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|  | **DIVISION OF CHILD AND FAMILY SERVICES Children’s Mental Health** |
| **SUBJECT:** | **DCFS CONSENT TO TREATMENT POLICY** |
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| **REFERENCES:** | UNITED STATES CODE (USC)  20 USC § 1232h(b)  5 U.S.C. 301;  42 U.S.C. 289 (a).  **CODE OF FEDERAL REGULATIONS (CFSR)**  42 CFR § 431  42 CFR § 438.100  42 CFR § 438.102  45 CFR § Part 46 (401 through 409) Subpart D  NEVADA REVISED STATUTES (NRS)  NRS 432B, et al  NRS 433.484  NRS 433.554    NRS 433A.200  NRS 433A.715  NRS 433B.200  NRS 439, et al |

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|  | **DCFS Children’s Mental Health Policy**  A - 2 Security Camera System Technology, Residential Programs, March 2013  CRR - 1 Seclusion and Restraint Policy, March 2013  CRR - 2 DCFS Client Rights Policy, March 2014  CRR - 4 Confidentiality Policy, January 2015  SP-1 DCFS Identification of Children for Residential Services, March 2013  SP- 3 DCFS Incident Reporting Policy, July 2013  2.30 DCFS Reporting Suspected Abuse and Neglect of Clients Policy, April 2011  SP – 6 Medication Administration and Management for DCFS Residential Program Policy, April 2014  10.40 Child and Family Team Policy, April 2008  SP – 7 Intake Policy, January 2015  MEDICAID SERVICES MANUAL (MSM)  MSM 100: Medicaid Program  MSM 400: **Mental Health and Alcohol/Substance Abuse Services**  MSM 2500: **Case Management**  MSM 3600: **Program Integrity**  **THE JOINT COMMISION STANDARDS**  **Additional References:**  Center for Ethics Education, Fordham University; “Consent Procedures for Children and Youth and Child Assent Information”, 2013.  American Academy of Pediatrics Task Force on Pediatric Research, Informed Consent, and Medical Ethics. *Pediatrics.* 1976; 57:414-416.  Arizona Department of Health Services, Division of Behavioral Health Services. *Provider Manual.* July, 2009 |
| **ATTACHMENTS:** | **Attachment A:** DCFS General Consent Form  **Attachment B:** DCFS Informed Consent Form  **Attachment C:** DCFS/CCDFS Consent for Psychotropic Medications  **Attachment D:** WCDSS Consent for Psychotropic Medications  **Attachment E:** Notice of Privacy Practices |

1. **POLICY**

The Division of Child and Family Services (DCFS) shall promote and embrace the full participation of clients and their legally responsible person(s) in making decisions about their mental health care, including the right to refuse treatment. Therefore, it is the policy of DCFS that we shall ensure each client and legally responsible person is afforded the right to provide informed consent, as applicable and to the extent allowed by law, during the course of the client’s mental health treatment.

1. **PURPOSE**

DCFS clients and legally responsible person(s) have a right to receive sufficient information with which to enable them to make informed decisions with regard to consenting or not consenting to tests, evaluations, and/or treatments which may be recommended by DCFS staff and afforded in DCFS children’s mental health programs.

This policy describes the requirements for obtaining both general consent and informed consent in order to:

1. Ensure the client’s understanding of the risks and benefits of DCFS mental health services, including the risks associated with refusing a specific DCFS service or procedure; and,
2. Document a client’s agreement to the delivery of mental health treatment services and obtain the client’s and legally responsible person’s signature to verify general and, when required, informed consent
   1. **PROCEDURES AND PRACTICE GUIDELINES**
3. Introduction

Best practice in System of Care delivery models support that clients and/or their legally responsible person have a right to decide, in consultation with the mental health professional and other identified child and family team members, which proposed interventions or treatments they will or will not accept. Children, youth and families have a right to know about their health, to know about available diagnostic and treatment options as well as the risks and probable benefits, and to choose among those alternatives.

DCFS recognizes that decision-making power or authority lies with the client and family/legally responsible person at all times, with the exception of emergencies. DCFS also recognizes that families, who are typically the legally responsible person, are the experts in what works and what does not work for their family.

