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Foster Youth Mental Health Bill of Rights

Rights

1. Foster youth have the right to receive mental health services and supports.[1]

2. Foster youth have the right to receive information about their mental health, including their diagnosis and available treatment options, in a way that is easy to understand and age appropriate.[2]

3. Foster youth have the right to participate in decisions made about what mental health treatments, services, and medications they receive.[3]

4. Foster youth have the right to receive needed mental health services and supports in a timely fashion.[4]

5. Foster youth have the right to receive mental health services and supports in the least restrictive environment appropriate to meet their individual needs.[5]

6. Foster youth who are twelve or older have the right to privately seek and consent to outpatient mental health counseling and treatment (except for psychotropic medications).[6]

7. Foster youth have the right to take only medication or other chemical substances that are authorized by a doctor.[7]

8. Foster youth have the right to be informed about the risks and benefits of psychotropic medications in an age appropriate manner. [8]

9. Foster youth have the right to tell their doctor that they disagree with any recommendation to prescribe psychotropic medication.[9]

10. Foster youth have the right to go to the judge and say they disagree with any recommendation to prescribe psychotropic medications. [10]

    (Foster youth are encouraged to talk to their attorney first to make sure the youth does not say something against his or her interests.)

11. Foster youth have the right to ask for mental health services, including re-assessments regarding their diagnoses and their prescriptions for psychotropic medications.[11]

12. Foster youth have the right to work with their prescribing doctor in order to safely stop taking psychotropic medications.[12]

13. Foster youth have the right to be able to contact their mental health treatment providers.[13]

14. Foster youth who are twelve or older have the right to confidentiality when speaking with their therapist or doctor. With a few limited exceptions, a health care provider must get permission from a foster youth who is twelve or older before sharing confidential medical information with others.[14]

    (Foster youth are encouraged to ask their therapist or doctor what information will or will not be kept confidential and who the provider is allowed to share the information with.)

15. Foster youth have a right to keep their medical information and diagnoses confidential and only shared with those authorized to know this information for the purposes of arranging for, coordinating, and providing health care services and medical treatment to the youth.[15]

16. Foster youth have the right to see and get a copy of their court record.[16]

17. Foster youth who are twelve or older have the right to see and get a copy of their medical and mental health records.[17]

    (A *foster youth can request his or her mental health records, but if a health care provider determines that seeing these records would be harmful to the foster youth, they can refuse his or her request.)*

18. Foster youth have the right to continue receiving mental health treatment when their placement changes, including when they are moved to a different county.[18]

19. Foster youth who are in foster care on their 18th birthday have the right to continue to receive health care, including mental health services, through Medi-Cal until age 26 regardless of their income level.[19]

Best Practices

In addition to these rights, mental health and other care providers using best practices are expected to do the following when working with foster youth:

- Foster youth receive mental health services and supports in their own communities.[20]
- Foster youth are able to continue mental health treatment with the same providers when their placement changes, including when they are moved to a different county.[21]
- Foster youth are only given a formal diagnosis after an evaluation from a licensed mental health professional.
- Foster youth residing in group homes are able to seek treatment outside of their current placement.
- Foster youth are provided information about alternatives to psychotropic medication. [22]
- Foster youth are able to participate in decisions made about whether to prescribe psychotropic medication. Whenever possible and appropriate, a foster youth's expressed preferences are followed, including his or her desire to not take psychotropic medication.[23]
- Foster youth are not penalized or punished for refusing to take psychotropic medications.[24]

This Mental Health Bill of Rights is not an exhaustive list of rights held by foster youth. Additional rights may be available to foster youth under federal and state law, medical ethics, and best practices.

Resources & Contacts

Do you think your rights have been violated? Do you want to speak with someone about questions or concerns you have? Help is available!

Foster youth are encouraged to reach out to trusted adults who can offer support and help answer questions. These adults might include social workers, CASA volunteers, attorneys, and foster parents.

Foster youth can also contact any of the resources listed below. They can listen to concerns, answer questions, document complaints, and provide feedback on what steps foster youth can take to advocate for their mental health rights.

