Consent for Minors

Susan Penney
UCSF Health
Overview

- General Rules
- Consent when parents are absent
- When parents refuse treatment for a minor
- When parents disagree
- Court Involved Youth
- When can a minor consent?
  - Based on age or status
  - “Sensitive Services”

(Minor consent rules are found in Chapter 4 of the Consent Manual)
Consent in General

• A fundamental right for Competent Adults is the right to make health care decisions—patient autonomy — Common law (judge made law)

• Minors do not have the same global right: The right of a minor to make decisions depends on:
  • Age: 12 for some things; 14 for other; 18 general
  • Demonstrated independence — Status
  • Type of health care they are seeking — “sensitive services”
Consent in General

• Except for those decisions specifically granted to them, minors have the right to have a responsible adult, acting in the patient’s best interest, make health care decisions

• We will discuss the different categories of adult decision makers, and the limits of the consent process
Who Can Access the Record?

• Basic rules still apply
• If the patient is incompetent, the surrogate decision maker is allowed to access patient records
• Incompetent patients include:
  • Minors
  • Adults with a temporary conditions
  • Adults with more permanent conditions
Access When the Patient is a Minor

Minors

• Generally parents may access
• Exclusions
  • Adoption
  • Child Protective Services involved
  • Minor gave consent for the care [reproductive health (i.e. pregnancy testing, contraception, testing and treatment for sexually transmitted diseases), and certain mental health and substance use screening and treatments]
• Rule that can work for electronic access: parents can access the charts of minors under 11 but not 12 and older
## Option: Allow Access 12-17 with Limits

<table>
<thead>
<tr>
<th>Content</th>
<th>Adolescent (12-17 yrs)</th>
<th>Parent Proxy (≥12 yrs)</th>
<th>Parent Proxy (0-11 yrs)</th>
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<tr>
<td>Labs (HIV, STD etc.)</td>
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<td>Immunizations</td>
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<td>Allergies</td>
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<td>Growth Chart</td>
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<td>Messaging to and from provider*</td>
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<td>Appointment Request</td>
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<td>Problem List/Summary</td>
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<tr>
<td>Medications/refill request</td>
<td>YES</td>
<td>NO</td>
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</tbody>
</table>
The Basic Rules

• If the nature of the treatment is involved or complicated, “informed consent” is necessary

• The patient’s consent should be meaningful (risks and benefits, alternatives and their risks and benefits)

• All procedures require consent — but they may not have to be “informed consent”
“Simple” vs. “Informed Consent”

**Simple:** Conditions of Admissions
- Applies to simple, common procedures with remote risks, e.g., blood screen
- Signed Conditions of Admission sufficient for administration of Ativan and echocardiogram

**Informed:** Additional process required — malpractice implications
  » *Cobbs v. Grant* (1972) 8 Cal 3d 22

**No consent = Battery (Intentional tort)**
- E.g., wrong surgery or exceeds scope of consent
Other General Compliance Issues

- Elements of informed consent must be met
- Case law, Joint Commission, CMS all address the required elements
- Must decide what procedures require informed consent
- Documentation of process is required
Emergency Exception

• In an emergency when the patient can’t give consent in a timely fashion, and there is no one else, “implied consent” allows providers to save live/limb
• Immunity for proceeding with care
• Applies to both office and hospital settings

(California Business and Professions Code section 2397)
Consent for Minors: General Rules
Minors and their Adults

- Minor = person under the age of 18
- Parents have a legal obligation to provide the necessities of life for their minor children, including health care
  - Penal Code section 270
- The rights of minors have been expanded over the years—in California this has occurred via legislation or court interpretation
Minors and their Adults

• Some states have adopted the “mature minor” doctrine —
  • Minor at the age (usually 14) to appreciate risks and benefits
  • Minor evidences actual understanding
  • Treatment will benefit the minor

• California has not adopted this doctrine, but has used it as a rationale to legislate minors’ rights in some areas — e.g. outpatient mental health
Minors and their Adults — It’s Complicated

- Married parents
- Divorced parents
- Step parents
- Registered domestic partners
- Non-biological parents
- Third parties
Attributes for Explaining Complicated Laws

A SILVER TONGUE, A GOLDEN TOUCH, AND A MIND LIKE A STEEL TRAP.

