Discussion Draft

Out of the Shadows: A Focus on Transition Planning for Non-Minor Dependents with Developmental Disabilities and Mental Health Disorders
Questions for Counsel Appointed to Represent the Non-Minor Dependent (NMD)

Forum/Area	Issue(s)	Standard	Questions	References
General	Whether the NMD lacks capacity to make decisions or needs assistance in making decisions.	Varies – see below	To what degree? In which situations? For what kinds of decisions? Who determines capacity/competence? What is the attorney's role? With whom can the attorney share concerns and information? Should the factors to consider in making a decision that a client lacks capacity to make a particular decision, as applied by probate court in limited conservatorship proceeding be used to assess whether a NMD is incapable of making informed consent or deemed incompetent in the juvenile court context?	Varies – see below Legal Mental Capacity Probate Code §§810-813.[1]
Supported Decision Making (SDM)	Whether a client's will and preferences can be expressed by the person or understood (interpreted) by others who know the person well and are in a voluntary, trusting and committed relationship with the person.	A series of relationships, practices, arrangements, and agreements, of more or less formality and intensity, designed to assist an individual with a disability to make and communicate to others decisions about the	What supports and accommodations can the juvenile court process/child welfare planning make to enable client's will and preferences to guide decisionmaking? What principles/practices related to creating circles of support can be built into the TILP planning process?	Article 12 of the Convention on the Rights of Persons with Disabilities[2] Persons with developmental disabilities:

Forum/Area	Issue(s)	Standard	Questions	References
		individual's life.		Respect for decisions WIC §4502.1[3] Services and supports WIC §4512(b)[4]
Extended Foster Care	Whether to remain in foster care past 18. Whether the NMD can sign the Mutual Agreement. Whether the NMD can sign the Voluntary Placement Agreement. Whether the NMD can sign the TILP.	Incapable of making an informed agreement (Mutual Agreement)	Who determines whether the NMD is incapable of making an informed agreement? How is this judged? What happens if the NMD doesn't sign the mutual agreement: It is not signed? Can anyone else sign? To what extent is the NMD responsible for the commitments made in the mutual agreement? To what extent can the NMD agree to or determine participation requirements, including (5) Incapable of doing any of the activities due to a medical condition? Under what circumstances can a NMD opt out? Is a TILP legally required? Signed? Does "medical condition" include developmental disability or mental illness?	Jurisdiction Adult capacity Mutual Agreement WIC §303(d)(1)[5] TILP WIC 16501.1(f)(16)[6] Reentry WIC §388(e)(1)[7] Voluntary Reentry Agreement WIC §11400(z)[8] CDSS FAQ re Clients of Regional Centers[9]

Forum/Area	Issue(s)	Standard	Questions	References
Regional Center Authorized Representative	Whether a regional center client should have an authorized representative.	The person has requested the appointment. The rights or interests of the person will not be properly protected or advocated without the appointment of a representative. Appointment is at discretion of Area Boards.	Can the attorney for the NMD raise the issue? Under what circumstances? Can the attorney serve as authorized representative? What happens if the NMD disagrees with the authorized representative? Can an authorized representative be appointed over client objection? How should the NMD attorney assess whether to pursue this as a transition planning objective? What is the relationship between the AR and the juvenile court-appointed "responsible adult" for educational and developmental service decisionmaking? How does this role intersect/diverge from the Office of Clients Rights Advocate?	WIC §4705(e)[10] WIC §4548(d)[11]
Responsible Adult for Education and/or Developmental Services Decisionmaking	Whether the court should appoint an educational or developmental services decision maker.	Client choice Or Deemed incompetent	Can the attorney raise the issue of competency to hold these specific rights? Under what circumstances? What is the attorney's relationship with the decisionmaker?	WIC §§361(a)(1)(A)[12] 361(a)(4)[13] & 726(b)(1)[14] Surrogate Parent Cal. Educ. Code § 56041.5[15]

Forum/Area	Issue(s)	Standard	Questions	References
			What if the NMD disagrees with the decisionmaker? Does the answer change if the NMD has not been found incompetent but has just chosen not to make decisions for him or herself? How far do the decisionmaker's powers extend? Can the decisionmaker designate someone Authorized Representative for purposes of making an SSI application? Sign the ROI that accompanies the SSI application? Authorize releases of information more generally (e.g. educational records)? Consent to *all* treatment and services contained in an IEP/IPP? (including placement)? Consent to treatment or services that are *not* included in an IEP/IPP?	Access to Records – Developmental Disability WIC § 4701.6[16] SSI Application 20 C.F.R. § 416.315[17]
Juvenile Court GAL	Whether a GAL should be appointed for the NMD.	Not competent to direct counsel Not able to understand the nature of the proceedings and participate meaningfully and cooperate with counsel	Can the attorney serve as GAL for a NMD? Does the attorney represent the NMD or the GAL? To what extent should the attorney provide representation at a variance with the wishes of the NMD? What is the role of the GAL? Duties? (Is it clear they have no authority/responsibilities outside juvenile court?)	Juvenile Court WIC §317(e)(1)[18] Civil Action or Proceeding Code of Civ. Proc. §372[19] Code of Civ. Proc. §373[20] Conservator Prob. Code §1801[21] Juvenile Competence WIC §709(a)[22]

Forum/Area	Issue(s)	Standard	Questions	References
			Should the GAL sign the TILP? Voluntary Placement Agreement? What if a client chooses to approve appointment of a GAL? What if a client objects to appointment of a GAL?	Criminal Competence Penal Code §1367[23]
Conservator	Whether a conservator of the person should be appointed. Whether a conservator of the estate should be appointed. Whether a limited conservator should be appointed.	Unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter Substantially unable to manage his or her own financial resources or resist fraud or undue influence Lack the capacity to perform some, but not all, of the tasks necessary to provide properly for his or her own personal needs for physical health, food, clothing, or shelter, or to manage his or her own financial resources	Can the attorney for the NMD request that a conservator be appointed? Under what circumstances? If not, who can? How is that process invoked? With whom can the attorney share information? Can the attorney participate in conservatorship proceedings? What is the attorney's relationship with the conservator? What is the attorney's responsibility if the NMD and the conservator disagree? Does an LPS conservatorship suspend placement powers of county child welfare agency? How does a juvenile court's exclusive jurisdiction affect where a probate conservatorship petition is filed and heard? What is the county child welfare agency's role in those proceedings?	Legal Mental Capacity Probate Code §§810-813.[24] Conservatorship Probate Code 1801[25] Probate Code § 1820[26] Probate Code §1827.5[27] Probate Code § 1828.5[28] WIC § 5350 et seq[29] Juvenile Court Jurisdiction WIC § 302,[30] 304[31]

Forum/Area	Issue(s)	Standard	Questions	References
	Whether an LPS conservator should be appointed.	"Gravely disabled": unable to provide for basic personal needs as a result of mental disorder or impairment due to chronic alcoholism	For an LPS conservatorship? An LPS conservatorship may *only* be initiated by a professional person in charge of a treatment facility(?)	
Consent for health care	Whether the NMD is able to provide informed consent for medical care, including mental health services. Whether the NMD can sign an Advanced Health Care Directive (formerly known as POA for Health Care). Whether the NMD can sign a Power of Attorney.	Informed consent Capacity defined as "a person's ability to understand the nature and consequences of a decision and to make and communicate a decision, and includes in the case of proposed health care, the ability to understand its significant benefits, risks, and alternatives." Cal. Probate Code § 4609	If not NMD, who? Does the law contemplate a legal representative being able to contract a POA or AHCD (or only the principal may contract for these?) Can a foster parent serve as an agent? Who determines whether a principal lacks capacity such that an agent's powers under POA/AHCD become effective? For AHCD counties are using, what is the end point? Process for revoking/amending it?	Presumption of Capacity Probate Code 4657[32] Health Surrogate Probate Code §4711[33] Consent for Health Care in Facilities Health and Safety Code §1418.8[34] Health Instruction Probate Code § 4670,[35] Probate Code § 4671[36] Power of Attorney Probate Code § 4022[37] Probate Code § 4123[38] Durable Power of Attorney Probate Code § 4124[39] Advanced Health Care Directive

