

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 816 (Haney)
Version: February 13, 2023
Hearing Date: June 20, 2023
Fiscal: No
Urgency: No
AWM

SUBJECT

Minors: consent to medical care

DIGEST

This bill authorizes minors aged 16 years of age and older to consent to buprenorphine as a narcotic replacement therapy to treat a substance abuse issue, without the consent of their parent or guardian.

EXECUTIVE SUMMARY

Existing law permits a minor who is 12 years of age or older to consent to medical care and counseling related to the treatment of drug or alcohol abuse, with the express exemption of replacement narcotic abuse treatment. As the name suggests, narcotic replacement therapy treats substance abuse disorder by replacing the substance with a drug that curbs cravings and allows the addicted person to wean themselves off the illicit substance.

Buprenorphine is a replacement narcotic abuse treatment for opioid abuse that is FDA-approved for persons 16 years of age and older. Unlike many other opioid replacements, buprenorphine can be prescribed and dispensed in a physician's office rather than in a clinic, making it a more accessible treatment option for opioid addiction. In recognition of the ravaging opioid crisis and the rise of fentanyl addiction, the federal government has recently made it easier for physicians to prescribe buprenorphine.

This bill creates a modest exception-to-the-exception to allow a minor aged 16 years or older to consent to buprenorphine as part of their substance abuse treatment plan. Given that many teenagers suffering from opioid abuse do not have a supportive, or even available, parent to give consent, this bill will enable older teens suffering from opioid addiction to take steps to obtain a federally approved treatment. The bill maintains the existing requirement that the treating professional attempt to involve the

parent in the treatment plan, unless in their professional judgment notifying the parent would be inappropriate.

This bill is sponsored by the American Academy of Pediatrics, California, and is supported by a 14 organizations, including a number of groups representing medical and mental health professionals. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes that a “minor” is an individual under 18 years of age. (Fam. Code, § 6500.)
- 2) Defines the following relevant terms:
 - a) “Counseling” is 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, as specified.
 - b) “Drug or alcohol” includes substances identified as such in the Penal Code and Health and Safety Code.
 - c) “LAAM” is levoalphacetylmethadol, as defined in section 11055 of the Health and Safety Code.
 - d) “Professional person” includes a physician and surgeon, registered nurse, psychologist, clinical social worker, professional clinical counselor, marriage and family therapist, and other identified health care professionals. (Fam. Code, § 2929(a).)
- 3) Permits a minor who is 12 years of age or older to consent to medical care and counseling relating to the diagnosis and treatment of a drug- or alcohol-related problem without the consent of their parent or guardian.¹ (Fam. Code, §§ 6929(b), 6920.)
- 4) Provides that a treatment plan of a minor authorized by 3) shall include involvement of the minor’s parent, if appropriate, as determined by the professional person or treatment facility treating the minor. The professional person providing care or counseling shall state in the minor’s treatment record whether and when they attempted to contact the minor’s parent and whether the attempt was successful or unsuccessful, or why, in their professional opinion, it would be inappropriate to contact the minor’s parent or guardian. (Fam. Code, § 6929(d).)
- 5) Provides that a minor’s parent is not liable for services provided pursuant to 3), except if the minor’s parent participates in a counseling program pursuant to 3), the

¹ Going forward, this analysis uses “parent” to include the term “guardian.”

parent is liable for the costs of the services provided to the minor and their parent. (Fam. Code, § 6929(d).)

- 6) Provides that 3) does not authorize a minor to receive replacement narcotic abuse treatment, in a program licensed pursuant to the Health and Safety Code, without parental consent. (Fam. Code, § 6929(e).)
- 7) States that 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 or counseling, and the provisions allowing a minor to consent to their own treatment shall not be construed to restrict or eliminate that right. (Fam. Code, § 6929(f).)
- 8) Requires a physician and surgeon to disclose medical information concerning the minor's care under 3) to the minor's parent, when the parent has sought medical care and counseling for the minor's drug- or alcohol-related problem, even if the minor does not consent to the disclosure, and provides that the physician and surgeon is not liable for the disclosure. (Fam. Code, § 6929(g).)