UNKNOWN
Questions to Ask

- Is it a “sensitive service”? If yes, then the minor consents, if no:
- Is minor treated as an adult because he/she is emancipated or “self-sufficient”? If yes, then minor consents, if no:
- Is there a parent or legal guardian or some other adult available to consent, if yes, use them to consent, if no:
- Is it an emergency? If no, then probably not treatment that can be provided
Minors with Married Parents

• If no evidence of disagreement between parents, either parent has the legal authority to consent

• However, if there is disagreement, treatment should not be provided until the conflict is resolved — this can be very challenging — get good communicators and mediators — but carefully evaluate?

• What if harm to patient will result?
Minors with Divorced Parents

- If both agree: no problem
- If disagreement: It depends on legal rights of parents:
  - If parent has “sole legal custody” — they have the right:
    - Family Code section 3006 and 6903
  - If parents have joint legal custody — either parent can consent unless court order to the contrary
Minors with Divorced Parents

- Physical custody is irrelevant as to whether a parent has the right to make health care decisions.
- Thus, the fact that the minor lives with one parent does not mean that the non-custodial parent cannot consent.
- Focus on the LEGAL rights of the parents — sole legal custody is the exception.
Minors with Divorced Parents

- What if divorced parents with joint legal custody disagree?
  - If time allows, have parents get a court order
  - If delay might harm the minor, carefully consider, document, check with legal counsel
Minors with Divorced Parents

- Possible ways to manage:
  - Communicate equally with both parents
  - For elective treatment, determine in advance if parents are in general agreement before agreeing to the physician patient relationship
  - Avoid getting caught up in being used as a “pawn” for one parent to win
  - If you have notice of parental break-up, request that medical needs be addressed in legal documents — focus on child
Who Do You Believe? Just the Facts Please

- Priscilla is 13 and has a rare cancer and is pretty sick
- Priscilla’s mom, Betty comes with her to the hospital — Betty has quite a story to tell you about her soon to be ex-husband — Bud — the cheating, the hitting — according to her, he doesn’t care about his children and she makes sure the kids know this
Who Do You Believe? Just the Facts Please

- Betty says that we should not tell the Priscilla's dad ANYTHING
- She claims to have had a restraining order but can’t produce it; it later turns out that the restraining order has expired
- Your clinicians are siding with Mom
- Meanwhile, Bud’s attorney is calling with his client’s side of the story
- What do you do?
Family Code Section 3020

- **Public Policy**: to assure that children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, or ended their relationship, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy, except where the contact would not be in the best interest of the child, as provided in Section 3011.
I'm Switzerland; neutral as can be, and also with great chocolate.

Neal Shusterman
Step Parents

• Can a stepparent give consent for a minor?
  • A stepparent does not have the authority to give legal consent to medical treatment for a minor stepchild unless the stepparent has legally adopted the child or been designated a legal guardian.
Adopted Minors

• Adoptive parents have the same right to consent as birth parents 
  \textit{(Family Code section 8616)}
• Birth parents after adoption thus have no rights or responsibilities and are not involved in the consent process
• If birth parents have relinquished rights, but adoption not final, agency may consent
Adoption Pending

• If rights not yet formally relinquished, obtain a “continuing consent” from birth parents

• Use “Health Facility Minor Release Report” — that gives the prospective adoptive parent the right to make health care decision pending finalization of adoption
Last Year’s New Laws: Health Facility Minor Release Form (AB 2872)

- At the request of the birth parent of a newborn, hospitals are required to complete a Health Facility Minor Release form and:
  - Provide copies to the birth parent(s)
  - Provide copies to the persons who will receive physical custody of the child upon discharge from the hospital
Health Facility Minor Release Form (AB 2872)

- Legislative intent: to make it easier for adoptive parents to take a child home while the adoption is pending

*(Family Code section 9001; W & I Code 305.6, 827)*
Minors Born out of Wedlock

- Mother has legal authority to consent
- Father has the same right: however, if reason to doubt status, request court order establishing parental right
- Hospital must offer to the mother oral notice about the ability to provide a voluntary declaration of paternity
  (	extit{Family Code section 7571})
Registered Domestic Partners

- RDP have the same rights as married spouses
- But with regard to spouses and RDP, they have no right to make health care decisions for the child of one partner or spouse, unless:
  - They have adopted the child
  - They have a signed 3rd party authorization
  - They have a care giver authorization affidavit
Non-Biological Parents

• This area is evolving: Two California cases demonstrate this:
  • *Elisa B. v Sup Ct.*: Former partner of biological parent held to have obligation to support child
  • *K.M. v E.G.*: Woman ovum donor who helped raise children has parental rights post separation