Forum/Area	Issue(s)	Standard	Questions	References
				Probate Code § 4670 Access to Records and Disclosure Probate Code § 4678[40] Authority Probate Code § 4683[41] Probate Code § 4684[42] Probate Code §4689[43] Probate Code §4690[44] Termination Probate Code § 4682[45] Probate Code § 4695[46] Regional Center Consent WIC § 4655[47] Authorized representative WIC § 4548[48] Informed Consent Closest Relative *Cobbs v. Grant*, 8 Cal 3d 229 (1972)[49] *Barber v. Superior Court*, 147 Cal. App. 3d 1006 (2nd Dist. 1983)[50]

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Release of records	Whether the NMD can authorize release of medical records.	General rule: she who can consent can authorize release. Preference in favor of individual's right of access extends to people making health care decisions for another person.	If not NMD, who? Does a NMD require a conservator to act as "patient representative" or are there less restrictive means of delegating authority to another person? If a client lacks capacity to contract a POA, is the only alternative a conservatorship to address consent to treat and release of information?	HIPAA—personal representative : 45 CFR §164.502(g)(2)[51] Confidentiality of Medical Information Act (CMIA)—*patient representative*: Cal Civ 56.10(b)(7)[52] Patient Representative H&S Code §123105(e)[53] H&S Code §123110[54] Disclosure - General Legal RepresentativeCal Civ. Code 56.11[55] LPS records WIC §5328(d)[56] Authorization to inspect agency records Cal. Civ. Code §1798.34(b)[57]
Attorney Ethics and Responsibilities	Whether the attorney can take protective action if the attorney believes the client may have diminished capacity.		How does the attorney reconcile statutory and ethical obligations? What should the attorney do?	Statutory Obligations WIC 317(e)[58] Rules of Professional Conduct, Rule 1.6

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	Whether WIC 317(e) conflicts with Professional Rules of Conduct. Whether the rules are different for court-appointed vs voluntary attorney-client relationships.			State Bar of California Rules of Professional Conduct Confidentiality Rule 3-100[59] Business and Professions Code § 6068(e)[60] Unruh California Civil Code § 51[61] Privilege Evidence Code § 952[62] Withdrawal WIC §317(d)[63] Cal. Formal Op. 1989-112[64] SF Bar Ass'n Ethics Op. 2 (1999)[65]
Public Benefits	Whether an individual can apply for and receive benefits him or herself.	Legally incompetent adults Disabled adults who are determined by the Social Security	Who can apply for benefits? Who can receive case benefits and decide how they are used? Who should be appointed representative	Social Security Application 20 C.F.R. §404.612[66] Social Security Representative Payee

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		Administration to be incapable/have a drug or alcohol addiction	payee for NMD clients who receive SSI?	20 C.F.R. §404.2010[67] SSI Application 20 C.F.R. §416.315(a)[68] SSI Representative Payee 20 C.F.R. §416.610[69] Authorized Representative MPP 22-101(a)[70] MPP 22-085[71]

End Notes

[1] ***810.*** *The Legislature finds and declares the following:*
(a) For purposes of this part, there shall exist a rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for their acts or decisions.
(b) A person who has a mental or physical disorder may still be capable of contracting, conveying, marrying, making medical decisions, executing wills or trusts, and performing other actions.
(c) A judicial determination that a person is totally without understanding, or is of unsound mind, or suffers from one or more mental deficits so substantial that, under the circumstances, the person should be deemed to lack the legal capacity to perform a specific act, should be based on evidence of a deficit in one or more of the person's mental functions rather than on a diagnosis of a person's mental or physical disorder.
(Amended by Stats. 1998, Ch. 581, Sec. 19. Effective January 1, 1999.)
811. *(a) A determination that a person is of unsound mind or lacks the capacity to make a decision or do a certain act, including, but not limited to, the incapacity to contract, to make a conveyance, to marry, to make medical decisions, to execute wills, or to execute trusts, shall be supported by evidence of a deficit in at least one of the following mental functions, subject to subdivision (b), and evidence of a correlation between the deficit or deficits and the decision or acts in question:*
(1) Alertness and attention, including, but not limited to, the following:
(A) Level of arousal or consciousness.
(B) Orientation to time, place, person, and situation.
(C) Ability to attend and concentrate.
(2) Information processing, including, but not limited to, the following:
(A) Short- and long-term memory, including immediate recall.
(B) Ability to understand or communicate with others, either verbally or otherwise.
(C) Recognition of familiar objects and familiar persons.
(D) Ability to understand and appreciate quantities.
(E) Ability to reason using abstract concepts.
(F) Ability to plan, organize, and carry out actions in one's own rational self-interest.
(G) Ability to reason logically.
(3) Thought processes. Deficits in these functions may be demonstrated by the presence of the following:
(A) Severely disorganized thinking.
(B) Hallucinations.
(C) Delusions.
(D) Uncontrollable, repetitive, or intrusive thoughts.
(4) Ability to modulate mood and affect. Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, apathy or indifference, that is inappropriate in degree to the individual's circumstances.

(b) A deficit in the mental functions listed above may be considered only if the deficit, by itself or in combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question.
(c) In determining whether a person suffers from a deficit in mental function so substantial that the person lacks the capacity to do a certain act, the court may take into consideration the frequency, severity, and duration of periods of impairment.
(d) The mere diagnosis of a mental or physical disorder shall not be sufficient in and of itself to support a determination that a person is of unsound mind or lacks the capacity to do a certain act.
(e) This part applies only to the evidence that is presented to, and the findings that are made by, a court determining the capacity of a person to do a certain act or make a decision, including, but not limited to, making medical decisions. Nothing in this part shall affect the decisionmaking process set forth in Section 1418.8 of the Health and Safety Code, nor increase or decrease the burdens of documentation on, or potential liability of, health care providers who, outside the judicial context, determine the capacity of patients to make a medical decision.
(Amended by Stats. 1998, Ch. 581, Sec. 20. Effective January 1, 1999.)
812. *Except where otherwise provided by law, including, but not limited to, Section 813 and the statutory and decisional law of testamentary capacity, a person lacks the capacity to make a decision unless the person has the ability to communicate verbally, or by any other means, the decision, and to understand and appreciate, to the extent relevant, all of the following:*
(a) The rights, duties, and responsibilities created by, or affected by the decision.
(b) The probable consequences for the decisionmaker and, where appropriate, the persons affected by the decision.
(c) The significant risks, benefits, and reasonable alternatives involved in the decision.
(Repealed and added by Stats. 1996, Ch. 178, Sec. 5. Effective January 1, 1997.)
813. *(a) For purposes of a judicial determination, a person has the capacity to give informed consent to a proposed medical treatment if the person is able to do all of the following:*
(1) Respond knowingly and intelligently to queries about that medical treatment.
(2) Participate in that treatment decision by means of a rational thought process.
(3) Understand all of the following items of minimum basic medical treatment information with respect to that treatment:
(A) The nature and seriousness of the illness, disorder, or defect that the person has.
(B) The nature of the medical treatment that is being recommended by the person's health care providers.
(C) The probable degree and duration of any benefits and risks of any medical intervention that is being recommended by the person's health care providers, and the consequences of lack of treatment.
(D) The nature, risks, and benefits of any reasonable alternatives.
(b) A person who has the capacity to give informed consent to a proposed medical treatment also has the capacity to refuse consent to that treatment.
Probate Code §§810-813.

[2] *States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be*

proportional to the degree to which such measures affect the person's rights and interests. Article 12 of the Convention on the Rights of Persons with Disabilities.

[3] *The right of individuals with developmental disabilities to make choices in their own lives requires that all public or private agencies receiving state funds for the purpose of serving persons with developmental disabilities, including, but not limited to, regional centers, shall respect the choices made by consumers or, where appropriate, their parents, legal guardian, or conservator. Those public or private agencies shall provide consumers with opportunities to exercise decisionmaking skills in any aspect of day-to-day living and shall provide consumers with relevant information in an understandable form to aid the consumer in making his or her choice.* WIC §4502.1.

[4] *"Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of his or her family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies, advocacy assistance, including self-advocacy training, facilitation and peer advocates, assessment, assistance in locating a home, child care, behavior training and behavior modification programs, camping, community integration services, community support, daily living skills training, emergency and crisis intervention, facilitating circles of support, habilitation, homemaker services, infant stimulation programs, paid roommates, paid neighbors, respite, short-term out-of-home care, social skills training, specialized medical and dental care, supported living arrangements, technical and financial assistance, travel training, training for parents of children with developmental disabilities, training for parents with developmental disabilities, vouchers, and transportation services necessary to ensure delivery of services to persons with developmental disabilities. Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan*. WIC §4512(b)

[5] *A nonminor dependent shall retain all of his or her legal decisionmaking authority as an adult. The nonminor shall enter into a mutual agreement … unless the nonminor is incapable of making an informed agreement …* WIC §303(d)(1).

