

1 **320-U PRE-PETITION SCREENING, COURT-ORDERED EVALUATION,**
2 **AND COURT-ORDERED TREATMENT**
3

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7 REFERENCES: A.R.S. Title 36, Chapter 5; A.R.S 12-136; A.A.C. Title 9,
8 Chapter 21, Article 5; ~~Division Medical Policies 320-O, 320-P, 320-Q;~~
9 ~~Division Operations Policies 423, 437~~
10

11 **PURPOSE**

12 This policy applies to ~~services delivered to the~~ Division of Developmental
13 Disabilities (Division) and Administrative Services Subcontractors (AdSS)
14 serving Division Members who may be involved in Pre-Petition Screening,
15 Court-Ordered Evaluation (COE), and Court-Ordered Treatment (COT)
16 proceedings. ~~members of the Tribal Program~~ American Indian Health Plan
17 ~~(AIHP) and by~~

18 The purpose of this policy is to outline the duties and responsibilities
19 applicable when necessary to initiate COE and COT proceedings, as specified
20 in A.R.S. § 36-501 et seq., to ensure the safety of a Member or the safety of
21 others when, due to a Member's mental disorder, that Member is unable or
22 unwilling to participate in treatment. ~~establishing guidelines, as applicable,~~
23 ~~for the provision and coordination of behavioral health services regarding the~~
24 ~~pre-petition screening, court ordered evaluation, and court ordered~~

25 ~~treatment process. The Division is responsible for collaborating with Tribal~~
26 ~~entities and behavioral health providers to ensure access to services for~~
27 ~~THPAIHP members.~~

28 Further, this policy outlines the Division's requirements for oversight and
29 monitoring of duties delegated to the Division's AdSS as specified in contract
30 and AdSS Medical Policy 320-U.

31 **DEFINITIONS**

32 1. "Admitting Officer" means a psychiatrist or other physician or
33 psychiatric and mental health practitioner with experience in
34 performing psychiatric examinations who has been designated as an
35 Admitting Officer of the Evaluation Agency by the person in charge of
36 the Evaluation Agency.

37 ~~1.2.~~ "Court-Ordered Evaluation" means means evaluation ordered by the
38 court under A.R.S. Title 36, Chapter 5. (A.A.C R9-21-101). ~~The COE~~
39 ~~process as specified in this Policy.~~

40 ~~2.3.~~ "Court-Ordered Treatment" means treatment ordered by the court
41 under A.R.S. Title 36, Chapter 5(A.A.C R9-21-101). ~~The COT process~~
42 ~~as specified in this policy.~~

43 ~~3.4.~~ "Evaluation Agency" means a health care agency licensed by the
44 Arizona Department of Health Services (ADHS) that has been

45 approved, pursuant to A.R.S. Chapter 5 Title 36, ~~to provide~~providing
46 those services required of such agency.

47 5. "Health Care Decision Maker" means an individual who is authorized to
48 make health care treatment decisions for the patient. As applicable to
49 the situation, this may include a parent of an unemancipated minor or
50 a person lawfully authorized to make health care treatment decisions
51 pursuant to A.R.S. §§ Title 14, Chapter 5, article 2 or 3; or A.R.S. §§
52 8-514.05, 36-3221, 36-3231 or 36-3281.

53 6. "Member" means the same as "Client" as defined in A.R.S. § 36-551.

54 7. "Mental Disorder" means a substantial disorder of the individual's
55 emotional processes, thought, cognition, or memory, ~~as defined in~~
56 A.R.S. §36-501.

57 4.8. "Peace Officer" means sheriffs of counties, constables, marshals and
58 policemen of cities and towns.

59 5.9. "Pre-Petition Screening" means the review of each application
60 requesting court-ordered evaluation, including an investigation of facts
61 alleged in ~~the~~such application, an interview with each applicant, and,
62 ~~an interview,~~ if possible, an interview with the ~~proposed~~individual
63 ~~subject to the screening in order. The purpose of the interview with~~
64 ~~the proposed member is~~ to assess the problem, explain the
65 application, and when indicated, attempt to persuade the ~~proposed~~

66 [individualmember](#) to receive, on a voluntary basis, evaluation or other
67 services as specified in A.R.S. § 36-501.

