Adolescent Reproductive Health Concerns: Legal Review

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(116 responses)

California Minor Consent and Confidentiality Laws

What is baseline knowledge in general medical practice in California?

(n=116 responses)

What is the baseline knowledge in general medical practice in California?

(n=116 responses)
Why is assuring confidentiality important?

Young people worry about it.

Concerns about parents finding out about a clinic visit impacts whether youth will seek sensitive services (e.g., STD screening and birth control).

40% of female adolescents who seek sensitive services in clinics are pregnant or sexually active.

Among sexually active female adolescents seeking sensitive services...

- 40% would not go to a clinic for prescription contraceptives.
- 1 out of 5 would not use any contraception or rely on withdrawal methods.
- Only 1% would stop having sex.

Parental notification can drastically affect youth decision-making, reducing the likelihood they will seek sensitive services while not reducing their risk behaviors.

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Ensuring access to confidential sensitive healthcare services for young people who need them is an essential safety net for keeping youth healthy and safe.

Consensus among national recommending bodies strongly supports minors’ access to confidential care for sensitive services.

What does “minor consent” mean?

Young people can consent to specific, sensitive medical services without the permission or notification of their parents/guardians. These are minor consent services.

Some minors are able to consent to their own care entirely based on their situation in life. This is minor consent based on status.

Status Exceptions in California

Minors may consent for general medical care if:
- Emancipated by a court
- Married
- Armed Services
- All of the following:
  - 15 years of age or older;
  - Living apart from parents/guardians, no matter the duration of the separation and with or without the permission of the parents;
  - Managing their own financial affairs.
Minor Consent Services:
Of the services listed below, minors* can consent to which?
1. Contraception
2. Pregnancy testing
3. Abortion
4. Sports physical
5. Flu vaccine
6. Mental Health Psychotropic Medication
7. Mental Health Outpatient Therapy
8. HPV vaccine
9. Hepatitis B vaccine
10. Drug Treatment
11. HIV PrEP
12. STD testing

* Assume the minors are not emancipated

Quiz! Of the services listed, minors* can consent to which?
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5. Flu vaccine
6. Mental Health Medication
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12. STD testing

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HIV Prevention + Testing + Treatment

- A **minor 12 years and older** is competent to give written consent for an HIV test
  Cal. Health and Safety Code § 121020

- A **minor 12 years and older** may consent to the prevention, diagnosis and treatment of HIV/AIDS
  Cal. Family Code § 6926

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STD Prevention + Testing + Treatment

- A minor 12 years and older who may have come into contact with a sexually transmitted disease may consent to medical care related to the diagnosis or treatment of the disease
  
  Cal. Family Code § 6926

- A minor 12 years and older may consent to medical care related to the prevention of a sexually transmitted disease
  
  Cal. Family Code § 6926

Contraception Services

A minor may receive birth control without parental consent

Cal. Family Code § 6925

There is no specified age minimum related to minor consent for birth control.

Pregnancy + Related Services

- A minor may consent to pregnancy related care, including pre and postnatal pregnancy care, except sterilization
  
  Cal. Family Code § 6925

- A minor may consent to an abortion without parental consent
  

There is no specified age minimum related to minor consent for pregnancy related care.
What does this mean for Healthcare Providers?

• Minors of any age may seek any of the pregnancy related services noted (no age minimum for contraception).

• Healthcare providers do NOT need parent/guardian permission to provide these services.

• Healthcare providers cannot demand parent permission or notification.

Confidentiality Laws and Parent/Guardian Access

A health care provider is not permitted to inform a parent or legal guardian about sexual and reproductive health care services (STD services, pregnancy related care) provided to a minor without minor’s consent.

The provider can only share the minor’s medical information with a parent or guardian with a signed authorization from the minor.


Minor Consent Confidentiality Law and Third Party Disclosures

While the general rule is that a signed authorization is necessary to release personal health information, in some cases, the law sometimes allows or requires providers to disclose otherwise protected information about the minor to third parties.

Examples include but are not limited to:

• Complying with mandated child abuse reporting laws
• Public health reporting laws
• Court Orders (but also consider Doctor Patient Privilege before releasing for court purposes)
• Insurance Claims

What is Mandated Child Abuse Reporting?

1. Neglect
2. Child abuse
   - Sexual Abuse
   - Willful Harm or Endangering
   - Physical Injury
   - Unlawful Corporal Punishment

Not mandated by child abuse reporting law, but often required by other duties:
- Hurting oneself or threats to hurt oneself
- Hurting others or threats to hurt others

What is Reportable as Sexual Abuse?

1. Sexual assault
2. Sexual exploitation, including trafficking
3. Certain disparate age sexual acts

When is disparate age sexual intercourse reportable as child abuse?
Common question areas related to mandated child abuse reporting

• Do I need to report illegal activities?
• Do I need to inform parents if I make a child abuse report?

