

320-Q - GENERAL AND INFORMED CONSENT

EFFECTIVE DATES: 07/01/16, 01/25/19, 07/01/20, 01/25/23, 10/01/23

APPROVAL DATES: 01/23/19, 04/16/20, 11/03/22, 07/18/23

I. PURPOSE

This Policy applies to ACC, ACC-RBHA, ALTCS E/PD, DCS/CHP (CHP), and DES/DDD (DDD) Contractors; Fee-For-Service (FFS) Programs including: American Indian Health Program (AIHP), DES/DDD Tribal Health Program (DDD THP) Tribal ALTCS, TRBHA, Federal Emergency Services (FES), and all FFS populations. This Policy specifies the requirements for reviewing and obtaining general and informed consent for members receiving physical and/or behavioral health services, as well as consent for any behavioral health survey or evaluation in connection with an AHCCCS school-based prevention program.

This policy is not intended to provide legal advice. It is the professional responsibility of each provider to understand the legal requirements for obtaining consent that apply to the professional's discipline and the particular services to be provided. This policy is intended to provide general guidance, and every provider is encouraged to consult with their own legal counsel for answers to specific questions regarding consent.

II. DEFINITIONS

Refer to the [AHCCCS Contract and Policy Dictionary](#) for common terms found in this Policy including:

ARIZONA DEPARTMENT OF CHILD SAFETY (DCS)	EARLY PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT)	FOSTER CAREGIVER
GENERAL CONSENT	HEALTH CARE DECISION MAKER (HCDM)	HEALTH CARE POWER OF ATTORNEY
INFORMED CONSENT	MEMBER	SERIOUS MENTAL ILLNESS (SMI)

III. POLICY

Each member has the right to participate in decisions regarding their physical and/or behavioral health care, including the right to refuse treatment. It is important for members seeking physical or behavioral health services to be made aware of the service options and alternatives available to them, as well as specific risks and benefits associated with these services to be able to agree to these services. AHCCCS recognizes two primary types of consent for physical and behavioral health services: general consent and informed consent.

1. Unless otherwise provided by law, general consent shall be obtained before any services and/or treatment are provided. Verification of member's enrollment does not require consent.
2. 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 shall obtain consent, as specified in A.R.S. Title 36, Chapter 5.
3. Documenting Consent:
 - a. All evidence of informed consent and general consent to treatment shall be documented in the member's medical record as specified in AMPM Policy 940,
 - b. If the member, or when applicable, the member's Health Care Decision Maker (HCDM), refuses to sign a written or electronic acknowledgment and gives verbal informed consent or general consent instead, the provider shall document in the member's medical record that the information was given, the member or the member's HCDM refused to sign an acknowledgment, and that the member, or when applicable, the member's HCDM, gives consent,
 - c. Informed consent shall be correctly documented in the member's medical record, the form shall include relevant information about the service provided, the provider's name and certification to provide the service and the written or electronic signature of the member or their HCDM, when applicable, and
 - d. For the requirements of documenting consent for mobile dental services, refer to A.R.S. §32-1299.25.

A. GENERAL CONSENT FOR ADULTS

1. Adults are considered individuals aged 18 years and older or emancipated minors as specified in A.R.S. §12-2451 et seq.
 - a. The following specifications apply to both general and informed consent. Unless otherwise provided by law:
 - i. Any member in need of physical or behavioral health services shall give voluntary general consent to treatment and/or services, as demonstrated by the member, or when applicable, the member's HCDM's signature (either written or electronic) on a general consent form, before receiving treatment and/or services,
 - ii. Any member, or when applicable, the member's HCDM after being fully informed of the consequences, benefits, and risks of treatment, has the right to not consent to receive physical or behavioral health services,
 - iii. Any member or, when applicable, the member's HCDM has the right to refuse medications unless specifically required by a court order or in an emergency situation, and
 - iv. A member, or when applicable, the member's HCDM, may revoke informed consent or general consent at any time orally or by submitting a written statement withdrawing the consent.
 - b. To meet the requirements of consent for members with a Serious Mental Illness (SMI) designation, the consent shall comply with the specifications found in A.A.C. R9-21-206.

B. UNIVERSAL REQUIREMENTS FOR INFORMED CONSENT

A higher level of consent may be required for provision of specific behavioral or physical health services or for services provided to vulnerable members. This is not an exhaustive list of those instances but a guide pertaining to some situations in which informed consent may be necessary.