California State Office of the Foster Care Ombudsman
Toll Free: (877) 846-1602
www.fosteryouthhelp.ca.gov

California Office of Patients' Rights
(916) 504-5810

Disability Rights California
Toll Free: (800) 776-5746, (800) 719-5798 TTY

California Mental Health Ombudsman
Toll Free: (800) 896-4042, (800) 896-2512 TTY
MHOmbudsman@dhcs.ca.gov
[Note: This document can be adapted to include contact information for local resources.]

Disclaimer: The Foster Youth Mental Health Bill of Rights is for informational purposes only. The information provided should not be construed or relied on as legal advice on any issue.

This document outlines *some* of the legal rights of California foster youth within the public mental health system. The rights listed are intended to reflect and support the needs expressed by foster youth in their experience as consumers within the public mental health system.

Young Minds Advocacy Project staff attorneys, in collaboration with California Youth Connection and the National Center for Youth Law, prepared the document on behalf of the Department of Health Care Services/California Department of Social Services' Quality Improvement Project: Improving the Use of Psychotropic Medication Among Children and Youth in Foster Care with input from stakeholders.

The content is based on an original list of mental health rights developed by the *Voices of the Unheard* Taskforce, a group formed by members of California Youth Connection (CYC), available at: http://www.calyouthconn.org/assets/files/resources/VofU publication v5.pdf

1 Cal. Welf. & Inst. Code § 16001.9(a)(4); 42 U.S.C. § 1396d(a)(4)(B).

[2] American Medical Association Code of Medical Ethics, Opinion 8.12 ("Patients have a right to know their past and present medical status and to be free of any mistaken beliefs concerning their conditions."); AMA CoME, Opinion 10.016 ("Physicians should give pediatric patients the opportunity to participate in decision making at a developmentally appropriate level. The physician should seek the patient's assent, or agreement, by explaining the medical condition, its clinical implications, and the treatment plan in ways that take into account the child's cognitive and emotional maturity and social circumstances.")

[3]Cal. Welf. & Inst. Code § 16001.9(a)(19); Cal. Fam. Code § 6924; Cal. Health & Saf. Code § 124260; *see also* Cal. Welf. & Inst. Code § 369(h) (reaffirms that a youth's right to obtain outpatient mental health services does not change due to dependent status); Cal. Dept. of Health Care Services and Cal. Dept. of Social Services, *Core Practice Model Guide* 9 (2013); Cal. Dept. of Health Care Services and Cal. Dept. of Social Services, *Medi-Cal Manual for ICC, IHBS & TFC for Katie A. Subclass Members* 19 (2013); Cal. Welf. & Inst. Code § 369(h) (reaffirms that a youth's right to obtain outpatient mental health services does not change due to dependent status).

Additionally, medical ethics generally require doctors and providers get assent (similar to permission or consent) from older youth (typically twelve or older) before beginning any treatment. *See* Society for Adolescent Medicine, *Confidential Health Care for Adolescents: Position Paper of the Society for Adolescent Medicine*, Understanding Confidentiality and Minor Consent in California: An Adolescent Provider Toolkit A-12 (2003) *available at* http://www.teenhealthlaw.org/fileadmin/teenhealth/teenhealthrights/ahwg/ahwg_consent_toolkit.pdf (even when a youth cannot legally consent to medical treatment, the medical professional should respect the youth's opinion by obtaining assent).

Foster youth in some counties may have additional rights to participate in mental health treatment planning and decision-making required under *standing orders*, which are special rules required by the court. A foster youth can talk to his or her attorney about what other rights he or she might have under local rules. *See* Gudeman, Rebecca, *Consent to Medical Treatment for Foster Children: California Law – A Guide for Health Care Providers* 10 (Dec. 2008)

[4] 42 U.S.C. § 1396a(a)(8) (requires "reasonable promptness" in furnishing medical assistance to beneficiaries covered by state Medicaid plans).

[5] Olmstead v. L. C., 527 U.S. 581 (1999) (concluding that "...under Title II of the ADA, States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities."); Cal. Welf. & Inst. Code § 5600.1, 5600.2(a)(4)

[6] Cal. Health & Safety Code § 124260 (permits a minor who is twelve or older to consent to outpatient mental health counseling and treatment if the attending professional person believes the minor to be mature enough to participate intelligently in the services); Cal. Fam. Code § 6924; *see also* Cal. Welf. & Inst. Code § 369(h) (reaffirms that a youth's right to obtain outpatient mental health services does not change due to dependent status).

