

**Arizona Department of Health Services  
Division of Behavioral Health Services  
PROVIDER MANUAL**

**Section 3.11**      **General and Informed Consent to Treatment**

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**3.11.1**      **Introduction**

Each behavioral health recipient has the right to participate in decisions regarding his or her behavioral health care, including the right to refuse treatment. It is important for persons 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.

ADHS/DBHS recognizes two primary types of consent: general consent and informed consent.

General consent is a one-time agreement to receive behavioral health services that is usually obtained from a person 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 verified by a behavioral health recipient's or legal guardian's signature.

Informed consent must be obtained before the provision of a specific treatment that has associated risks and benefits. Informed consent is required prior to the provision of the following services and procedures:

- Complementary and Alternative Medicine (CAM)
- Psychotropic medications;
- Electro-convulsive therapy (ECT);
- Use of telemedicine;
- Application for a voluntary evaluation;
- Research;
- Admission for medical detoxification, an inpatient facility or a residential program (for persons determined to have a serious mental illness);
- Procedures or services with known substantial risks or side effects;
- Media access granted by a provider; and filming, photography, video or recording beyond treatment, payment and health care operations. See discussion below and for exceptions.

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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 person 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 person agrees to the specific treatment must be included in the comprehensive clinical record, as well as the person's/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. (See sub section 3.11.7-E.)

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

#### 3.11.2 References

The following citations can serve as additional resources for this content area:

[20 U.S.C. § 1232h\(b\)](#)

[42 C.F.R. § 438.100](#)

[42 C.F.R. § 438.102](#)

[A.R.S. § 8-514.05](#)

[A.R.S. § 14-5104](#)

[A.R.S. § 15-104](#)

[A.R.S. § 36-522](#)

[A.R.S. § 36-501.21](#)

[A.R.S. § 44-132](#)

[R9-20-203](#)

[R9-20-208](#)

[R9-21-206](#)

[R9-21-503](#)

[AHCCCS/ADHS Contract](#)

[ADHS/RBHA Contracts](#)

[ADHS/TRBHA IGAs](#)

[ADHS/DBHS Covered Behavioral Health Services Guide](#)

[Section 3.15, Psychotropic Medications: Prescribing and Monitoring](#)

[Section 4.2, Behavioral Health Medical Record Standards](#)

[Section 8.4, Performance Improvement Project: "Psychotropic Medication \(Poly-pharmacy\)"](#)

[Informed Consent for Psychotropic Medication Treatment Practice Protocol](#)

[Poly-pharmacy Use: Assessment of Appropriateness and Importance of Documentation Practice Protocol](#)

[Psychotropic Medication Use in Children and Adolescents Practice Protocol](#)

[ADHS/DBHS Policy Clarification Memorandum: General and Informed Consent to Treatment for Persons under the Age of 18](#)

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[ADHS/DBHS Policy Clarification Memorandum: Active Consent for Evaluation of Prevention Programs](#)

[Arizona Medical Board's Guidelines for Physicians Who Incorporate or Use Complementary or Alternative Medicine in Their Practice \(Arizona Medical Board\)](#)

#### **3.11.3 Scope**

##### **To whom does this apply?**

All persons enrolled in the behavioral health system.

#### **3.11.4 Did you know?**

ADHS/DBHS has developed a performance improvement project entitled "Psychotropic Medication (Poly-pharmacy)" which mentions the importance of documenting informed consent from persons, parents and legal guardians for all prescribed psychotropic medications.(See [Section 8.4, Performance Improvement Projects](#)).

Behavioral health services delivered through telemedicine require informed consent from the person receiving the service(s). [Appendix B-2](#) of the [ADHS/DBHS Covered Behavioral Health Services Guide](#) includes information regarding behavioral health service codes that can be encountered through the use of telemedicine.

