

## **1004-B CONSENT TO MEDICAL TREATMENT OF MINORS, INCAPACITATED MINORS, OR INCAPACITATED ADULTS**

REVISION DATE: 9/30/2016, 7/3/2015, 5/1/2014

EFFECTIVE DATE: July 31, 1993

REFERENCES: A.R.S. §§ 14-5101, 14-5104, 14-5207, 14-5209, 14-5310, 14-5312, 14-5503, 14-5602 14-5602, 36-2271, 36-3231, 44-133.

### **Consent to Medical Treatment of Minors**

Generally, the parent or guardian of a minor must provide written consent for medical treatment, however, Arizona law allows other individuals to provide consent to medical treatment of a minor when a parent or guardian is unavailable.

- A. A member may consent to the medical treatment of a minor if the member has a properly executed power of attorney from the minor's parent or guardian delegating the power to consent to medical treatment. The delegation of power may be for not more than six (6) months.
- B. If time allows, a temporary guardian may be appointed by the court to consent to medical treatment, but the authority of the temporary guardian is limited to six (6) months. Where no one is available to act as a temporary guardian, a public fiduciary may be appointed by the court.
- C. In cases of emergency, where a parent or guardian cannot be located after reasonably diligent efforts, consent may be given by a person standing *in loco parentis* to the minor. *In loco parentis* means a person who takes the parent's place by undertaking temporary care and control of a minor in the absence of a parent. For example, this might be a person who is a relative, caregiver, or teacher of the minor.
- D. If no one can be located who stands in *in loco parentis* to the minor, a physician can determine that an emergency exists, and that a parent or guardian cannot be located or contacted after reasonable diligent effort. The physician can then perform a surgical procedure on the minor if necessary to treat a serious disease, injury, drug abuse, or to save the life of the minor.
- E. As a general rule, the Division Support Coordinators cannot sign a medical consent for treatment of minors except for children in foster care.

### **Consent to Medical Treatment of Incapacitated Minors**

The general rule is that the parent or guardian of a minor must provide written consent for medical treatment, however, Arizona law allows other individuals to provide consent to medical treatment of a minor when a parent or guardian is unavailable.

- A. A member may consent to the medical treatment of a minor if the member has a properly executed power of attorney from the minor's parent or guardian delegating the power to consent to medical treatment. The delegation of power may be for not more than six (6) months.

- B. If time allows, a temporary guardian may be appointed by the court to consent to medical treatment, but the authority of the temporary guardian is limited to six (6) months. Where no one is available to act as a temporary guardian, a public fiduciary may be appointed by the court.
- C. In cases of emergency, where a parent or guardian cannot be located after reasonably diligent efforts, consent may be given by a person standing in *loco parentis* to the minor. In *loco parentis* means a person who takes the parent's place by undertaking temporary care and control of a minor in the absence of a parent. For example, this might be a person who is a relative, caregiver, or teacher of the minor.
- D. If no one can be located who stands in *loco parentis* to the minor, a physician can determine that an emergency exists, and that a parent or guardian cannot be located or contacted after reasonable diligent effort. The physician can then perform a surgical procedure on the minor if necessary to treat a serious disease, injury, drug abuse, or to save the life of the minor.
- E. As a general rule, the Division Support Coordinators cannot sign a medical consent for treatment of minors except for children in foster care.

### **Consent to Medical Treatment of Incapacitated Adults**

An adult cannot consent to medical treatment if he/she lacks the understanding or capacity to make or communicate responsible decisions. One of the duties of a guardian is to make reasonable efforts to secure medical services for a member of the Division who is his/her ward. If a permanent guardian is unavailable (due to death, resignation, etc.), Arizona law allows other identified individuals to sign the consent for medical treatment of an incapacitated adult.

- A. A.R.S. § 36-3231 defines surrogate decision makers priorities and limitations. In the following order of priority, these individuals may act as a surrogate to sign the consent for medical treatment of an incapacitated adult when no guardian is available.
  - 1. The spouse of the incapacitated adult;
  - 2. An adult child;
  - 3. A parent;
  - 4. A domestic partner (assuming the Member is not married and no other person has a financial responsibility for the individual);
  - 5. A brother or sister;
  - 6. A close friend. A close friend means an adult who has shown special care and concern for the individual, who is familiar with the individual's health care views and desires, and who is willing and able to become involved and act in the individual's best interest; and,
  - 7. A health care provider is required to make a reasonable effort to locate and

follow a health care directive. A health care provider shall also make reasonable efforts to locate the above designated individuals. In order to assist the reasonable efforts of health care providers, the Division Support Coordinators should have available, at all times, a complete list of the names, addresses, and phone numbers of these designated individuals who may be contacted for purposes of signing a consent for medical treatment. A copy of the list may be provided to treating medical personnel, as necessary, to assist them in locating a person authorized to sign the consent for medical treatment if a guardian is unavailable. If none of these persons is available, the appointment of a public fiduciary by the court may be requested.

- B. A guardian has authority to execute the consent. If the guardian has executed a health care power of attorney that authorizes another person to make health care decisions on behalf of the incapacitated person, the person named in that power of attorney has authority to execute the consent. The power of attorney is valid for not more than 6 months.
- C. In an emergency, if time allows, a temporary guardian may be appointed by the court to sign a consent for medical treatment or the court may immediately exercise the power to consent to medical treatment prior to notice and hearing. If no one is available to serve as a temporary guardian, the court may appoint a public fiduciary.
- D. When an immediate, life threatening emergency exists and there is neither time to get to court nor time to contact the individuals who may lawfully sign a consent, an attending physician, after consultation with a second physician, may make the health care treatment decision without a signed consent.
- E. The Division Support Coordinators cannot sign a medical consent for treatment of incapacitated adults.
- F. A surrogate may make decisions about mental health care treatment on behalf of a patient if the patient is found incapable. However, a surrogate who is not the patient's agent or guardian shall not make decisions to admit the patient to a level one behavioral health facility licensed by the department of health services, except as provided in subsection E of this section or section 14-5312.01, 14-5312.02 or 36-3231. Subsection E: If the admitting officer for a mental health care provider has reasonable cause to believe after examination that the patient is incapable as defined in section 36-3231, subsection D and is likely to suffer serious physical harm or serious illness or to inflict serious physical harm on another person without immediate hospitalization, the patient may be admitted for inpatient treatment in a level one behavioral health facility based on informed consent given by any surrogate identified in subsection A of this section. The patient shall be discharged if a petition for court ordered evaluation or for temporary guardianship, requesting authority for the guardian to consent to admission to a level one behavioral health facility has not been filed within forty-eight hours of admission or on the following court day if the forty-eight hours expires on a weekend or holiday. The discharge requirement prescribed in this section does not apply if the patient has given informed consent to voluntary treatment or if a mental health care provider is prohibited from discharging the patient under federal law.