

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

SB 457 (Menjivar)
Version: March 20, 2023
Hearing Date: March 28, 2023
Fiscal: No
Urgency: No
AWM

SUBJECT

Vision care: consent by a minor

DIGEST

This bill allows minors aged 15 and older and living separate and apart from their parents or guardians to consent to vision care without obtaining the consent of their parent or guardian.

EXECUTIVE SUMMARY

While the age of majority in California is 18 years old, the State has enacted several statutes allowing minors to consent to various services without the authorization of their parents and without disaffirmance upon reaching the majority age. These statutes reflect a policy determination that, in some situations, the minor's interest in obtaining medical care outweighs their parent's interest in preventing them from obtaining that care.

This bill expands one of the less-controversial statutes allowing minors to independently consent to medical treatment: the provision allowing minors 15 years of age or older, who live separate and apart from their parents or guardians and manage their own financial affairs, to consent to medical and dental care. According to the author and sponsor, because this statute does not specifically refer to "vision care," these independent youth – many of whom are homeless – have been unable to obtain vision care without the consent of a parent or guardian. To ensure that minors living on their own can obtain the vision care they need, this bill expands that provision to allow such a minor to consent to vision care without the consent of the parent or guardian.

This bill is sponsored by the California Coalition for Youth and is supported by the Alliance for Children's Rights and the California Optometric Association. The bill is opposed by one individual.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Defines “minor” as an individual under 18 years of age. (Fam. Code, § 6500.)
- 2) Provides a minor who is 15 years of age or older may consent to medical and dental care without the consent of a parent or guardian¹ provided that both conditions are met:
 - a) The minor living separate and apart from their parents, with or without the parents’ consent and regardless of the duration of the separate residence.
 - b) The minor manages their own financial affairs, regardless of the source of the minor’s income. (Fam. Code, § 6922(a).)
- 3) Provides that the parent of a minor who receives medical or dental care pursuant to 2) is not liable for the cost of the care.
- 4) Provides that a physician, surgeon, or dentist providing care pursuant to 2) may, with or without consent of the minor patient, inform the minor’s parent of the care provided or the care needed if the physician, surgeon, or dentist has reason to know the parent’s whereabouts on the basis of information provided by the minor.

This bill:

- 1) Defines “vision care” as the diagnosis, prevention, treatment, and management of disorders, diseases, and dysfunctions of the visual system and the provision of habilitative or rehabilitative optometric services by a licensed optometrist licensed pursuant to Article 1 of Chapter 7 of Division 2 of the Business and Professions Code.
- 2) Authorizes a minor aged 15 or older, who lives separate and apart from their parent(s), to obtain vision care without parental consent.
- 3) Provides that a parent is not liable for vision care provided to the minor pursuant to 2).
- 4) Provides that an optometrist may, with or without the consent of the minor, inform the minor’s parent of the treatment provided if the optometrist has reason to know the whereabouts of the parent on the basis of information provided by the minor.

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

COMMENTS

1. Author's comment

According to the author:

For minors affected by homelessness, accessing vision care can be a challenge. Existing law clearly states when an unaccompanied minor can consent to certain medical, dental, reproductive, and sexual health treatments, but it is ambiguous on an unaccompanied minor's ability to consent to vision care. A child's ability to see and access to regular eye exams are foundational needs that are vital to a child's learning and reading comprehension. This bill will allow unaccompanied minors who are on their own to be able get their basic vision care needs met.

2. California law allows minors to make certain health care decisions without parental consent

"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 control over a child is not absolute. "Under the doctrine of *Parrens 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

One of the oldest grants of medical autonomy to minors is the grant of "medical emancipation" for minors aged 15 years and older who are functionally, albeit not legally, living separately from their parents.⁵ Specifically, this provision allows a minor who is 15 years of age or older, does not live with their parent, and manages their own financial affairs to consent to medical and dental care without also needing parental consent.⁶ A minor can qualify for this exception even if they are not fully financially independent from their parents – i.e., if they still receive financial support from their parents – so long as the minor makes their own day-to-day spending decisions.⁷ For

² *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 314-315.

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. 315. The exception dates back to 1968. (*Id.* at p. 316.)

⁶ Fam. Code, § 6922.

⁷ *Ibid.*; *Carter v. Cangelo* (1980) 105 Cal.App.3d 348, 350.

youth who are homeless or otherwise lack stable family structures, this exception allows them to obtain the medical and dental care they need.

3. This bill allows minors aged 15 and older who live independently from their parents to receive vision care without parental consent

This bill makes a modest change to the statute authorizing minors aged 15 and older living separately from their parents to consent to medical care, by extending to those minors the right to consent to vision care without needing parental consent. The bill also adds a definition of “vision care” that is broadly tailored to ensure that this provision covers any and all necessary care for their eyesight and vision. Given the longstanding law authorizing minors in the same circumstances to consent to medical and dental care, it does not appear that this bill presents an undue interference into the parent-child relationship. Instead, as the bill’s sponsors and supporters note, this appears to be a commonsense extension that closes a gap in independent minors’ ability to take care of their own health needs.

4. Arguments in support

According to the bill’s sponsor, the California Coalition for Youth:

While schools provide the ideal place to receive vision screening, current law does not allow an unaccompanied minor to correct the eye problem should one be detected. The American Optometric Association states that regular comprehensive eye examinations conducted by a doctor of optometry both annually and at key developmental milestones in a child’s life can improve detection, diagnosis, and early prevention or treatment of eye problems. They found that school screenings provide less than 4 percent of the eye tests needed and miss up to 75 percent of children with vision problems. Further research shows that about a quarter of all school-aged children have a significant vision problem.

Our agency members have indicated that a major barrier to providing services to youth is the need for parental consent. While we recognize that this is important to obtain, we know that some youth do not have the advantages of supportive and engaged families. Homeless youth are not homeless by choice; their family environments have been unhealthy and either they have been kicked out or feel forced out. This bill allows youth who are on their own to be able to receive an eye examination and receive corrective lenses as needed so they can safely see the world around them.

SUPPORT

California Coalition for Youth (sponsor)
Alliance for Children’s Rights

California Optometric Association

OPPOSITION

One individual

RELATED LEGISLATION

Pending Legislation:

AB 816 (Haney, 2023) authorizes a minor 16 years of age or older to consent to replacement narcotic abuse treatment that uses buprenorphine without parental consent. AB 816 is pending before the Assembly Judiciary Committee.

AB 665 (Carrillo, 2023) eliminates the requirement that a minor 12 years of age and older either present a danger of serious physical or mental harm or be the alleged victim of incest or child abuse in order to receive specified mental health treatment without parental consent. AB 665 is pending before the Assembly Judiciary Committee.

Prior Legislation:

SB 866 (Wiener, 2022) would have allowed minors aged 15 and older to consent to a vaccination that has been approved by the Food and Drug Administration and meets the recommendations of the Advisory Committee on Immunization Practices without the consent of their parent or guardian. SB 866 died on the Assembly Floor.

AB 3189 (Cooper, Ch. 1003, Stats. 2018) authorized a minor aged 12 or older to consent to diagnosis and treatment of conditions arising from intimate partner violence without parental consent.

AB 599 (Donnelly, 2013) would have prohibited a minor from obtaining a vaccine related to the prevention of a sexually transmitted disease without parental consent. AB 599 died in the Assembly Health Committee.

AB 499 (Atkins, Ch. 652, Stats. 2011) authorized minors aged 12 or older to consent to medical care related to the prevention of a sexually transmitted disease.
