

Consent to Medical Treatment for Foster Children: California Law

A Guide for Health Care Providers

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February 2014



This publication was created by the National Center for Youth Law as part of its **Teen Health Law Initiative**, which provides information and resources to providers of adolescent health services.

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Funding for the first edition of this document was provided in part by the Richard and Rhoda H. Goldman Fund.

Acknowledgements: Thanks to Allison Crapo, NCYL; Martha Matthews, Children's Law Center of Los Angeles; and Phil Ladew, California CASA, for reviewing and commenting on drafts of the first addition. Special thanks to Christiana MacFarlane, Fiza Quarishi, and Erica Franklin of NCYL for research and writing assistance.

Disclaimer: This manual provides information. It does not constitute legal advice or representation. For legal advice, readers should consult their own counsel. This manual presents the state of the law as of December 2014. While we have attempted to assure the information included is accurate as of this date, laws do change, and we cannot guarantee the accuracy of the contents after publication.

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Consent to Medical Treatment for Dependent Children

I. INTRODUCTION

Approximately 80,000 children are in foster care in California at any given time.¹ Children entering foster care often have significant health needs. When children are in foster care, the state has a responsibility to ensure they receive appropriate medical services.²

Health care clinicians cannot provide medical care, however, without first obtaining consent from the appropriate individual. Outside of emergencies, health care providers risk civil and criminal liability if they treat a patient without receiving proper consent. Unfortunately, there often is confusion about who may consent for a foster child's medical care at different stages of the dependency process. May a foster parent consent for a dependent's care? A social worker? What is the parent's role? This confusion can lead to delayed or denied care. It also can lead to the inappropriate provision of treatment.

This document explains the medical consent rules that apply when children enter the juvenile dependency system in California. The rules that apply when children enter the juvenile delinquency system in California are described in "*Consent to Medical Treatment for Youth in the Juvenile Justice System: California Law*," available at www.TeenHealthLaw.org.

II. WHO MAY CONSENT FOR CHILDREN'S HEALTH CARE?

All non-emergency health care requires consent before treatment can be provided. When a patient is a minor child, a parent or legal guardian usually must consent for that child's medical treatment. There are some exceptions to this rule of course. For example, adult caregivers often may consent to medical treatment for children under their care, even when the caregiver does not have formal legal custody of the child.³ In addition, minors may consent for their own care when they meet certain status conditions, such as being married, or are seeking certain types of care, such as drug abuse treatment.⁴

¹California Department of Social Services-Administration Division, Child Welfare Services/Case Management System Total Children in Supervised Out of Home Placements By Placement – During October 2008, available at <http://www.dss.cahwnet.gov/research/res/pdf/CWS/2008/cws1Oct08.htm>

² See *Norfleet v. Ark. Dep't of Human Serv.*, 989 F.2d 289 (8th Cir. 1993); Cal. Welf. & Inst. Code (hereinafter WIC) §16001.9(a)(4); legislative findings for Civil Code § 56.103, Section 1 of Stats. 2007, c. 552 (A.B.1687).

³ For example, caregivers without legal custody of a child often can use a "Caregiver's Authorization Affidavit" to consent to medical and mental health services for the youth in their care. See Cal. Fam. Code §§ 6550, 6552.

⁴For more information on California's minor consent laws, see *Minor Consent, Confidentiality and Child Abuse Reporting in California*, available at www.TeenHealthLaw.org.

III. WHO CONSENTS FOR CARE WHEN CHILDREN ENTER THE DEPENDENCY SYSTEM?

A. General Rule

When a child enters the dependency system,⁵ medical consent rules become slightly more complicated. As a starting point, the general rule still holds: where parent or guardian consent would have been required for services outside the dependency system, the parent or guardian's consent is necessary to receive those services inside the dependency system. However, the general rule has three important exceptions when children enter the dependency system.

1. First, while entry into the dependency system does not automatically remove a parent's right to consent to his or her child's health care, the juvenile court does have the authority to remove a parent's right to consent to medical care once a minor is declared a dependent child.⁶ If the court exercises this authority and removes a parent's right to consent, the court must put that removal in a court order.⁷ That same order likely will place primary consent rights with someone else, such as the child welfare agency.
2. Second, California law allows additional people to consent for a dependent's health care at times. This does not mean the parents or other person who holds primary consent rights have been divested of their authority.⁸ Rather, the law simply provides additional options to ensure necessary services can be provided in a timely manner. These rules are explained in section (B) below.
3. Finally, there are special consent rules when a minor under court jurisdiction or court proceedings needs care in certain circumstances or needs certain types of specialty care. Minor consent rules also still apply. These rules are explained in sections (C) and (D) below.

B. Additional Persons Who May Consent for a Dependent's Care

⁵ For information on the California juvenile dependency system and how children enter the dependency system, see <http://www.courts.ca.gov/cfcc-dependency.htm>. For a glossary of dependency related terminology, see <http://www.courtinfo.ca.gov/selfhelp/glossary.htm#d>.

⁶ WIC §361(a) ("In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations...").

⁷ *Id.*

⁸ WIC § 369(f) ("Nothing in this section shall be construed as limiting the right of a parent, guardian, or person standing in loco parentis, who has not been deprived of the custody or control of the minor by order of the court, in providing any medical, surgical, dental, or other remedial treatment recognized or permitted under the laws of this state.").

In addition to whoever holds primary consent rights, several others may give consent for a dependent minor's health care, according to the following:

1. County Social Worker

County social workers ("CSW's") may provide consent for a dependent minor's medical treatment in the following situations:

- When a minor is in **temporary custody**⁹, the county social worker may consent for necessary care; however, before providing consent, the social worker must notify the parent, guardian, or other person holding consent rights of her intent. If this person objects, care cannot be provided without a court order authorizing treatment, unless it is an emergency. Cal. Welf. & Inst. Code § 369(a).¹⁰
- In **emergency**¹¹ situations, the social worker may provide consent to necessary medical care; before providing consent, though, she must make a reasonable attempt to notify the parent, guardian, or person holding consent rights. If this person objects upon notification, the social worker nevertheless may consent to the care in an emergency. A court order is not necessary in this situation. Cal. Welf. & Inst. Code § 369(d).¹² See section (C) below for more on consent to emergency care.

⁹ See WIC §305 et seq.: e.g. WIC § 305("Any peace officer may, without a warrant, take into temporary custody a minor: (a) When the officer has reasonable cause for believing that the minor is a person described in Section 300, and, in addition, that the minor has an immediate need for medical care, or the minor is in immediate danger of physical or sexual abuse, or the physical environment or the fact that the child is left unattended poses an immediate threat to the child's health or safety. In cases in which the child is left unattended, the peace officer shall first attempt to contact the child's parent or guardian to determine if the parent or guardian is able to assume custody of the child. If the parent or guardian cannot be contacted, the peace officer shall notify a social worker in the county welfare department to assume custody of the child. (b) Who is in a hospital and release of the minor to a parent poses an immediate danger to the child's health or safety. (c) Who is a dependent child of the juvenile court, or concerning whom an order has been made under Section 319, when the officer has reasonable cause for believing that the minor has violated an order of the juvenile court or has left any placement ordered by the juvenile court. (d) Who is found in any street or public place suffering from any sickness or injury which requires care, medical treatment, hospitalization, or other remedial care.").