[6] *(A) When appropriate, for a child who is 16 years of age or older and, commencing January 1, 2012, for a nonminor dependent, the case plan shall include the transitional independent living plan (TILP), a written description of the programs and services that will help the child, consistent with the child's best interests, to prepare for the transition from foster care to independent living, and, in addition, whether the youth has an in-progress application pending for Title XVI Supplemental Security Income benefits or for Special Immigrant Juvenile Status or other applicable application for legal residency and an active dependency case is required for that application. When appropriate, for a nonminor dependent, the transitional independent living case plan, as described in subdivision (v) of Section 11400, shall include the TILP, a written description of the programs and services that will help the nonminor dependent, consistent with his or her best interests, to prepare for transition from foster care and assist the youth in meeting the eligibility criteria set forth in paragraphs (1) to (5), inclusive, of*

subdivision (b) Section 11403. If applicable, the case plan shall describe the individualized supervision provided in the supervised independent living placement as defined in subdivision (w) of Section 11400. The case plan shall be developed with the child or nonminor dependent and individuals identified as important to the child or nonminor dependent, and shall include steps the agency is taking to ensure that the child or nonminor dependent achieves permanence, including maintaining or obtaining permanent connections to caring and committed adults.

(B) During the 90-day period prior to the participant attaining 18 years of age or older as the state may elect under Section 475(8)(B)(iii) of the federal Social Security Act (42 U.S.C. Sec. 675(8)(B)(iii)), whether during that period foster care maintenance payments are being made on the child's behalf or the child is receiving benefits or services under Section 477 of the federal Social Security Act (42 U.S.C. Sec. 677), a caseworker or other appropriate agency staff or probation officer and other representatives of the participant, as appropriate, shall provide the youth or nonminor with assistance and support in developing the written 90-day transition plan, that is personalized at the direction of the child, information as detailed as the participant elects that shall include, but not be limited to, options regarding housing, health insurance, education, local opportunities for mentors and continuing support services, and workforce supports and employment services, a power of attorney for health care, and information regarding the advance health care directive form.

(C) For youth 16 years of age or older, the case plan shall include documentation that a consumer credit report was requested annually from each of the three major credit reporting agencies at no charge to the youth and that any results were provided to the youth. For nonminor dependents, the case plan shall include documentation that the county assisted the nonminor dependent in obtaining his or her reports. The case plan shall include documentation of barriers, if any, to obtaining the credit reports. If the consumer credit report reveals any accounts, the case plan shall detail how the county ensured the youth received assistance with interpreting the credit report and resolving any inaccuracies, including any referrals made for the assistance.
WIC §16501.1(f)(16)

[7] *On and after January 1, 2012, a nonminor who attained 18 years of age while subject to an order for foster care placement and, commencing January 1, 2012, who has not attained 19 years of age, or, commencing January 1, 2013, 20 years of age, or, commencing January 1, 2014, 21 years of age, or as described in Section 10103.5, for whom the court has dismissed dependency jurisdiction pursuant to Section 391, or delinquency jurisdiction pursuant to Section 607.2, or transition jurisdiction pursuant to Section 452, but has retained general jurisdiction under subdivision (b) of Section 303, or the county child welfare services, probation department, or tribal placing agency on behalf of the nonminor, may petition the court in the same action in which the child was found to be a dependent or delinquent child of the juvenile court, for a hearing to resume the dependency jurisdiction over a former dependent or to assume or resume transition jurisdiction over a former delinquent ward pursuant to Section 450. The petition shall be filed within the period that the nonminor is of the age described in this paragraph. If the nonminor has completed the voluntary reentry agreement, as described in subdivision (z) of Section 11400, with the placing agency, the agency shall file the petition on behalf of the nonminor within 15 judicial days of the date the agreement was signed unless the nonminor elects to file the petition at an earlier date.* WIC §388(e)(1).

[8] *"Voluntary reentry agreement" means a written voluntary agreement between a former dependent child or ward or a former nonminor dependent, who has had juvenile court jurisdiction terminated pursuant to Section 391, 452, or 607.2, and the county welfare or probation department or tribal placing entity that documents the nonminor's desire and willingness to reenter foster care, to be placed in a supervised setting under the placement and care responsibility of the placing agency, the nonminor's desire, willingness, and ability to immediately participate in one or more of the conditions of paragraphs (1) to (5), inclusive, of subdivision (b) of Section 11403, the nonminor's agreement to work collaboratively with the placing agency to develop his or her transitional independent living case plan within 60 days of reentry, the nonminor's agreement to report any changes of circumstances relevant to continued eligibility for foster care payments,*

and (1) the nonminor's agreement to participate in the filing of a petition for juvenile court jurisdiction as a nonminor dependent pursuant to subdivision (e) of Section 388 within 15 judicial days of the signing of the agreement and the placing agency's efforts and supportive services to assist the nonminor in the reentry process, or (2) if the nonminor meets the definition of a nonminor former dependent or ward, as described in subdivision (aa), the nonminor's agreement to return to the care and support of his or her former juvenile court-appointed guardian and meet the eligibility criteria for AFDC-FC pursuant to subdivision (e) of Section 11405. WIC §11400(z).

[9] *What eligibility criteria must a youth who is the client of a regional center meet in order to be eligible for Extended Foster Care benefits under AB 12?*
Answer: Regional center clients must meet the same eligibility criteria as all other foster youth. A regional center consumer who is under an order for foster care placement on his/her 18th birthday is eligible for EFC benefits as long as the youth (1) meets one of the participation conditions; (2) participates in a Transitional Independent Living Plan (TILP); and (3) resides in a licensed or approved placement. Additionally, a mutual agreement must be signed by the Non-Minor Dependent (NMD) to participate in EFC, unless the NMD is incapable of making an informed agreement, but this is not a condition of payment. Participation condition number five, "medical condition," encompasses youth who are incapable of meeting any of the other participation conditions due to a documented medical condition; this can include regional center clients per ACL 11-61.
The TILP describes the services that the NMD is receiving to support their active engagement in one of the five participation criteria. For a NMD who is participating in EFC under "medical condition", the TILP should describe the NMDs medical condition as well as the NMDs transitional goals and services that the NMD receives to support the overall case plan goals. A NMD who meets the medical condition criteria can still attempt modified work and educational activities. In this situation, the primary participation condition would be "medical condition," even if the NMD is participating in other activities to develop additional life skills. All case plan goals should be developed with the active participation and consent of the NMD, including goals regarding placement decisions or exiting foster care to transition into an adult system of care (with SSI benefits, if eligible) prior to reaching 21 years of age (see ACL 11-77).
NMDs who are regional center consumers are eligible to receive additional support services, including the "dual agency" rate, in most licensed or approved foster care placements. The NMD must reside in a licensed or approved placement in order to receive payment benefits. NMDs who are regional center clients placed in a group home should be transitioned to an appropriate less restrictive placement upon turning 18 or completing high school (if before age 19). As with all NMDs, those meeting the medical condition may remain in a group home beyond age 19 only if the continued group home placement is a short-term transition to an adult system of care because their needs cannot be appropriately met through continued EFC placement. CDSS Website FAQ.

[10] *If, in the opinion of any person, the rights or interests of a claimant who has not personally authorized a representative will not be properly protected or advocated, the local area board and the clients' right advocate assigned to the regional center or developmental center shall be notified, and the area board may appoint a person or agency as representative, pursuant to subdivision (d) of Section 4548, to assist the claimant in the mediation and fair hearing procedure. The appointment shall be in writing to the authorized representative and a copy of the appointment shall be immediately mailed to the service agency director.* WIC §4705(e).