68 ~~6.10.~~ "Screening Agency" means a health care agency licensed by ADHS and
69 that provides those services required of such agency pursuant to

70 ~~A.R.S. Chapter 5 Title 36~~ (A.R.S. § 36-501).

71 ~~7.11.~~ "Voluntary Evaluation" means ~~For purposes of this Policy,~~ an inpatient
72 or outpatient professional multidisciplinary service based on analysis of
73 data describing the individual's ~~person's~~ identity, biography, and
74 medical, psychological and social conditions, that is provided after a
75 determination that an individual willingly agrees to consent to receive
76 the service and is unlikely to present a danger to self or others until
77 the service is completed. A voluntary evaluation is invoked after the
78 filing of a Pre-Petition Screening but before the filing of a court-
79 ordered evaluation and requires the informed consent of the individual.
80 Additionally, the individual must be able to ~~demonstrate~~ [manifest the](#)
81 capacity to give informed consent.

82 **POLICY**

83 **A. GENERAL OVERVIEW REQUIREMENTS**

84 1. This Policy outlines the processes and responsibilities applicable
85 when it is necessary to initiate [Court-Ordered Evaluation \(COE\)](#)

86 [and Court-Ordered Treatment \(COT\) ~~pCOE/COT~~](#) proceedings

87 detailed in A.R.S. §§ 36-501 et seq. This process is used to

88 ensure the safety of an individual or the safety of others when,

89 due to an individual's mental disorder, that individual is unable

90 or unwilling to participate in treatment.

91 2. The Division's responsibilities may vary for Pre-Petition
92 Screening and COE based on contractual arrangements between
93 ~~the Division, AHCCCS, and individual Arizona~~ [TRBHA](#) and the
94 counties.

95 ~~The Division must ensure shall require ~~p~~Providers responsible for~~
96 ~~the COE/COT process adhere to requirements of this Policy.~~

97 3. An electronic signature, in lieu of a wet signature, is an
98 acceptable method for obtaining consent and acknowledgement.

99 4. When necessary, [as specified](#) in ~~accordance with~~ A.A.C. R9-21-
100 501 and A.R.S. § 36-520, any responsible [individual](#) ~~person~~ may
101 submit an application [requesting an agency conduct a Pre-](#)
102 [Petition Screening](#) when ~~a Member another individual~~ is alleged
103 to be, as a result of a mental disorder:

104 . Danger to Self (DTS),

- 105 a. Danger to Others (DTO),
- 106 b. Persistently or Acutely Disabled (PAD), ~~or~~
- 107 ~~c. Gravelly Disabled (GD), or~~
- 108 ~~d. Is unwilling or unable to undergo a voluntary evaluation.~~
- 109 ~~Information about the tribal court process and the procedures under~~
110 ~~state law for recognizing and enforcing a tribal court order are found~~
111 ~~in this Policy.~~
- 112 5. If a Member who is the subject of the court-ordered commitment
113 proceeding is subject to the jurisdiction of a tribal nation, rather
114 than the ~~State~~state, the laws of the tribal nation ~~shall~~will govern
115 the commitment process.
- 116 6. Pre-Petition Screening includes an examination of the Member's
117 mental status and/or other relevant circumstances by a
118 designated Screening Agency.
- 119 7. Upon review of the application, examination of the Member, and
120 review of other pertinent information, a licensed Screening
121 Agency's medical director or designee will determine if the
122 ~~Member~~individual meets criteria for DTS, DTO, PAD, or GD as a
123 result of a mental disorder.
- 124 8. If the pre-petition application screening indicates that the
125 ~~Member~~individual may be DTS, DTO, PAD, or GD, the Screening

- 126 Agency will file an Application for Emergency Admission for
127 Evaluation, as specified in A.R.S. § 36-524, for a COE.
- 128 9. ~~Based on the immediate safety of the individual or others, an~~
129 ~~emergency admission for evaluation may be necessary.~~ The
130 Screening Agency, upon receipt of the application, shall must
131 determine the need for continued evaluation and immediately
132 act as prescribed, not to exceed 48 hours of the filing of the
133 application excluding weekends and holidays as specified in
134 A.R.S. § 36-520.
- 135 10. Based on the COE, the Evaluating Agency may petition for COT
136 on behalf of the Member individual. The subsequent hearing is
137 the determination as to whether the Member will be court
138 ordered to treatment as specified in A.R.S. § 36-539. COT may
139 include a combination of inpatient and outpatient treatment.
140 Inpatient treatment days are limited contingent on the Member's
141 designation as DTS, DTO, PAD, or GD; ~~Individuals identified as:~~
- 142 a. DTS may be ordered up to 90 inpatient days per year.
143 b. DTO and PAD may be ordered up to 180 inpatient days per
144 year, and
145 c. GD may be ordered up to 365 inpatient days per year.