• Solution: *Parental Agreements or Adoption*
Minors Who Are Parents

- The law doesn’t make much sense here
- Even though a minor parent CANNOT make health care decisions for herself, she can make them for her child, so long as:
  - The minor demonstrates the ability to give informed consent
Minors Who Are Parents

• 17-year old mother with newborn with complicated medical issues

• Mother did not consent to the child being trached because she did not like how it would look. What do you do?
  • Ethics Consult on capacity?
  • Discussion of CPS?
Evaluating if a Minor Has Capacity

• Start with the presumption of capacity
• Physical and mental disorders alone are not a sufficient basis for finding lack of capacity
• Explain risks, benefits and alternatives in terms the minor can understand
• Believing that the minor is making an unwise or “wrong” medical decision is not a basis for concluding lack of capacity
• Look at the situation
Minors Who are Parents

- Pregnant 16-year old here for delivery of baby
- Due to condition of fetus, C-section recommended
- 16 year old would not consent, wanted to wait for her mother to get to the hospital
- What do you do?
Minors Who are Parents

- If a provider believes the minor lacks that capacity, suggest the minor involve the grandparent — have grandparent sign conditions of admission for financial responsibility
Refusal of Treatment

Parents have the right to refuse treatment-informed refusal, however:

- May not impose their beliefs re: blood transfusion — court orders
- When is refusal of treatment abuse?
- Generally, the parents must act in patient’s best interest
- But both the physician and the parents think they are acting in best interest
Refusal of Treatment

Strategies to gain agreement

• Discuss best interest analysis and long term nature of decisions
• Consider ethics consult and meeting with parents to resolve anxiety about provider’s motives
• 2nd opinion offered
However, Consider

A physician’s right to not treat a person as a personal representative if the physician has a reasonable belief that:

• The patient has been subjected to domestic violence, abuse or neglect by that person, or

• Treating that person as the personal representative could endanger the patient, and

• In the exercise of professional judgment, the physician decides it is not in the patient’s best interest to treat the person as the patient’s personal representative

(45 C.F.R Section 164.502 (g)(5))
Blood Transfusions for Minors - Two Approaches

• **Court Order option policy language**: If the treating physician has determined that medical treatment is necessary to sustain life or prevent lifelong disability of a minor patient, and parents or legal guardians have been contacted and refuse to provide consent, the physician, in collaboration with a hospital social worker should immediately contact Child Protective Services (CPS) for consultation and possible court order.

• **Less Common but emerging? — No court order**: If a minor patient suffers a life-threatening emergency during the course of treatment and the treating physician determines that the transfusion of blood or blood products is immediately necessary to save the minor’s life, hospital personnel will administer necessary care, which includes using blood and/or blood products.
Blood Transfusions for Minors

- **Less Common** — no court order policy: The attending physician/surgeon or his/her designee shall discuss with the patient’s decision-maker the risks of foregoing the use of blood or blood products and the risks and benefits of any alternative procedures, treatment, or care. In the case of a minor patient, the attending physician/surgeon shall also advise that in the event of a life-threatening emergency during the course of treatment, hospital personnel will administer necessary care, including using blood or blood products, if doing so is immediately necessary to save a minor patient’s life.
Blood Transfusions for Minors

**Less Common** — no court order policy: When the patient is a minor, this discussion must include notification that the physician cannot guarantee that administration of blood or blood products will not occur, since the law permits, and Hospital policy requires, the transfusion of blood or blood products over the objections of the parent(s)/legal representative in the event of a life-threatening emergency if the treating physician determines that the transfusion of blood or blood products is immediately necessary to save the minor’s life.
Third Party Consent-Signed by Parent

- A parent, guardian or related caregiver may authorize an adult into whose care a minor has been entrusted to consent to medical or dental care, except
  - If minor is 14 or older — then guardian rule applies
    *(Family Code section 6901)*
- See CHA form: Authorization for 3rd party to Consent. This form allows hospital to release child to 3d party
3rd Party Authorization Form

FORM 2-3

AUTHORIZATION FOR THIRD PARTY TO CONSENT TO TREATMENT OF MINOR LACKING CAPACITY TO CONSENT

I am the   □ parent  
□ guardian  
□ other person having legal custody  
(describe legal relationship)
of (name of minor)  , a minor.

I hereby authorize (name of agent)  to act as my agent to consent to any X-ray examination, anesthetic, medical, surgical or dental diagnosis or treatment, and hospital care which is recommended by, and to be rendered under the general or special supervision of, any licensed doctor or dentist, whether such diagnosis or treatment is rendered at the doctor’s office or at a hospital.