[11] *(1) The area board shall have the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of the legal, civil, and service rights of persons who require services or who are receiving services in the area. In carrying out this responsibility, area boards may appoint a representative to assist the person in expressing his or her desires and in making decisions and advocating his or her needs, preferences, and choices, where the person with developmental disabilities has no parent, guardian, or conservator legally authorized to represent him or her and the person has either requested the appointment of a representative or the rights or interests of the person, as determined by the area board, will not be properly protected or advocated without the appointment of a representative.*

(2) Where there is no guardian or conservator, the person's choice, if expressed, including the right to reject the assistance of a representative, shall be honored. If the person does not express a preference, the order of preference for selection of the representative shall be the person's parent, involved family member, or a volunteer selected by the area board. In establishing these preferences, it is the intent of the Legislature that parents or involved family members shall not be required to be appointed guardian or conservator in order to be selected. Unless the consumer expresses otherwise, or good cause otherwise exists, the request of the parents or involved family members to be appointed the representative shall be honored.
(3) Where appropriate pursuant to this section, the area board shall appoint a representative to advocate the rights and protect the interests of a person residing in a developmental center for whom community placement is proposed pursuant to Section 4803.
WIC §4548(d)

[12] *… the court shall at the same time appoint a responsible adult to make educational or developmental services decisions for the child or nonminor dependent until one of the following occurs:*
(A) The minor reaches 18 years of age, unless the child or nonminor dependent chooses not to make educational or developmental services decisions for himself or herself, or is deemed by the court to be incompetent. WIC §361(a)(1)(A)

[13] *If the court appoints a developmental services decisionmaker pursuant to this section, he or she shall have the authority to access the child's or nonminor dependent's information and records pursuant to subdivision (u) of Section 4514 and subdivision (y) of Section 5328, and to act on the child's or nonminor dependent's behalf for the purposes of the individual program plan process pursuant to Sections 4646, 4646.5, and 4648 and the fair hearing process pursuant to Chapter 7 (commencing with Section 4700) of Division 4.5, and as set forth in the court order. WIC § 361(a)(4).*

[14] *the court shall at the same time appoint a responsible adult to make educational or developmental services decisions for the child until one of the following occurs:*
(1) The minor reaches 18 years of age, unless the child chooses not to make educational or developmental services decisions for himself or herself, or is deemed by the court to be incompetent. WIC §726(b)(1).

[15] *When an individual with exceptional needs reaches the age of 18, with the exception of an individual who has been determined to be incompetent under state law, the local educational agency shall provide any notice of procedural safeguards required by this part to both the individual and the parents of the individual. All other rights accorded to a parent under this part shall transfer to the individual with exceptional needs. The local educational agency shall notify the individual and the parent of the transfer of right. Educ. Code § 56041.5*

[16] *(a) "Authorized representative" means the conservator of an adult, the guardian, conservator, or parent or person having legal custody of a minor claimant, or a person or agency appointed pursuant to subdivision (d) of Section 4548 or subdivision (e) of Section 4705 and authorized in writing by the claimant or by the legal guardian, conservator, or parent or person having legal custody of a minor claimant to act for or represent the claimant under this chapter.*

(b) "Authorized representative" also means a responsible adult appointed by a court order made pursuant to subdivision (g) of Section 319, subdivision (a) of Section 361, or subdivision (b) of Section 726, who the court determines is an appropriate representative for the minor, and who does not have a conflict of interest, as defined in subdivision (i) of Section 7579.5 of the Government Code, including, but not limited to, a foster parent, caregiver, or court appointed special advocate.

WIC § 4701.6

[17] *We will determine who may sign an application [for SSI] according to the following rules:*
(a) If you are 18 years old or over, mentally competent, and physically able, you must sign your own application. If you are 16 years old or older and under age 18, you may sign the application if you are mentally competent, have no court appointed representative, and are not in the care of any other person or institution.
(b) If the claimant is under age 18, or is mentally incompetent, or is physically unable to sign the application, a court appointed representative or a person who is responsible for the care of the claimant, including a relative, may sign the application. If the claimant is in the care of an institution, the manager or principal officer of the institution may sign the application.
(c) To prevent a claimant from losing benefits because of a delay in filing an application when there is a good reason why the claimant cannot sign an application, we may accept an application signed by someone other than a person described in this section.
20 C.F.R. § 416.315

[18] When counsel is appointed to represent a nonminor dependent, counsel is charged with representing the wishes of the nonminor dependent except when advocating for those wishes conflicts with the protection or safety of the nonminor dependent. If the court finds that a nonminor dependent is not competent to direct counsel, the court shall appoint a guardian ad litem. WIC §317(e)(1).

[19] When . . . an incompetent person . . . is a party, that person shall appear . . . by a guardian ad litem appointed by the court in which the action or proceeding is pending . . . . A guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted . . . expedient to appoint a guardian ad litem to represent the . . . incompetent person . . . .
Code of Civ. Proc. §372

[20] *When a guardian ad litem is appointed, he or she shall be*
appointed as follows:
(a) If the minor is the plaintiff the appointment must be made before the summons is issued, upon the application of the minor, if the minor is of the age of 14 years, or if under that age, upon the application of a relative or friend of the minor.
(b) If the minor is the defendant, upon the application of the minor, if the minor is of the age of 14 years, and the minor applies within 10 days after the service of the summons, or if under that age, or if the minor neglects to apply, then upon the application of a relative or friend of the minor, or of any other party to the action, or by the court on its own motion.
(c) If an insane or incompetent person is a party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person, or of any other party to the action or proceeding, or by the court on its own motion.
Code of Civ. Proc. §373

[21] … unable to provide properly for his or her personal needs for physical health, food, clothes or shelter" Prob. Code §1801

[22] *A minor is incompetent to proceed if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her.* WIC §709(a).

[23] *… lacks capacity to understand the nature of the proceedings and/or he or she is unable to assist the attorney in the preparation of the case.*
Penal Code §1367

[24] See note 1.

[25] *(a) A conservator of the person may be appointed for a person who is unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter, except as provided for the person as described in subdivision (b) or (c) of Section 1828.5.*
(b) A conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence, except as provided for that person as described in subdivision (b) or (c) of Section 1828.5. Substantial inability may not be proved solely by isolated incidents of negligence or improvidence.
(c) A conservator of the person and estate may be appointed for a person described in subdivisions (a) and (b).
(d) A limited conservator of the person or of the estate, or both, may be appointed for a developmentally disabled adult. A limited conservatorship may be utilized only as necessary to promote and protect the well-being of the individual, shall be designed to encourage the development of maximum self-reliance and independence of the individual, and shall be ordered only to the extent necessitated by the individual's proven mental and adaptive limitations. The conservatee of the limited conservator shall not be presumed to be incompetent and shall retain all legal and civil rights except those which by court order have been designated as legal disabilities and have been specifically granted to the limited conservator. The intent of the Legislature, as expressed in Section 4501 of the Welfare and Institutions Code, that developmentally disabled citizens of this state receive services resulting in more independent, productive, and normal lives is the underlying mandate of this division in its application to adults alleged to be developmentally disabled.
(e) The standard of proof for the appointment of a conservator pursuant to this section shall be clear and convincing evidence.
Probate Code §1801

[26] *General or limited conservatorship may be initiated by (1) the proposed conservatee; (2) the spouse or DP of proposed conservatee; (3) a relative of proposed conservatee; (4) any interested state or local entity or agency of this state or any interested public officer or employee of this state or of a local public entity of this state; and (5) any other interested person or friend of the proposed conservatee.*
Probate Code § 1820

[27] *(a) In the case of any proceeding to establish a limited conservatorship for a person with developmental disabilities, within 30 days after the filing of a petition for limited conservatorship, a proposed limited conservatee, with his or her consent, shall be assessed at a regional center as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. The regional center shall submit a written report of its findings and recommendations to the court.*
(b) In the case of any proceeding to establish a general conservatorship for a person with developmental disabilities, the regional center, with the consent of the proposed conservatee, may prepare an assessment as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. If an assessment is prepared, the regional center shall submit its findings and recommendations to the court.

(c) A report prepared under subdivision (a) or (b) shall include a description of the specific areas, nature, and degree of disability of the proposed conservatee or proposed limited conservatee. The findings and recommendations of the regional center are not binding upon the court.
In a proceeding where the petitioner is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or a spouse or employee of a provider, is not the natural parent of the proposed conservatee or proposed limited conservatee, and is not a public entity, the regional center shall include a recommendation in its report concerning the suitability of the petitioners to meet the needs of the proposed conservatee or proposed limited conservatee.
(d) At least five days before the hearing on the petition, the regional center shall mail a copy of the report referred to in subdivision (a) to all of the following:
(1) The proposed limited conservatee.
(2) The attorney, if any, for the proposed limited conservatee.
(3) If the petitioner is not the proposed limited conservatee, the attorney for the petitioner or the petitioner if the petitioner does not have an attorney.
(4) Such other persons as the court orders.
(e) The report referred to in subdivisions (a) and (b) shall be confidential and shall be made available only to parties listed in subdivision (d) unless the court, in its discretion, determines that the release of the report would serve the interests of the conservatee who is developmentally disabled. The clerk of the court shall make provision for limiting disclosure of the report exclusively to persons entitled thereto under this section.
Probate Code §1827.5.