- 146 11. If the ~~Courteourt~~ orders a combination of inpatient and
147 outpatient treatment, a mental health agency will be identified
148 by the ~~Courteourt~~ to supervise the Member's outpatient
149 treatment. Before the ~~Courteourt~~ can order a mental health
150 agency to supervise the Member's outpatient treatment, the
151 agency medical director ~~shall~~~~must~~ agree and accept
152 responsibility by submitting a written treatment plan to the
153 court.
- 154 12. At every stage of the Pre-Petition Screening, COE, and COT
155 process, an ~~Memberindividual~~ who ~~demonstrates~~~~manifests~~ the
156 capacity to give informed consent pursuant to A.R.S. § 36-518
157 will be provided an opportunity to change ~~their~~~~the~~ status to
158 "voluntary" ~~for evaluation purposes~~. Under voluntary status, the
159 ~~Memberindividual~~ will voluntarily receive an evaluation and ~~may~~
160 ~~notis unlikely to~~ present as ~~DTS or DTODTO/ or DTS~~ during the
161 time pending the voluntary evaluation.
- 162 13. Entities responsible for COE ~~shall~~~~must~~ ensure the use of the
163 ~~following~~ forms prescribed in 9 A.A.C. 21, Article 5, for
164 individuals determined to have a Serious Mental Illness (SMI)
165 ~~designation. The forms and~~ may also ~~be~~ used ~~for individuals~~

166 who do not have an SMI designation, as applicable. these forms
167 for all other populations.

168 14. Although the AdSS Division may not be contracted for providing
169 Pre-Petition Screening services, emergency/crisis petition filing,
170 and COE services in all counties, the Division must require the
171 AdSS provide policies and procedures for providers outlining
172 these processes.

173 14.15. American Indian members may be subject to the COE and COT
174 proceedings or may be subject to a tribal court order, depending
175 on where the behavioral health crisis occurs. For more
176 information, refer to Section I of this Policy. AHCCCS requires
177 fee for service providers to ensure clinical coordination with the
178 appropriate entities including but not limited to American Indian
179 tribes, TRBHAs, and tribal courts.

180 **B. LICENSING REQUIREMENTS**

181 Behavioral health providers who are licensed by the ADHS/Division of
182 Public Health Licensing as a COE or COT agency shall must adhere to
183 ADHS licensing requirements.

184 **C. PRE-PETITION SCREENING**

185 1. Unless otherwise indicated in an Intergovernmental Agreement

186 (IGA) with a county, Arizona counties are responsible for
187 managing, providing, and paying for Pre-Petition Screening and
188 COEs, and are required to coordinate provision of behavioral
189 health services with the Member's [health plan contractor](#) or [fee-](#)
190 [for-serviceFFS](#) program responsible for the provision of
191 behavioral health services. ~~For additional information, visit the~~
192 ~~AHCCCS website, <https://www.azahcccs.gov>.~~

193 1. During the Pre-Petition Screening, the designated Screening
194 Agency ~~shall~~[must](#) offer assistance, if [requested by the Member,](#)
195 [Member's responsible person, or identified as a need by the](#)
196 [Member's clinical team, needed,](#) to the applicant in the
197 preparation of the application for involuntary COE. Any
198 behavioral health provider that receives an application for COE
199 ~~(AMPM Attachment A, COE Deliverable Template)~~ [shall](#)[must](#)
200 immediately refer the application for Pre-Petition Screening and
201 petitioning for COE to the ~~Division~~ designated Pre-Petition
202 Screening agency or county facility.