1. Providers of behavioral health services shall gain informed consent in a variety of specific circumstances for members with an SMI designation. These requirements can be found in A.A.C. R9-21-206.01.
2. At times, involuntary treatment, including medications, 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, the 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 their 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.
3. At a minimum, the following treatments and services require informed consent:
 - a. Surgical or other procedures requiring anesthesia services,
 - b. Sterilization as specified in all requirements in 42 CFR 441, Subpart F and AMPM Policy 420,
 - c. Procedures or services with known substantial risks or side effects, or
 - d. As required by Federal or State law.
4. For telehealth services, in addition to the requirements set forth in section of Universal Requirements for informed consent of this Policy, before a provider delivers health care via telehealth, verbal or written informed consent from the member, or when applicable, the member's HCDM, shall be obtained as specified in AMPM Policy 320-I, A.R.S. §36-3602, and A.A.C. R9-21-206.01. Exceptions to this consent requirement include:
 - a. If the telehealth interaction does not take place in the physical presence of the member,
 - b. In an emergency situation in which the member, or when applicable, the member's HCDM is unable to give informed consent, or
 - c. Transmission of diagnostic images to a health care provider serving as a consultant or the reporting of diagnostic test results by that consultant.

C. SUBSTANCE USE AND 42 CFR PART 2 REQUIREMENTS

The federal confidentiality law and regulations protect the privacy of records for members with a Substance Use Disorder (SUD) by prohibiting unauthorized disclosure of member records except in limited circumstances. If a provider treats or diagnoses a member for treatment of SUD and is subject to the Confidentiality of SUD Patient Records (42 CFR Part 2) as a Part 2 Program, that provider shall comply with the terms of their contract with respect to any claim or other information they submit to a health plan that contains patient identifying information.

D. GENERAL AND INFORMED CONSENT FOR CHILDREN

1. Unless otherwise provided by law:
 - a. To the extent legally authorized to do so, the member's HCDM, shall give general consent to treatment, demonstrated by the authorized HCDM's written or electronic signature on a general consent form prior to the delivery of physical or behavioral health services, or refuse treatment.
 - i. Under A.R.S. §8-514.05, in situations where the Department of Child Safety (DCS) and/or foster caregiver are temporarily operating as the HCDM of a child member, consent may only be granted for some services.
 - b. In cases where the member's HCDM is unavailable to provide general or informed consent and the child is being supervised by a caregiver who is not the child's HCDM (e.g., grandparent), a Health Care Power of Attorney (or a document with similar provisions) is necessary to provide general and informed consent.
2. Emergency Situations
 - a. In emergencies involving a child in need of immediate hospitalization or medical attention, general consent and, when applicable, informed consent to treatment is not required, and
 - b. Any child, 12 years of age or older, who is determined upon diagnosis by a licensed physician, to be under the influence of a dangerous drug or narcotic, may be considered an emergency situation and can receive behavioral health care as needed for the treatment of the condition without general consent and when applicable, informed consent to treatment.
3. Emancipated Minor
 - a. In the event the child is an emancipated minor, evidence of an emancipation shall be required, except in emergency situations under A.R.S. §12-2453, and
 - b. 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 consent and, when applicable, informed consent to treatment without parental consent (A.R.S. §44-132).

4. Foster Children
 - a. For any child who has been removed from the home by DCS, the foster caregiver may give general consent for the following:
 - i. Routine physical, behavioral health, and dental treatment and procedures, including but not limited to, 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 (including behavioral health services and psychotropic medications) (A.R.S. §8-514.05(C-D)), and
 - ii. Evaluation and treatment for emergency conditions that are not life threatening.
 - b. A foster caregiver shall not consent to items “i” through “vi”. However, DCS as the HCDM may consent to these items:
 - i. General Anesthesia,
 - ii. Surgery,
 - iii. Testing for the presence of the Human Immunodeficiency Virus (HIV),
 - iv. Termination of behavioral health treatment,
 - v. Blood transfusions, or
 - vi. Abortions.

5. If someone other than the member’s HCDM intends to provide general consent and, when applicable, informed consent to treatment, the following documentation shall be obtained and filed in the member’s medical record:

INDIVIDUAL/ENTITY	DOCUMENTATION
Legal guardian	Copy of court order assigning custody
Relatives	Copy of Health Care Power of Attorney
Other individual/agency	Copy of court order assigning custody or a Health Care Power of Attorney
DCS Placements (for children removed from the home by DCS), such as: <ol style="list-style-type: none"> a. Foster parents, b. Group home staff, c. Foster home staff, d. Relatives, e. Other individual/agency in whose care DCS has placed the child 	Foster Caregiver Resources are available on the AHCCCS website: https://www.azahcccs.gov/members/alreadycovered/memberresources/foster/
<p>Note: If behavioral health providers doubt whether the individual bringing the child in for services is an individual/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 representative. 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.</p>	

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

1. Written consent shall be obtained from a child’s HCDM for any behavioral health survey, analysis, or evaluation conducted in reference to a school-based prevention program administered by AHCCCS. A.R.S. §15-104 requires written consent from a child’s HCDM for any behavioral health survey. All surveys shall comply with parental consent procedures as specified in A.R.S. § 15-117(B).
2. Attachment B shall be used to gain the HCDM’s 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 shall satisfy all 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 HCDM, 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 HCDM.
3. Completion of Attachment B applies solely to consent for a survey, analysis, or evaluation only, and does not constitute consent for participation in the program itself.
4. Analysis, or evaluation conducted in reference to a school-based prevention program.