

320-Q GENERAL AND INFORMED CONSENT

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REFERENCES: A.R.S. § 8-514.05(C), A.R.S. § 15-104, A.R.S. § 36-501 et seq, A.R.S. § 36-2272; A.A.C. R9-21-206.01(c); AMPM Policy 310-V; AMPM 310-V, Attachment A; AMPM Exhibit 320-Q, Attachments A and B

PURPOSE

This policy applies to the Administrative Services Subcontractors (AdSS) and outlines the requirements for reviewing and obtaining General and Informed Consent for Division of Developmental Disabilities (Division) Members receiving physical or behavioral health services, as well as consent for any behavioral health survey or evaluation in connection with an AHCCCS school-based prevention program.

DEFINITIONS

1. "Arizona Department of Child Safety" or "DCS" means the department established as specified in A.R.S. § 8-451 to protect children and to perform the following:
 - a. Investigate reports of abuse and neglect.

- b. Assess, promote, and support the safety of a child in a safe and stable family or other appropriate placement in response to allegations of abuse or neglect.
 - c. Work cooperatively with law enforcement regarding reports that include criminal conduct allegations.
 - d. Without compromising child safety, coordinate services to achieve and maintain permanency on behalf of the child, strengthen the family and provide prevention, intervention, and treatment services.
2. “Early and Periodic Screening, Diagnostic and Treatment” or “EPSDT” means a comprehensive child health program of prevention, treatment, correction, and improvement of physical and behavioral health conditions for AHCCCS Members under the age of 21. EPSDT services include screening services, vision services, dental services, hearing services and all other medically necessary mandatory and optional services listed in Federal Law 42 U.S.C. 1396d(a) to correct or ameliorate defects and physical and mental illnesses and conditions identified in an EPSDT

screening whether or not the services are covered under the AHCCCS State Plan. Limitations and exclusions, other than the requirement for medical necessity and cost effectiveness, do not apply to EPSDT services.

3. “Foster Caregiver” means the caregiver providing consent for a child in the Arizona Department of Child Safety (DCS), including a DCS case manager, a step parent, kinship caregiver, group home staff member, foster home staff member, relative or other person or agency in whose care the child is currently placed pursuant to A.R.S. §8-514.05.
4. “General Consent” means 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 the Member or Responsible Person.

5. “Health Care Power of Attorney” means a written document that designates an individual who is allowed to make healthcare decisions for someone. The document shall specify if there are any health care decisions the Power of Attorney is not allowed to make, otherwise it is assumed all decisions are permissible. The document shall include the name and signature of the individual and the name of the Power of Attorney. It shall be dated and explain whether it is in operation always, or only if the individual is incapacitated as specified in A.R.S. §§ 8-514.05, 36-3221 and Mental Health Care Power of Attorney as specified in A.R.S. §§ 8-514.05, 36-3281.
6. “Informed Consent” means an agreement to receive physical or behavioral health services following the presentation of facts including risks, benefits, and possible consequences, necessary to form the basis of a well briefed consent by the Responsible Person with no minimization of known dangers of any procedures by the Provider.

7. “Member” means a person receiving developmental disabilities services from the Division as specified in A.R.S. § 36-551.
8. “Provider” means any individual or entity contracted with the AdSS that is engaged in the delivery of services, or ordering or referring for those services, and is legally authorized to do so by the State.
9. “Responsible Person” means an adult with a developmental disability who is a Member or an applicant for whom no guardian has been appointed, the parent or guardian of a minor with a developmental disability, or the guardian of an adult with a developmental disability.

POLICY

A. CONSENT REQUIREMENTS

1. The AdSS shall require Providers to ensure Members have the right to participate in decisions regarding their physical or behavioral health care, including the right to refuse treatment.
2. The AdSS shall require Providers to inform Members of the following:

- a. Service options;
 - b. Nature or purpose of the procedure;
 - c. Alternatives to the proposed treatment, particularly alternatives offering less risk or other adverse effects; and
 - d. The risks, including any side effects, of the proposed treatment, as well as the risks of not proceeding.
3. The AdSS shall require Providers ensure General Consent is obtained before any services or treatment are provided to Members.
 4. The AdSS shall require Providers treating Members in an emergency are not required to obtain General Consent prior to the provision of emergency services.
 5. The AdSS shall require Providers treating Members pursuant to court order shall obtain consent, as specified in A.R.S. Title 36, Chapter 5.
 6. The AdSS shall require that when Providers are providing information that forms the basis of an Informed Consent decision, the information must be presented in a manner that is

understandable and culturally appropriate to the Responsible Person.