203 ~~The Division shall [require the AdSS to develop policies that](#)~~
204 ~~[outline its role and responsibility related to the treatment of](#)~~
205 ~~[individuals who are unable or unwilling to consent to treatment.](#)~~

206 ~~The policy must conform to the processes provided in A.R.S. §§~~

207 ~~36-501 et seq, and at a minimum address:~~

208 a. ~~Involuntary evaluation,~~

209 b. ~~Petitioning process,~~

210 c. ~~COE/COT process, including tracking the status of Court~~
211 ~~orders,~~

212 d. ~~Execution of Court orders, and~~

213 e.2. ~~Judicial Review.~~

214 **D. RESPONSIBILITY FOR PROVIDING PRE-PETITION SCREENING**

215 1. When the ~~AdSS are are Division is~~ responsible, through an IGA
216 with a county, for Pre-Petition Screening and petitioning for COE,
217 the ~~AdSS Division shall~~ must refer the applicant to a
218 subcontracted Pre-Petition Screening Agency.

219 2. The Pre-Petition Screening Agency is responsible for themust
220 follow ing these procedures:

221 a. Provide Pre-Petition Screening within 48 hours excluding
222 weekends and holidays.

223 b. Prepare a report of opinions and conclusions. If Pre-
224 Petition Screening was not possible, the Screening Agency

- 225 [shall](#)~~must~~ report [the](#) reasons why the screening was not
226 possible, including opinions and conclusions of staff
227 members who attempted to conduct the Pre-Petition
228 Screening.
- 229 c. Ensure the agency's medical director or designee review of
230 the report if the report indicates that there is not
231 reasonable cause to support the allegations for COE by the
232 applicant.
- 233 d. Prepare a petition for COE and file the petition if the
234 Screening Agency determines that, due to a mental
235 disorder, there is reasonable cause to believe that the
236 Member meets the criteria [as specified](#)~~set forth~~ in [A.R.S. §](#)
237 [36-521\(D\)](#).
- 238 e. Ensure completion of [the](#) Application for Emergency
239 Admission for Evaluation and take all reasonable steps to
240 procure hospitalization on an emergency basis if it
241 determines that there is reasonable cause to believe that
242 the Member, without immediate hospitalization, is likely to
243 [be a DTS, DTO, is PAD or GD](#)~~harm themselves or others~~.
- 244 f. Contact the county attorney prior to filing a petition if it
245 alleges that a Member is [in need of or may be in need of a](#)

246 Health Care Decision Maker~~DTO~~.

247 E. EMERGENT/CRISIS PETITION FILING~~Emergent/Crisis Petition~~
248 Filing Process for Contractors Contracted as Evaluating
249 Agencies

- 250 1. When it is determined that there is reasonable cause to believe
251 that the Member being screened is in a condition that without
252 immediate hospitalization is likely to be a DTS, DTO, is PAD or is
253 GD, harm themselves or others, an emergent application
254 shall~~must~~ be filed. The petition shall~~must~~ be filed at the
255 appropriate agency as determined by the AdSS~~Division~~.
- 256 2. When~~Pursuant to A.R.S. § 36-501 et seq., when~~ considering the
257 emergent petition process, the following shall apply:
- 258 a. A~~Only~~ applications indicating DTS, and/or~~DTO, PAD, or~~
259 GD can be filed on an emergent basis.
- 260 b. The applicant shall have knowledge of the behavior(s)
261 displayed by the Member that is a DTS, DTO, is PAD or
262 is GD, danger to self or others consistent with
263 requirements specified in A.R.S. § 36-524.
- 264 c. The applicant shall complete an Application for Emergency
265 Admission for Evaluation.

266 d. The applicant and all witnesses identified in the application
267 as direct observers of the dangerous behavior(s) may be
268 called to testify in court if the application results in a
269 petition for COE.

270 3. Immediately upon receipt of an Application for Emergency
271 Admission for Evaluation and all corroborating documentation
272 necessary to successfully complete a determination, the
273 Admitting ~~Officer~~ ~~physician~~ will determine if enough evidence
274 exists for an emergency admission for evaluation.

275 4. If there is enough evidence to support the emergency admission
276 for evaluation, the appropriate facility is not currently operating
277 at or above its allowable member capacity, and the Member does
278 not require medical care, then facility staff will immediately
279 coordinate with local law enforcement or other transportation
280 service contracted by the county, city, town, or tribal community
281 for the detention of the Member and transportation to the
282 appropriate facility.

