



## **SPECIAL TRIBAL CONSULTATION TELECONFERENCE**

December 14, 2016

9:30 a.m. –10:30 a.m. (Arizona Time)

Conference Bridge: 1-877-820-7831, Participant Passcode: 778195#

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### **NOTIFICATION TO TRIBES:**

Good Afternoon Tribal Stakeholders,

This is to inform you that a special AHCCCS Tribal Consultation teleconference is scheduled to discuss the Tribal Court Ordered Involuntary Treatment legislative proposal.

#### Background:

AHCCCS recently received approval from the Governor's office to move forward with our one priority for the upcoming legislative session. As such, AHCCCS is seeking to address issues related to tribal court-ordered treatment. The proposed legislation is attached for your review.

When tribal members are ordered by tribal court to undergo involuntary treatment, and there are no inpatient facilities available on the reservation, the member must be transported off the reservation in order to fulfill the terms of the tribal court order. However, the identified problem is that due to potential legal consequences, behavioral health providers will not admit the member until the tribal court order has been fully domesticated, or recognized, within Superior Court. Because the recognition process can take upwards of 48 hours, it has been brought to our attention that tribal members are in many instances being placed in tribal jail until the recognition process has been fulfilled by the Superior Court. By holding the member in such a setting and being unable to offer definitive behavioral health treatment, the member's condition is likely to deteriorate further.

#### Legislation:

The AHCCCS proposal seeks to resolve this problem by stating a behavioral health provider may admit the tribal member pending a Superior Court ruling on recognition and enforcement, as well as offering immunity from any civil liability for complying with the terms of the tribal court order. By effectuating this change, we will be better positioned to ensure the timely provision of behavioral health services, reduce unnecessary incarceration, increase efficiencies and improve processes within state government.

As the upcoming legislative session is quickly approaching, we have scheduled a tribal consultation conference call on **December 14<sup>th</sup> from 9:30 a.m.-10:30 a.m.** (Arizona time) to discuss the proposal. We appreciate all who can participate and are looking forward to our continued partnership in order to resolve this important issue. To participate in the conference call please dial: **1-877-820-7831** and enter participant passcode, **778195#**. The draft agenda is attached.

Please place this important date on your calendars. We look forward to your participation.

Cordially,

*Bonnie Talakte*

Tribal Relations Liaison  
Office of Intergovernmental Affairs, AHCCCS  
MD-4100, 801 E. Jefferson St., Phoenix, AZ 85034  
602-417-4610 (Office)  
602-256-6756 (Fax)  
[Bonnie.talakte@azahcccs.gov](mailto:Bonnie.talakte@azahcccs.gov)

## **AGENDA**



### **SPECIAL TRIBAL CONSULTATION TELECONFERENCE**

With Tribal Leaders, Tribal Members, Indian Health Services, Tribal Health Programs Operated Under P.L. 93-638 and Urban Indian Health Programs

Date: Wednesday, December 14, 2016

Time: 9:30 a.m. – 10:30 a.m. (Phoenix Time)

Conference Call-In: **1-877-820-7831** **Participant Passcode: 778195#**

TOPIC	LEAD
9:30a.m. - Welcome & Introductions	Bonnie Talakte, <i>Tribal Relations Liaison</i>
<u>Legislative Proposal:</u>  In the upcoming 2017 Arizona legislation session, AHCCCS will move forward with a legislative proposal to address issues related to tribal court-ordered treatment. This tribal consultation will review the proposal, discuss issues related to court ordered treatment and seeks input from tribal stakeholders.	Christopher Vinyard, <i>AHCCCS Chief Legislative Liaison</i>
10:30 a.m. - Adjourn	

All meeting materials and presentations can be found at the AHCCCS Tribal Consultation website:

