



320-Q GENERAL AND INFORMED CONSENT

INITIAL

EFFECTIVE DATE: 07/01/2016

BACKGROUND

Each member has the right to participate in decisions regarding his or her behavioral health care, including the right to refuse treatment. It is important for members seeking behavioral health services to agree to those services and be made aware of the service options and alternatives available to them as well as specific risks and benefits associated with these services.

DEFINITIONS

General Consent is a one-time agreement to receive certain services, including but not limited to behavioral health services that is usually obtained from a member during the intake process at the initial appointment, and is always obtained prior to the provision of any behavioral health services. General consent must be obtained from a member's behavioral health recipient's or legal guardian's signature.

Informed Consent is an agreement to receive behavioral health services before the provision of a specific treatment that has associated risks and benefits. Informed consent is required to be obtained from a member or legal guardian prior to the provision of the following services and procedures:

1. Complementary and Alternative Medicine (CAM),
2. Psychotropic medications,
3. Electro-Convulsive Therapy (ECT),
4. Use of telemedicine,
5. Application for a voluntary evaluation,
6. Research,
7. Admission for medical detoxification, an inpatient facility or a residential program (for members determined to have a Serious Mental Illness), and
8. Procedures or services with known substantial risks or side effects

A. OVERVIEW

AHCCCS recognizes two primary types of consent for behavioral health services: general consent and informed consent.

Prior to obtaining informed consent, an appropriate behavioral health representative, as identified in R9-21-206.01(c), must present the facts necessary for a member to make an informed decision regarding whether to agree to the specific treatment



and/or procedures. Documentation that the required information was given, and that the member agrees or does not agree to the specific treatment, must be included in the comprehensive clinical record, as well as the member/guardian's signature when required.

In addition to general and informed consent for treatment, state statute (A.R.S. §15-104) requires written consent from a child's parent or legal guardian for any behavioral health survey, analysis, or evaluation conducted in reference to a school based prevention program.

The intent of this section is to describe the requirements for reviewing and obtaining general, and informed consent, for members receiving services within the behavioral health system, as well as consent for any behavioral health survey or evaluation in connection with an AHCCCS school-based prevention program.

B. GENERAL REQUIREMENTS

1. Any member, aged 18 years and older, in need of behavioral health services must give voluntary general consent to treatment, demonstrated by the member's or legal guardian's signature on a general consent form, before receiving behavioral health services.
2. For members under the age of 18, the parent, legal guardian, or a lawfully authorized custodial agency (including foster care givers A.R.S. 8.514.05(C)) must give general consent to treatment, demonstrated by the parent, legal guardian, or a lawfully authorized custodial agency representative's signature on a general consent form prior to the delivery of behavioral health services.
3. Any member aged 18 years and older or the member's legal guardian, or in the case of members under the age of 18, the parent, legal guardian or a lawfully authorized custodial agency, after being fully informed of the consequences, benefits and risks of treatment, has the right not to consent to receive behavioral health services.
4. Any member aged 18 years and older or the member's legal guardian, or in the case of members under the age of 18, the parent, legal guardian or a lawfully authorized custodial agency has the right to refuse medications unless specifically required by a court order or in an emergency situation.
5. Providers treating members in an emergency are not required to obtain general consent prior to the provision of emergency services. Providers treating members pursuant to court order must obtain consent, as applicable, in accordance with A.R.S. Title 36, Chapter 5.
6. All evidence of informed consent and general consent to treatment must be documented in the comprehensive clinical record per AMPM Policy 940.