283 5. If the Member requires a medical facility, or if appropriate
284 placement cannot be arranged within the 48-hour timeframe
285 identified above relating to an Application for Emergency

- 286 Admission for Evaluation, the medical director of the
287 agency~~Division~~ or, for FFS Members, the FFS provider's medical
288 director, will be consulted to arrange for a review of the case.
- 289 6. The Application for Emergency Admission for Evaluation may be
290 discussed by telephone with the facility admitting physician, the
291 referring physician, and a peace officer or other third-party
292 transportation provider contracted by the county, city or town in
293 which the evaluation is provided to facilitate transportation of the
294 Member to be evaluated.
- 295 7. A Member proposed for emergency admission for evaluation may
296 be apprehended and transported to the facility under the
297 authority of law enforcement or other transportation
298 entity~~transportation entity~~ contracted by the county, city, or
299 town using the Application for Emergency Admission for
300 Evaluation, contracted by the county, city, or town community
301 using the Application for Emergency Admission for Evaluation,
302 as specified in ~~accordance with~~ A.R.S. §§ 36-524(D) and 36-
303 525(A), which outlines criteria for a peace officer or other
304 county, city, or town contracted transportation provider to
305 apprehend and transport an individual based upon either a

- 306 telephonic or written application for emergency admission.
- 307 8. An emergency admission for evaluation begins at the time the
308 Member is detained involuntarily by the Admitting
309 ~~Officer~~physician who determines if there is reasonable cause to
310 believe that the Member, as a result of a mental disorder, is a
311 DTS, ~~or~~ DTO, PAD, or GD, and that during the time necessary to
312 complete pre-screening procedures the Member is likely, without
313 immediate hospitalization, to suffer harm or cause harm to
314 others.
- 315 9. During the emergency admission period of up to 23 hours the
316 following occurs:
- 317 a. The Member's ability to consent to voluntary treatment is
318 assessed;
- 319 ~~b.~~ The Member shall~~must~~ be offered and receive treatment,
320 to which the Member may consent; otherwise, the only
321 treatment administered involuntarily will be for the safety
322 of the Member or others; and, including i.e.,
323 seclusion/ and restraint or pharmacological restraint in
324 accordance with A.R.S. § 36-513, and
325 e.b. When applicable, the psychiatrist will complete the

326 voluntary evaluation within 24 hours of a determination
327 that the Member no longer requires an involuntary
328 evaluation.

329 **F. COURT-ORDERED EVALUATION**

330 1. If, after review of the petition for evaluation, the Member is
331 reasonably believed to be DTS, DTO, PAD, or GD, as a result of a
332 mental disorder, the ~~Courteourt~~ can issue an order directing the
333 Member to submit to an evaluation at a designated time and
334 place. The order ~~shall~~must specify whether the evaluation will
335 take place on an inpatient or ~~an~~ outpatient basis.

336 The ~~Courteourt~~ may also order that, if the Member does not or
337 cannot submit, the Member be taken into custody by a peace
338 officer or other county, city, town or tribal community contracted
339 transportation and delivered to an Evaluation Agency. ~~For further~~
340 ~~requirements surrounding COEs on an inpatient basis, refer to~~
341 ~~A.R.S. § 36-529.~~

342 2. If the Pre-Petition Screening indicates that the Member may be
343 DTS, DTO, PAD, or GD, the Screening Agency will file a petition
344 for COE.

- 345 3. When, through an IGA with a county, the designated agency is
346 contracted to provide COE, they shall ~~The designated agency~~
347 ~~When, through an IGA with a county, the health plan~~ Division is
348 agency contracted to provide COE, they shall ~~must~~ adhere to the
349 following requirements when conducting COEs:
- 350 a. A Member who is reasonably believed to be a DTS, DTO,
351 PAD, or GD, as a result of a mental disorder, disorder,
352 shall ~~must~~ have a petition for COE prepared, signed, and
353 filed by the medical director of the agency or designee.
- 354 b. A Member admitted to an Evaluation Agency shall ~~must~~
355 receive an evaluation as soon as possible and receive care
356 and treatment as required by their condition for the full
357 period they are hospitalized.
- 358 c. A clinical record shall ~~must~~ be kept for each Member that
359 details all medical and psychiatric evaluations and all care
360 and treatment received by the Member.
- 361 d. An inpatient evaluation must be completed within a 72-
362 hour period. Holidays and weekends do not count in this
363 evaluation-hour period. A ~~The~~ An Member being evaluated
364 on an inpatient basis shall ~~must~~ be released within this 72-

365 hour period if within 72 hours, not including weekends or
366 court holidays, if further evaluation is determined by the
367 Admitting Officer or provider as evaluation is not
368 appropriate, unless the Member agrees to a voluntary
369 evaluation or additional care that ensures their safety,
370 makes application for further care and treatment on a
371 voluntary basis, or unless an application for COT has been
372 filed, and

373 e. An On a daily basis, at minimum, an evaluation shall must
374 be conducted on a daily basis throughout the COE process
375 for the purpose of determining if a Member desires to be
376 switched to a voluntary status or qualifies for discharge.