I understand that this authorization is given in advance of any specific diagnosis, treatment, or hospital care being required, but is given to provide authority to the above-named agent to give consent to any and all such diagnosis, treatment, or hospital care which a licensed doctor or dentist recommends.

This authorization is given pursuant to the provisions of Family Code Section 6910.

I hereby authorize any hospital providing treatment to the above-named minor pursuant to the provisions of Family Code Section 6910 to surrender physical custody of the minor to the above-named agent upon the completion of treatment. This authorization is given pursuant to Health and Safety Code Section 1283.

These authorizations shall remain effective until (month and day) 20_____, unless sooner revoked in writing delivered to the agent named above.

Date:  

Signature:  
(circle relationship: parent/legal guardian/person having legal custody)
Signature:  

(printed form on reverse of this page)
Use of Authorization Form Required?

- Use of CHA form is optimal, but it is not required
- Report preparation does not need to be witnessed by hospital staff
- Does not need to be dated
- Specific name of 3rd party not necessary — title is sufficient
- Try to verify with parents, but authorization not required
Parent Out of the Country

- Judy’s Father has sole legal custody
- Judy’s dad is working off shore on an oil rig
- Father wrote letter authorizing grandparents to consent for parents
- What do you do?
  - Look to see if it meets elements of 3rd party authorization
• A nonparent adult relative with whom a minor lives may complete a “Caregiver Authorization Affidavit”

• Authority for treatment is the same as a parent’s except for surgical treatment

• Surgical treatment authority is the same as guardian authority
Caregiver Authorization Affidavit

- “Living with” is undefined but probably does not mean visiting
- “Qualified relative” is broad and survives death or separation — includes blood relatives and step parents, cousins, “greats” and “grands”
- The adult must advise parents of proposed treatment without objection or the caregiver must be unable to contact the parents
CAREGIVER'S AUTHORIZATION AFFIDAVIT

Use of this affidavit is authorized by Part 1.3 (commencing with Section 6556) of Division 11 of the California Family Code.

INSTRUCTIONS:
Completions of items 1-4, inclusive, and the signing of the affidavit is insufficient to authorize consent of a minor in school and authorize school-related medical care. School-related medical care means medical care that is required by statute or local governmental authority as a condition for school enrollment, including immunizations, physical exams and medical exams conducted in schools. Completion of items 5-8, inclusive, is additionally required to authorize any other medical care. Please print clearly.

☐ I am requesting consent of the minor in school and to authorize school-related medical care.

☐ I am requesting to authorize medical care not school-related. Completion of items 5-8 is required.

The minor named below lives in my home, and I am 18 years of age or older.

1. Name of minor: ____________________________

2. Minor's birth date: _________________________

3. My name (adult giving authorization): ____________________________

4. My home address: ____________________________

5. I am a parent, guardian, custodian, or other qualified relative of the minor (see back of this form for a definition of "qualified relative").

6. Check one or both (for example, if one parent was advised and the other cannot be located):

☐ I have notified the parent(s) or other person(s) having legal custody of the minor of my intent to authorize medical care, and have received no objection.

☐ I am unable to contact the parent(s) or other person(s) having legal custody of the minor at this time, to notify them of my intended authority.

7. My date of birth: ____________________________

☐ My California driver's license or ID card number: ____________________________

WARNING: DO NOT SIGN THIS FORM IF ANY OF THE STATEMENTS ABOVE ARE INCOMPLETE OR YOU WILL BE COMMITTING A CRIME PUNISHABLE BY A FINE, IMPRISONMENT OR BOTH.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: ________________________ Time: ________________________

Signature: ________________________ (legal representative)

Print name: ________________________ (legal representative)

California Department of Education

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NOTICE:

This affidavit does not affect the rights of the minor's parents or legal guardian regarding the care, custody, and control of the minor, and does not mean that the caregiver has legal custody of the minor.

A person subscribing an affidavit has no obligation to make any further inquiry or investigation.

IMPORTANT INFORMATION

TO CAREGIVERS

"Qualified relative" for purposes of item 5 means a grandparent, grandchild, brother, sister, stepbrother, stepsister, half-sibling, half-stepsibling, uncle, aunt, niece, nephew, first cousin, or any person related by the blood "strain" of "prince" or the issue of any of the persons specified in this definition, even after the marriage has been terminated by death or desertion.

The law may require you, if you are not a relative or not a legal guardian, to obtain written evidence from the minor's parent or other legal guardian that the minor will be living with you.