This bill:

- 1) Authorizes a minor aged 16 years or older to consent, without parental consent, to buprenorphine as a replacement narcotic abuse treatment.

COMMENTS

1. Author's comment

According to the author:

California has a youth overdose crisis. Last year 1 out of every 5 youth deaths in California was caused by an opioid overdose. There is only one medication that has been approved by the FDA to treat opioid addiction: buprenorphine. This lifesaving medication stops opioid cravings and allows therapists and doctors the time they need to get youth clean and sober.

Currently state law requires parental consent to receive this medication. But often times, youth suffering from opioid addiction are not in contact with their parents, or have parents who are also dealing with addiction and are not part of their children's lives. This presents a significant barrier for youth who need to access this life-saving medication.

AB 816 will allow physicians to oversee buprenorphine treatment for youth over the age of 16 without parental consent. This bill will be a critical step forward to achieving California's goal of ending the rapidly growing crisis of youth opioid deaths.

2. This bill authorizes minors aged 16 years of age and older to consent to buprenorphine to treat a substance abuse problem

“At common law, minors generally were considered to lack the legal capacity to give valid consent to medical treatment or services, and consequently a parent, guardian, or other legally authorized person generally was required to provide the requisite consent.”² This general rule was intended to “protect the health and welfare of minors, safeguarding them from the potential overreaching of third parties or the improvidence of their own immature decisionmaking, and leaving decisions concerning the minor's medical care in the hands of his or her parents, who were presumed to be in the best position to protect the health of their child.”³

But parental autonomy is not absolute. “Under the doctrine of *Parens patriae*, the state has a right, indeed, a duty, to protect children. [Citation] State officials may interfere in family matters to safeguard the child's health, educational development and emotional well-being.”⁴

Over the last 70 years, California has adopted a number of statutes that allow minors to seek medical care in certain situations without parental consent.⁵ This bill addresses Family Code section 6929 (“Section 6929”), which allows minors who are 12 years of age or older to consent to medical care and counseling for a drug- or alcohol-related problem without parental consent.⁶

As with similar minor-consent laws, Section 6929 has guardrails for minors seeking care. The professional treating the minor for their substance abuse issues is required to notify the minor's parent unless the professional determines that it would be inappropriate to do so.⁷ The minor's parent is not liable for the costs of the care except to the extent that the parent participates.⁸ A parent retains their right to have the minor involuntarily treated for substance abuse issues.⁹ And, relevant to this bill, Section 6929

² *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 314-315. Going forward, this analysis uses “parent” to include a guardian.

³ *Id.* at p. 315.

⁴ *In re Phillip B.* (1979) 92 Cal.App.3d 769, 801.

⁵ *American Academy of Pediatrics, supra*, 16 Cal.4th at p. 316.

⁶ Fam. Code, § 6920; *see also id.*, § 6920.

⁷ *Id.*, § 6929(c).

⁸ *Id.*, § 6929(d).

⁹ *Id.*, § 6929(f).

does not permit a minor to consent to replacement narcotic abuse treatment otherwise authorized for the treatment of substance abuse disorders.¹⁰

This bill would make a modest exception to the rule against allowing a minor to consent to replacement narcotic abuse treatment, by allowing minors 16 years of age and older to consent to replacement treatment with buprenorphine. Buprenorphine is approved by the federal Food and Drug Administration (FDA) to treat opioid use disorder.¹¹ Unlike other opioid abuse disorder treatments that have to be administered in clinics, buprenorphine can be prescribed or dispensed in physician offices, thereby making buprenorphine a more accessible treatment option for many people.¹² The FDA approved the use of buprenorphine by persons 16 years of age and older in 2002.¹³ Earlier this year, in recognition of the state of the opioid addiction crisis and the need for access to treatment, Congress removed the requirement that physicians obtain a waiver before prescribing buprenorphine.¹⁴