377 e.f. For FFS members undergoing COE, the FFS provider
378 (Evaluation Agency) is responsible for all aspects of care
379 coordination with the appropriate entities, including the
380 Screening Agency conducting the Pre-Petition Screening, if
381 applicable, treatment agency, if applicable, and AHCCCS
382 DFSM.

383 For information on individuals being released from COE, and on
384 COE dispositions, refer to A.R.S. § 36-531.

385 **F. VOLUNTARY EVALUATION**

- 386 1. ~~B~~The Division shall require behavioral health providers who
387 receive an application for Voluntary Evaluation ~~shall~~
388 immediately refer the Member to a facility responsible for
389 voluntary evaluations. The voluntary evaluation may be on an
390 inpatient or outpatient basis. Voluntary evaluation may be
391 carried out only if chosen by the Member during the course of a
392 Pre-Petition Screening after an application for evaluation has
393 been made.
- 394 2. When a Member consents to voluntary evaluation, the evaluating
395 agency shall follow these procedures:
- 396 a. Obtain the Member's informed consent prior to the
397 evaluation,
 - 398 b. Provide an evaluation at a scheduled time and place within
399 five business days of the notice that the Member will
400 voluntarily receive an evaluation, and
 - 401 c. For inpatient voluntary evaluations, complete evaluations
402 in less than 72 hours, not including weekends or court
403 holidays, of receiving notice that the Member will
404 voluntarily receive an evaluation.

- 405 3. ~~BThe Division shall~~must require behavioral health providers that
406 conduct voluntary evaluation services ~~shall~~te include the
407 following in the ~~comprehensive~~ clinical record as specified in ~~(see~~
408 Division Medical Policy 940:
- 409 a. A copy of the application for Voluntary Evaluation,
 - 410 b. A completed informed consent form, and
 - 411 c. A written statement of the Member's present medical
412 condition.

413 **G. COURT-ORDERED TREATMENT FOLLOWING CIVIL PROCEEDINGS**

- 414 1. Based on the COE, the evaluating agency may petition for COT.
415 ~~As specified in A.R.S. §§ 36-501 et seq., the Division shall~~must
416 ~~require~~B behavioral health providers ~~shall~~te follow these
417 procedures:
- 418 a. Upon determination that a person is DTS, DTO, PAD, or
419 GD, and if no alternatives to COT exist, the medical
420 director of the agency that provided the COE shall file a
421 petition with the court for COT.
 - 422 b. Any behavioral health provider filing a petition for COT
423 shall~~must~~ do so in consultation with the Member's clinical
424 team prior to filing the petition.

- 425 c. The petition shall be accompanied by the affidavits of the
426 two physicians who conducted the examinations during
427 the evaluation period and by the affidavit of the applicant
428 for the evaluation.
- 429 d. In cases of DTS, DTO, PAD, or GD, a copy of the petition
430 shall~~must~~ be mailed to the public fiduciary in the county of
431 the Member's residence, or the county in which the
432 Member was found before evaluation, and to any
433 individual~~person~~ nominated as Health Care Decision
434 Makerguardian/ ~~or legal representative~~ if one is either
435 requested or identified as being necessary as part of the
436 COE or COT process. In addition, a copy of all petitions
437 shall~~must~~ be mailed to the superintendent of the Arizona
438 State Hospital.
- 439 2. For information regarding court options for treatment, release,
440 discharge, annual reviews, or COT violations, refer to A.R.S. §
441 36-540 et seq. For requirements relating to Judicial Review, refer
442 tosee A.R.S. §§ 36-546 and ~~36~~—546.01.
- 443 3. For COT relating to driving under the influence, domestic
444 violence, or other criminal offenses, refer to Division Operations