If the minor's home is located outside the city, town, county or other political division to which you have given this affidavit, you may be required to file an affidavit of consent to medical care with the appropriate local or county health officer.

TO SCHOOL OFFICIALS

Section 4329.5, California Education Code provides that this affidavit contains a sufficient basis for the school to have the medical consent. If the school has reasonable cause to believe that the minor is not living with the caregiver, the school district may require additional reasonable evidence that the caregiver lives at the address provided in item 4.

TO HEALTH CARE PROVIDERS AND HEALTH CARE SERVICE PLANS

A person who acts in good faith reliance upon a caregiver's Authorization Affidavit to provide medical or dental care, without actual knowledge of such contrary evidence in the caregiver's possession, is not subject to civil liability to the minor for any action, and is not subject to professional disciplinary action, for the omission of such application pertaining to this form are answered.

This affidavit does not mean that the minor is automatically independent for health care coverage purposes.

Reference: Family Code Sections 4556 and 4650

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Minors Whose Parents Appear Permanently Unavailable

- If the minor is 16 years or older, but consent by his/her parent is required:
  - Minor may petition the court for order allowing the treatment  
    \textit{(Family Code section 6911)}
- If minor has been abandoned, involve juvenile court
- Abandoned newborns under safe surrender may be treated without parental consent  
  \textit{(Health & Safety Code section 1255.7)}
Suspected Child Abuse

- Health care providers have the right to examine and x-ray minors without the consent of the parent when child abuse is suspected.
- Provider does not have to prove that abuse has occurred.
- Immunity applies.
What if the Minor Refuses Treatment?

• Case by case analysis — assess the minor’s capacity
• Discuss care with minor
• Mediate with family using social work, spiritual services
• Consider ethics consult
General Confidentiality Rules for Court Involved Youth

- Parent maintains the right to access health care info unless the court orders otherwise
- Minors maintain their rights to minor consent matters
- Same rules regarding who signs authorization (try to get parents to sign general authorization)
- Court has authority to authorize others to receive information such as probation and social work
Minors in Custody/Juvenile System

- If a minor is taken into custody, the State must provide for health care needs — Court may issue orders for care
- As a general rule, the same consent rules will apply, including:
  - A court may remove the parents’ right to consent
  - A court may grant other people the right to make decisions without taking away parents’ rights
Minors in Custody/Juvenile System

• Probation officer:
  • May consent for medical screening when minor has been taken into custody and for related recommended treatment
  • Emergency Care: may consent, but make reasonable efforts to contact parents and obtain consent — if no consent, treatment may be given without court order
  • Court authorization may be given to make decisions with notice to parents
Foster Parents

• Unless otherwise specified, parents do not lose the right to consent. Exceptions:
  • Court has the right to remove parents’ rights to consent once the minor is a dependent of the court
  • Additional people can be authorized to consent
  • Most of the same consent rules apply that would give minor the right to consent
Foster Parents

• May give consent for “ordinary” (not defined) medical and dental treatment, such as immunizations, physical exams and x-rays. No need for court order.

• May authorize care only if court has given caregiver that authority.
Child Welfare (CW) Social Worker

- CW Social Worker may consent for care in immediate emergencies, even without a court order, after making a reasonable effort to notify and obtain parental consent
- When in temporary custody, the social worker may authorize care upon recommendation by attending physician and notice to the parent. If the parent objects, no care without court order
- Some counties have standing orders!!!
An Attorney Comes Knocking

- Helene is a busy social worker at Making the Impossible Possible Hospital
- She is dealing with an unfortunate situation where CPS is involved and the parents are angry that they are under investigation
- The father’s attorney Mel Melodeous is at the front desk of the hospital demanding to speak to the nine-year-old — the nine-year-old is afraid
An Attorney Comes Knocking

- Remember in CPS cases, the child is supposed to be given an attorney.
- Helene should be advised to refer the father’s attorney to the child’s court appointed attorney.

“YOU CAN’T CHANGE SOMEONE WHO DOESN’T SEE AN ISSUE IN THEIR ACTIONS.”
Guardians

The rights of guardians are determined by the court so always obtain the certified letters of guardianship to determine scope of authority vs. parents’ authority. Unless specified otherwise, guardians may consent to non-surgical medical treatment.