7. The AdSS shall require Providers to inform the Responsible Person that General or Informed Consent may be revoked at any time by giving oral or written notification to the treating Provider and withholding or withdrawal of consent will not prejudice the future provision of:
 - a. Care,
 - b. Support, and
 - c. Services to the Member.

B. DOCUMENTING CONSENT

1. The AdSS shall require Providers ensure all evidence of Informed Consent and General Consent to treatment be documented in the comprehensive clinical record as specified in AMPM 940.
2. The AdSS shall require the Provider documents the following in the Member's medical record if the Member, or when applicable, Responsible Person, refuses to sign a written or electronic

acknowledgment and gives verbal Informed Consent or General Consent instead:

- a. The information was given,
 - b. The Member or Responsible Person refused to sign an acknowledgement, and
 - c. The Member or Responsible Person gives consent.
3. The AdSS shall require the Providers ensure the Informed Consent is correctly documented in the Member's medical record and includes:
- a. Relevant information about the service provided,
 - b. The Provider's name and certification to provide the service, and
 - c. Written or electronic signature of the Member or Responsible Person.

C. GENERAL CONSENT FOR ADULTS

1. The AdSS shall require Providers obtain General Consent from the Responsible Person or a lawfully authorized custodial agency for treatment for Members under the age of 18, demonstrated by

the Responsible Person or a lawfully authorized custodial agency representative's signature on a General Consent form prior to the delivery of behavioral health services.

2. The AdSS shall require Providers to ensure any Member aged 18 years and older or the Responsible Person after being fully informed of the consequences, benefits and risks of treatment, has the right not to consent to receive behavioral health services.
3. The AdSS shall require the Provider to ensure any Member aged 18 years and older or the Responsible Person has the right to refuse medications unless specifically required by a court order or in an emergency situation.
4. The AdSS shall require the Providers to ensure a Member, or when applicable, the Responsible Person, may revoke Informed Consent or General Consent at any time orally or by submitting a written statement withdrawing the consent.

5. The AdSS shall meet the requirements of consent for Members with a Serious Mental Illness (SMI) designation as specified in A.A.C. R9-21-206.

D. UNIVERSAL REQUIREMENTS FOR INFORMED CONSENT

1. The AdSS shall require Providers of behavioral health services gain Informed Consent for Members with an SMI designation as specified in A.A.C. R9-21-206.01.
2. The AdSS shall require the Provider assesses Members 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. The AdSS shall require Providers obtain Informed Consent for the following treatments and services:
 - 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. The AdSS shall require Providers obtain verbal or written Informed Consent from the Member, or when applicable, the Responsible Person is obtained before a Provider delivers health care via telehealth, as specified in AMPM Policy 320-I, A.R.S. §36-3602, and A.A.C. R9-21-206.01. Exemptions 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 Responsible Person 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.
 5. The AdSS shall require Providers ensure Informed Consent is given by the Responsible Person prior to the initiation of any psychotropic medication as referenced in Division Policy 310-V.

E. SUBSTANCE USE AND 42 CFR PART 2 REQUIREMENTS

1. The AdSS shall prohibit unauthorized disclosure of Member records except in limited circumstances per the federal confidentiality law and regulations that protect the privacy of records for Members with a Substance Use Disorder (SUD).
2. The AdSS shall monitor to ensure that Providers 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 when 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.

F. GENERAL AND INFORMED CONSENT FOR CHILDREN

1. The AdSS shall require the Provider to meet the following criteria, unless otherwise provided by law:
 - a. To the extent legally authorized to do so, the Responsible Person gives General Consent to treatment, demonstrated by the Responsible Person's authorized written or

- electronic signature on a General Consent form prior to the delivery of physical or behavioral health services, or refusal of treatment;
- b. In situations where DCS or a Foster Caregiver are temporarily acting as the legal guardian for the Member under the age of 18, consent is only granted for some services as specified in A.R.S. §8-514.05;
 - c. When the Responsible Person is unavailable to provide General or Informed Consent and the Member under the age of 18 is being supervised by a caregiver who is not the legal guardian, a Health Care Power of Attorney is necessary to provide General and Informed Consent.
2. The AdSS shall require Providers to meet the following criteria for Emergency Situations:
- a. In emergencies involving a Member under the age of 18 in need of immediate hospitalization or medical attention, General Consent and, when applicable, Informed Consent to treatment is not required; and

- b. Any Member, 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, 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.
3. The AdSS shall require Providers meet the following criteria for Emancipated Minors:
 - a. In the event the Member under the age of 18 is an emancipated minor, evidence of an emancipation is 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 under A.R.S. §44-132.