1. General Consent and Informed Consent

Obtaining consent is a process which includes both DCFS staff and the legally responsible person. As much as possible, the client should be included in the decision-making process and should only be excluded from the decision-making process for compelling reasons, such as being too young to understand or participate. The legal authority to provide consent rests solely with the legally responsible person. When consent is required for psychiatric services offered to a client in the custody of a public child welfare agency, the Person Legally Responsible for the Psychiatric Care of the child (i.e., the PLR) is understood to be the legally responsible person.

* 1. General Consent

General consent is a one-time agreement to receive DCFS children’s mental health services that is obtained from the legally responsible person during the intake process or admission. It is always obtained prior to the provision of any services. General consent must be verified by the legally responsible person’s signature on the DCFS General Consent Form (Attachment A). General consent is not informed consent but rather a general permission to provide services and admission to the DCFS program until such time as the treatment plan is developed and implemented.

The DCFS General Consent Form (Attachment A) is valid for one year. The Planning and Evaluation Unit (PEU) shall be responsible for tracking this data and informing the mental health professional at least 30 days prior to the expiration of the general consent.

General consent is not required for emergency situations, as defined in Section IIII., G. of this policy.

* 1. Informed Consent

Informed Consent (Attachment B) must be obtained before the provision of a specific treatment or intervention. The mental health professional who is proposing to provide the specific treatment or refer for the specific treatment is required to obtain the informed consent.

Informed consent is required prior to the implementation of a treatment plan/care coordination plan/rehabilitation plan/comprehensive treatment plan (hereinafter referred to as “plan”) or when a plan is revised and/or updated pursuant to NRS 433.484. Each time a service or treatment is offered, changed, referred or provided, informed consent must be obtained from the legally responsible person (Attachment B – DCFS Informed Consent Form).

Informed consent is also always required prior to the provision of the following services and procedures:

1. Complementary and Alternative Medicine (CAM)
2. Psychotropic medications;
3. Electro-convulsive therapy (ECT);
4. Use of telemedicine;
5. Application for a voluntary evaluation;
6. Research;
7. Procedures or services with known substantial risks or side effects;
8. Media access granted by a DCFS; and filming, photography, video or recording beyond treatment, payment and health care operations.

Informed consent is not required for emergency situations, as defined in Section IIII., G. of this policy.

1. Who can give consent and how is it documented?

The legally responsible person, except in the case of a legally emancipated minor or a mature minor under certain circumstances, shall give consent for treatment services by signing and dating the DCFS General Consent (Attachment A) at intake/admission.

At the time the plan is developed and implemented and each time it is changed or revised, the legally responsible person shall sign the DCFS Informed

Consent Form (Attachment B).

If the informed consent is for psychiatric services, including psychotropic medication administration, and the client is in the custody of a public child welfare agency (i.e., DCFS, WCDSS, or CCDFS) the Medical Director is responsible for ensuring the person legally responsible for the psychiatric care of the child (PLR) signs the informed consent for all psychiatric services, including psychotropic medication (Attachment C, Attachment D).

All information provided in the process of obtaining consent must be provided in the primary language of the legally responsible person and/or PLR. DCFS staff shall ensure the provision of interpreter services whenever necessary.

1. Required Information to Obtain Informed Consent

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

* 1. The legally responsible person’s right to participate in decisions regarding the client’s care, including the right to refuse treatment, and to express preferences about future treatment decisions;
  2. Information about the client’s diagnosis and the proposed treatment, including the intended outcome, nature and all available procedures involved in the proposed treatment;
  3. The risks, including any side effects, of the proposed treatment, as well as the risks of not proceeding;
  4. The alternatives to the proposed treatment, particularly alternatives offering less risk or other adverse effects and the nature of those alternative risks and adverse effects;
  5. That any consent given may be withheld or withdrawn in writing at any time. When this occurs the mental health professional or DCFS staff must document the legally responsible person’s choice in the client record;
  6. The potential consequences of revoking the informed consent to treatment; and,
  7. A description of any clinical indications that might require suspension or termination of the proposed treatment.
     1. Photography, Recording, Filming, Media Access and Other Identifiable Images

Images and likenesses of clients gained through photography, filming, recording and media access are considered protected health information (PHI) under HIPAA. HIPAA privacy rules (45 CFR 164.500 et seq) require that legally responsible persons and/or clients be adequately informed of the use of photography, recording, filming and other identifiable images made by DCFS 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 is included in the DCFS General Consent Form (Attachment A) and in the Notice of Privacy Practices (NPP) (Attachment E). Any DCFS programs accredited by Joint Commission (JC) will also conform to standards for informed consent prior to photographing, filming or videotaping.

