



NCYL

## Minor Consent for Substance Use Disorder (SUD) Services in California: Frequently Asked Questions about Family Code § 6929

<p><b>Which minors may consent to services under this statute?</b></p>	<p>Minors aged 12–17 years old.</p>
<p><b>What services may minors consent to under this statute?</b></p>	<ul style="list-style-type: none"> <li>• <b>Initial intake</b><sup>1</sup>, including application for services and assessment, and <b>diagnosis</b><sup>2</sup> of a “drug- or alcohol-related problem”<sup>3</sup></li> <li>• <b>Development of a treatment plan</b> for a “drug- or alcohol-related problem”</li> <li>• <b>“Medical care”</b><sup>4</sup> for a “drug- or alcohol-related problem.” But see below related to consent for narcotic replacement medication.</li> <li>• <b>Individual and group “counseling”</b><sup>5</sup> for a “drug- or alcohol-related problem”</li> <li>• <b>Hospital care</b><sup>6</sup></li> </ul>
<p><b>Family Code 6929 allows minors to consent to services related to a “drug or alcohol related problem.” What substances does this cover?</b></p>	<p>Substances included on schedules I-IV of the <a href="#">Uniform Controlled Substances Act</a>, including, but not limited, to:</p> <ul style="list-style-type: none"> <li>• Marijuana</li> <li>• Prescription pain medications (Oxycodone/Hydrocodone/Diphenoxylate/Morphine/Codeine)</li> <li>• MDMA</li> <li>• Cocaine</li> <li>• Methamphetamine</li> <li>• Heroin</li> </ul> <p>The statute also explicitly references and authorizes minors to consent to SUD services for:</p> <ul style="list-style-type: none"> <li>• Alcohol</li> <li>• <a href="#">Toluene</a></li> <li>• <a href="#">Nitrous Oxide</a></li> </ul> <p>The statute does not cover treatment for nicotine use.<sup>7</sup></p>

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## Minor Consent for Substance Use Disorder (SUD) Services in California: Frequently Asked Questions about Family Code § 6929

**May minors consent to “replacement narcotic abuse treatment” under this statute?**

No. Family Code 6929 specifies that minors cannot consent to “replacement narcotic abuse treatment” on their own behalf, but minors can receive “replacement narcotic abuse treatment” with the consent of a parent or guardian.<sup>8</sup> (See below for further discussion.)

**What is “replacement narcotic abuse treatment” for purposes of Family Code 6929?**

There is some ambiguity as to the best definition of “replacement narcotic abuse treatment” for this purpose due to an outdated reference in Section 6929. Subsection (e) of 6929 states that minors cannot consent to “replacement narcotic abuse treatment” on their own though they can receive “replacement narcotic abuse treatment” with parent consent.<sup>9</sup> However, the subsection references definitions from a part of the Health and Safety Code that has since been repealed.<sup>10</sup> A similar, current section of the Health and Safety Code uses the terminology “narcotic replacement therapy and medication-assisted treatment,” which are defined by Health and Safety Code 11839.2 to include:

- “(a) Methadone,
- (b) Levo-alpha-acetylmethadol (LAAM) as specified in paragraph (10) of subdivision (c) of Section 11055,
- (c) Buprenorphine products or combination of products approved by the federal Food and Drug Administration for maintenance or detoxification of opioid dependence, and
- (d) Any other medication approved by the federal Food and Drug Administration for the purpose of narcotic replacement treatment or medication-assisted treatment of substance use disorders.”<sup>11</sup>

There is a strong argument that this definition from Health and Safety Code 11839.2 can be used to understand the term “replacement narcotic abuse treatment” in Family Code 6929.<sup>12</sup> However, because subsection (e) of section 6929 does not directly reference Health and Safety Code 11839.2 and instead refers to repealed code sections, providers should consult legal counsel for guidance on how to understand this outdated reference in the context of current law and practice.