[28] *(b) If the court finds that the proposed limited conservatee possesses the capacity to care for himself or herself and to manage his or her property as a reasonably prudent person, the court shall dismiss the petition for appointment of a limited conservator.*
(c) If the court finds that the proposed limited conservatee lacks the capacity to perform some, but not all, of the tasks necessary to provide properly for his or her own personal needs for physical health, food, clothing, or shelter, or to manage his or her own financial resources, the court shall appoint a limited conservator for the person or the estate or the person and the estate.
Probate Code § 1828.5

[29] *A conservator of the person, of the estate, or of the person and the estate may be appointed for any person who is gravely disabled.*
WIC § 5350 et seq.

[30] *(a) A juvenile court may assume jurisdiction over a child described in Section 300 regardless of whether the child was in the physical custody of both parents or was in the sole legal or physical custody of only one parent at the time that the events or conditions occurred that brought the child within the jurisdiction of the court.*
(b) Unless their parental rights have been terminated, both parents shall be notified of all proceedings involving the child. In any case where the social worker is required to provide a parent or guardian with notice of a proceeding at which the social worker intends to present a report, the social worker shall also provide both parents, whether custodial or noncustodial, or any guardian, or the counsel for the parent or guardian a copy of the report prior to the hearing, either personally or by first-class mail. The social worker shall not charge any fee for providing a copy of a report required by this subdivision. The social worker shall keep confidential the address of any parent who is known to be the victim of domestic violence.
(c) When a child is adjudged a dependent of the juvenile court, any issues regarding custodial rights between his or her parents shall be determined solely by the juvenile court, as specified in Sections 304, 361.2, and 362.4, so long as the child remains a dependent of the juvenile court.

(d) Any custody or visitation order issued by the juvenile court at the time the juvenile court terminates its jurisdiction pursuant to Section 362.4 regarding a child who has been previously adjudged to be a dependent child of the juvenile court shall be a final judgment and shall remain in effect after that jurisdiction is terminated. The order shall not be modified in a proceeding or action described in Section 3021 of the Family Code unless the court finds that there has been a significant change of circumstances since the juvenile court issued the order and modification of the order is in the best interests of the child. WIC §302

[31] *(a) A juvenile court may assume jurisdiction over a child described in Section 300 regardless of whether the child was in the physical custody of both parents or was in the sole legal or physical custody of only one parent at the time that the events or conditions occurred that brought the child within the jurisdiction of the court.*
(b) Unless their parental rights have been terminated, both parents shall be notified of all proceedings involving the child. In any case where the social worker is required to provide a parent or guardian with notice of a proceeding at which the social worker intends to present a report, the social worker shall also provide both parents, whether custodial or noncustodial, or any guardian, or the counsel for the parent or guardian a copy of the report prior to the hearing, either personally or by first-class mail. The social worker shall not charge any fee for providing a copy of a report required by this subdivision. The social worker shall keep confidential the address of any parent who is known to be the victim of domestic violence.
(c) When a child is adjudged a dependent of the juvenile court, any issues regarding custodial rights between his or her parents shall be determined solely by the juvenile court, as specified in Sections 304, 361.2, and 362.4, so long as the child remains a dependent of the juvenile court.
(d) Any custody or visitation order issued by the juvenile court at the time the juvenile court terminates its jurisdiction pursuant to Section 362.4 regarding a child who has been previously adjudged to be a dependent child of the juvenile court shall be a final judgment and shall remain in effect after that jurisdiction is terminated. The order shall not be modified in a proceeding or action described in Section 3021 of the Family Code unless the court finds that there has been a significant change of circumstances since the juvenile court issued the order and modification of the order is in the best interests of the child. WIC §304.

[32] *A patient is presumed to have the capacity to make a health care decision, to give or revoke an advance health care directive, and to designate or disqualify a surrogate. This presumption is a presumption affecting the burden of proof.* Probate Code §4657

[33] *(a) A patient may designate an adult as a surrogate to make health care decisions by personally informing the supervising health care provider. The designation of a surrogate shall be promptly recorded in the patient's health care record.*
(b) Unless the patient specifies a shorter period, a surrogate designation under subdivision (a) is effective only during the course of treatment or illness or during the stay in the health care institution when the surrogate designation is made, or for 60 days, whichever period is shorter.
(c) The expiration of a surrogate designation under subdivision (b) does not affect any role the person designated under subdivision (a) may have in making health care decisions for the patient under any other law or standards of practice.
(d) If the patient has designated an agent under a power of attorney for health care, the surrogate designated under subdivision (a) has priority over the agent for the period provided in subdivision (b), but the designation of a surrogate does not revoke the designation of an agent unless the patient communicates the intention to revoke in compliance with subdivision (a) of Section 4695. Probate Code §4711

[34] *(a) If the attending physician and surgeon of a resident in a skilled nursing facility or intermediate care facility prescribes or orders a medical intervention that requires that informed consent be obtained prior to administration of the medical intervention, but is unable to obtain informed consent because the physician and surgeon determines that the resident lacks capacity to make decisions concerning his or her health care and that there is no person with legal authority to make those decisions on behalf of the resident, the physician and surgeon shall inform the skilled nursing facility or intermediate care facility.*

(b) For purposes of subdivision (a), a resident lacks capacity to make a decision regarding his or her health care if the resident is unable to understand the nature and consequences of the proposed medical intervention, including its risks and benefits, or is unable to express a preference regarding the intervention. To make the determination regarding capacity, the physician shall interview the patient, review the patient's medical records, and consult with skilled nursing or intermediate care facility staff, as appropriate, and family members and friends of the resident, if any have been identified.

(c) For purposes of subdivision (a), a person with legal authority to make medical treatment decisions on behalf of a patient is a person designated under a valid Durable Power of Attorney for Health Care, a guardian, a conservator, or next of kin. To determine the existence of a person with legal authority, the physician shall interview the patient, review the medical records of the patient, and consult with skilled nursing or intermediate care facility staff, as appropriate, and with family members and friends of the resident, if any have been identified.

(d) The attending physician and the skilled nursing facility or intermediate care facility may initiate a medical intervention that requires informed consent pursuant to subdivision (e) in accordance with acceptable standards of practice.

(e) Where a resident of a skilled nursing facility or intermediate care facility has been prescribed a medical intervention by a physician and surgeon that requires informed consent and the physician has determined that the resident lacks capacity to make health care decisions and there is no person with legal authority to make those decisions on behalf of the resident, the facility shall, except as provided in subdivision (h), conduct an interdisciplinary team review of the prescribed medical intervention prior to the administration of the medical intervention. The interdisciplinary team shall oversee the care of the resident utilizing a team approach to assessment and care planning, and shall include the resident's attending physician, a registered professional nurse with responsibility for the resident, other appropriate staff in disciplines as determined by the resident's needs, and, where practicable, a patient representative, in accordance with applicable federal and state requirements. The review shall include all of the following:

(1) A review of the physician's assessment of the resident's condition.

(2) The reason for the proposed use of the medical intervention.

(3) A discussion of the desires of the patient, where known. To determine the desires of the resident, the interdisciplinary team shall interview the patient, review the patient's medical records, and consult with family members or friends, if any have been identified.

(4) The type of medical intervention to be used in the resident's care, including its probable frequency and duration.

(5) The probable impact on the resident's condition, with and without the use of the medical intervention.

(6) Reasonable alternative medical interventions considered or utilized and reasons for their discontinuance or inappropriateness.

(f) A patient representative may include a family member or friend of the resident who is unable to take full responsibility for the health care decisions of the resident, but who has agreed to serve on the interdisciplinary team, or other person authorized by state or federal law.

(g) The interdisciplinary team shall periodically evaluate the use of the prescribed medical intervention at least quarterly or upon a significant change in the resident's medical condition.