¹⁰WIC § 369(a)("Whenever any person is taken into temporary custody under Article 7 (commencing with Section 305) and is in need of medical, surgical, dental, or other remedial care, the social worker may, upon the recommendation of the attending physician and surgeon or, if the person needs dental care and there is an attending dentist, the attending dentist, authorize the performance of the medical, surgical, dental, or other remedial care. The social worker shall notify the parent, guardian, or person standing in loco parentis of the person, if any, of the care found to be needed before that care is provided, and if the parent, guardian, or person standing in loco parentis objects, that care shall be given only upon order of the court in the exercise of its discretion.").

¹¹WIC § 369(d)("Emergency situation,' for the purposes of this subdivision means a child requires immediate treatment for the alleviation of severe pain or an immediate diagnosis and treatment of an unforeseeable medical, surgical, dental, or other remedial condition or contagious disease which if not immediately diagnosed and treated, would lead to serious disability or death.").

¹²WIC § 369(d)("Whenever it appears that a child ...requires immediate emergency, medical, surgical, or other remedial care in an emergency situation, that care may be provided by a licensed physician and

- The court, via a **court order**, may grant the social worker the right to consent to medical care on the minor’s behalf. Cal. Welf. & Inst. Code § 369(c).¹³ A consent order is not the same as a “care, custody and control” order. When children are removed from their parents’ custody, the child welfare agency is often given “care, custody and control” of the dependent child. The “care, custody and control” order, on its own, does not authorize the agency to consent for a dependent’s medical care. For the agency or social worker to have the right to consent to care, the court must make a separate consent order.¹⁴ In some counties, the courts have issued *standing court orders* giving social workers this right in certain contexts.¹⁵

2. The Court

The juvenile court judge or hearing officer may provide consent for a dependent’s medical treatment in the following situations:

- The **court** itself may authorize treatment for a minor if a licensed physician recommends treatment; notice is provided to the minor’s parent or guardian; and the juvenile court finds that no parent, guardian, or person standing *in loco parentis* is willing and able to provide consent. Cal. Welf. & Inst. Code § 369(b).¹⁶

surgeon, or if the child needs dental care... , by a licensed dentist, without a court order and upon authorization of a social worker. The social worker shall make reasonable efforts to obtain the consent of, or to notify, the parent, guardian, or person standing in loco parentis prior to authorizing emergency... care.”).

¹³WIC § 369(c)(“Whenever a dependent child of the juvenile court is placed by order of the court within the care and custody or under the supervision of a social worker of the county in which the dependent child resides and it appears to the court that there is no parent, guardian, or person standing in loco parentis capable of authorizing or willing to authorize medical, surgical, dental, or other remedial care or treatment for the dependent child, the court may, after due notice to the parent, guardian, or person standing in loco parentis, if any, order that the social worker may authorize the medical, surgical, dental, or other remedial care for the dependent child, by licensed practitioners, as may from time to time appear necessary.”).

¹⁴See WIC §§ 362; 361.2(e); 369(c).

¹⁵For example, the Los Angeles county juvenile court has issued a standing order that gives all county social workers (CSWs) the right to consent to health care for minors in temporary custody when the CSW is unable to contact the minor’s parents or the parent objects to care. Los Angeles County Juvenile Court Rule 7.4(a).

Similarly, the Nevada county juvenile court has issued a standing order that gives Child Protective Services (CPS) the authority to secure certain health care for “minors detained by or in the custody of...CPS.” Among other things, this includes the authority to secure “a comprehensive health assessment and physical examination” for the minors as well as “any routine care based on the results of the comprehensive health assessment...” This order requires obtaining the minor’s consent before initiating minor consent services. Nevada County Juvenile Court Rule 6.07.1.

¹⁶WIC § 369(b)(“Whenever it appears to the juvenile court that any person concerning whom a petition has been filed with the court is in need of medical, surgical, dental, or other remedial care, and that there is no parent, guardian, or person standing *in loco parentis* capable of authorizing or willing to authorize the remedial care or treatment for that person, the court, upon the written recommendation of a licensed physician and surgeon, or if the person needs dental care, a licensed dentist, and after due notice to the

- Certain special care requires a court order: for example, when dependent minors not living with a parent need psychotropic medications or minors need inpatient psychiatric hospitalization. *See* section (D) below for more detail.

3. Caregivers

If a dependent child is removed from his or her parent's care, the child will be placed with one of several types of caregivers. The dependent child's caregiver may provide consent for medical treatment in the following situations:

- A **licensed caregiver** providing residential foster care may give consent for *ordinary* medical and dental treatment, including but not limited to immunizations, physical exams, and X-rays. Cal. Health & Saf. Code § 1530.6.¹⁷ The caregiver does not need a court order to be able to authorize care for ordinary treatment. This does not authorize a caregiver to consent for services that require minor consent, such as pregnancy related care.
- Beyond ordinary care, the court may authorize a **relative caregiver** to provide the same legal consent for the minor's medical, surgical, and dental care as the custodial parent of a minor if the child has been placed in a planned permanent living arrangement with that caregiver. Cal. Welf. & Inst. Code § 366.27(a).¹⁸
- **Legal guardians** may consent to health care for minors currently in their care pursuant to Probate Code § 2353.¹⁹

parent, guardian, or person standing in loco parentis, if any, may make an order authorizing the performance of the necessary medical, surgical, dental, or other remedial care for that person.”).

¹⁷Cal. Health & Saf. Code § 1530.6(“Notwithstanding any other provision of law, persons licensed pursuant to this chapter to provide residential foster care to a child either placed with them pursuant to an order of the juvenile court or voluntarily placed with them by the person or persons having legal custody of such child, may give the same legal consent for that child as a parent except for the following: (1) marriage; (2) entry into the armed forces; (3) medical and dental treatment, except that consent may be given for ordinary medical and dental treatment for such child, including, but not limited to, immunizations, physical examinations, and X-rays; and (4) if the child is voluntarily placed by the parent or parents, those items as are agreed to in writing by the parties to the placement. To this effect, the state department shall prescribe rules and regulations to carry out the intent of this section. This section does not apply to any situation in which a juvenile court order expressly reserves the right to consent to those activities to the court.”).

¹⁸WIC § 366.27(a)(“If a court, pursuant to paragraph (3) of subdivision (g) of Section 366.21, Section 366.22, or Section 366.26, orders the placement of a minor in a planned permanent living arrangement with a relative, the court may authorize the relative to provide the same legal consent for the minor's medical, surgical, and dental care as the custodial parent of the minor.”).

¹⁹Cal. Prob. Code § 2353 (a)(“[with several important exceptions], the guardian has the same right as a parent having legal custody of a child to give consent to medical treatment performed upon the ward and to require the ward to receive medical treatment.”).

C. Consent Rules in Special Circumstances

In addition to whoever holds primary consent rights, others may consent to a dependent's health care in the following special situations:

1. Emergency Care²⁰

In addition to whomever holds primary consent rights, the following may consent for care in an **emergency**:

- A **social worker** may consent for emergency care, but before providing authorization, he or she must make a reasonable attempt to notify and obtain consent from the parent, guardian, or person standing *in loco parentis*. Even if the parent or guardian refuses to give consent, the social worker may proceed. A court order is not necessary. Cal. Welf. & Inst. Code § 369(d).²¹
- Alternatively, the **court** may provide the requisite authorization for treatment if a licensed physician recommends treatment, notice is provided to the minor's parent or guardian, and the juvenile court finds that no parent, guardian, or person standing *in loco parentis* is willing and able to provide consent. Cal. Welf. & Inst. Code § 369(b).²²
- If the emergency requires services to which a minor must consent on his or her own under federal or state law, such as treatment for an ectopic pregnancy, the minor must consent to the care on his or her own behalf. See section (D) below, "Consent Rules for Special Services."