1. Revocation of Consent

If either general or informed consent is revoked, DCFS treatment and applicable services must be promptly discontinued, except in cases in which abrupt discontinuation of treatment may pose an imminent risk to the client. Such a potential risk shall be evaluated and affirmed by the DCFS Medical Director or his/her designee who shall document his/her findings and recommendations in the client record. In such cases, treatment may be phased out to avoid any harmful effects.

1. Special requirements for Obtaining Consent

In cases where the legally responsible person is unavailable to provide general or informed consent and the child is being supervised by a caregiver who is not the child’s legally responsible person (e.g., grandparents, neighbors, fictive kin, etc.) and does not have power of attorney, general and informed consent must be obtained from the legally responsible person or a court of competent jurisdiction or a public child welfare agency authorized to provide consent. It is the responsibility of the caregiver to obtain and provide confirmation of his/her right to consent to treatment.

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| **Someone *other than* the parent providing consent** | **Documentation required by DCFS** |
| Legally Responsible Person (other than parent) | Copy of Court Order awarding legal custody |
| PLR | Copy of Court Order awarding PLR status |
| Relatives | Copy of Court Order awarding custody or Copy of Executed Medical Power of Attorney |
| Other person/agency | Copy of Court awarding custody |

In the event DCFS staff has reason to believe or suspect the child is without the legal protections offered by a legally responsible person or if DCFS staff has reason to suspect medical neglect as a result of there being no legally responsible person to consent to mental health or medical treatment, DCFS staff is required to make a Child Protective Services (CPS) report to the CPS Hotline at the public child welfare agency having jurisdiction to report the child as abandoned and/or suffering from medical neglect. Under no circumstances are CPS referrals to be made to any person or entity other than the CPS Hotline at the public child welfare agency having jurisdiction.

1. **DEFINITIONS** (*Please refer to DCFS Glossary of Terms dated 01-17-14 for all universal definitions*)
2. Complementary and Alternative Medicine (CAM)

Complementary and alternative medicine (CAM) is the term for medical products and practices that are not part of standard medical care. "Complementary medicine" refers to treatments that are used with standard treatment. "Alternative medicine" refers to treatments that are used instead of standard treatment (National Cancer Institute, 2014).

1. Confidentiality

Confidentiality refers to the practice standards used by DCFS staff to ensure a client’s privacy about information and disclosures they share in the course of treatment, including therapy, and out of home care.

Pertains to all safeguards required to protect all information which concerns a client and any other information which may not be disclosed by any party pursuant to federal and state law…including by not limited to NRS 422 and 42 CFR 431 (MSM 100).

1. Expressed Consent

Means the client or legally responsible person has specifically consented, in writing, to the treatment or intervention. As a practice issue, expressed consent cannot occur without first obtaining and documenting informed consent.

1. General Consent

A one-time agency and client executed agreement to provide and receive services.

1. Informed Consent

An agreement or permission that is obtained from the legally responsible person before the provision of a specific treatment that has associated risks and benefits. Informed consent is required prior to the provision of certain services and procedures, including when care plans are updated and/or revised, such as complementary and alternative medicine, psychotropic medications, electro-convulsive therapy, use of telemedicine, application for a voluntary evaluation, research, procedures or services with known substantial risks or side effects, media access and filming, photography, video or recording beyond treatment, etc. Informed consent is obtained for every such procedure which has associated risks and benefits and it is provided by the Mental Health Professional who is either providing the procedure/service or who is recommending the procedure/service.

1. Mature Minor

Someone who has not reached adulthood (as defined by state law) but who, according to state or federal law, may be treated as an adult for certain purposes (e.g., consenting to treatment for venereal disease, drug abuse, or family planning services, etc.).