**May parents or guardians consent to “medication-assisted treatment” on behalf of minors?**

Yes. Family Code 6929 does not prevent a parent or guardian from consenting to replacement narcotic abuse treatment or “medication-assisted treatment” on behalf of a minor, if such treatment is authorized by other law.<sup>13</sup>

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## Minor Consent for Substance Use Disorder (SUD) Services in California: Frequently Asked Questions about Family Code § 6929

<p><b>May parents or guardians consent to “medication-assisted treatment” on behalf of minors?</b> <i>(continued)</i></p>	<p>Other laws do shape which providers may provide medication-assisted treatment to minors and when it can be used. For example, providers operating under SAMHSA certification must ensure they are complying with federal regulations related to provision of maintenance treatment to minors.<sup>14</sup> As one example of such rules, opioid treatment programs<sup>15</sup> (OTPs) operating under SAMHSA certification must comply with a regulation that says a person under age 18 must have two documented unsuccessful attempts at short-term detoxification or drug-free treatment within a 12-month period to be eligible for maintenance treatment, and the OTP cannot admit any person under 18 years of age to “maintenance treatment unless a parent, legal guardian, or responsible adult designated by the relevant State authority consents in writing to such treatment.”<sup>16</sup> Providers should consult legal counsel to understand which federal and state rules apply to delivery of medication to minors.</p>
<p><b>Are there additional statutes that allow a minor to consent to substance use related treatments?</b></p>	<p>Yes. There are statutes that allow minors to consent to outpatient mental health counseling on their own, and statutes that allow minors to consent to medical care based on their status (for example, if they are emancipated). See the chart “<a href="#">California Minor Consent and Confidentiality Laws</a>” on the <a href="#">teenhealthlaw.org</a> website for more information.</p>
<p><b>Are parents financially liable?</b></p>	<p>A minor’s parents or guardian are not liable for payment for treatment provided under minor consent unless the parent or guardian participates in counseling being provided.<sup>17</sup></p>
<p><b>May minors consent to other types of health and mental health care in California?</b></p>	<p>Yes. See the chart “<a href="#">California Minor Consent and Confidentiality Laws</a>” on the <a href="#">teenhealthlaw.org</a> website for more information.</p>



<sup>1</sup> 22 C.C.R. § 51341.1(b)(13). For purposes of the Drug Medi-Cal program, “‘**intake**’ means the process of admitting a beneficiary into a substance use disorder treatment program. Intake includes the evaluation or analysis of the cause or nature of mental, emotional, psychological, behavioral, and substance use disorders; the diagnosis of substance use disorders utilizing the Diagnostic and Statistical Manual of Mental Disorders Third Edition-Revised or Fourth Edition, published by the American Psychiatric Association; and the assessment of treatment needs to provide medically necessary treatment services by a physician. Intake may include a physical examination and laboratory testing (e.g., body specimen screening) necessary for substance use disorder treatment and evaluation conducted by staff lawfully authorized to provide such services and/or order laboratory testing within the scope of their practice or licensure.”

<sup>2</sup> Family Code § 6929 (Minors may consent to medical care and counseling relating to the diagnosis and treatment of a drug or alcohol related problem under this statute.) Diagnosis requires evaluation and assessment. *See* § 6902 and 22 C.C.R. § 51341.1.

<sup>3</sup> Family Code § 6929(a)(2) (Drug or alcohol includes but is not limited to substances included on schedules I-IV of the Uniform Controlled Substances Act as well as alcohol, toluene and nitrous oxide.)

<sup>4</sup> Family Code § 6902 (“‘**Medical care**’ means X-ray examination, anesthetic, medical or surgical diagnosis or treatment, and hospital care under the general or special supervision and upon the advice of or to be rendered by a physician and surgeon licensed under the Medical Practice Act.”); *see* Family Code § 6900 (making definitions in section 6902 applicable).