²⁰WIC § 369(d) ("Emergency situation," ... means a child requires immediate treatment for the alleviation of severe pain or an immediate diagnosis and treatment of an unforeseeable medical, surgical, dental, or other remedial condition or contagious disease which if not immediately diagnosed and treated, would lead to serious disability or death.").

²¹WIC § 369(d) ("Whenever it appears that a child [in temporary or permanent custody] ... requires immediate emergency, medical, surgical, or other remedial care in an emergency situation, that care may be provided by a licensed physician and surgeon, or if the child needs dental care..., by a licensed dentist, without a court order and upon authorization of a social worker. The social worker shall make reasonable efforts to obtain the consent of, or to notify, the parent, guardian, or person standing in loco parentis prior to authorizing emergency... care. 'Emergency situation,' for the purposes of this subdivision means a child requires immediate treatment for the alleviation of severe pain or an immediate diagnosis and treatment of an unforeseeable medical, surgical, dental, or other remedial condition or contagious disease which if not immediately diagnosed and treated, would lead to serious disability or death.").

²²WIC § 369(b) ("Whenever it appears to the juvenile court that any person concerning whom a petition has been filed with the court is in need of medical, surgical, dental, or other remedial care, and that there is no parent, guardian, or person standing in loco parentis capable of authorizing or willing to authorize the remedial care or treatment for that person, the court, upon the written recommendation of a licensed physician and surgeon, or if the person needs dental care, a licensed dentist, and after due notice to the parent, guardian, or person standing in loco parentis, if any, may make an order authorizing the performance of the necessary medical, surgical, dental, or other remedial care for that person.").

- If a medical provider is unable to obtain consent in a timely manner, he or she may provide necessary emergency care without obtaining prior consent. Cal. Bus. & Prof. Code § 2397(a)(3).²³

In addition to state law, each county social service agency and local court may have its own policy or procedure that must be followed when obtaining emergency care for a dependent. Please see your local rules for guidance.

2. Temporary Custody²⁴

When a minor is in **temporary custody** but has not yet been declared a dependent, a parent or guardian may consent for health care, but in addition:

- A **social worker** may consent for general care, but before providing authorization, the worker must notify the parent, guardian, or person standing *in loco parentis* of her intent. If this person objects to treatment, the minor may not receive care without a court order authorizing treatment. Cal. Welf. & Inst. Code § 369(a).²⁵ In some counties, the courts have issued *standing court orders* automatically giving social workers this right in certain contexts.²⁶

²³Cal. Bus. & Prof. Code § 2397(a)(3) (“A licensee shall not be liable for civil damages for injury or death caused in an emergency situation occurring in the licensee’s office or in a hospital on account of a failure to inform a patient of the possible consequences of a medical procedure where the failure to inform is caused by any of the following: [. . .] A medical procedure was performed on a person legally incapable of giving consent, and the licensee reasonably believed that a medical procedure should be undertaken immediately and that there was insufficient time to obtain the informed consent of a person authorized to give such consent for the patient.”).

²⁴See WIC § 305 et seq.: e.g. WIC § 305 (“Any peace officer may, without a warrant, take into temporary custody a minor: (a) When the officer has reasonable cause for believing that the minor is a person described in Section 300, and, in addition, that the minor has an immediate need for medical care, or the minor is in immediate danger of physical or sexual abuse, or the physical environment or the fact that the child is left unattended poses an immediate threat to the child’s health or safety. In cases in which the child is left unattended, the peace officer shall first attempt to contact the child’s parent or guardian to determine if the parent or guardian is able to assume custody of the child. If the parent or guardian cannot be contacted, the peace officer shall notify a social worker in the county welfare department to assume custody of the child. (b) Who is in a hospital and release of the minor to a parent poses an immediate danger to the child’s health or safety. (c) Who is a dependent child of the juvenile court, or concerning whom an order has been made under Section 319, when the officer has reasonable cause for believing that the minor has violated an order of the juvenile court or has left any placement ordered by the juvenile court. (d) Who is found in any street or public place suffering from any sickness or injury which requires care, medical treatment, hospitalization, or other remedial care.”).

²⁵WIC § 369(a) (“Whenever any person is taken into temporary custody under Article 7 (commencing with Section 305) and is in need of medical, surgical, dental, or other remedial care, the social worker may, upon the recommendation of the attending physician and surgeon or, if the person needs dental care and there is an attending dentist, the attending dentist, authorize the performance of the medical, surgical, dental, or other remedial care. The social worker shall notify the parent, guardian, or person standing in loco parentis of the person, if any, of the care found to be needed before that care is provided, and if the parent, guardian, or person standing in loco parentis objects, that care shall be given only upon order of the court in the exercise of its discretion.”).

²⁶For example, the Los Angeles county juvenile court has issued a standing order that gives all county social workers (CSWs) the right to consent to health care for minors in temporary custody when the CSW

- The **court** may authorize treatment if a licensed physician recommends treatment, notice is provided to the minor’s parent or guardian, and the juvenile court finds that no parent, guardian, or person standing *in loco parentis* is willing and able to provide consent. Cal. Welf. & Inst. Code § 369(b).²⁷

D. Consent Rules for Special Services

Federal and state law grants minors the right to consent to certain types of health care on their own accord. These rights do not change when a minor becomes a dependent. This section reviews those rights as they apply in the dependency context. The section also reviews consent rules that apply when dependents need certain other types of care.

1. Diagnosing Child Abuse

A health care provider may take skeletal X-rays of a child without the consent of the child’s parent or guardian, but only for purposes of diagnosing the case as one of possible child abuse or neglect and determining the extent of the child abuse or neglect. Cal. Penal Code § 11171.2(a).²⁸

2. HIV: Testing and Treatment for minors 12 and older

When a minor is 12 years old or older, the minor’s consent is necessary to test or treat for HIV. Cal. Family Code § 6926(a),²⁹ Cal. Welf. & Inst. Code § 369(h).³⁰

is unable to contact the minor’s parents or the parent objects to care. Los Angeles County Juvenile Court Rule 7.4(a).

Similarly, the Nevada county juvenile court has issued a standing order that gives Child Protective Services (CPS) the authority to secure certain health care for “minors detained by or in the custody of...CPS.” Among other things, this includes the authority to secure “a comprehensive health assessment and physical examination” for the minors as well as “any routine care based on the results of the comprehensive health assessment....” This order does not include the authority to initiate minor consent services absent the minor’s authorization. Nevada County Juvenile Court Rule 6.07.1.

²⁷WIC § 369(b)(“Whenever it appears to the juvenile court that any person concerning whom a petition has been filed with the court is in need of medical, surgical, dental, or other remedial care, and that there is no parent, guardian, or person standing in loco parentis capable of authorizing or willing to authorize the remedial care or treatment for that person, the court, upon the written recommendation of a licensed physician and surgeon, or if the person needs dental care, a licensed dentist, and after due notice to the parent, guardian, or person standing in loco parentis, if any, may make an order authorizing the performance of the necessary medical, surgical, dental, or other remedial care for that person.”).