7. Contractors and TRBHAs must develop and make available to providers policies and procedures that include any additional information or forms.
8. A foster parent, group home staff, foster home staff, relative, or other person or agency in whose care a child is currently placed may give consent for:
 - a. Evaluation and treatment for emergency conditions that are not life threatening, and
 - b. Routine medical and dental treatment and procedures, including Early Periodic Screening Diagnosis and Treatment (EPSDT) services, and services by health care providers to relieve pain or treat symptoms of common childhood illnesses or conditions (A.R.S. §8-514.05(C)).
9. To ensure timely delivery of services, consent for intake and routine behavioral health services may be obtained from either the foster caregiver or the Department of Child Safety Specialist (DCSS) whomever is available to do so immediately upon request (A.R.S. § 8-514.05(C)).
10. Foster or kinship caregivers can consent to evaluation and treatment for routine medical and dental treatment and procedures, including behavioral health services. Examples of behavioral health services in which foster or kinship can consent to include:
 - a. Assessment and service planning,
 - b. Counseling and therapy,
 - c. Rehabilitation services,
 - d. Medical Services,
 - e. Psychiatric evaluation,
 - f. Psychotropic medication,
 - g. Laboratory services,
 - h. Support Services,
 - i. Case Management,
 - j. Personal Care Services,
 - k. Family Support,
 - l. Peer Support,
 - m. Respite,
 - n. Sign Language or Oral Interpretive Services,
 - o. Transportation,
 - p. Crisis Intervention Services,
 - q. Behavioral Health Day Programs.
11. A foster parent, group home staff, foster home staff, relative, or other person or agency in whose care a child is currently placed shall not consent to:
 - a. General Anesthesia,
 - b. Surgery,
 - c. Testing for the presence of the human immunodeficiency virus,
 - d. Blood transfusions,



- e. Abortions.
- 12. Foster or kinship caregivers may not consent to terminate behavioral health treatment. The termination of behavioral health treatment requires Department of Child Safety (DCS) consultation and agreement.
- 13. If the foster or kinship caregiver disagrees on the behavioral health treatment being recommended through the Child and Family Team (CFT), the CFT including the foster or kinship caregiver and DCS caseworker should reconvene and discuss the recommended treatment plan. Only DCS can refuse consent to medically recommended behavioral health treatment.

C. GENERAL CONSENT

Administrative functions associated with a member's enrollment do not require consent, but before any services are provided, general consent must be obtained.

Contractors and TRBHAs must develop and make available to providers any form used to obtain general consent to treatment.

D. INFORMED CONSENT

- 1. In all cases where informed consent is required by this policy, informed consent must include at a minimum:
 - a. The member's right to participate in decisions regarding his or her health care, including the right to refuse treatment, and to express preferences about future treatment decisions,
 - b. Information about the member's diagnosis and the proposed treatment, including the intended outcome, nature and all available procedures involved in the proposed treatment,
 - c. The risks, including any side effects, of the proposed treatment, as well as the risks of not proceeding,
 - d. The alternatives to the proposed treatment, particularly alternatives offering less risk or other adverse effects,
 - e. That any consent given may be withheld or withdrawn in writing or orally at any time. When this occurs the provider must document the member's choice in the medical record;
 - f. The potential consequences of revoking the informed consent to treatment, and
 - g. A description of any clinical indications that might require suspension or termination of the proposed treatment.
- 2. Documenting Informed Consent:
 - a. Members, or if applicable the member's parent, guardian or custodian, shall give informed consent for treatment by signing and dating an