(Probate Code section 2353(a))
Guardians — Surgical Treatment

Unless otherwise specified, guardians may consent to surgical treatment, except surgery for a minor 14 years of age or older requires:

- Consent of both the guardian and minor, OR
- A court order obtained by the guardian, OR
- Guardian determine, based on medical advice that surgery is an emergency

(Probate Code section 2353 (b), (c))
Guardians — Limitations

Guardians cannot consent to:

- Experimental drugs
- Convulsive treatment
- Sterilization
- Psychosurgery
- Mental health treatment facility placement unless application is made under Welfare and Institution Code. In that situation, the treatment is considered voluntary and minor is so advised.
Case Example — Advocating?

- Angela, age eight, has been coming to your facility for treatment on an ongoing basis
- Biological mother is not involved with care
- Grandmother always appears with minor for appointments with mother’s authority
- Grandmother wants to seek guardianship of the child and she asks for a letter advocating that she be awarded guardianship. What do you do?
Emergency

• Clair, age 14, was injured in a skateboard accident and has a serious vascular injury to her leg — we don’t want to amputate but need to act now. Her parents cannot be located.

• She needs emergency treatment, what do you do?

• Answer: Emergency exception to consent applies (remember you do not need the consent of two physicians by law — hospital policy may require)
Minor’s Right to Consent Based on Age or Status
Minors of a Certain Age

Magic Numbers:

• Any age: reproductive health services
• Age 12+: outpatient mental health, communicable diseases, HIV testing, drug and alcohol
• Emancipated or self sufficient at 15+: all care
• 16+: may apply for court order

Note: Providers may consider actual capacity of patient
General Rule on Financial Responsibility

• If the minor may legally consent, the parents are not financially responsible for the service

(W & I Code section 14010)
Emancipated Minors

A minor is emancipated if:

- The minor is or has been validly married
- Is on active duty in the military
- Has received a “Declaration of Emancipation” by a court

*(Family Code section 7002)*
Emancipation Declarations

- Minor 14+ years may petition the court for emancipation
- DMV will issue an ID card stating emancipation
- Emancipated minors may consent to treatment without parents consent, knowledge or liability
Emancipated Minors

Look at statutes for what parents might be responsible for if the emancipated minor lives with them. It is basically all health care except those listed on the following slide.

(W & I code section 14010)
Under Family Code, Parents Free of Financial Responsibility For:

- Outpatient mental health care: 6924
- Prevention of or treatment for pregnancy: 6925
- Communicable disease prevention and treatment: 6926
- Care related to rape: 6927
- Care related to sexual assault: 6928
- Alcohol and drug abuse treatment: 6929
Minors Living Separate and Apart From Parents

A Minor may be deemed “self-sufficient” and able to consent for health care if:

- Age 15+
- Minor is living separate and apart from parents, regardless of their consent or the duration of the separation
- Minor is managing his or her own financial affairs

(Family Code section 6922)
Self-Sufficient — How to Verify?

• The law does not provide rules on how or if a health care provider must verify the minor’s claim of self-sufficiency
• Look at ID & make a good faith effort
• Have the individual fill out the Self-Sufficient Minor form (CHA form 2-1)
• In the absence of evidence to the contrary, you may rely on form
• Can you inform parents? Maybe
Minors on Active Duty

Minors on Active Duty are emancipated and can consent to all care

- Obtain a copy of their military ID card
- No responsibility to inform parents and parents are not financially responsible
Married or Previously Married Minors

Minors in this category are emancipated and can consent to care

• No responsibility to inform parents and parents are not financially responsible

• It is advisable to get a copy of the marriage certificate
Minor’s Right to Consent Based on the Type of Treatment
Emergency Care

- Emergency defined: “a situation requiring immediate services … which if not immediately diagnosed and treated, would lead to serious disability or death”
  
  *(B & P Code section 2397 (c) (2))*

- Provider will not be liable for performing a procedure on a minor if the provider “reasonably believed that the procedure should be performed immediately and that there was insufficient time to obtain parental consent”
  
  *(B & P Code section 2397)*

- Document your efforts to reach the parent
Services for Which Minors Can Consent

- Pregnancy related services at any age
- Outpatient mental health services*
- Reportable communicable diseases/STD’s treatment*
- HIV counseling and testing*
- Drug and alcohol treatment*
- Rape services*

* ≥ 12-years old
Access to Care During School Hours

• Minors can leave school to obtain these sensitive services without telling their parents.

• School cannot ask what the treatment is for, but they can ask for a confirmation that a visit has occurred.