²⁸Cal. Pen. Code § 11171.2(a)(“A physician and surgeon or dentist or their agents and by their direction may take skeletal X-rays of the child without the consent of the child’s parent or guardian, but only for purposes of diagnosing the case as one of possible child abuse or neglect and determining the extent of the child abuse or neglect.”).

²⁹Cal. Fam. Code § 6926(a)(“A minor who is 12 years of age or older and who may have come into contact with an infectious, contagious, or communicable disease may consent to medical care related to the diagnosis or treatment of the disease, if the disease or condition is one that is required by law or regulation

Consent for HIV testing of a dependent minor also may be obtained from the court “...when necessary to render appropriate care or to practice preventative measures.” Cal. Health & Safety Code § 121020.³¹ Some counties have implemented special *standing court orders* or protocols for obtaining HIV related services for dependents.³²

3. HIV Testing for minors under 12

- The **court** may provide written consent for HIV testing when the subject of the test is a minor under the age of 12 who is adjudged to be a dependent of the court if a licensed physician recommends the test, notice is provided to the minor’s parent or guardian, and the juvenile court finds that no parent, guardian, or person standing *in loco parentis* is willing and able to provide consent.³³
- The **social worker** may provide written consent for HIV testing of an infant who is less than 12 months of age who has been taken into temporary custody or who has been, or has a petition filed with the court to be, adjudged a dependent of the juvenile court when the child is receiving medical care pursuant to Cal. Welf. & Inst. Code § 369 if:
 - i. The attending physician and surgeon determines testing is necessary to render appropriate care to the infant and documents that determination;

adopted pursuant to law to be reported to the local health officer, or is a related sexually transmitted disease, as may be determined by the State Director of Health Services.”)

³⁰ WIC § 369(h)(“Nothing in this section shall be construed as limiting the rights of dependent children, pursuant to Chapter 3 (commencing with [Section 6920](#)) of Part 4 of Division 11 of the Family Code, to consent to, among other things, the diagnosis and treatment of sexual assault, medical care relating to the prevention or treatment of pregnancy, including contraception, abortion, and prenatal care, treatment of infectious, contagious, or communicable diseases, mental health treatment, and treatment for alcohol and drug abuse. If a dependent child is 12 years of age or older, his or her social worker is authorized to inform the child of his or her right as a minor to consent to and receive those health services, as necessary. Social workers are authorized to provide dependent children access to age-appropriate, medically accurate information about sexual development, reproductive health, and prevention of unplanned pregnancies and sexually transmitted infections.”).

³¹ Cal. Health & Saf. Code § 121020(a)(“ (1) When the subject of an HIV test is not competent to give consent for the test to be performed, written consent for the test may be obtained from the subject’s parents, guardians, conservators, or other person lawfully authorized to make health care decisions for the subject. For purposes of this paragraph, a minor shall be deemed not competent to give consent if he or she is under 12 years of age. (2) Notwithstanding paragraph (1), when the subject of the test is a minor adjudged to be a dependent child of the court pursuant to Section 360 of the Welfare and Institutions Code, written consent for the test to be performed may be obtained from the court pursuant to its authority under Section 362 or 369 of the Welfare and Institutions Code.”).

³² See e.g. Los Angeles County Juvenile Court Rule 7.6.

³³ Cal. Health & Saf. Code § 121020(a)(2)(“...when the subject of the HIV test is a minor adjudged to be a dependent child of the court pursuant to Section 360 of the Welfare and Institutions Code, written consent for the test to be performed may be obtained from the court pursuant to its authority under Section 362 or 369 of the Welfare and Institutions Code.”).

- ii. The social worker provides known information concerning the infant's possible risk factors regarding exposure to HIV; AND
 - iii. The social worker has made reasonable efforts to contact the parent or guardian but was unable to do so and has documented his or her efforts. Cal. Health & Saf. Code § 121020(a)(3).³⁴
- A **social worker** may consent for **emergency** immediate medical care, if an infant under 12 months of age tests positive for HIV and the physician determines that immediate HIV medical care is necessary to render appropriate care to that infant. Before providing authorization, he or she must make a reasonable attempt to notify and obtain consent from the parent, guardian, or person standing *in loco parentis*. Even if the parent or guardian refuses to give consent, the social worker may proceed. Cal. Health & Saf. Code § 121020(d)(1). *See also*, Cal. Welf. & Inst. Code § 369(d).³⁵

4. Infectious, Contagious, Communicable Diseases: Testing and Treatment

Minors 12 years old and older who may have come into contact with an infectious, contagious, or communicable disease may consent to medical care related to the diagnosis or treatment of the disease, if the disease or condition is one that is required by law or regulation to be reported to the local health officer, or is a related sexually transmitted disease, as may be determined by the State Director of Health Services. Cal. Family Code § 6926(a),³⁶ Cal. Welf. & Inst. Code § 369(h).³⁷

³⁴ Cal. Health & Saf. Code § 121020(a)(3) (“...if the subject of the test is an infant who is less than 12 months of age who has been taken into temporary custody pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code or who has been, or has a petition filed with the court to be, adjudged a dependent child of the court pursuant to Section 360 of the Welfare and Institutions Code, the social worker may provide written consent for an HIV test to be performed when the infant is receiving medical care pursuant to Section 369 of the Welfare and Institutions Code, if all of the following have occurred: (i) The attending physician and surgeon determines that HIV testing is necessary to render appropriate care to the infant and documents that determination. When deciding whether HIV testing is necessary, the physician and surgeon shall consider appropriate factors, either known to the attending physician and surgeon or provided to the attending physician and surgeon by the social worker, including, but not limited to, whether the infant has a parent with a history of behavior that places the parent at an increased risk of exposure to HIV, or whether the infant is a victim of sexual abuse, which has placed the child at risk of exposure to HIV. (ii) The social worker provides known information concerning the infant's possible risk factors regarding exposure to HIV to the attending physician and surgeon. (iii) The social worker has made reasonable efforts to contact the parent or guardian but was unable to do so, and the social worker has documented his or her efforts to contact that person.”)

³⁵ Cal. Health & Saf. Code § 121020(d)(1) (“If an infant tested for HIV pursuant to paragraph (3) of subdivision (a) tests positive for HIV infection and the physician and surgeon determines that immediate HIV medical care is necessary to render appropriate care to that infant, the provision of HIV medical care shall be considered emergency medical care, pursuant to subdivision (d) of Section 369 of the Welfare and Institutions Code.”).

³⁶ Cal. Fam. Code § 6926(a).

³⁷ WIC § 369(h) (“Nothing in this section shall be construed as limiting the rights of dependent children, pursuant to Chapter 3 (commencing with [Section 6920](#)) of [Part 4 of Division 11 of the Family Code](#), to consent to, among other things, the diagnosis and treatment of sexual assault, medical care relating to the prevention or treatment of pregnancy, including contraception, abortion, and prenatal care, treatment of infectious, contagious, or communicable diseases, mental health treatment, and treatment for alcohol and

For dependent minors less than 12 years of age, the consent rules described in sections A and B, *above*, apply.