(h) In case of an emergency, after obtaining a physician and surgeon's order as necessary, a skilled nursing or intermediate care facility may administer a medical intervention that requires informed consent prior to the facility convening an interdisciplinary team review. If the emergency results in the application of physical or chemical restraints, the interdisciplinary team shall meet within one week of the emergency for an evaluation of the medical intervention.

(i) Physicians and surgeons and skilled nursing facilities and intermediate care facilities shall not be required to obtain a court order pursuant to Section 3201 of the Probate Code prior to administering a medical intervention which requires informed consent if the requirements of this section are met.

(j) Nothing in this section shall in any way affect the right of a resident of a skilled nursing facility or intermediate care facility for whom medical intervention has been prescribed, ordered, or administered pursuant to this section to seek appropriate judicial relief to review the decision to provide the medical intervention.

(k) No physician or other health care provider, whose action under this section is in accordance with reasonable medical standards, is subject to administrative sanction if the physician or health care provider believes in good faith that the action is consistent with this section and the desires of the resident, or if unknown, the best interests of the resident.
(l) The determinations required to be made pursuant to subdivisions (a), (e), and (g), and the basis for those determinations shall be documented in the patient's medical record and shall be made available to the patient's representative for review.
Health and Safety Code §1418.8.

[35] *An adult having capacity may give an individual health care instruction. The individual instruction may be oral or written. The individual instruction may be limited to take effect only if a specified condition arises*. Probate Code §4670.

[36] *(a) An adult having capacity may execute a power of attorney for health care, as provided in Article 2 (commencing with Section 4680). The power of attorney for health care may authorize the agent to make health care decisions and may also include individual health care instructions.*
(b) The principal in a power of attorney for health care may grant authority to make decisions relating to the personal care of the principal, including, but not limited to, determining where the principal will live, providing meals, hiring household employees, providing transportation, handling mail, and arranging recreation and entertainment. Probate Code §4671.

[37] *"Power of attorney" means a written instrument, however denominated, that is executed by a natural person having the capacity to contract and that grants authority to an attorney-in-fact. A power of attorney may be durable or nondurable.* Probate Code §4022

[38] *(a) In a power of attorney under this division, a principal may grant authority to an attorney-in-fact to act on the principal's behalf with respect to all lawful subjects and purposes or with respect to one or more express subjects or purposes. The attorney-in-fact may be granted authority with regard to the principal's property, personal care, or any other matter.*
(b) With regard to property matters, a power of attorney may grant authority to make decisions concerning all or part of the principal's real and personal property, whether owned by the principal at the time of the execution of the power of attorney or thereafter acquired or whether located in this state or elsewhere, without the need for a description of each item or parcel of property.
(c) With regard to personal care, a power of attorney may grant authority to make decisions relating to the personal care of the principal, including, but not limited to, determining where the principal will live, providing meals, hiring household employees, providing transportation, handling mail, and arranging recreation and entertainment. Probate Code 4123.

[39] *A durable power of attorney is a power of attorney by which a principal designates another person as attorney-in-fact in writing and the power of attorney contains any of the following statements:*
(a) "This power of attorney shall not be affected by subsequent incapacity of the principal."
(b) "This power of attorney shall become effective upon the incapacity of the principal."
(c) Similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity.
Probate Code §4124.

[40] *Unless otherwise specified in an advance health care directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.* Probate Code §4678.

[41] *Subject to any limitations in the power of attorney for health care:*
(a) An agent designated in the power of attorney may make health care decisions for the principal to the same extent the principal could make health care decisions if the principal had the capacity to do so.
(b) The agent may also make decisions that may be effective after the principal's death, including the following:
(1) Making a disposition under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).
(2) Authorizing an autopsy under Section 7113 of the Health and Safety Code.
(3) Directing the disposition of remains under Section 7100 of the Health and Safety Code.
(4) Authorizing the release of the records of the principal to the extent necessary for the agent to fulfill his or her duties as set forth in this division.
Probate Code §4683.

[42] *An agent shall make a health care decision in accordance with the principal's individual health care instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.* Probate Code §4684

[43] *Nothing in this division authorizes an agent under a power of attorney for health care to make a health care decision if the principal objects to the decision. If the principal objects to the health care decision of the agent under a power of attorney, the matter shall be governed by the law that would apply if there were no power of attorney for health care.* Probate Code §4689.

[44] *(a) If the principal becomes wholly or partially incapacitated, or if there is a question concerning the capacity of the principal, the agent may consult with a person previously designated by the principal for this purpose, and may also consult with and obtain information needed to carry out the agent's duties from the principal's spouse, physician, supervising health care provider, attorney, a member of the principal's family, or other person, including a business entity or government agency, with respect to matters covered by the power of attorney for health care.*
(b) A person described in subdivision (a) from whom information is requested shall disclose information that the agent requires to carry out his or her duties. Disclosure under this section is not a waiver of any privilege that may apply to the information disclosed. Probate Code §4690.

[45] *Unless otherwise provided in a power of attorney for health care, the authority of an agent becomes effective only on a determination that the principal lacks capacity, and ceases to be effective on a determination that the principal has recovered capacity.* Probate Code §4682.

[46] *(a) A patient having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.*
(b) A patient having capacity may revoke all or part of an advance health care directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke. Probate Code §4695.

[47] *The director of a regional center or his designee may give consent to medical, dental, and surgical treatment of a regional center client and provide for such treatment to be given to the person under the following conditions:*
(a) If the developmentally disabled person's parent, guardian, or conservator legally authorized to consent to such treatment does not respond within a reasonable time to the request of the director or his designee for the granting or denying of consent for such treatment, the director of a regional center or his designee may consent on behalf of the developmentally disabled person to such treatment and provide for such treatment to be given to such person.
(b) If the developmentally disabled person has no parent, guardian, or conservator legally authorized to consent to medical, dental, or surgical treatment on behalf of the person, the director of the regional center or his designee may consent to such treatment on behalf of the person and provide for such treatment to be given to the person. The director of a regional center or his designee may thereupon also initiate, or cause to be initiated, proceedings for the appointment of a guardian or conservator legally authorized to consent to medical, dental, or surgical services.
(c) If the developmentally disabled person is an adult and has no conservator, consent to treatment may be given by someone other than the person on the person's behalf only if the developmentally disabled person is mentally incapable of giving his own consent. Probate Code §4655.

[48] See note 11.

[49] *… if the patient is a minor or incompetent, the authority to consent is transferred to the patient's legal guardian or closest available relative (Ballard v. Anderson (1971) 4 Cal.3d 873, 883, 95 Cal.Rptr. 1, 484 P.2d 1345; Doyle v. Giuliucci (1965) 62 Cal.2d 606, 43 Cal.Rptr. 697, 401 P.2d 1; Bonner v. Moran (1941) 75 U.S.App.D.C. 156, 126 F.2d 121).* Cobbs v. Grant, 8 Cal. 3d 229, 244 (1972).

[50] *Under the circumstances of this case, the wife was the proper person to act as a surrogate for the patient with the authority to decide issues regarding further treatment, and would have so qualified had judicial approval been sought. There is no evidence that there was any disagreement among the wife and children. Nor was there any evidence that they were motivated in their decision by anything other than love and concern for the dignity of their husband and father. Furthermore, in the absence of legislative guidance, we find no legal requirement that prior judicial approval is necessary before any decision to withdraw treatment can be made. Barber v. Superior Court,* 147 Cal. App. 3d 1006, 1021 (2 Dist. 1983)

[51] *Implementation specification: Adults and emancipated minors. If under applicable law a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation.* 45 C.F.R. §164.502(g)2).
(This says that for adult patients, personal representative stands in place of individual vis a vis HIPAA rights if local law gives the personal rep that authority. So ultimately it defers to state law to figure out who should get rights to inspect records and rights to sign authorizations to release records.)

[52] *A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following: … (7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.* Civ. Code §56.10(b)(7).
(This says that information must be shared, without need of authorization, when requested by patient representative, as that is defined in Patient Access to Health Records Act (PAHRA).