(Education Code section 46010.1)
Pregnancy or Contraception

May consent to all types of care in this category, regardless of age. Treatment includes:

- Contraception care, including emergency
- Abortion
- Pelvic exams
- Pregnancy testing
- Pre-natal care
• Lucey is 13 and is scheduled to have her appendix removed

• Hospital policy on pregnancy testing: “The purpose of this policy is to provide instruction on pre-procedure pregnancy testing in order to minimize potential adverse effects to a fetus.”

• The surgeon, a dad of a teenage girl, wants to explain the policy to Lucey’s Mom and get consent for a pregnancy test
Pregnancy Testing For Minors

- Nurse Diane intervenes and explains to the surgeon that the matter needs to be handled sensitively.
- The surgeon can not believe that a child of such a young age should be allowed to consent alone for this type of situation let alone possibly be involved in sexual activity.
- Diane rolls her eyes and explains.
Special Pediatric/Adolescent Considerations

• Menses occurs at various ages, with the average age of menses having recently decreased

• Parents may not be aware that their child is sexually active

• California state law requires that a minor’s positive pregnancy test result be reported only to the minor, and not her parents without the minor’s written consent
Possible Policy Language

Procedure

• Develop a standard practice of conducting a portion of pre-operative interview outside the presence of parents
• Obtain consent of minor
• Arrange for social work involvement if test is positive

It is best if this process is included in a policy
Pregnancy

- A parent cannot be told of the pregnancy test or result without the minor’s consent
  

- Also think about this policy related to radiation
No Parental Notification For Abortion

- Minors have a constitutional right to consent to abortion
- In the 80’s a statute passed that would have required parental notification: CA Supreme Court struck down that law. *(Cal. Family Code § 6925; American Academy of Pediatrics v. Lungren, 16 Cal.4th 307 (1997))*
- No mandatory waiting period for abortion in California (24 other states have such a rule)
- Use good judgment as with any patient as to capacity
Communicable Diseases

• Threshold age for consent is 12 years
• Diseases include those that must be reported to the State
• HIV testing is included
• HPV virus is included
• Minor may consent for all necessary treatment
Communicable Diseases - Prevention

Existing Law:

• A minor of 12 years of age or older can provide consent for hospital, surgical, or medical care related to the diagnosis or care of certain conditions or diseases.

• New Law:
  • A minor who is 12 years of age or older may consent to medical care related to the prevention of a sexually transmitted disease.
  • The minor’s parents or guardian are not liable for payment for medical care provided pursuant to this section.
Rape or Sexual Assault Victims

- Minor 12+ can consent to all necessary treatment, including emergency contraception, related to rape
- Minor of any age may consent to all treatment related to sexual assault (so that would cover rape?)
- Minor may also consent to the collection of evidence by police
Rape or Sexual Assault Victims

For minors under 12:

- Provider must attempt to contact the minor’s parent/guardian and note in the minor’s record the day and time of the attempted contact and whether it was successful. This provision does not apply if the treating professional reasonably believes that the parent/guardian committed the assault. 
  
  *(Cal. Family Code § 6928)*

- Both rape and sexual assault of a minor are considered child abuse and must be reported
For minors 12 and over:

- The health care provider is not permitted to inform a parent or legal guardian without the minor’s consent. The provider can only share the minor’s medical information with them with a signed authorization from the minor.

Drug/Alcohol Treatment

• Minor 12+ may consent to medical care and counseling related to a drug/alcohol problem
  (Family Code section 6929)

• However, minor may not consent to replacement narcotic abuse treatment (methadone, etc.)

• State law also allows a parent or guardian to consent to care for these conditions if the minor does not consent
Drug/Alcohol Treatment

• Parents will not be financially liable unless they participate in counseling
• Parents must be given the opportunity to participate in counseling unless provider does not think it is appropriate
Minors and Outpatient Mental Health Consent

• Minors 12 or older, deemed by the professional person sufficiently mature to participate intelligently, may consent to outpatient “mental health treatment or counseling services”

• No longer limited to when the minor presents a danger to self or others, is alleged victim of incest or child abuse

(CHA Consent Manual Chapter 2)
Minors and Mental Health Consent (cont.)

- Counseling “shall include” parents/guardian unless the professional determines that would be inappropriate
- The professional is required to confer with the minor first on this issue
  - Documentation required:
    - Decision not to contact parents/guardian
    - Or attempts to contact parents/guardian
- But cannot share medical record without minor’s consent

Minors and Mental Health Consent (cont.)

• Expands right of privacy to include the services to which the minor could have consented, so minor can decide whether or not to disclose information from counseling even if the parents consented and are paying.

• Extends to substance abuse disorder – outpatient counseling, not methadone.