[7] Cal. Welf. & Inst. Code § 16001.9(a)(5)

[8] In most cases, a judge must give permission before a foster youth is prescribed psychotropic medications. Before the judge can decide whether to give permission, the foster youth's doctor must explain to the foster youth in an age-appropriate manner what medication is being recommended, why the doctor recommends it, and what are the medication's risks and benefits. Cal. Welf. & Inst. Code § 369(a); Cal. R. of Ct. 5.640(b), (c)(6)(G). Medical ethics also require doctors make sure that youth "have a developmentally appropriate understanding of why the medication is being prescribed and its risks and benefits." Am. Acad. of Child & Adolescent Psychiatry, *A Guide for Public Serving Agencies on Psychotropic Medications for Children and Adolescents* 8-9 (Feb. 2012).

[9] Medical ethics generally require that doctors get assent (similar to permission or consent) from older youth (typically twelve or older) before prescribing psychotropic medication except in emergency situations where there is an immediate threat to the safety of the youth or others. *See* Am. Acad. of Child & Adolescent Psychiatry, *A Guide for Public Serving Agencies on Psychotropic Medications for Children and Adolescents* 9 (Feb. 2012). Before prescribing psychotropic medication to a foster youth, a doctor is required to tell the youth that he or she may oppose the doctor's recommendation. The doctor must also tell the judge whether the youth agree or disagree with the doctor's recommendation. Cal. R. of Ct. 5.640(c)(6)(G); Cal. Juv. Ct. Form JV-220(A)(1)(a).

[10] A foster youth can ask his or her attorney to file Form JV-222, *Opposition to Application Regarding Psychotropic Medication,* which lets the judge know that you disagree with the doctor's recommendation to prescribe medication. By filing this form, a foster youth may have a chance to go to court and talk to the judge about his or her wishes. A foster youth is encouraged to talk to his or her attorney first to make sure the youth does not say something against his or her interests. Cal. Welf. & Inst. Code § 16001.9(a)(17); Cal. R. of Ct. 5.640(c)(8)-(9); Cal. Juv. Ct. Form JV-222. Additionally, the doctor is required to tell the youth that he or she has a right to oppose the doctor's recommendation to prescribe psychotropic medications. The doctor is also required to tell the judge if the foster youth agrees or disagrees with the doctor's recommendation. Cal. R. of Ct. 5.640(c)(6)(G); Cal. Juv. Ct. Form JV-220(A)(1)(a).

[11] Cal. Welf. & Inst. Code §§ 5003, 6552 (allows a foster youth, with advice of counsel, to seek voluntary inpatient and outpatient mental health services); Cal. Fam. Code § 6924, Cal. Health & Saf. Code § 124260 (permits a minor who is twelve or older to consent to outpatient counseling and treatment services); Cal. Dept. of Health Care Services and Cal. Dept. of Social Services, *Core Practice Model Guide* 9 (2013); Cal. Dept. of Health Care Services and Cal. Dept. of Social Services, *Medi-Cal Manual for ICC, IHBS & TFC for Katie A. Subclass Members* 19 (2013).

[12] Any foster youth wishing to reduce or discontinue taking psychotropic medication should work with his or her prescribing doctor to make sure this is done in a safe way. It is generally recommended that changes are made in a gradual manner monitored by the prescribing doctor. *See* Am. Acad. of Child &

Adolescent Psychiatry, *A Guide for Public Serving Agencies on Psychotropic Medications for Children and Adolescents* 10 (Feb. 2012).