The bill is supported by a number of medical organizations, all of which note that youth opioid deaths are a serious concern. According to the bill's sponsor, the American Academy of Pediatrics, California, one in five youth deaths is caused by an opioid overdose. They explain:

As pediatricians, we consistently make every effort to engage families in the care of youth. However, obtaining parental consent is not always possible. For youth without an available or supportive caregiver (e.g., unhoused youth), or for youth who may be unwilling to disclose their substance use to caregivers, we strongly believe parental consent should not be a barrier to safe and effective care. The patients for whom parental consent is the most challenging are often the most vulnerable patients who need our care and advocacy the most.

The California Association for Nurse Practitioners also writes:

As providers of substance abuse disorder treatment, NPs understand the important role of buprenorphine in the care of patients battling opioid addiction. While the State of California continues to face a physician shortage, NPs' role and perspective as administrators and prescribers of

¹⁰ *Id.*, § 6929(e).

¹¹ United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, "Buprenorphine" (last updated May 10, 2023), <https://www.samhsa.gov/medications-substance-use-disorders/medications-counseling-related-conditions/buprenorphine>. All links in this analysis are current as of June 16, 2023.

¹² *Ibid.*

¹³ FDA, Approval letters re NDA 20-732 & NDA 20-733 (Subutex and Suboxone) (Oct. 8, 2022).

¹⁴ United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, "Removal of DATA Waiver (X-Waiver) Requirement" (last updated Apr. 25, 2023), <https://www.samhsa.gov/medications-substance-use-disorders/removal-data-waiver-requirement>.

buprenorphine proves especially vulnerable. The persisting opioid crisis has demonstrated that it is critical that treatment be accessible to all who need it. Oftentimes, obtaining parental consent is a barrier to this lifesaving treatment. AB 816 works to increase access to such treatment by authorizing a minor aged 16 years older to consent to treatment using the drug buprenorphine[, thereby providing] an additional avenue for individuals to receive potentially lifesaving treatment.

Committee staff are not aware of any opposition to this bill.

SUPPORT

American Academy of Pediatrics, California (sponsor)
CA Bridge
California Academy of Family Physicians
California Association for Nurse Practitioners
California Coalition for Youth
California Medical Association
California Psychological Association
California State Association of Psychiatric
Children's Trust California
Montage Health
National Association of Social Workers - California Chapter
National Center for Youth Law
National Health Law Program
San Francisco Marin Medical Society
Steinberg Institute

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation:

SB 457 (Menjivar, 2023) authorizes a minor who is 15 years of age or older and living separate and apart from their parent or guardian and managing their own finances to consent to vision care. SB 457 is pending on the Assembly Floor.

AB 665 (Carrillo, 2023) allows minors aged 12 and older to consent to mental health treatment and residential shelter services provided that the treating professional determines that they are mature enough to participate intelligently, bringing the provision in line with the current authorization for 12-year-olds with private insurance

to consent to mental health treatment. AB 665 is pending before this Committee and is set to be heard on the same day as this bill.

Prior Legislation:

SB 866 (Wiener, 2022) would have allowed minors aged 15 and older to consent to a vaccine that has been approved by the FDA and meets the recommendations of the Advisory Committee on Immunization Practices of the federal Centers for Disease Control and Prevention. SB 866 died on the Assembly Floor.

AB 3189 (Cooper, Ch. 1003, Stats. 2018) authorized minors aged 12 and older to consent to medical treatment related to the diagnosis or treatment of an injury and the collection of medical evidence related to alleged intimate partner violence.

PRIOR VOTES:

Assembly Floor (Ayes 62, Noes 0)
Assembly Judiciary Committee (Ayes 7, Noes 0)
