



Monterey County Behavioral Health  
 Quality Improvement  
 Policy Clarification Memorandum

**Minor Consent for Mental Health Services**

1. The table below only applies to minors 12 years old and older. Minors who are 12 years old and older who are dependents or wards of the court enjoy the same right to consent to outpatient mental health care as minors living at home with a parent or guardian (no court order or other authorization is necessary).
2. Authority to consent for services and release protected health information for minors less than 12 years of age are with parents. For dependents or wards of the Court who are younger than 12, care must be taken to establish a non-parent’s legal authority to consent to care before treatment begins. Often, it requires identification of the child’s status as well as the ability or inclination of the natural parents to provide consent. A copy of the Court Order delegating the authority to consent (e.g., to a foster parent) should be placed in the health records before care is provided.

Service/Treatment	Minor Consent	Confidentiality	Additional Information
Outpatient mental health: <ul style="list-style-type: none"> <li>• Assessment</li> <li>• Therapy</li> <li>• Rehabilitative counseling</li> <li>• Case management</li> <li>• Group counseling</li> </ul>	A minor who is 12 years of age or older may consent to mental health treatment or counseling on an <b>outpatient basis</b> if the following requirements are satisfied: <ol style="list-style-type: none"> <li>1) The minor, in the opinion of the attending professional person, is mature enough to participate <u>intelligently</u> in the outpatient services; <b>AND</b></li> <li>2) The minor:               <ol style="list-style-type: none"> <li>a. Would present</li> </ol> </li> </ol>	The provider must involve the minor’s parents in the counseling services unless the provider believes that such involvement would be inappropriate. If the minor objects to involving the parent but the provider believes their involvement would be appropriate, further services should not be provided pursuant to minor consent and the parent should not be involved. If the minor does not object, the parent(s) should be involved, but control of the medical record, as well as the “privilege” sits with the minor and access to the	<u>Minor Consent</u> As of 05/01/2015, County policy re: minor consent for <i>sensitive mental health services</i> will apply under the following conditions: <ol style="list-style-type: none"> <li>1) The minor is mature enough to participate intelligently in services based on the clinician’s assessment; <b>AND</b></li> <li>2) Would present a danger of serious physical or mental harm to self <b>without</b> the mental health treatment or counseling; <b>OR</b></li> <li>3) Would present a danger of serious physical or mental harm to others <b>without</b> the mental health treatment or counseling; <b>OR</b></li> <li>4) Is alleged to be a victim of incest; <b>OR</b></li> <li>5) Is alleged to be a victim of child abuse.</li> </ol>



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	<p>a danger of serious physical or mental harm to self or others without the mental health treatment or counseling; <b>OR</b></p> <p>b. Is the alleged victim of incest or child abuse.</p> <p>(Source: CA Family Code Section 6924)</p>	<p>record by the parent should only be provided after written authorization from the minor is obtained. Note that the right to control the record sits with the minor regardless of whether the parent gives independent consent to the services, or initiated the services.</p> <p>[Source: CA Health &amp; Safety Code Section 123110(a), 123115(a); Code of Federal Regulations, Title 45, Section 164.502(g)(3), 164.508(a)]</p> <p>Per MCBH policy, an authorization from the client is normally required to disclose protected health information to other third party healthcare providers, including MCBH contract partners, unless the disclosure is for a critical, emergency service.</p>	<p>Under this definition, not all clients 12 years old and over can consent for their own services. <b><i>The minor must meet condition 1 (appropriate level of maturity) and at least one of conditions 2-5 (danger of physical or emotional harm to self or others without mental health treatment or counseling; or alleged victim of incest or abuse)</i></b></p> <p>The client’s clinical documentation, especially the psychosocial assessment, must clearly articulate the factors utilized by the clinician to determine condition 1 and how the client’s mental health related presenting issues/impairments meet at least one of conditions 2-5.</p> <p><u>Confidentiality</u>        An Authorization to Use, Exchange, and/or Disclose PHI (“Authorization”) must be obtained from minor clients 12 years or older prior to disclosing PHI to parents or legal guardians even if those parents or guardians are who consented for services.</p> <p><u>Legal Requirement to Involve Parents</u>        The provider is required to involve a parent or guardian in the minor’s outpatient treatment unless such involvement is inappropriate. This decision and any attempts to contact parents must be documented in the health</p>