There are multiple opportunities for a foster youth to express his or her wishes to reduce or discontinue taking psychotropic medications. A foster youth might communicate his or preferences when participating in ongoing care planning. *See* Right #3 and n. 3. A foster youth can also ask for a reassessment by his or her doctor to consider whether there is a continuing need to take psychotropic medications. *See* Right

#11 and n. 11. Finally, the prescribing doctor will need to occasionally ask the judge for permission to continue prescribing medication to the foster youth. The doctor will need to follow the same process used when psychotropic medications, which requires the doctor to inform the foster youth that he or she can oppose the doctor's recommendation to continue prescribing medication. A foster youth can tell the doctor that he or she wants to reduce or discontinue taking psychotropic medications at this time, which the doctor must tell the judge. R. of Ct. 5.640(c)(6)(G); Cal. Juv. Ct. Form JV-220(A)(1)(a). As part of this process, a foster youth can also tell the judge that he or she opposes the doctor's recommendation to continue taking medication. A foster youth is encouraged to talk to his or her attorney first to make sure the youth does not say something against his or her interests. Cal. Welf. & Inst. Code § 16001.9(a)(17); Cal. R. of Ct. 5.640(c)(8)-(9); Cal. Juv. Ct. Form JV-222.

[13] Cal. Welf. & Inst. Code § 16001.9(a)(9) (Foster Youth Bill of Rights: the right to make and receive confidential telephone calls and send and receive unopened mail, unless prohibited by court order.)

[14] If a foster youth is twelve or older and consents or could have consented to care, including outpatient mental health treatment and other sensitive health services, a provider may only share the youth's medical information with written signed authorization of the foster youth. Cal. Health & Safety Code §§ 123110(a), 123115(a)(1) (when a minor can consent to treatment, the provider cannot share records regarding this treatment with a parent or guardian without the minor's consent); Cal. Civ. Code § 56.10(b)(7), 56.11(c); 45 C.F.R 164.502(g)(3), 164.508a(a); *see also* Cal. Welf. & Inst. Code § 369(h) (reaffirms that a youth's right to obtain outpatient mental health services does not change due to dependent status). However, there are limited circumstances when a provider may be required to disclose confidential information. These circumstances include an order from a judge to share the foster youth's medical information. Cal. Civ. Code § 56.10(b).

A provider is permitted, but not required, to share medical information with other health professionals for the purposes of treatment and referral. Cal. Civ. Code § 56.10(c)(1). A provider is also allowed, but not required, to share medical information with social workers, probation officers, or any other person legally authorized to have custody or care of a foster youth for the purposes of coordinating health care services and medical treatment provided to the youth. Cal. Civ. Code § 56.103(a). However, a provider is not allowed to share psychotherapy notes. 45 C.F.R. 164.502(a)(1)(ii), 164.508(a)(2); Cal. Civ. Code § 56.103(e)(2) (medical information otherwise allowed to be released to authorized persons does not include psychotherapy notes).

A foster youth can ask his or her provider what information will or will not be kept confidential and who the provider will share the information with.

[15] Generally, a mental health provider can share mental health information with other qualified personnel for the purposes of treatment or referral without the need for permission from the client. A mental health provider cannot share psychotherapy notes without a client's written authorization. 45 C.F.R. 164.501, 164.502(a)(1)(ii), 164.506, 164.508(a)(2); Cal. Welf. & Inst. Code § 5328(a); *see also* Society for Adolescent Medicine, *Confidential Health Care for Adolescents: Position Paper of the Society for Adolescent Medicine*, Understanding Confidentiality and Minor Consent in California: An Adolescent Provider Toolkit A-12 (2003) *available at* http://www.teenhealthlaw.org/fileadmin/teenhealth/teenhealthrights/ahwg/ahwg_consent_toolkit.pdf (providers should speak to the youth alone and clarify with whom, if anyone, the information may be shared at the beginning of each session)

[16] Cal. Welf. & Inst. Code § 827(a)(1)(C), (a)(5); Cal. R. Ct. 5.552(b)(1)(C).

[17] Cal. Health & Saf. Code §§ 123110(a)-(b), 124260. A provider may refuse to allow foster youth to see or get copies of their mental health records if the provider determines that seeing these records would be harmful to the foster youth. Cal. Health & Saf. Code § 123115(a) ("When a health care provider determines there is a substantial risk of significant adverse or detrimental consequences to a patient in seeing or receiving a copy of mental health records requested by the patient, the provider may decline to permit inspection or provide copies of the records to the patient . . . .")

[18] 42 U.S.C § 1396a(a)(8); 42 C.F.R § 435.930; *see also* Cal. Dept. of Health Care Services and Cal. Dept. of Social Services, *Core Practice Model Guide* 11 (2013); Cal. Dept. of Social Services, *Child Welfare Services Manual of Policies and Procedures* 31-505, *available at* http://www.cdss.ca.gov/ord/entres/getinfo/pdf/cws4.PDF (last visited Aug. 15, 2014).

