

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

- 3.11.1** **Introduction**
- 3.11.2** **Terms**
- 3.11.3** **Procedures**
- 3.11.3-A.** **General Requirements**
- 3.11.3-B.** **General Consent**
- 3.11.3-C.** **Informed Consent**
- 3.11.3-D.** **Special requirements for children**
- 3.11.3-E.** **Informed Consent during Involuntary Treatment**
- 3.11.4** **References**

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.

The Arizona Department of Health Services/Division of Behavioral Health 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); and
- Procedures or services with known substantial risks or side effects;

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.

Arizona Department of Health Services
Division of Behavioral Health Services
PROVIDER MANUAL
Magellan Health Services of Arizona Edition

Documentation that the required information was given and that the person agrees or does not agree 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 subsection 3.11.3-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 Terms

Definitions for terms are located online at <http://www.azdhs.gov/bhs/definitions/index.php> and <http://www.magellanofaz.com/for-providers/provider-manual/definitions.aspx>. The following terms are referenced in this section:

Behavioral Health Medical Practitioner

An individual licensed and authorized by law to use and prescribe medication and devices, as defined in A.R.S. § 32-1901, and who is one of the following with at least one year of full-time behavioral health work experience:

- a. A physician;
- b. A physician assistant; or
- c. A nurse practitioner

Complementary and Alternative Medicine (CAM)

A broad range of healing philosophies (schools of thought), approaches and therapies that mainstream Western (conventional) medicine does not commonly use, accept, study, understand, or make available. A few of the many CAM practices include the use of acupuncture, Ayurveda, herbs, homeopathy, naturopathy, therapeutic massage, and traditional Oriental medicine to promote well-being or treat health conditions.

General Consent

A voluntary written agreement to receive behavioral health services.

Informed Consent

A voluntary agreement, oral or written, except when explicitly required to be written, following presentation of all facts necessary to form the basis of an intelligent consent by the person or guardian prior to the provision of specified behavioral health services.

Telemedicine

The practice of healthcare delivery, diagnosis, consultation, treatment and transfer of medical data through interactive, audio, video or data communications that occur in the physical

Arizona Department of Health Services
Division of Behavioral Health Services
PROVIDER MANUAL
Magellan Health Services of Arizona Edition

presence of the patient, including audio or video communications sent to a health care provider for diagnostic or treatment consultation.

Voluntary Evaluation

An inpatient or outpatient evaluation service that is provided after a determination that a person will voluntarily receive an evaluation and is unlikely to present a danger to self or others until the voluntary evaluation is completed. A voluntary evaluation is invoked after the filing of a pre-petition screening but before the filing of a court ordered evaluation and requires the informed consent of the person.

3.11.3 Procedures

3.11.3-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.

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.

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.

Providers treating persons in an emergency situation are not required to obtain general consent prior to the provision of emergency services. Providers treating persons pursuant to court order must obtain consent, as applicable, in accordance with [A.R.S. Title 36, Chapter 5](#).

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](#).

[General Consent to Treatment \(Form 3.11.3\)](#)

[Informed Consent for Psychotropic Medication Treatment \(PM Form 3.15.1\)](#)

[Informed Consent for Electroconvulsive Therapy \(ECT\) \(Form 3.11.2\)](#)

Arizona Department of Health Services
Division of Behavioral Health Services
PROVIDER MANUAL
Magellan Health Services of Arizona Edition

3.11.3-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 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. [General Consent to Treatment Form](#)

3.11.3-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:

- 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. 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 person, must be established. 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 and culturally appropriate to the person, parent, legal guardian or an appropriate court; and

Arizona Department of Health Services
Division of Behavioral Health Services
PROVIDER MANUAL
Magellan Health Services of Arizona Edition

- 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

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 person, parent or legal guardian, it must be documented in written fashion. Informed consent is required 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](#) is recommended as a tool to review and document informed consent for psychotropic medications; and
- Prior to the delivery of behavioral health services through telemedicine.

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 (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.

Additional Provisions

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.

3.11.3-D. Special requirements for children

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

Arizona Department of Health Services
Division of Behavioral Health Services
PROVIDER MANUAL
Magellan Health Services of Arizona Edition

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.

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:

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

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

DES/CPS Placements (for children removed from the home by DES/CPS), such as: Foster parents Group home staff Foster home staff Relatives Other person/agency in whose care DES/CPS has placed the child	None required*
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For any child who has been removed from the home by 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, emancipated youth 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.

3.11.3-E. Informed Consent during Involuntary Treatment

At times, involuntary treatment can be necessary to protect safety and meet needs when a person, due to mental disorder, is unwilling or unable to consent to necessary treatment. In this

* 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.

Arizona Department of Health Services
Division of Behavioral Health Services
PROVIDER MANUAL
Magellan Health Services of Arizona Edition

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 an individual may be willing and able to give informed consent for aspects of treatment even when not able to give general consent. Individuals should be assessed for capacity to give informed consent for specific treatment and such consent obtained if the individual is willing and able, even though the individual remains under court order.

3.11.3-F 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.

Provider Manual Form 3.11.1, 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 ADHS/DBHS. The consent must satisfy all of the following requirements:

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

3.11.4 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. § 36-2272](#)

[A.R.S. § 44-132](#)

[R9-20-203](#)

[R9-20-208](#)

[R9-21-206](#)

[R9-21-503](#)

**Arizona Department of Health Services
Division of Behavioral Health Services
PROVIDER MANUAL
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[AHCCCS/ADHS Contract](#)

[ADHS/RBHA Contracts](#)

[ADHS/TRBHA IGAs](#)

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

[ADHS/DBHS Policy and Procedure Manual CO 1.3, Use of Telemedicine](#)

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

[Section 3.18, Pre-Petition Screening, Court-Ordered Evaluation, and Court-Ordered Treatment](#)

[Section 4.1 Disclosure of Behavioral Health Information](#)

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

[ADHS/DBHS Practice Protocol, Comprehensive Assessment and Treatment for Substance Use](#)

[Disorders in Children and Adolescents \(Formerly known as Practice Improvement Protocol #](#)

[10\)](#)

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