Reportable communicable diseases currently include tuberculosis; hepatitis A, B, C and D; and pertussis, among many others. *See* 17 C.C.R. §§ 2500, 2641-2643 for a complete list. Some counties have implemented specific protocols for obtaining these services. Please see your local rules for guidance.

5. Mental Health: Assessment and Counseling (Outpatient)

A minor 12 years old or older may consent for outpatient mental health treatment and counseling if the minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services. Cal. Health & Saf. Code § 124260; Cal. Family Code § 6924; Cal. Welf. & Inst. Code § 369(h).³⁸

If a dependent minor does not meet the requirements described above, the consent rules described in sections A and B, *above*, apply, with one caveat. In some cases, in addition to consent from the parent or other qualified person as outlined in sections A and B, the provider also may need consent from the dependent minor before certain outpatient mental health care can be provided.³⁹ Clinicians should speak to their legal counsel for further information on when a minor's consent is necessary.

Even when a minor's consent is not legally required, seeking the minor's **assent** to counseling can be helpful for therapeutic purposes. A patient must be a willing participant in treatment for mental health counseling to be fruitful. If a dependent minor is reluctant to participate in counseling, then the minor's provider, social worker, attorney and others, as appropriate, should work to identify and attempt to alleviate the minor's concerns, or respect his or her decision.

drug abuse. If a dependent child is 12 years of age or older, his or her social worker is authorized to inform the child of his or her right as a minor to consent to and receive those health services, as necessary. Social workers are authorized to provide dependent children access to age-appropriate, medically accurate information about sexual development, reproductive health, and prevention of unplanned pregnancies and sexually transmitted infections.”).

³⁸ WIC § 369(h)(“Nothing in this section shall be construed as limiting the rights of dependent children, pursuant to Chapter 3 (commencing with [Section 6920](#)) of Part 4 of Division 11 of the Family Code, to consent to, among other things, the diagnosis and treatment of sexual assault, medical care relating to the prevention or treatment of pregnancy, including contraception, abortion, and prenatal care, treatment of infectious, contagious, or communicable diseases, mental health treatment, and treatment for alcohol and drug abuse. If a dependent child is 12 years of age or older, his or her social worker is authorized to inform the child of his or her right as a minor to consent to and receive those health services, as necessary. Social workers are authorized to provide dependent children access to age-appropriate, medically accurate information about sexual development, reproductive health, and prevention of unplanned pregnancies and sexually transmitted infections.”).

³⁹ For example, voluntary inpatient or outpatient services under WIC § 6552 require a minor's application to initiate.

Some counties have implemented *standing orders* and protocols to help ensure the mental health needs of foster children are being addressed.⁴⁰ Please see your local rules for guidance. For more on foster youth and mental health services, see Youth Law Center, *Mental Health Services for Foster Youth in California*, available at www.ylc.org.

6. Mental Health: Inpatient Hospitalization

A minor's consent is necessary before the minor may be hospitalized for mental health treatment in all but a few situations. Treatment with the youth's consent is called *voluntary* treatment. Treatment absent the youth's consent is called *involuntary* treatment.

Before a dependent minor may be hospitalized as a *voluntary* patient, the minor, in consultation with his or her attorney, must make an application for voluntary hospitalization. The court then must approve the application. Cal. Welf. & Inst. Code § 6552.⁴¹

In very limited circumstances, a dependent minor may be admitted to a psychiatric hospital against the minor's wishes, as an *involuntary* patient. If the court believes, before or during a dependency jurisdiction hearing, that a minor is or may be mentally ill, the court may order that the minor be held temporarily in a psychiatric or other approved hospital for observation and to obtain professional recommendations as to future care, supervision, and treatment. Cal. Welf. & Inst. Code § 357.⁴² In addition, at any time, the court may order the dependent held for

⁴⁰ For example, San Francisco county has implemented a standing order that gives "members of the Foster Care Mental Health Unit" the authority to execute documents "necessary for the [mental health] assessment and treatment" of dependents and minors whose dependency status is pending before the court. The Unit is authorized to execute these documents in all cases in which the minor's parent or guardian is unavailable, unable, or unwilling to execute such documents themselves. San Francisco County Juvenile Court Standing Order Number 203 - "Authorization for Mental Health Treatment".

⁴¹ WIC § 6552 ("A minor who has been declared to be within the jurisdiction of the juvenile court may, with the advice of counsel, make voluntary application for inpatient or outpatient mental health services in accordance with Section 5003. Notwithstanding the provisions of subdivision (b) of Section 6000, Section 6002, or Section 6004, the juvenile court may authorize the minor to make such application if it is satisfied from the evidence before it that the minor suffers from a mental disorder which may reasonably be expected to be cured or ameliorated by a course of treatment offered by the hospital, facility or program in which the minor wishes to be placed; and that there is no other available hospital, program, or facility which might better serve the minor's medical needs and best interest. The superintendent or person in charge of any state, county, or other hospital facility or program may then receive the minor as a voluntary patient. Applications and placements under this section shall be subject to the provisions and requirements of the Short-Doyle Act (Part 2 (commencing with Section 5600), Division 5), which are generally applicable to voluntary admissions.").

⁴² WIC § 357 ("Whenever the court, before or during the hearing on the petition, is of the opinion that the minor is mentally ill or if the court is in doubt concerning the mental health of any such person, the court may order that such person be held temporarily in the psychopathic ward of the county hospital or hospital whose services have been approved and/or contracted for by the department of health of the county, for observation and recommendation concerning the future care, supervision, and treatment of such person.").

72-hour treatment and evaluation if it appears the minor may be “gravely disabled” or a danger to him or herself or others. Cal. Welf. & Inst. Code §§ 6550, 6551, 5150. *See* Cal. Welf. & Inst. Code § 5585.20 et seq.⁴³ For this purpose only, “gravely disabled” is defined by section 5585.25 of the Welfare and Institutions code.⁴⁴ Cal. Welf. & Inst. Code § 5585.20.

After the completion of a 72-hour hold, if the professional person in charge of the facility finds that, as the result of mental disorder, the minor is in need of intensive treatment, the minor may be ‘certified’ for not more than 14 days of involuntary treatment. At the end of this 14-day period, the professional in charge of the facility may recommend an additional stay of no more than 30 days. In a few circumstances, they may be able to recommend an additional stay of no more than 180 days. *See e.g.* Cal. Welf. & Inst. Code §§ 5260, 5270.15, 5300. *See also* Cal. Ct. R. 5.645.

Beyond this, further involuntary treatment requires court hearings and significant due process but is available if the minor is “gravely disabled.” *See* Cal. Welf. & Inst. Code § 5350. In this context, “gravely disabled” means the youth cannot provide for his or her basic personal needs for food, clothing, or shelter, or, the court has found the youth to be mentally incompetent per section 1370 of the Penal code and additional facts exist. *See* Cal. Welf. & Inst. Code § 5008(h).⁴⁵

In assessing whether a minor is “gravely disabled” for this purpose, the court must distinguish between disability and immaturity. As one court explained, “[i]mmaturity, either physical or mental when not brought about by a mental disorder, is not a disability which would render a minor ‘gravely disabled’ within the meaning of section 5008.” *In re Michael E.*, 15 Cal.3d 183, 193 (1977).