<sup>5</sup> Family Code § 6929(a)(1) (“‘**Counseling**’ means the provision of counseling services by a provider under a contract with the state or a county to provide alcohol or drug abuse counseling services pursuant to Part 2 (commencing with Section 5600) of Division 5 of the Welfare and Institutions Code or pursuant to Division 10.5 (commencing with Section 11750) of the Health and Safety Code.”) This includes, but is not limited to, counseling services funded through the Drug Medi-Cal (DMC) program, among others. 22 CCR § 51341.1(b)(11) (For purposes of the drug Medi-Cal program, “‘**group counseling**’ means face-to-face contacts in which one or more therapists or counselors treat two or more clients at the same time, focusing on the needs of the individuals served. Group counseling shall be conducted in a confidential setting, so that individuals not participating in the group cannot hear the comments of the group participants, therapist or counselor. A beneficiary that is 17 years of age or younger shall not participate in group counseling with any participants who are 18 years of age or older. However, a beneficiary who is 17 years of age or younger may participate in group counseling with participants who are 18 years of age or older when the counseling is at a provider’s certified school site. (A) For outpatient drug free treatment services and narcotic treatment programs, group counseling shall be conducted with no less than four and no more than ten clients at the same time, only one of whom needs to be a Medi-Cal beneficiary. (B) For day care rehabilitative services, group counseling shall be conducted with no less than two and no more than twelve clients at the same time, only one of whom needs to be a Medi-Cal beneficiary.”) 22 CCR § 51341.1(b)(12) (For the purposes of the drug Medi-Cal program, “‘**individual counseling**’ means face-to-face contacts between a beneficiary and a therapist or counselor. Individual counseling shall be conducted in a confidential setting, so that individuals not participating in the counseling session cannot hear the comments of the beneficiary, therapist or counselor.”).

<sup>6</sup> Minors may consent to “medical care,” and medical care is defined by section 6902 of the Family Code to include hospital care. (See footnote 4). This authority to consent to hospital care is in contrast to the minor consent mental health statutes (sections 6924 of the Family Code and 124260 of the Health and Safety Code) which limit minors to only consenting for outpatient mental health care. It is advisable to consult your risk management department for more information on minor and parent consent to inpatient treatment.

<sup>7</sup> Family Code § 6929(a)(2) (“‘Drug or alcohol’ includes, but is not limited to, any substance listed in any of the following: (A) Section 380 or 381 of the Penal Code. (B) Division 10 (commencing with Section 11000) of the Health and Safety Code. (C) Subdivision (f) of Section 647 of the Penal Code.”).

<sup>8</sup> Subsection (e) of section 6929 states that it “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.”

<sup>9</sup> Subsection (e) of section 6929 of the Family Code states that it “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.”

<sup>10</sup> Subsection (e) references Article 3 of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code. This section of the Health and Safety Code applies to “narcotic treatment programs” licensed and administered by the Department of Alcohol and Drug Programs. In 2012, the legislature repealed the referenced statutes, disbanded this department and transferred administrative and programmatic control for narcotic treatment programs from the Department of Alcohol and Drug Programs to the state Health and Human Services Agency (HHS). “Narcotic Treatment Programs” in California are now licensed by HHS pursuant to Article 1 (commencing with Section 11839) of Chapter 10 of Part 2 of Division 10.5 of the Health and Safety Code.

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<sup>11</sup> Health and Safety Code § 11839.2.

<sup>12</sup> Subsection (e) of section 6929 states that it “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.” This Article of the Health and Safety Code referred to “narcotic treatment programs” licensed and administered by the Department of Alcohol and Drug Programs (AOD). Article 3 authorized NTPs to provide “replacement narcotic therapy” for substance use disorders and defined which medications could be used. (See Health and Safety Code § 11875.1, added by Assembly Bill 1113 (1995).) In 2012, the legislature repealed Article 3, disbanded AOD and transferred administrative and programmatic control for narcotic treatment programs from AOD to the state Health and Human Services Agency (HHS). “Narcotic Treatment Programs” in California are now licensed pursuant to Article 1 (commencing with Section 11839) of Chapter 10 of Part 2 of Division 10.5 of the Health and Safety Code. Section 11839.2 of the Health and Safety Code is part of Article 1. Section 11839.2 authorizes use of medication in treatment. The statute originally used the term “replacement narcotic therapy,” but the legislature amended and updated it over time such that it now refers to use of both “narcotic replacement therapy” and “medication assisted treatment.” (Originally section 11839.2 referred to use of “replacement narcotic therapy.” (See former Health and Safety Code § 11839.2, added by Senate Bill 1838 (2004).) In 2013, the legislature updated section 11839.2 by replacing the term “replacement narcotic therapy” with the term “narcotic replacement therapy.” (Assembly Bill 75 (2013).) In 2017, the statute was amended again to authorize NTPs to provide both “narcotic replacement therapy” and “medication assisted treatment.” (Assembly Bill 395 (2017).) As of January 2018, Health and Safety Code 11839.2 defines these terms to include:

“(a) Methadone,

(b) Levo-alpha-acetylmethadol (LAAM) as specified in paragraph (10) of subdivision (c) of Section 11055,

(c) Buprenorphine products or combination of products approved by the federal Food and Drug Administration for maintenance or detoxification of opioid dependence, and

(d) Any other medication approved by the federal Food and Drug Administration for the purpose of narcotic replacement treatment or medication-assisted treatment of substance use disorders.”