Sample strategies that help to assure confidentiality for adolescent visits

Standardize alone time for adolescent patients, regardless of reason for visit

During alone time with the provider, ensure parents/caretakers are not waiting outside exam room

Provide parents with resources that help explain the developmental role of privacy

Review "Conditional confidentiality" with each teen patient during alone time. Have materials in waiting and exam room.
Sample strategies that help to assure confidentiality for adolescent visits

Music in hallways and communal areas can help ensure privacy of conversations occurring in exam rooms

Provide routine training for all staff on CA Minor Consent and Confidentiality laws (clinicians, nurses, MAs, receptionists, and medical records staff)

Sample strategies that help to assure confidentiality for adolescent visits

Facilitate confidential billing for adolescent patients requesting minor consent services
- Family PACT
- Medi-Cal Minor Consent
- Assist patients in submitting confidential communications request forms to their parents health plans

For more about the Confidential Communications Request Information: www.myhealthmyinfo.org

Summary of California Laws for Minor Consent Services

Minors may seek and consent to any of the following services:
- Contraception (no age minimum)
- Pregnancy services, including abortion (no age minimum)
- STD & HIV testing, treatment, prevention (12 years and older)
- HPV & Hepatitis B vaccines (12 years and older)
- HIV PrEP, PEP (12 years and older)
- Mental Health Outpatient Treatment (12 years and older)
Quiz!

Fifteen year old Emma comes in with her mom for a physical. During a private moment with her, Emma says she wants a pregnancy test.

May she consent for the pregnancy test?

Emma’s test is positive and she tells you that she wants to schedule an abortion appointment.

May she consent for an abortion on her own?

Quiz!

Emma shares that her partner is 22 years old. They plan to get married, but she wants to finish high school before she has any children.

Are you required to make any reports related to Emma?

What if anything can you share with Emma’s mom?

Resources

National Center for Youth Law Charts
www.teenhealthlaw.org
- When Sexual Intercourse is Deemed Child Abuse in CA
- CA Minor Consent Laws
Quiz!

Emma shares that she is from Texas. You know that there are new laws around pregnancy and abortion in Texas. Are you required to ask additional questions? Are you required to make any additional reports?
Legal Landscape

Abortion Ban

Affirmative Right, Access

1. Abortion is a fundamental right under the federal constitution;
2. States cannot ban abortion absolutely;
3. States cannot pass laws that create an "undue burden" on abortion access.
Examples of Laws

- Minor Consent
- Public Funding
- Confidentiality
- Telehealth
- Recognition of Affirmative Right to Choose
- Clinic Protections
- Education in Medical Schools
- Comprehensive Sex Ed

Parental Involvement Laws as of May 2022

- Parent consent or parent notice
- Required waiting period
- Required ultrasound
- Required information
- No telehealth
- Hospital admitting requirements
- Ban after 15 weeks
- Ban after 8 weeks
- Absolute ban

When Roe v Wade fell, what happened...

Abortion Ban

Affirmative Right, Support Access
What do state laws say as of July 2022?

https://reproductiverights.org/maps-abortion-laws-by-state

But wait! What do state constitutions say?

Abortion Ban

Federal Constitution

State Constitution

Where is California?

California’s highest court recognized the right to choose is protected by the right to privacy in the California constitution.
What's coming? lots of legislative and ballot activity

- Many bills right now to protect and improve access to abortion
- Many bills to restrict or ban abortion.
- Constitutional Amendment will be on the California November Ballot.

Constitutional Ballot Proposition 1, Right to Reproductive Freedom Amendment:

If the initiative passes, it would add the following language to the California Constitution:

"The state shall not deny or interfere with an individual's reproductive freedom in their most intimate decisions, which includes their fundamental right to choose to have an abortion and their fundamental right to choose or refuse contraceptives. This section is intended to further the constitutional right to privacy guaranteed by Section 1, and the constitutional right to not be denied equal protection guaranteed by Section 7. Nothing herein narrows or limits the right to privacy or equal protection."

https://ballotpedia.org/California_Proposition_1,_Right_to_Reproductive_Freedom_Amendment_(2022)

Resources:

- For an up to date summary of state abortion laws, see abortionfinder.org, sponsored by Power to Decide.
- For a legal helpline for youth with questions about self-managed abortion, judicial bypass and state law, see DeclaracionZika.org, sponsored by If/When How; Lawyering for Reproductive Justice.
- For holistic support (funding, travel support, abortion doula, information) in California, clients can reach out to the Access Reproductive Justice Health line via text or phone, see https://accessrj.org.
- For holistic support and resources to support abortion access in other states (funding, travel support, informational needs, etc.), find the local abortion fund at abortionfunds.org.
- For information on waiting lists and other resources in California, check out the website for the Access Reproductive Justice Future of Abortion Council (FAB council).
Hypothetical

Seventeen-year-old Julia schedules an appointment for an abortion in your clinic. In her paperwork, she lists her home state, and it is one in which abortion has now been banned.

- Does Julia have a legal right to consent to abortion in California?
- Are you required to make a report that she has sought abortion care from you?
- What do you do if you receive a court order or subpoena asking for private medical information related to Julia?

Thank you!
Questions, comments, discussion?