445 Policy 423.

446 **H. INDIVIDUALS WHO ARE TITLE XIX/XXI ELIGIBLE OR**
447 **DETERMINED TO HAVE A SERIOUS MENTAL ILLNESS**

448 When a Member ~~individual~~ referred for COT is Title XIX/XXI eligible
449 and/or determined or suspected to meet the criteria for an ~~an~~ ~~have an~~
450 SMI designation, the behavioral health provider shall ~~Division must~~:

451 a. Conduct an evaluation to determine if the Member meets
452 the criteria for ~~has an~~ an SMI designation, as specified in
453 ~~accordance with the~~ Division Medical Policy 320-P, and
454 conduct a behavioral health assessment to identify the
455 Member's service needs, in conjunction with the Member's
456 clinical team, as specified in ~~the~~ Division Medical Policy
457 320-O.

458 b. Provide necessary COT and other covered behavioral
459 health services in accordance with the Member's needs, as
460 determined by the Member's clinical team, family
461 members, and other involved parties.

462 c. Perform, either directly or by contract, all treatment
463 required by A.R.S. Title 36, Chapter 5, Article 5, and 9
464 A.A.C. 21, Article 5.

465 **I. COURT-ORDERED TREATMENT FOR AMERICAN INDIAN TRIBAL**
466 **MEMBERS IN ARIZONA**

- 467 1. Arizona tribes are sovereign nations and tribal courts have
468 jurisdiction over their members residing on reservation. Tribal
469 court jurisdiction, however, does not extend to tribal members
470 residing off reservation or to State issued COE or COT due to a
471 behavioral health crisis occurring off reservation.
- 472 2. Several Arizona tribes have adopted procedures in their tribal
473 codes, which are similar to Arizona law for COE and COT,
474 however, each tribe has its own laws that must be followed for
475 the tribal court process.
- 476 3. Additional information on the history of the tribal court process,
477 legal documents and forms, a diagram of payment structures, as
478 well as contact information for the tribes, tribal liaisons, TRBHAs,
479 and tribal court representatives can be found on the AHCCCS
480 website under Tribal Court Procedures for Involuntary
481 Commitment.
- 482 . Tribal (COT) for American Indian tribal members in Arizona
483 is initiated by the tribal behavioral health staff, the tribal
484 prosecutor or other individuals as authorized under tribal

485 laws. In accordance with tribal codes, tribal members who
486 may be a danger to themselves or others, and in need of
487 treatment due to a mental disorder, are evaluated and
488 recommendations are provided to the tribal judge for a
489 determination of whether tribal COT is necessary. Tribal
490 court orders specify the type of treatment needed.

491 b. Since many tribes do not have treatment facilities on
492 reservation to provide the treatment ordered by the tribal
493 court, tribes may need to secure treatment off reservation
494 for tribal members. To secure COT off reservation, the
495 court order must be “recognized” or transferred to the
496 jurisdiction of the [Statestate](#).

497 c. The process for establishing a tribal court order for
498 treatment under the jurisdiction of the [Statestate](#) is a
499 process of recognition or “enforcement” of the tribal court
500 order (see A.R.S. § 12-136). Once this process occurs, the
501 [Statestate](#) recognized tribal court order is enforceable off
502 reservation. The [Statestate](#) recognition process is not a
503 rehearing of the facts or findings of the tribal court.

504 Treatment facilities must provide treatment as identified by
505 the tribe and recognized by the [Statestate](#). AMPM 320-U

\$06 Attachment B (~~A.R.S. §12-136 Flow Chart~~) is a flow chart
507 demonstrating the communication between tribal and state
508 entities in accordance with A.R.S § 12-136.

509 d. Contractors and providers shall comply with notice
510 requirements as specified in A.R.S. § 12-136(B) and A.R.S.
511 § 36-541.01.

\$12 e. Contractors and providers shall comply with ~~Statestate~~
513 recognized tribal court orders for Title XIX/XXI and Non-
\$14 Title XIX individuals with an SMI ~~designation~~ ~~termination~~.
515 f. When tribal providers are also involved in the care and
516 treatment of court-ordered tribal members, Contractors
\$17 and providers ~~shall~~ ~~must~~ involve tribal providers to ensure
518 the coordination and continuity of care of the members for
\$19 the duration of COT, and when members are transitioned
\$20 to services on the reservation, as applicable. ~~The~~
\$21 Contractors ~~are~~ ~~is~~ encouraged to enter into agreements
522 with tribes to address behavioral health needs and improve
523 the coordination of care for tribal members.