#### **3.11.5 Definitions**

[Behavioral Health Medical Practitioner](#)

[Complementary and Alternative Medicine \(CAM\)](#)

[General Consent](#)

[Informed Consent](#)

[Telemedicine](#)

[Voluntary Evaluation](#)

#### **3.11.6 Objectives**

To describe requirements for behavioral health providers to:

- Ensure a behavioral health recipient's understanding of the risks and benefits of behavioral health services, including the risks associated with declining a specific service or procedure; and
- Document a person's agreement to the delivery of behavioral health treatment services and obtain a person's, or if applicable, a person's guardian, custodian or agent's signature to verify general and, when required, informed consent.

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#### 3.11.7 Procedures

##### 3.11.7-A. General requirements

Any person, aged 18 years and older, in need of behavioral health services must give voluntary general consent to treatment, demonstrated by the person's or legal guardian's signature on a general consent form, before receiving behavioral health services except in an emergency situation or pursuant to a court order.

For persons under the age of 18, the parent, legal guardian, or a lawfully authorized custodial agency 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, except in an emergency situation or pursuant to a court order.

Unless pursuant to a court order or in an emergency situation, any person aged 18 years and older or the person's legal guardian, or in the case of persons 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.

Any person aged 18 years and older or the person's legal guardian, or in the case of persons 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.

All evidence of informed consent and general consent to treatment must be documented in the comprehensive clinical record per [Section 4.2, Behavioral Health Medical Record Standards](#).

NARBHA reviews for evidence of general and informed consent through clinical record review.

##### 3.11.7-B: General consent

Administrative functions associated with a behavioral health recipient's enrollment do not require consent, but before any services are provided, general consent must be obtained. General consent is usually obtained during the intake process (see [Section 3.9, Assessment and Service Planning](#)) and represents a person's, or if under the age of 18, the person's parent, legal guardian or lawfully authorized custodial agency representative's, written agreement to participate in and to receive non-specified (general) behavioral health services. Responsible Agencies utilize their own forms to document general consent to treatment.

##### 3.11.7-C: Informed consent

What Information must be provided to obtain informed consent?

In all cases where informed consent is required by this policy, informed consent must include at a minimum:

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- Behavioral health recipient'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;
- Information about the person's diagnosis and the proposed treatment, including the intended outcome, nature and all available procedures involved in the proposed treatment;
- The risks, including any side effects, of the proposed treatment, as well as the risks of not proceeding;
- The alternatives to the proposed treatment, particularly alternatives offering less risk or other adverse effects;
- That any consent given may be withheld or withdrawn in writing or orally at any time. When this occurs the provider must document the person's choice in the medical record;
- The potential consequences of revoking the informed consent to treatment; and
- A description of any clinical indications that might require suspension or termination of the proposed treatment.

#### Who can give informed consent, and how is it documented:

Persons, or if applicable the client'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 to the proposed treatment. If the informed consent is for psychotropic medication or telemedicine and the person, or if applicable, the person's guardian refuses to sign an acknowledgment and gives verbal informed consent, the medical practitioner shall document in the person's record that the information was given, the client refused to sign an acknowledgment and that the client gives informed consent to use psychotropic medication or telemedicine.

#### Who can provide informed consent and how is it communicated:

When providing information that forms the basis of an informed consent decision for the circumstances identified above, the information must be:

- Presented in a manner that is understandable to the person, parent, legal guardian or an appropriate court; and
- 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 that 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.

#### Psychotropic Medications, Complementary and Alternative Treatment and Telemedicine

Oral or written informed consent must be obtained from the person, parent or legal guardian, unless treatments and procedures are under court order, in the following circumstances:

- Prior to the initiation of any psychotropic medication or initiation of Complementary and Alternative Treatment (CAM) (see [Section 3.15, Psychotropic Medication Prescribing and Monitoring](#)). The use of [PM Form 3.15.1](#) Informed Consent for Medications is recommended as a tool to review and document informed consent for psychotropic

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medications. The use of [PM Form 3.15.2 TMED Informed Consent for Medications \(Telemedicine\)](#) is recommended as a tool to review and document informed consent for psychotropic medications prescribed via telemedicine; and

- Prior to the delivery of behavioral health services through telemedicine (see [PM Form 3.11.2, Informed Consent to Participate in Telemedicine Services](#), and [PM Form 3.11.3, Informed Consent to Record Participate in Telemedicine Services](#)).