4. The AdSS shall require Providers meet the following criteria for foster children:
 - a. For any Member under the age of 18 who has been removed from the home by DCS, the Foster Caregiver may give consent for the following:
 - i. Routine physical, behavioral health, and dental treatment and procedures, including EPSDT services;
 - ii. Services by health care Providers to relieve pain or treat symptoms of common childhood illnesses or conditions including behavioral health services and psychotropic medications as specified in A.R.S. §8-514.05(C-D); and
 - iii. Evaluation and treatment for emergency conditions that are not life threatening.
5. The AdSS shall require Providers only accept consent from DCS for children in foster care for the following services:

- a. General Anesthesia,
 - b. Surgery,
 - c. Testing for the presence of the Human Immunodeficiency Virus (HIV),
 - d. Termination of behavioral health treatment,
 - e. Blood transfusions, or
 - f. Abortions.
6. The AdSS shall require the Provider to reconvene the Child and Family Team (CFT) and discuss the recommended treatment plan if the foster or kinship caregiver disagrees on the behavioral health treatment being recommended.
 7. The AdSS shall require Providers only accept refusal to consent to medically recommended behavioral health treatment from DCS for children in foster care.
 8. The AdSS shall require the Provider to ensure if ~~if~~ someone other than the Member under the age of 18 intends to provide General and, when applicable, Informed Consent to treatment,

the following documentation must be obtained and filed in the comprehensive clinical record:

- a. Legal guardian - copy of court ordered assigning custody;
- b. Relatives - copy of Health Care Power of Attorney document;
- c. Other individual or agency - copy of court ordered assigning custody or a Health Care Power of Attorney; and
- d. DCS Placements for children removed from the home by DCS - refer to the Foster Caregiver Resources.

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

1. The AdSS shall require the Provider to obtain written consent from a Responsible Person for any behavioral health survey, analysis, or evaluation conducted in reference to a school-based prevention program administered by AHCCCS as specified in A.R.S. §15-104 and A.R.S. § 15-117(B).

2. The AdSS shall require the Provider to use AMPM 320-Q, Attachment B are to gain consent for evaluation of school-based prevention programs.
3. The AdSS shall allow Providers to use an alternative consent form only with the prior written approval of the Division and 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 Responsible Person; 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 Responsible Person.
4. The AdSS shall require Providers complete AMPM 320-Q, Attachment B which applies solely to consent for a survey,

analysis, or evaluation only, and does not constitute consent for participation in the program itself.

H. INFORMED CONSENT

1. The AdSS shall require Providers obtain written consent from the Member or Responsible Person for the release of confidential information.
2. The AdSS shall require Providers ensure written consents are available for participation in the following when required:
 - a. Participation in events,
 - b. Medical treatments, and
 - c. Activities.
3. The AdSS shall require Providers ensure the person giving consent has been informed of the following and comprehends that withholding or withdrawal of consent will not prejudice the future provision of care and support and services to the Member:
 - a. Nature,
 - b. Purpose,
 - c. Consequences,

- d. Risks, and
 - e. Benefits of the alternative to the procedure.
4. The AdSS shall require Providers inform that the Member or Responsible Person giving consent comprehends the methods to be used in the following unusual or hazardous treatment procedures:
- a. Experimental research,
 - b. Organ transplantation, and
 - c. Non-therapeutic surgery.
5. The AdSS shall not allow psychosurgery, insulin shock or electroshock treatment or experimental drugs to administered by the Division to any Member, nor allow the consent, license, approval or support of any program or service which uses such treatment or drugs pursuant to A.R.S. § 36-561, subsection A.
6. The AdSS shall require Providers ensure consents be time or event-limited and may be withdrawn at any time by giving written notification to the Member's Support Coordinator.

SUPPLEMENTAL INFORMATION

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 service to be provided.

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.

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.

Vicki Copeland, MD

Signature of Chief Medical Officer

Vicki Copeland

Name

05/13/2025

Date