Information on the use of psychotropic medication in an inpatient facility is described below under section (D)(6) “Mental Health: Psychotropic Medication.”

⁴³ WIC § 6550 (“If the juvenile court, after finding that the minor is a person described by Section 300, 601, or 602, is in doubt concerning the state of mental health or the mental condition of the person, the court may continue the hearing and proceed pursuant to this article.”).

⁴⁴ WIC § 5585.25 (“‘Gravely disabled minor’ means a minor who, as a result of a mental disorder, is unable to use the elements of life which are essential to health, safety, and development, including food, clothing, and shelter, even though provided to the minor by others. Mental retardation, epilepsy, or other developmental disabilities, alcoholism, other drug abuse, or repeated antisocial behavior do not, by themselves, constitute a mental disorder.”).

⁴⁵ WIC § 5008(h) (“‘Gravely disabled’ means either of the following: (A) A condition in which a person, as a result of a mental disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter, or (B) A condition in which a person, has been found mentally incompetent under Section 1370 of the Penal Code and all of the following facts exist:

(i) The indictment or information pending against the defendant at the time of commitment charges a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person. (ii) The indictment or information has not been dismissed. (iii) As a result of mental disorder, the person is unable to understand the nature and purpose of the proceedings taken against him or her and to assist counsel in the conduct of his or her defense in a rational manner.”).

Admitting a minor for inpatient mental health treatment, whether voluntary or involuntary treatment, involves detailed processes. Because this section only provides a simple overview of the issue, providers should speak to their own counsel for more information and advice on the specific procedures that must be followed to admit a dependent for inpatient mental health care in their county. For more on foster youth and mental health services, *see* Youth Law Center, *Mental Health Services for Foster Youth in California*, available at www.ylc.org.

7. Mental Health: Psychotropic Medications⁴⁶

If a dependent has not been removed from his or her parent's custody, the consent rules described in section A, *above*, apply when the minor needs psychotropic medication. Unemancipated minors cannot consent to psychotropic medication.⁴⁷

If a dependent child has been removed from parental custody, only the **court** has the authority to consent to the administration of psychotropic medication and may only do so upon a physician's request. However, the court may delegate this authority back to the parent if it finds that the parent poses no danger to the child and has the requisite capacity. Cal. Welf. & Inst. Code § 369.5(a).⁴⁸

- *Court Authorization*

Section 5.640 of the California Rules of Court describes the process that must be followed to obtain court authorization for psychotropic medication for a dependent. This court rule in its entirety can be found at Appendix A of this document, but in summary, first, a form called the JV-220 must be completed and filed with the court and proper notice provided to the relevant parties and their attorneys. This includes notice to the minor, the minor's current caregiver, and the minor's parent or prior legal guardian, among others. If any of these people do not want the minor placed on said medication, they may file an opposition form with the court and ask for a court hearing. Upon receiving the completed JV-220 application, the court has seven court days to approve the medication request, deny it, or order a hearing on the issue. Because this is a particularly complicated and sensitive matter, many

⁴⁶ Cal. R. Ct. 5.640(a) ("For the purposes of this rule, "psychotropic medication" means those medications prescribed to affect the central nervous system to treat psychiatric disorders or illnesses. They may include, but are not limited to, anxiolytic agents, antidepressants, mood stabilizers, antipsychotic medications, anti-Parkinson agents, hypnotics, medications for dementia, and psychostimulants.").

⁴⁷ See Cal. Fam. Code § 6924(f).

⁴⁸ WIC § 369.5(a) ("If a child is adjudged a dependent child of the court under Section 300 and the child has been removed from the physical custody of the parent under Section 361, only a juvenile court judicial officer shall have authority to make orders regarding the administration of psychotropic medications for that child. The juvenile court may issue a specific order delegating this authority to a parent upon making findings on the record that the parent poses no danger to the child and has the capacity to authorize psychotropic medications. Court authorization for the administration of psychotropic medication shall be based on a request from a physician, indicating the reasons for the request, a description of the child's diagnosis and behavior, the expected results of the medication, and a description of any side effects of the medication.").

counties have implemented their own protocols and local court rules regarding the JV-220 process.⁴⁹ Please see your local rules for guidance.

- *Administering Psychotropic Medication without a Court Order*

In emergencies, psychotropic medications may be administered without court authorization. For this purpose, an emergency situation occurs when:

- (A) “A physician finds that the child requires psychotropic medication to treat a psychiatric disorder or illness; and
- (B) The purpose of the medication is:
 - i. To protect the life of the child or others, or
 - ii. To prevent serious harm to the child or others, or
 - iii. To treat current or imminent substantial suffering; and
- (C) It is impractical to obtain authorization from the court before administering the psychotropic medication to the child.

Cal. R. Ct. 5.640(g).

If medication is administered in an emergency, court authorization still must be sought as soon as possible but no later than two court days after the emergency administration of the psychotropic medication.” *Id.*

- *Right to Refuse Psychotropic Medication*

Minors who have been involuntarily detained or hospitalized pursuant to sections 5150, 5250, 5260 or 5270.15 of the Welfare and Institutions Code have a right to refuse administration of antipsychotic medication. Cal. Welf. & Inst. Code § 5332.⁵⁰ Should an involuntary patient object to medication, the hospital must request a hearing to authorize involuntary administration.⁵¹ Only in very limited

⁴⁹For example, San Francisco County’s juvenile court issued a standing order that establishes the protocol to follow when requesting psychotropic medication for a dependent child in San Francisco. Among other things, the protocol requires that all JV-220 applications be submitted to the SFHSA psychiatrist for approval before being submitted to the Court. San Francisco County Juvenile Court Standing Order Number 105.

⁵⁰WIC § 5332(a)(“Antipsychotic medication, as defined in subdivision (l) of Section 5008, may be administered to any person subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, if that person does not refuse that medication following disclosure of the right to refuse medication as well as information required to be given to persons pursuant to subdivision (c) of Section 5152 and subdivision (b) of Section 5213.”).

⁵¹WIC § 5332 (“(b) If any person subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, and for whom antipsychotic medication has been prescribed, orally refuses or gives other indication of refusal of treatment with that medication, the medication shall be administered only when treatment staff have considered and determined that treatment alternatives to involuntary medication are unlikely to meet the needs of the patient, and upon a determination of that person's incapacity to refuse the treatment, in a hearing held for that purpose.

circumstances may the minor be administered medication over his or her objection.⁵²

8. Pregnancy Related Care, including Contraception, Abortion and Prenatal

A dependent minor's consent is necessary and sufficient for any pregnancy related care. The consent of no other person is required. Cal. Family Code § 6925;⁵³ Cal. Welf. & Inst. Code § 369(h).⁵⁴ This includes the right to consent for the performance of an abortion. *American Academy of Pediatrics v. Lungren*, 16 Cal. 4th 307, 383 (1997). This rule applies irrespective of the age of the minor; however, if a very young minor is sexually active, practitioners should be sensitive to the possibility of coercion and sexual abuse.⁵⁵

Some counties have implemented specific policies to help ensure the reproductive health needs of dependent minors are addressed.⁵⁶ Please see your local rules for guidance.

(c) Each hospital in conjunction with the hospital medical staff or any other treatment facility in conjunction with its clinical staff shall develop internal procedures for facilitating the filing of petitions for capacity hearings and other activities required pursuant to this chapter.”)