<sup>13</sup>A parent or legal guardian’s right to legal custody includes the right to make medical decisions on behalf of minor children. (*See e.g.* Family Code §§ 3003, 3006, 6903, 6910.) Medical care means “medical or surgical diagnosis or treatment, and hospital care under the general or special supervision and upon the advice of or to be rendered by a physician and surgeon licensed under the Medical Practice Act.” Medical care may include medications authorized by law for use with minors. (*See* Family Code § 6902). Section 6929 of the Family Code does not limit the scope of services available to minors or a parent or guardian’s authority to consent to medications. Indeed, subsection (e) of Family Code 6929 explicitly references the authority of parents to consent to replacement narcotic abuse treatment on behalf of minors. (“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.”) And subsection (f) of Family Code 6929 clarifies that the legislature did not intend to remove any legal rights to consent to care when it granted minors the authority to consent to certain SUD treatment on their own behalf. (“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.”).

<sup>14</sup> 42 C.F.R. § 8.1(a) (“Subparts A through C of this part establish the procedures by which the Secretary of Health and Human Services (the Secretary) will determine whether a practitioner is qualified under section 303(g) of the Controlled Substances Act (CSA) (21 U.S.C. 823(g)) to dispense opioid drugs in the treatment of opioid use disorders. The regulations also establish the Secretary's standards regarding the appropriate quantities of opioid drugs that may be provided for unsupervised use by individuals undergoing such treatment (21 U.S.C. 823(g)(1)). Under these regulations, a practitioner who intends to dispense opioid drugs in the treatment of opioid use disorder must first obtain from the Secretary or, by delegation, from the Administrator, Substance Abuse and Mental Health Services Administration (SAMHSA), a certification that the practitioner is qualified under the Secretary's standards and will comply with such standards. Eligibility for certification will depend upon the practitioner obtaining accreditation from an accreditation body that has been approved by SAMHSA. These regulations establish the procedures whereby an entity can apply to become an approved accreditation body. This part also establishes requirements and general standards for accreditation bodies to ensure that practitioners are consistently evaluated for compliance with the Secretary's standards for treatment of opioid use disorder with an opioid agonist treatment medication.”).

<sup>15</sup> 42 C.F.R. § 8.2 (“Opioid treatment program or “OTP” means a program or practitioner engaged in opioid treatment of individuals with an opioid agonist treatment medication registered under 21 U.S.C. 823(g)(1); Opioid agonist treatment medication means any opioid agonist drug that is approved by the Food and Drug Administration under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid use disorder.”)

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<sup>16</sup> 42 C.F.R. § 8.11 (“(a) General.(1) An OTP must be the subject of a current, valid certification from SAMHSA to be considered qualified by the Secretary under section 303(g)(1) of the Controlled Substances Act (21 U.S.C. 823(g)(1)) to dispense opioid drugs in the treatment of opioid use disorder. An OTP must be determined to be qualified under section 303(g)(1) of the Controlled Substances Act, and must be determined to be qualified by the Attorney General under section 303(g)(1), to be registered by the Attorney General to dispense opioid agonist treatment medications to individuals for treatment of opioid use disorder. (2) To obtain certification from SAMHSA, an OTP must meet the Federal opioid treatment standards in § 8.12, must be the subject of a current, valid accreditation by an accreditation body or other entity designated by SAMHSA, and must comply with any other conditions for certification established by SAMHSA.”); 42 C.F.R. 8.12(e)(2) (“(e) Patient admission criteria...(2) Maintenance treatment for persons under age 18. A person under 18 years of age is required to have had two documented unsuccessful attempts at short-term detoxification or drug-free treatment within a 12-month period to be eligible for maintenance treatment. No person under 18 years of age may be admitted to maintenance treatment unless a parent, legal guardian, or responsible adult designated by the relevant State authority consents in writing to such treatment.”).

<sup>17</sup> Family Code § 6929(d).