- acknowledgment that he or she has received the information and gives informed consent for the proposed treatment.
- b. When informed consent is given by a third party, the identity of the third party and the legal capability to provide consent on behalf of the member, must be established. If the informed consent is for psychotropic medication or telemedicine and the member, or if applicable, the member's guardian refuses to sign an acknowledgment and gives verbal informed consent, the medical practitioner shall document in the member's record that the information was given, the member refused to sign an acknowledgment and that the member gives informed consent to use psychotropic medication or telemedicine.
3. When providing information that forms the basis of an informed consent decision for the circumstances identified above, the information must be:
 - a. Presented in a manner that is understandable and culturally appropriate to the member, parent, legal guardian or an appropriate court; and
 - b. Presented by a credentialed behavioral health medical practitioner or a registered nurse with at least one year of behavioral health experience. It is preferred that the prescribing clinician provide information forming the basis of an informed consent decision. In specific situations in which it is not possible or practicable, information may be provided by another credentialed behavioral health medical practitioner or registered nurse with at least one year of behavioral health experience.
 4. Psychotropic Medications, Complementary and Alternative Treatment and Telemedicine:
 - a. Unless treatments and procedures are court ordered, providers must obtain written informed consent, and if written consent is not obtainable, providers must obtain oral informed consent. If oral informed consent is obtained instead of written consent from the member, parent or legal guardian, it must be documented in written fashion. Informed consent is required in the following circumstances:
 - i. Prior to the initiation of any psychotropic medication or initiation of Complementary and Alternative Treatment (CAM) (see AMPM Policy 310-V). The use of AMPM Exhibit 310-V-1, *Informed Consent/Assent for Psychotropic Medication Treatment Form* is recommended as a tool to review and document informed consent for psychotropic medications, and
 - ii. Prior to the delivery of behavioral health services through telemedicine.
 - b. Electro-Convulsive Therapy (ECT), research activities, voluntary evaluation and procedures or services with known substantial risks or side effects.
 - c. Written informed consent must be obtained from the member, parent or legal guardian, unless treatments and procedures are under court order, in the following circumstances:
 - i. Before the provision of (ECT),
 - ii. Prior to the involvement of the member in research activities,
 - iii. Prior to the provision of a voluntary evaluation for a member. The use of AMPM Exhibit 320-Q-1, *Application for Voluntary Evaluation* is required



for members determined to have a Serious Mental Illness and is recommended as a tool to review and document informed consent for voluntary evaluation of all other populations, and

- iv. Prior to the delivery of any other procedure or service with known substantial risks or side effects.
5. Written informed consent must be obtained from the member, legal guardian or an appropriate court prior to the member's admission to any medical detoxification, inpatient facility or residential program operated by a behavioral health provider.
6. If informed consent is revoked, treatment must be promptly discontinued, except in cases in which abrupt discontinuation of treatment may pose an imminent risk to the member. In such cases, treatment may be phased out to avoid any harmful effects.
7. Informed Consent for Telemedicine:
 - a. Before a health care provider delivers health care via telemedicine, verbal or written informed consent from the member or their health care decision maker must be obtained. Refer to AMPM Policy 320-I,
 - b. Informed consent may be provided by the behavioral health medical practitioner or registered nurse with at least one year of behavioral health experience. When providing informed consent it must be communicated in a manner that the member and/or legal guardian can understand and comprehend.
 - c. Exceptions to this consent requirement include:
 - i. If the telemedicine interaction does not take place in the physical presence of the member,
 - ii. In an emergency situation in which the member or the member's health care decision maker is unable to give informed consent, or
 - iii. To the transmission of diagnostic images to a health care provider serving as a consultant or the reporting of diagnostic test results by that consultant.

E. SPECIAL REQUIREMENTS FOR CHILDREN

1. In accordance with A.R.S. §36-2272, except as otherwise provided by law or a court order, no person, corporation, association, organization or state-supported institution, or any individual employed by any of these entities, may procure, solicit to perform, arrange for the performance of or perform mental health screening in a nonclinical setting or mental health treatment on a minor without first obtaining consent of a parent or a legal custodian of the minor child. If the parental consent is given through telemedicine, the health professional must verify the parent's identity at the site where the consent is given. This section does not apply when an emergency exists that requires a person to perform mental health screening or provide mental health treatment to prevent serious injury to or save the life of a minor child.