*(Family Code section 6924 (b))*

*(Health and Safety Code section 12460)*
Minor Mental Health Payment

• Provides the parents are not liable for payment (and should not be billed) if the minor consented to the services

• Medi-Cal has a “minor consent” or “sensitive services” program, that enrolls minors for benefits without income qualification or parental notification for services: (includes: pregnancy, family planning, abortion, sexual assault, sexually transmitted diseases, mental health outpatient treatment (some limits) and substance abuse treatment)
Minors cannot consent to any of the following:

- Inpatient mental health
- Psychotropic drugs
- Convulsive therapy
- Psychosurgery
Minor Mental Health Payment

Medi-Cal program will not cover care provided when minors consent for mental health care, although it might still pay if the minor required counseling because he/she was danger to self or others, or victim of alleged incest or abuse.
Gender Identity Related Counseling

- 14-year old Billie is considering a gender change – possibly transition surgery
- Preparatory to that decision Billie is going thru a program that involves counseling
- Billie’s parents are divorced, and his primary relationship is with his mother
- His mother wants to make sure that Billie’s dad does not know anything about the situation
Gender Identity Related Counseling (cont.)

- Billie can consent to the outpatient mental health counseling; however his counselor needs to talk to Billie about involving his parents — all behavioral health statutes require this involvement
- Document attempts
- Make decision to involve parents in collaboration with Billie
- Note: 42 CRF Part two prohibits involving parent unless there is written consent from the minor.
- The counselor wants to encourage Billie to involve both parents, because it is a “family” issue that needs to be explored AND one of the parents can say “no” to transition surgery.
- Billie’s mother is so informed.
Human Trafficking
What is Human Trafficking?

HUMAN TRAFFICKING IS

- modern day slavery.
- exploiting a person through force, fraud, or coercion.
- sex trafficking, forced labor, and domestic servitude.
- happening everywhere, even in the United States, and victims can be U.S. citizens or of any nationality, age, socioeconomic status, or gender.
- any person under the age of 18 involved in a commercial sex act.

Trafficking Victims Protection Act of 2000
Josh is a 19-year old male who comes to your ED complaining of possible seizures. He is accompanied by an older male, Norbert, who says he is Josh’s:

- Agent for health care decisions giving him immediate decision making regardless of Josh’s capacity
- Attorney
- Partner
- Guardian — Norbert relied on Probate Code section 1510.1 — authorizing guardianship until 21
Red Flags in the ED

- Norbert did not want anyone talking to Josh outside his presence.
- The ED MDs were concerned noting Josh appeared afraid of Norbert.
- Norbert was asked to leave and he became physically violent.
- Norbert is threatening to sue your hospital.
- Red Flag: Was this human trafficking?
Red Flags in the ED

- Norbert had isolated Josh by outing him as gay to his family; Josh is now at-risk from his own cultural community
- Adult Protective Services were involved
- Policy arrested both parties
- Now there are civil actions and the ED providers are being called to testify
Lingering in the Laundromat

- 16-year-old Jill was found in a laundromat saying that she was not feeling well; she had been reported missing by a foster family, but when called they reported Jill was no longer in their care.
- Jill was hesitant to provide any background information but ultimately reported that she was being used by her boyfriend.
- Concern for sex trafficking.
Questions:

• Is there anyone at your facility who is aware of this international/national issue?
• Have your ED and primary care providers received any education on the signs to look for?
• What resources do you have to evaluate — good police contacts?
• Do you think human trafficking isn’t a problem in your geographical area?
What are the Numbers?

- 14,500-17,500: estimated number of people trafficked into the United States each year
- 50% of people trafficked into the U.S. each year are children
- 800,000 people are trafficked worldwide each year
- East Asia/Pacific is the region that is the largest source of people who are trafficked into the U.S. each year.

Sources: U.S. Department of Health and Human Services
U.S. Department of Justice; Free the Slaves
Vulnerable Youth

- Run away kids
- Physically/sexually assaulted
- Neglected/Abandoned
- Family-controlled (may start at a very young age) — 36% of cases
- LGBT

87.8% of victims reported contact with health care system

Resources

- Polaris hotline: 1 (888) 373-7888
- Training by HHS Office of Women’s Health Administration of Children and Families [https://www.acf.hhs.gov/otip](https://www.acf.hhs.gov/otip)
Questions
Thank You

Susan Penney
Executive Director of Risk Management
UCSF Health
(415) 353-1842
susan.penney@ucsf.edu