[53] *"Patient's representative" or "representative" means any of the following:*

(1) A parent or guardian of a minor who is a patient.
(2) The guardian or conservator of the person of an adult patient.
(3) An agent as defined in Section 4607 of the Probate Code, to the extent necessary for the agent to fulfill his or her duties as set forth in Division 4.7 (commencing with Section 4600) of the Probate Code.
(4) The beneficiary as defined in Section 24 of the Probate Code or personal representative as defined in Section 58 of the Probate Code, of a deceased patient.
Health & Safety Code §123105(e).
(PAHRA definition of patient representative)

[54] *Notwithstanding Section 5328 of the Welfare and Institutions Code, and except as provided in Sections 123115 and 123120, any adult patient of a health care provider, any minor patient authorized by law to consent to medical treatment, and any patient representative shall be entitled to inspect patient records upon presenting to the health care provider a written request for those records and upon payment of reasonable clerical costs incurred in locating and making the records available. However, a patient who is a minor shall be entitled to inspect patient records pertaining only to health care of a type for which the minor is lawfully authorized to consent. A health care provider shall permit this inspection during business hours within five working days after receipt of the written request. The inspection shall be conducted by the patient or patient's representative requesting the inspection, who may be accompanied by one other person of his or her choosing.* Health & Safety Code §123110(a).

[55] *Any person or entity that wishes to obtain medical information pursuant to subdivision (a) of Section 56.10, other than a person or entity authorized to receive medical information pursuant to subdivision (b) or (c) of Section 56.10, except as provided in paragraph (21) of subdivision (c) of Section 56.10, shall obtain a valid authorization for the release of this information.*
An authorization for the release of medical information by a provider of health care, health care service plan, pharmaceutical company, or contractor shall be valid if it:
(a) Is handwritten by the person who signs it or is in a typeface no smaller than 14-point type.
(b) Is clearly separate from any other language present on the same page and is executed by a signature which serves no other purpose than to execute the authorization.
(c) Is signed and dated by one of the following:
(1) The patient. A patient who is a minor may only sign an authorization for the release of medical information obtained by a provider of health care, health care service plan, pharmaceutical company, or contractor in the course of furnishing services to which the minor could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60).
(2) The legal representative of the patient, if the patient is a minor or an incompetent. However, authorization may not be given under this subdivision for the disclosure of medical information obtained by the provider of health care, health care service plan, pharmaceutical company, or contractor in the course of furnishing services to which a minor patient could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60).
(3) The spouse of the patient or the person financially responsible for the patient, where the medical information is being sought for the sole purpose of processing an application for health insurance or for enrollment in a nonprofit hospital plan, a health care service plan, or an employee benefit plan, and where the patient is to be an enrolled spouse or dependent under the policy or plan.
(4) The beneficiary or personal representative of a deceased patient.
(d) States the specific uses and limitations on the types of medical information to be disclosed.

(e) States the name or functions of the provider of health care, health care service plan, pharmaceutical company, or contractor that may disclose the medical information.
(f) States the name or functions of the persons or entities authorized to receive the medical information.
(g) States the specific uses and limitations on the use of the medical information by the persons or entities authorized to receive the medical information.
(h) States a specific date after which the provider of health care, health care service plan, pharmaceutical company, or contractor is no longer authorized to disclose the medical information.
(i) Advises the person signing the authorization of the right to receive a copy of the authorization. Civil Code §56.11.

[56] *If the recipient of services is a minor, ward, dependent, or conservatee, and his or her parent, guardian, guardian ad litem, conservator, or authorized representative designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician and surgeon, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, licensed professional clinical counselor, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.* WIC §5328(d).

[57] *The agency shall permit the individual, and, upon the individual's request, another person of the individual's own choosing to inspect all the personal information in the record and have an exact copy made of all or any portion thereof within 15 days of the inspection. It may require the individual to furnish a written statement authorizing disclosure of the individual's record to another person of the individual's choosing.* Civ. Code §1798.34(b).

[58] *(1) Counsel shall be charged in general with the representation of the child's interests. To that end, counsel shall make or cause to have made any further investigations that he or she deems in good faith to be reasonably necessary to ascertain the facts, including the interviewing of witnesses, and shall examine and cross-examine witnesses in both the adjudicatory and dispositional hearings. Counsel may also introduce and examine his or her own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child. When counsel is appointed to represent a nonminor dependent, counsel is charged with representing the wishes of the nonminor dependent except when advocating for those wishes conflicts with the protection or safety of the nonminor dependent. If the court finds that a nonminor dependent is not competent to direct counsel, the court shall appoint a guardian ad litem for the nonminor dependent.*
(2) If the child is four years of age or older, counsel shall interview the child to determine the child's wishes and assess the child's well-being, and shall advise the court of the child's wishes. Counsel shall not advocate for the return of the child if, to the best of his or her knowledge, return of the child conflicts with the protection and safety of the child.
(3) Counsel shall investigate the interests of the child beyond the scope of the juvenile proceeding, and report to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings. Counsel representing a child in a dependency proceeding is not required to assume the responsibilities of a social worker, and is not expected to provide nonlegal services to the child.
(4) (A) At least once every year, if the list of educational liaisons is available on the Internet Web site for the State Department of Education, both of the following shall apply:
(i) Counsel shall provide his or her contact information to the educational liaison, as described in subdivision (b) of Section 48853.5 of the Education Code, of each local educational agency serving counsel's foster child clients in the county of jurisdiction.

(ii) If counsel is part of a firm or organization representing foster children, the firm or organization may provide its contact information in lieu of contact information for the individual counsel. The firm or organization may designate a person or persons within the firm or organization to receive communications from educational liaisons.
(B) The child's caregiver or other person holding the right to make educational decisions for the child may provide the contact information of the child's attorney to the child's local educational agency.
(C) Counsel for the child and counsel's agent may, but are not required to, disclose to an individual who is being assessed for the possibility of placement pursuant to Section 361.3 the fact that the child is in custody, the alleged reasons that the child is in custody, and the projected likely date for the child's return home, placement for adoption, or legal guardianship. Nothing in this paragraph shall be construed to prohibit counsel from making other disclosures pursuant to this subdivision, as appropriate.
(5) Nothing in this subdivision shall be construed to permit counsel to violate a child's attorney-client privilege.
(6) The changes made to this subdivision during the 2011–12 Regular Session of the Legislature by the act adding subparagraph (C) of paragraph (4) and paragraph (5) are declaratory of existing law.
(7) The court shall take whatever appropriate action is necessary to fully protect the interests of the child. WIC §317(e).

[59] *Rule 3-100 Confidential Information of a Client*
(A) A member shall not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) without the informed consent of the client, or as provided in paragraph (B) of this rule.
(B) A member may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the member reasonably believes the disclosure is necessary to prevent a criminal act that the member reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.
(C) Before revealing confidential information to prevent a criminal act as provided in paragraph (B), a member shall, if reasonable under the circumstances:
(1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act or (ii) to pursue a course of conduct that will prevent the threatened death or substantial bodily harm; or do both (i) and (ii); and
(2) inform the client, at an appropriate time, of the member's ability or decision to reveal information as provided in paragraph (B).
(D) In revealing confidential information as provided in paragraph (B), the member's disclosure must be no more than is necessary to prevent the criminal act, given the information known to the member at the time of the disclosure.
(E) A member who does not reveal information permitted by paragraph (B) does not violate this rule. California State Bar Rules of Professional Conduct, Rule 3-100. (See discussion.)

[60] *It is the duty of an attorney to do all of the following: …*
(e) (1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client. Business and Professions Code § 6068(e)

[61] *All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.* Civil Code §51(b).

[62] *As used in this article, "confidential communication between client and lawyer" means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.* Evidence Code §952.

[63] *Counsel shall represent the parent, guardian, child, or nonminor dependent at the detention hearing and at all subsequent proceedings before the juvenile court. Counsel shall continue to represent the parent, guardian, child, or nonminor dependent unless relieved by the court upon the substitution of other counsel or for cause. The representation shall include representing the parent, guardian, or the child in termination proceedings and in those proceedings relating to the institution or setting aside of a legal guardianship. On and after January 1, 2012, in the case of a nonminor dependent, as described in subdivision (v) of Section 11400, no representation by counsel shall be provided for a parent, unless the parent is receiving court-ordered family reunification services.* WIC §317(d).