2. Non-Emergency Situations

- a. In cases where the parent is unavailable to provide general or informed consent and the child is being supervised by a caregiver who is not the child's legal guardian (e.g., grandparent) and does not have power of attorney, general and informed consent must be obtained from one of the following:
 - i. Lawfully authorized legal guardian,
 - ii. Foster parent, group home staff or other person with whom the DCS has placed the child, or
 - iii. Government agency authorized by the court.
- b. If someone other than the child's parent intends to provide general and, when applicable, informed consent to treatment, the following documentation must be obtained and filed in the child's comprehensive clinical record:

INDIVIDUAL/ENTITY	DOCUMENTATION
Legal guardian	Copy of court order assigning custody
Relatives	Copy of power of attorney document
Other person/agency	Copy of court order assigning custody
DCS Placements (for children removed from the home by DCS), such as: <ul style="list-style-type: none">• Foster parents• Group home staff• Foster home staff• Relatives• Other person/agency in whose care DCS has placed the child	None required (see note)

NOTE: If behavioral health providers doubt whether the individual bringing the child in for services is a person/agency representative in whose care DCS has placed the child, the provider may ask to review verification, such as documentation given to the individual by DCS indicating that the individual is an authorized DCS placement. If the individual does not have this documentation, then the provider may also contact the child's DCS caseworker to verify the individual's identity.

- c. For any child who has been removed from the home by DCS, the foster parent, group home staff, foster home staff, relative or other person or agency



in whose care the child is currently placed may give consent for the following behavioral health services:

- i. Evaluation and treatment for emergency conditions that are not life threatening, and
 - ii. Routine medical and dental treatment and procedures, including early periodic screening, diagnosis and treatment services, and services by health care providers to relieve pain or treat symptoms of common childhood illnesses or conditions (including behavioral health services and psychotropic medications).
- d. Any minor who has entered into a lawful contract of marriage, whether or not that marriage has been dissolved subsequently, any emancipated youth or any homeless minor may provide general and, when applicable, informed consent to treatment without parental consent (A.R.S. §44-132).
3. Emergency Situations
- a. In emergencies involving a child in need of immediate hospitalization or medical attention, general and, when applicable, informed consent to treatment is not required.
 - b. Any child, 12 years of age or older, who is determined upon diagnosis of a licensed physician, to be under the influence of a dangerous drug or narcotic, not including alcohol, may be considered an emergency situation and can receive behavioral health care as needed for the treatment of the condition without general and, when applicable, informed consent to treatment.

F. SPECIAL REQUIREMENTS FOR CHILDREN

At times, involuntary treatment can be necessary to protect safety and meet needs when a member, due to mental disorder, is unwilling or unable to consent to necessary treatment. In this case, a court order may serve as the legal basis to proceed with treatment. However, capacity to give informed consent is situational, not global, as a member may be willing and able to give informed consent for aspects of treatment even when not able to give general consent. Members should be assessed for capacity to give informed consent for specific treatment and such consent obtained if the member is willing and able, even though the member remains under court order.

G. CONSENT FOR BEHAVIORAL HEALTH SURVEY OR EVALUATION FOR SCHOOL-BASED PREVENTION PROGRAMS

1. Written consent must be obtained from a child's parent or legal guardian for any behavioral health survey, analysis, or evaluation conducted in reference to a school-based prevention program administered by AHCCCS.
2. AMPM Exhibit 320-Q-2, *Substance Abuse Prevention Program and Evaluation Consent* must be used to gain parental consent for evaluation of school based prevention programs. Providers may use an alternative consent form only with the



prior written approval of AHCCCS. The consent must satisfy all of the following requirements:

- a. Contain language that clearly explains the nature of the screening program and when and where the screening will take place,
 - b. Be signed by the child's parent or legal guardian, and
 - c. Provide notice that a copy of the actual survey, analysis, or evaluation questions to be asked of the student is available for inspection upon request by the parent or legal guardian.
3. Completion of AMPM Exhibit 320-Q-2, *Substance Abuse Prevention Program and Evaluation Consent* applies solely to consent for a survey, analysis, or evaluation only, and does not constitute consent for participation in the program itself.