\$24 g. The enforcement process ~~shall~~ ~~must~~ run concurrently with
525 the tribal staff's initiation of the tribal court-ordered
526 process in an effort to communicate and ensure clinical

527 coordination with the appropriate Contractor. This clinical
528 communication and coordination with the Contractor is
529 necessary to assure continuity of care and to avoid delays
530 in admission to an appropriate facility for treatment upon
531 state/county court recognition of the tribal court order.

532 The Arizona State Hospital ~~shall~~must be the last placement
533 alternative considered and used in this process.

534 h. The Court ~~shall~~must consider all available and appropriate
535 alternatives for the treatment and care of the member.

536 The ~~Courteourt~~ ~~shall~~must order the least restrictive
537 treatment alternative available as specified in A.R.S. § 36-
538 540(B). The Contractor is expected to partner with
539 American Indian tribes, TRBHAs, and tribal courts in their
540 geographic service areas to collaborate in finding
541 appropriate treatment settings for American Indians in
542 need of behavioral health services.

543 i. Due to the options American Indians have regarding their
544 health care, including behavioral health services, AHCCCS
545 eligible American Indians may be covered and/or
546 coordinate behavioral health services through an AIHP,
547 TRBHA, ~~AIHP (Division for~~ AIHP DDD ALTCS

548 ~~members), AHCCCS contractor,~~ Tribal ALTCS, IHS, or 638
549 tribal provider.

550 **J. REPORTING REQUIREMENTS**

551 COE and COT processes, tracking, and reporting shall align with ~~and~~
552 ~~adhere to~~ the requirements of A.R.S. Title 36, Chapter 5, and A.A.C.
553 Title 9, Chapter 21, including ~~the use of requirements for~~ COE and COT
554 forms as ~~prescribed delineated~~ in A.A.C. Title 9, Chapter 21, Article 5:

- 555 a. Exhibit A - Application for Involuntary Evaluation
- 556 b. Exhibit B - Petition for Court-Ordered Evaluation
- 557 c. Exhibit C - Application for Emergency Admission for
558 Evaluation
- 559 d. Exhibit D - Application for Voluntary Evaluation
- 560 e. Exhibit E - Affidavit
- 561 f. Exhibit F - Petition for Court-Ordered Treatment
- 562 g. Exhibit G - Demand for Notice by Relative or Victim
- 563 h. Exhibit H - Petition for Notice
- 564 i. Exhibit I - Application for Voluntary Treatment

565 **K. REIMBURSEMENT**

- 566 1. Reimbursement for court-ordered screening and evaluation
567 services are the responsibility of the county pursuant to A.R.S. §

568 36-545. ~~For additional information regarding behavioral health~~
569 ~~services refer to 9 A.A.C. 22.~~

570 2. Refer to Division Operations Policy 437 ~~for~~
571 ~~information clarification~~ regarding financial responsibility for the
572 provision of medically necessary behavioral health services
573 rendered after the completion of a COE.

574 ~~Title XIX/XXI funds must not be used to reimburse COE services.~~

575 3. For COEs that do not require an inpatient stay, any medically
576 necessary physical health services provided to the Member
577 individual ~~who is an TAIHP ALTCS DDD Member~~ shall be the
578 responsibility of the Member's health plan ~~Division~~.

579 **L. DIVISION OVERSIGHT AND MONITORING OF AdSS**

580 1. The Division shall provide oversight and monitoring of
581 compliance by Administrative Services Subcontractors serving
582 Members enrolled in a Division subcontracted health plan with
583 respect to any contractual delegation of duties specific to this
584 policy and as specified in AdSS Medical Policy 320-U using one or
585 more of the following methods:

586 a. Complete annual operational reviews of compliance.

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- b. Analyze deliverable reports or other data as required.
- c. Conduct oversight meetings with the AdSS for the purpose of reviewing compliance and addressing any access to care concerns or other quality of care concerns.
- d. Review data submitted by the AdSS demonstrating ongoing compliance monitoring of their network and provider agencies.

Signature of Chief Medical Officer:

Draft Policy for Public Comment