⁵² See e.g. WIC § 5332(e) (“In the case of an emergency, as defined in subdivision (m) of Section 5008, a person detained pursuant to Section 5150, 5250, 5260, or 5270.15 may be treated with antipsychotic medication over his or her objection prior to a capacity hearing, but only with antipsychotic medication that is required to treat the emergency condition, which shall be provided in the manner least restrictive to the personal liberty of the patient. It is not necessary for harm to take place or become unavoidable prior to intervention.”).

⁵³ Cal. Fam. Code § 6925 (“(a) A minor may consent to medical care related to the prevention or treatment of pregnancy.”); *Amer. Academy of Pediatrics v. Lungren*, 16 Cal. 4th 307 (1997) (permanently enjoining implementation of section 123450 of the Health & Safety Code, which would have required parental consent for adolescent abortion, because the statute violates a minor’s right to privacy under the California constitution).

⁵⁴ WIC § 369(h) (“Nothing in this section shall be construed as limiting the rights of dependent children, pursuant to Chapter 3 (commencing with [Section 6920](#)) of [Part 4 of Division 11 of the Family Code](#), to consent to, among other things, the diagnosis and treatment of sexual assault, medical care relating to the prevention or treatment of pregnancy, including contraception, abortion, and prenatal care, treatment of infectious, contagious, or communicable diseases, mental health treatment, and treatment for alcohol and drug abuse. If a dependent child is 12 years of age or older, his or her social worker is authorized to inform the child of his or her right as a minor to consent to and receive those health services, as necessary. Social workers are authorized to provide dependent children access to age-appropriate, medically accurate information about sexual development, reproductive health, and prevention of unplanned pregnancies and sexually transmitted infections.”).

⁵⁵ For more information on child abuse and abuse reporting requirements, see *Minor Consent, Confidentiality and Child Abuse Reporting in California*, available at www.TeenHealthRights.org.

⁵⁶ For example, Los Angeles DCFS issued a guide for county social workers to “support[] the Department’s efforts to improve safety for children by providing DCFS supervised youth with education and information, to prevent teen pregnancy and sexually transmitted infections (STIs) including HIV and AIDS, as well as, supporting a DCFS supervised youth in determining how to manage an unintended pregnancy.” Los Angeles DCFS Procedural Guide 0600-507.10 “Youth Development: Reproductive Health.” (available for download at: http://file.lacounty.gov/dcfscms1_171808.pdf).

9. Sexually Transmitted Diseases-Testing, Treatment, Preventive Care

Minors 12 years old and older may consent to medical care related to the prevention of a sexually transmitted disease. This includes consent for prophylactic HIV medication and certain vaccinations, including HPV. Minors 12 years old and older who may have come into contact with an infectious, contagious, or communicable disease may consent to medical care related to the diagnosis or treatment of the disease, if the disease or condition is one that is required by law or regulation to be reported to the local health officer, or is a related sexually transmitted disease, as may be determined by the State Director of Health Services. Cal. Family Code § 6926(a)-(b),⁵⁷ Cal. Welf. & Inst. Code § 369(h).⁵⁸

For dependent minors less than 12 years of age, the consent rules described in sections A and B, *above*, apply. Some counties have implemented specific policies to ensure minors have access to these services as needed.⁵⁹ Please see your local rules for guidance.

10. Sexual Assault Treatment

A dependent minor of any age who is alleged to have been sexually assaulted may consent to medical care related to the diagnosis and treatment of the condition, as well as to the collection of medical evidence with regard to the alleged sexual assault. Cal. Fam. Code § 6928(b);⁶⁰ Cal. Welf. & Inst. Code § 369(h).⁶¹ Sexual

⁵⁷ Cal. Fam. Code § 6926(b) (“A minor who is 12 years of age or older may consent to medical care related to the prevention of a sexually transmitted disease.”). Cal. Fam. Code § 6926(a) (“A minor who is 12 years of age or older and who may have come into contact with an infectious, contagious, or communicable disease may consent to medical care related to the diagnosis or treatment of the disease, if the disease or condition is one that is required by law or regulation adopted pursuant to law to be reported to the local health officer, or is a related sexually transmitted disease, as may be determined by the State Director of Health Services.”).

⁵⁸ WIC § 369(h) (“Nothing in this section shall be construed as limiting the rights of dependent children, pursuant to Chapter 3 (commencing with [Section 6920](#)) of Part 4 of Division 11 of the Family Code, to consent to, among other things, the diagnosis and treatment of sexual assault, medical care relating to the prevention or treatment of pregnancy, including contraception, abortion, and prenatal care, treatment of infectious, contagious, or communicable diseases, mental health treatment, and treatment for alcohol and drug abuse. If a dependent child is 12 years of age or older, his or her social worker is authorized to inform the child of his or her right as a minor to consent to and receive those health services, as necessary. Social workers are authorized to provide dependent children access to age-appropriate, medically accurate information about sexual development, reproductive health, and prevention of unplanned pregnancies and sexually transmitted infections.”).

⁵⁹ For example, the County of Nevada encourages screening sexually active minors for venereal disease but only “upon consent of the minor.” See Nevada County Juv. Ct. R. 6.07.1.

⁶⁰ Cal. Fam. Code § 6928(b) (“A minor who is alleged to have been sexually assaulted may consent to medical care related to the diagnosis and treatment of the condition, and the collection of medical evidence with regard to the alleged sexual assault.”).

⁶¹ WIC § 369(h) (“Nothing in this section shall be construed as limiting the rights of dependent children, pursuant to Chapter 3 (commencing with [Section 6920](#)) of Part 4 of Division 11 of the Family Code, to consent to, among other things, the diagnosis and treatment of sexual assault, medical care relating to the prevention or treatment of pregnancy, including contraception, abortion, and prenatal care, treatment of

assault of a minor is considered child abuse and mandated reporters of child abuse must report it to Child Protective Services or law enforcement, even if a minor already is a dependent in SSA care.⁶²

11. Substance Abuse Care

Minors age 12 years old or older may consent to medical care and counseling related to the diagnosis and treatment of drug or alcohol related problems. Cal. Family Code § 6929(b),⁶³ Cal. Welf. & Inst. Code § 369(h).⁶⁴ This section of law does not authorize the minor to consent to replacement narcotic abuse treatment (methadone). Cal. Fam. Code § 6929(e).⁶⁵

In the alternative, when a minor does not consent to treatment, a parent, guardian or other person with consent rights also may authorize care on the minor's behalf. Cal. Fam. Code § 6929(f).⁶⁶ In these situations, the consent rules described in sections A and B, *above*, apply.

12. Vaccination

Generally, the consent rules described in sections A and B, *above*, apply when dependents need vaccinations. Vaccinations are considered "ordinary treatment" under section 1530.6 of the California Health & Safety Code, and therefore, a

infectious, contagious, or communicable diseases, mental health treatment, and treatment for alcohol and drug abuse. If a dependent child is 12 years of age or older, his or her social worker is authorized to inform the child of his or her right as a minor to consent to and receive those health services, as necessary. Social workers are authorized to provide dependent children access to age-appropriate, medically accurate information about sexual development, reproductive health, and prevention of unplanned pregnancies and sexually transmitted infections.").