#### Electro-Convulsive Therapy (ECT), research activities, voluntary evaluation and procedures or services with known substantial risks or side effects

Written informed consent must be obtained from the person, parent or legal guardian, unless treatments and procedures are under court order, in the following circumstances:

- Before the provision of electro-convulsive therapy (ECT);
- Prior to the involvement of the person in research activities;
- Prior to the provision of a voluntary evaluation for a person. The use of [ADHS/DBHS Form MH-103](#) is required for persons 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
- Prior to the delivery of any other procedure or service with known substantial risks or side effects.

#### Filming, Photography, Video, Recording, and Media Access.

- Privacy rules (HIPAA, 45 CFR 164.500 et seq) require that persons be adequately informed of the use of photography, recording, filming and other identifiable images by the provider and the methods to ensure protection of privacy. For facilities where photography, recording or filming is routinely used for treatment, payment and health care operations, consent can be included in the general consent for treatment and in the notice of privacy practices. See AHIMA (American Health Information Management Association) for sample. JCAHO organizations will also want to refer to JCAHO RI.2.50 for informed consent prior to photographing, filming or videotaping;
- A HIPAA compliant release and authorization is required prior to disclosing individually identifiable health information, including quotation or comments from the person, films, images, recordings, or photographs of the person, for use or disclosure beyond purposes of treatment, payment or healthcare operations. Specific authorization for disclosure of photographs/images is recommended prior to releasing photographs/images from a medical record, even when photographs are routinely taken and used as part of medical record documentation; and
- Prior to permitting media access to the person, including identifying the person, interviews, audio and video recordings, still photography, digital images, or written material, and for publicity, research or teaching uses, the provider must obtain informed consent from the person, parent or legal guardian. (Consult legal or behavioral health guidance for advice on which form to use and/or tailoring forms to the specific circumstance.).

#### Additional Provisions

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Written informed consent must be obtained from the person, legal guardian or an appropriate court prior to the person’s admission to any medical detoxification, inpatient facility or residential program operated by a behavioral health provider.

Revocation of Informed Consent

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 person. In such cases, treatment may be phased out to avoid any harmful effects.

**3.11.7-D: Special requirements for children**

Non-emergency Situations

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:

- Lawfully authorized legal guardian;
- Foster parent, group home staff or other person with whom the Department of Economic Security/Child Protective Services (DES/CPS) has placed the child; or
- Government agency authorized by the court.

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:

<b>Individual/Entity</b>	<b>Documentation</b>
Legal guardian	Copy of court order assigning custody
Relatives	Copy of power of attorney document
Other person/agency	Copy of court order assigning custody
DES/CPS Placements (for children removed from the home by DES/CPS), such as: <ul style="list-style-type: none"> <li>▪ Foster parents</li> <li>▪ Group home staff</li> <li>▪ Foster home staff</li> <li>▪ Relatives</li> <li>▪ Other person/agency in whose care DES/CPS has placed the child</li> </ul>	None required*

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

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For any child who has been removed from the home by Child Protective Services (CPS), 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:

- Evaluation and treatment for emergency conditions that are not life threatening; and
- 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).

Any minor who has entered into a lawful contract of marriage, whether or not that marriage has been dissolved subsequently, or any homeless minor may provide general and, when applicable, informed consent to treatment without parental consent ([A.R.S. § 44-132](#)).

#### Emergency Situations

In emergency situations involving a child in need of immediate hospitalization or medical attention, general and, when applicable, informed consent to treatment is not required.

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.

#### **3.11.7-E: Consent for behavioral health survey or evaluation for school-based prevention programs**

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 ADHS/DBHS.

The use of [PM Form 3.11.1 Substance Abuse Prevention Program and Evaluation Consent](#) must be used in order 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 ADHS/DBHS. The written consent must satisfy all of the following requirements:

1. Contain language that clearly explains the nature of the screening program and when and where the screening will take place;
2. Be signed by the child's parent or legal guardian; and
3. 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.

Completion of [PM Form 3.11.1 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.