[19] Cal. Welf. & Inst. Code § 14005.28; 42 U.S.C. § 1396a(a)(10)(A)(i)(IX); Foster youth qualify for this program even if they were in foster care out-of-state on their 18th birthday. (DHCS Medi-Cal Eligibility

Division Information Letter 14-05, http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/MEDIL2014/MEDILI14-05.pdf);

[20] Cal. Dept. of Health Care Services and Cal. Dept. of Social Services, *Core Practice Model Guide* 9, 11 (2013); Cal. Dept. of Health Care Services and Cal. Dept. of Social Services, *Medi-Cal Manual for ICC, IHBS & TFC for Katie A. Subclass Members* 19 (2013); Cal. Dept. of Social Services, *Child Welfare Services Manual of Policies and Procedures* 31-505, *available at* http://www.cdss.ca.gov/ord/entres/getinfo/pdf/cws4.PDF (last visited Aug. 15, 2014)

[21] Cal. Dept. of Health Care Services and Cal. Dept. of Social Services, *Core Practice Model Guide* 11 (2013); Cal. Dept. of Social Services, *Child Welfare Services Manual of Policies and Procedures* 31-505, *available at* http://www.cdss.ca.gov/ord/entres/getinfo/pdf/cws4.PDF (last visited Aug. 15, 2014).

[22] Medical ethics require doctors seek assent (similar to permission or consent) from older youth (typically twelve or older) before prescribing psychotropic medications. In order to do this, the doctor must ensure a foster youth understands treatment options that are alternative or complementary to prescription medication. Am. Acad. of Child & Adolescent Psychiatry, *A Guide for Public Serving Agencies on Psychotropic Medications for Children and Adolescents* 8-9 (Feb. 2012).

[23] California state law recognizes that all persons living with mental illness, including foster youth, have a right to receive treatment services "in ways that are least restrictive of the personal liberty interest of the individual." Cal. Welf. & Inst. Code § 5325.1(a). It also protects all persons with mental illness "[the] right to be free from harm, including unnecessary or excessive . . . medication." Cal. Welf. & Inst. Code § 5325.1(c). Whenever possible and appropriate, providers using best practices should gain assent from foster youth before administering psychotropic medications.

In some circumstances, foster youth may have a right to refuse psychotropic medication. Foster youth in juvenile justice facilities have the right to refuse non-emergency medical and mental health care, including psychotropic medication. 15 CCR §§ 1434, 1439(b)(2).

Foster youth who have been involuntarily (against their will) detained or hospitalized as a result of a mental disorder have a right to refuse antipsychotic medication. Cal. Welf. & Inst. Code §§ 5325.2, 5332; Cal. Welf. & Inst. Code § 5585.53 (". . . Involuntary treatment [of a minor] shall only be allowed in accordance with the provisions of the Lanterman-Petris-Short Act. . . ."); *Riese v St. Mary's*, 259 Cal. Rptr. 669, 774 P.2D 698 (1989) (right of people held involuntarily to be presumed to have the capacity to consent to medication). If a foster youth objects to antipsychotic medication, the facility must request a hearing to determine whether the foster youth has the capacity to refuse treatment. Cal. Welf. & Inst. Code § 5332(b). Only in very limited circumstances may a foster youth be administered antipsychotic medication again his or her objection when subject to involuntary treatment. Cal. Welf. & Inst. Code § 53332(e).

Some foster youth may face adverse consequences for refusing to take psychotropic medication. Foster youth who have been ordered by a delinquency judge to take psychotropic medication may be charged with a probation violation.

A foster youth who is considering refusing to take psychotropic medication is encouraged to talk to his or her attorney about possible consequences before taking this action.

[24] All foster youth have a right to be free from physical, sexual, emotional, or other abuse, or corporal punishment. Cal. Welf. & Inst. Code § 16001.9(a)(2). Foster care providers should respect a foster youth's right to refuse to take psychotropic medications and avoid practices or policies that punish or penalize a youth for exercising this right.