[64] Attorneys are prohibited from instituting conservatorship proceedings over client objection, even when doing so is in the client's best interest. (Earlier Ethics Opinion from San Diego, 1978-1, includes prohibition against causing to initiate as well as initiating) (COPRAC does not contemplate an attorney's role when a client is silent toward their wishes regarding a conservatorship)

[65] SF Bar Ass'n Ethics Op. 2 (1999) found that, when a client is incapacitated, lawyer should have discretion, but not mandate, to act in the client's best interest, including the implied authority to make limited disclosure and take action allowed by Model Rule 1.14. (Relying, in part, on the theory that without the power to contract, there is no attorney-client privilege)

[66] *Who may sign an application.*
We will determine who may sign an application according to the following rules:
(a) A claimant who is 18 years old or over, mentally competent, and physically able to do so, must sign his or her own application. If the claim is for child's benefits for a person who is not yet 22 years old, the application may be signed by a parent or a person standing in place of the parent.
(b) A claimant who is between 16 and 18 years old may sign his or her own application if he or she is mentally competent, has no court appointed representative, and is not in the care of any person.
(c) If the claimant is under age 18, or mentally incompetent, or physically unable to sign, the application may be signed by a court appointed representative or a person who is responsible for the care of the claimant, including a relative. If the claimant is in the care of an institution, the manager or principal officer of the institution may sign the application.
(d) If a person who could receive disability benefits or who could have a period of disability established dies before filing, an application for disability benefits or for a period of disability may be signed by a person who would be qualified to receive any benefits due the deceased.
(e) If a written statement showing an intent to claim benefits is filed with us, but the person for whom the benefits are claimed dies before an application is filed, an application may be filed as explained in §404.630(d).
(f) If a person who could receive benefits on the basis of a "deemed" filing date of an application under §404.633 (b)(1)(i) or (b)(2)(i) dies before an application for the benefits is filed, the application may be signed by a person who would be qualified to receive any benefits due the deceased person as explained in §404.633 (b)(1)(ii) and (b)(2)(ii).

(g) If it is necessary to protect a claimant from losing benefits and there is good cause for the claimant not signing the application, we may accept an application signed by some one other than a person described in this section.
Example: Mr. Smith comes to a social security office a few days before the end of a month to file an application for old-age benefits for his neighbor, Mr. Jones. Mr. Jones, a 63 year old widower, just suffered a heart attack and is in the hospital. He asked Mr. Smith to file the application for him. We will accept an application signed by Mr. Smith since it would not be possible to have Mr. Jones sign and file the application until the next calendar month and a loss of one month's benefits would result.
20 C.F.R.§404.612

[67] *We pay benefits to a representative payee on behalf of a beneficiary 18 years old or older when it appears to us that this method of payment will be in the interest of the beneficiary. We do this if we have information that the beneficiary is—*
(1) Legally incompetent or mentally incapable of managing benefit payments; or
(2) Physically incapable of managing or directing the management of his or her benefit payments.
20 C.F.R. §404.2010(a).

[68] *Who may sign an application.*
We will determine who may sign an application according to the following rules:
(a) If you are 18 years old or over, mentally competent, and physically able, you must sign your own application. If you are 16 years old or older and under age 18, you may sign the application if you are mentally competent, have no court appointed representative, and are not in the care of any other person or institution.
(b) If the claimant is under age 18, or is mentally incompetent, or is physically unable to sign the application, a court appointed representative or a person who is responsible for the care of the claimant, including a relative, may sign the application. If the claimant is in the care of an institution, the manager or principal officer of the institution may sign the application.
(c) To prevent a claimant from losing benefits because of a delay in filing an application when there is a good reason why the claimant cannot sign an application, we may accept an application signed by someone other than a person described in this section.
Example: Mr. Smith comes to a Social Security office to file an application for SSI disability benefits for Mr. Jones. Mr. Jones, who lives alone, just suffered a heart attack and is in the hospital. He asked Mr. Smith, whose only relationship is that of a neighbor and friend, to file the application for him. We will accept an application signed by Mr. Smith since it would not be possible to have Mr. Jones sign and file the application at this time. SSI benefits can be paid starting with the first day of the month following the month the individual first meets all eligibility requirements for such benefits, including having filed an application. If Mr. Smith could not sign an application for Mr. Jones, a loss of benefits would result if it is later determined that Mr. Jones is in fact disabled.
20 C.F.R. §415.315

[69] *We pay benefits to a representative payee on behalf of a beneficiary 18 years old or older when it appears to us that this method of payment will be in the interest of the beneficiary. We do this if we have information that the beneficiary is—*
(1) Legally incompetent or mentally incapable of managing benefit payments; or
(2) Physically incapable of managing or directing the management of his or her benefit payments; or
(3) Eligible for benefits solely on the basis of disability and drug addiction or alcoholism is a contributing factor material to the determination of disability.

20 C.F.R. §416.610(a).

[70] *Authorized Representative - An individual or organization that has been authorized by the claimant or designated by the Administrative Law Judge or Department pursuant to Sections 22-085 and 22-101 to act for the claimant in any and all aspects of the state hearing or administrative disqualification hearing.*

HANDBOOK BEGINS HERE

(A) An authorized representative may include an attorney, a relative, a friend, or other spokesperson.

HANDBOOK ENDS HERE

(B) Any references to claimant shall also apply to the authorized representative unless otherwise stated.

(C) Repealed by Manual Letter No. CFC-07-01, effective 1/24/07. MPP 22-001(a)

[71] *AUTHORIZED REPRESENTATIVE*

.1 The claimant may authorize a person or organization to represent him/her during all aspects of the hearing process by signing and dating a written statement to that effect or by stating at the hearing that the person is so authorized. If the claimant is not present at the hearing, the written statement authorizing a representative to act on behalf of the claimant for hearing purposes shall be signed and dated by the claimant on or after the date of the action or inaction with which the claimant is dissatisfied.

.11 The authorization may be limited in scope or duration by the claimant, and may be revoked by the claimant at any time. The authorization shall be presumed to be a valid authorization. Such presumption is rebuttable.

.12 If the claimant is not present at the hearing and the written authorization does not meet the requirements set forth in Section 22-085.1, the Administrative Law Judge may proceed with the hearing if the circumstances indicate that the claimant wishes to proceed with the hearing process. In such cases, an amended authorization shall be submitted after the hearing as described in Sections 22-085.221 and .222.

HANDBOOK BEGINS HERE

.13 The above requirements are for hearing purposes only. For pre-hearing requirements and the release of information to authorized representatives, see Section 19-005.

HANDBOOK ENDS HERE

.2 If the claimant has not authorized the representative in writing and is not present at the hearing, the person may be recognized as the authorized representative as follows:

.21 If the person is an attorney as defined in Section 22-001(a)(5), and he/she states on the hearing record that the claimant is mentally competent and has authorized him/her to act as authorized representatie regarding the issue(s) to be addressed at the hearing, the attorney shall be recognized as an authorized representative without being required to submit an authorized representative form.

.22 If the person is not an attorney, and he/she swears, affirms or states under penalty of perjury that the claimant is mentally competent and has authorized him/her to act as the claimant's authorized representative, and the Administrative Law Judge determines the person is so authorized, the non-attorney may represent the claimant at the hearing, subject to the following:

.221 A written authorization shall be submitted by the non-attorney within ten days of the hearing unless this time period is extended by the Administrative Law Judge.

.222 If no written authorization is submitted, the case shall be dismissed by written decision.

.23 If, at the hearing, the person cannot swear or affirm under penalty of perjury that the claimant has authorized him/her to act as the claimant's authorized representative because the claimant is incompetent, in a comatose condition, suffering from amnesia or a similar condition, the hearing may proceed at the Administrative Law Judge's discretion if the person is a relative, or a person who has knowledge of the claimant's circumstances and who completed and signed the Statement of Facts on the claimant's behalf.

.24 If the attorney or non-attorney does not state on the hearing record that the claimant is mentally competent and has authorized him/her to act as authorized representative, the attorney or non-attorney shall not be recognized as authorized representative, the hearing shall not proceed and the hearing request shall be dismissed by written decision unless Section 22-085.23 applies.

.3 Whenever the claimant is represented by an authorized representative, the authorized representative shall be furnished a copy of all notices and decisions concerning the state hearing which are provided to the claimant.

.4 After a person or organization has been authorized to represent the claimant, the county, after notification of the authorization, shall send copies of any subsequent notices and correspondence that it has with the claimant regarding the state hearing, to the claimant and the authorized representative simultaneously.

.41 The county's duty under Section 22-085.4 shall include the requirement to send the authorized representative any notices and/or correspondence related to a conditional withdrawal or compliance with a state hearing decision. MPP 22-085.