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			records. Involving parents may mean sharing certain confidential information. However, having them participate does not mean parents have a right to access confidential records.
Psychotropic medication treatment	<p>Only with a parent or guardian consent, except a guardian cannot consent to experimental medications for a minor</p> <p>(Source: CA Probate Code Section 2356)</p>	<p>Since the minor did not and could not have consented to psychotropic medications, a parent or guardian usually has the right to access that portion of the minor's medical information. To share that information with others, the provider usually must have a signed authorization from the parent or guardian.</p>	<p>The parent/guardian of a minor shall not be entitled to inspect or obtain copies of the minor's patient records where the health care provider determines that access to the patient records requested by the parent/guardian would have a detrimental effect on the provider's professional relationship with the minor or the minor's physical safety or psychological well-being.</p>
<i>Voluntary</i> inpatient mental health hospitalization	<p>Only with parent or guardian consent, except a guardian cannot place a minor in a mental health facility against the minor's will. Involuntary placement can only be obtained through a CA Welfare and Institutions Code 5585.2 or 5350 proceeding.</p> <p>(Source: CA Probate Code 2356)</p>	<p>[Source: CA Health &amp; Safety Code 123105(e), 123110(a); CA Welfare and Institutions Code Section 5328(d)]</p> <p>Per MCBH policy, an authorization from the client is normally required to disclose protected health information to other third party healthcare providers, including MCBH contract partners, unless the disclosure is for a critical, emergency service.</p>	



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<p>Alcohol or Drug Counseling (ONLY)</p> <p>An individual, program, or facility is federally assisted drug program if:</p> <ol style="list-style-type: none"> <li>1) It is authorized, certified, licensed, or funded in whole or part by any department of the federal government; <b>AND</b></li> <li>2) The individual program is an individual or program that holds itself out as providing alcohol or drug abuse diagnosis, treatment, or referral</li> </ol> <p><b>NOTE:</b> MCBH alcohol and other drug programs are covered under this requirement.</p>	<p>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 problems.</p> <p>[Source: CA Family Code Section 6929(b)]</p>	<p>If the minor consents to care, the provider may only share the minor’s medical information with parents with the signed consent of the minor.</p> <p>[Source: CA Health &amp; Safety Code Sections 123110(a), 123115(a); CA Civil Code Sections 56.10(b)(7), 56.11 (c); Code of Federal Regulations, Title 42, Section 2.14; Code of Federal Regulations, Title 45, Sections 164.502(g)(3)(i)(A), 164.508(a)]</p> <p>Per MCBH policy, an authorization from the client is normally required to disclose protected health information to other third party healthcare providers, including MCBH contract partners, unless the disclosure is for a critical, emergency service.</p>	<p>Providers may not disclose information to parents without a minor’s written authorization. However, an exception allows a program to share with parents if the program manager and/or director determines the following three conditions are met:</p> <ol style="list-style-type: none"> <li>1) That the minor’s situation poses a substantial threat to the life or physical well-being of the minor or another;</li> <li>2) That this threat may be reduced by communicating relevant facts to the minor’s parents; <b>AND</b></li> <li>3) That the minor lacks the capacity because of extreme youth or a mental or physical condition to make a rational decision on whether to disclose to the parents</li> </ol> <p>[Source: Code of Federal Regulations, Title 42, Section 2.14.</p> <p>The provider may only share treatment information with providers employed by the SAME PROGRAM [NOTE: this does not say the same organization; it specifically states SAME PROGRAM or same team only] or with an entity having direct administrative control [e.g., Behavioral Health Quality Improvement], and only in connection with duties arising out of the provision of diagnosis, treatment, or</p>



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<p>Dual Diagnosis Treatment (treatment of co-occurring mental health and alcohol/substance abuse issues)</p> <p>An individual, program, or facility is a federally assisted drug program if:</p> <ol style="list-style-type: none"> <li>1) It is authorized, certified, licensed, or funded in whole or part by any department of the federal government; <b>AND</b></li> <li>2) The individual program is an individual or program that holds itself out as providing alcohol or drug abuse diagnosis, treatment, or referral</li> </ol> <p><b>NOTE:</b> MCBH mental health programs providing dual diagnosis treatment are covered under this requirement.</p>			<p>referral. Providers may release information to other medical professionals in bona fide medical emergencies.</p> <p>Even if your program is primarily a “mental health” program, <b>ALL</b> of the Alcohol or Drug Counseling Only rules attach once your team provides substance abuse treatment services to individual clients.</p> <p>This means that treatment information cannot be shared outside your teams/programs even with other teams in the organization. For example, if the client is served by the Juvenile Justice Team and the client is being provided substance abuse treatment, the Juvenile Justice Team cannot share treatment information with any other MCBH teams or programs.</p> <p>The exception to this is when the client completes an Authorization to Use, Exchange, and/or Disclose <b>WITHIN</b> MCBH. By consenting to and signing this form, the client agrees that treatment information about them can be shared with other <i>internal</i> MCBH teams programs. Sharing with an external provider, even if it is an MCBH contractor, requires the client’s signed consent to do so.</p>