⁶²See *California's Child Abuse and Neglect Reporting Act: Reporting Rules for Health Care Providers*, available at www.TeenHealthRights.org.

⁶³Cal. Fam. Code § 6929("b) A minor who is 12 years of age or older may consent to medical care and counseling relating to the diagnosis and treatment of a drug- or alcohol-related problem.").

⁶⁴WIC § 369(h)("Nothing in this section shall be construed as limiting the rights of dependent children, pursuant to Chapter 3 (commencing with [Section 6920](#)) of [Part 4 of Division 11 of the Family Code](#), to consent to, among other things, the diagnosis and treatment of sexual assault, medical care relating to the prevention or treatment of pregnancy, including contraception, abortion, and prenatal care, treatment of infectious, contagious, or communicable diseases, mental health treatment, and treatment for alcohol and drug abuse. If a dependent child is 12 years of age or older, his or her social worker is authorized to inform the child of his or her right as a minor to consent to and receive those health services, as necessary. Social workers are authorized to provide dependent children access to age-appropriate, medically accurate information about sexual development, reproductive health, and prevention of unplanned pregnancies and sexually transmitted infections.").

⁶⁵Cal. Fam. Code § 6929(e)("This section does not authorize a minor to receive replacement narcotic abuse treatment, in a program licensed pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code, without the consent of the minor's parent or guardian.").

⁶⁶Cal. Fam. Code § 6929(f)("It is the intent of the Legislature that the state shall respect the right of a parent or legal guardian to seek medical care and counseling for a drug- or alcohol-related problem of a minor child when the child does not consent to the medical care and counseling, and nothing in this section shall be construed to restrict or eliminate this right.").

licensed caregiver may consent to vaccinations for a dependent without need of a court order.

In some cases, minors may consent for their own vaccination. For example, minors may consent to their own vaccination if they are married; or they are 15 or older; living apart from their parents; and managing their own financial affairs. *See* Cal. Family Code §§ 7002, 6922(a).⁶⁷ For information on consent for vaccinations that prevent sexually transmitted diseases and other communicable diseases, please see your local rules for guidance.

IV. PUTTING IT INTO PRACTICE - CASE EXAMPLES

Justine C. is seven years old and in second grade. She lives with her mother and her mother's boyfriend. Mom's boyfriend deals drugs out of their house, and the house often is filled with people using illegal substances. Her mom frequently beats Justine. One morning, Justine arrives at school with visible bruises and nursing one arm. Her teacher reports this to child protection. A social worker visits, immediately removes Justine from her mother's home, and begins proceedings to have Justine declared a dependent of the court.

1. **Upon removing Justine, the worker immediately takes the girl to a hospital because she is concerned that Justine may have a broken arm. Who may consent for this care?**

Justine's mother may consent. Alternatively, because Justine is in temporary custody, the social worker may consent for this exam as long as the social worker first attempts to notify Justine's mom of her intent. Since a possible broken arm is an emergency, even if her mother objects to Justine being seen, the social worker still may authorize treatment. The court also may authorize care. As a last resort, the hospital may be able to provide Justine treatment, absent consent, under the emergency exception.

2. **Shortly thereafter, Justine has a hearing in front of a juvenile court judge and is declared a dependent of the court. The court orders "care, custody and control" be placed with the social services agency, and Justine is placed in a foster home. It is now time for follow up care for her arm. She needs some X-rays to see how her arm is healing. Who may consent for these X-rays?**

The court order is necessary to answer this question completely. Even though Justine has been placed in foster care, Justine's mother still has the right to consent to or refuse medical care on Justine's behalf until the court removes this right. If the court removed the mother's right to consent, there will be language in the court order that

⁶⁷ For more information on California's minor consent laws, *see* *Minor Consent, Confidentiality and Child Abuse Reporting in California*, available at www.TeenHealthLaw.org.

explicitly says this and that places consent rights with someone else, such as the social worker. It also is valuable to know what standing court orders are in place, as there may be a standing order in this county that authorizes social workers to consent to certain health care for dependents.

Regardless of who holds general consent rights, there is another option. Justine's foster parent may consent for the X-ray because: (1) her foster parent is licensed to provide residential foster care; (2) licensed caregivers may consent for a dependent's ordinary care; and (3) an X-ray is considered ordinary treatment in this context.

3. Justine's foster mother wants to enroll her in school. In order to do so, Justine must have her immunizations updated. Who may consent for Justine's immunizations?

The answer is similar to that for question (2) above. In order to answer completely, the court order is necessary. However, no matter what the court order says regarding parent rights, Justine's foster mother may consent for the immunizations because: (1) her foster parent is licensed to provide residential foster care; (2) licensed caregivers may consent for a dependent's ordinary care; and (3) an immunization is considered ordinary treatment in this context. In some few cases, a minor may be able to consent for her own immunization. Providers should speak to their legal counsel and check their local county policy for further information on this issue.

4. It is many years later. Justine is 15 and living in long-term foster care. She has just become sexually active. Her foster mother brings Justine to a local health clinic and asks them to put Justine on birth control. She specifically requests that Justine be given a birth control shot rather than daily pills. May her foster mother, or anyone else, request birth control on Justine's behalf or request that she be placed on a certain type of birth control?

No. Justine alone has the power to request and consent to pregnancy related care, including birth control, for herself. Her foster mother certainly may accompany Justine to an appointment and offer advice, but ultimately the choice to begin birth control and what type to use is Justine's alone. If a clinician placed Justine on birth control based on her foster mother's request, without getting Justine's consent first, the clinician could be found civilly and criminally liable.

5. Justine is placed on psychotropic medication to treat depression. When her foster mother seeks to refill the prescription, they realize that the order authorizing her medication expired. Her foster mother contacts Justine's social worker and psychiatrist. Her social worker begins the JV-220 process, but this is taking time. Meanwhile, her prescription runs out. The medication includes a warning that treatment should not be stopped abruptly as it may lead to withdrawal or relapse. What can they do so that Justine may continue her medication pending authorization of the new JV-220 request?

If a dependent child has been removed from parental custody, only the court has the authority to consent to the administration of psychotropic medication. However, medication may be administered absent court authorization in an emergency. An emergency occurs when (a) a physician finds the medication is necessary to treat a psychiatric disorder; (b) the purpose of the medication is to protect the life of the child, prevent serious harm, or treat current or imminent substantial suffering; and (c) it is impractical to obtain authorization from the court before administering the medication. In this case, Justine's psychiatrist may decide the risks associated with abruptly stopping Justine's medication are enough to meet the emergency exception. If they decide this meets the emergency exception, the psychiatrist may extend her prescription pending the JV-220. Some counties have standing orders and protocols that address how to use the emergency exception in this kind of situation. See your local rules for guidance.

- 6. Despite using birth control, one day Justine discovers she is pregnant. After attending options counseling and thinking long and hard about it, Justine elects to terminate the pregnancy. She tells her social worker about her plans, and the social worker says that Justine cannot have an abortion without first obtaining the social worker's consent. Is the social worker's consent necessary to authorize Justine's abortion?**

No. Even though she is in foster care, Justine's consent is sufficient to authorize an abortion. Further, if she chooses termination, no one has the legal authority to limit her access to this care. While her foster parent, social worker, family and others certainly may offer support and advice, no one else may initiate or refuse pregnancy-related care for Justine without her consent.