<https://www.azahcccs.gov/AmericanIndians/TribalConsultation/meetings.html>

## ATTENDEES:

Tribes	<p><u>Fort Mohave</u>: Shan Lewis</p> <p><u>Navajo Nation</u>: Gen Holona</p> <p><u>Pascua Yaqui Tribe</u>: Reuben Howard, Ben Casey, Michael Valenzuela, Melissa Acosta</p> <p><u>Salt River Pima Maricopa Indian Community</u>: Barry Brown</p> <p><u>San Carlos Apache Tribe</u>: Vickie Began, Carol Lewis</p> <p><u>Yavapai Apache Nation</u>: John Rodgers</p>
I/T/Us	<p><u>Inscription House Health Center</u>: Denny McCorkle</p> <p><u>Native Americans for Community Action</u>: Curtis Randolph</p> <p><u>Native Connections</u></p> <p><u>Winslow Indian Health Care Center</u>: Charlene Salibye</p>
Other	<p><u>Arizona Advisory Council on Indian Health Care</u>: Kim Russell</p> <p><u>Arizona Department of Health Services</u>: Michael Allison</p> <p><u>Chandler Counseling Center</u>: Alice Arviso, Rod Taylor, Mary Jean Barrera, Allen Ben</p> <p><u>Chinle Counseling Center</u></p> <p><u>Inter-Tribal Council of Arizona</u>: Alida Montiel</p> <p><u>Mercy Maricopa Integrated Care</u>: Faron Jack</p> <p><u>Supreme Court</u>: David Whitney, Amy Love</p>
AHCCCS Representatives	<p>Bonnie Talakte, Beth Kohler, Christopher Vinyard, Mark Carroll, Ben Runkle, Kyle Sawyer, Elizabeth Carpio</p>

## MEETING SUMMARY

TOPICS	SUMMARY
<p><b>Legislative Proposal: Tribal Court Ordered Involuntary Treatment</b></p>	<p><b>Chris Vinyard, Chief Legislative for AHCCCS</b>, provided information on one (1) legislative proposal, <i>Tribal Court Ordered Involuntary Treatment</i>, which will be submitted during the legislative session starting in January 2017.</p> <p><b>Background:</b> Over the past year AHCCCS has had discussions with both tribes and providers regarding the involuntary commitment process that starts at the tribal level and flows to the State Superior Court in order to recognize the tribal court order before AHCCCS can get tribal members admitted to in-patient facilities so the facilities can comply with the order. In the discussions, AHCCCS is finding issue with the timeline between the times the</p>

	<p>tribal court order is issued and when Superior Court recognizes the order before the patient can be admitted. AHCCCS is working through the language of the proposal so as to allow patients to be admitted expeditiously. In the proposal, AHCCCS has deleted language that references the state mental hospital as many tribal members are not going to the Arizona State Hospital (ASH) but are utilizing other in-patient facilities. Language is included in Subsection C of the proposal that will allow a mental health treatment facility to admit the patient so long as the Tribe is able to file the court order by the next business day the court is open. In Section D, language is included which is subject of ongoing discussion with the potential bill sponsor. The ultimate goal is to insure that tribal members are receiving timely behavioral health services, reducing unnecessary incarceration and increasing efficiency at the state level. AHCCCS is aware there are questions surrounding timeframes in the admitting process and when tribal orders need to be filed. AHCCCS would like to extend the dialogue to tribes through tribal consultation to see how they are affected by the current process. The bill is the first positive step in addressing this issue to ensure that AHCCCS tribal members receive services. As a clarifying point, this is strictly a court ordered treatment and not the evaluation process.</p>
<p><b>Questions/Answers/ Comments/Responses</b></p>	<p><b>Q:</b> “Did I understand that this is court ordered treatment only and not court ordered evaluation?”</p> <p><b>A:</b> “Yes, that is correct. Once the evaluation process is fulfilled and the member is not willing to undergo voluntary treatment the tribal court orders them to submit to some form of in-patient/out patient or combination treatment. The issue that has been brought to AHCCCS’ attention is that not every tribe has the facilities available to admit the patient. Because of that, they have to leave the reservation to be admitted to an in-patient facility. Because of sovereignty, and with the court recognition of the state process, the court order has to be filed with Superior Court and recognized before the patient can be admitted. On the provider side, because of the sovereignty aspect, there is concern that until the court order is recognized they are opening themselves up to potential to lawsuit for kidnapping or wrongful imprisonment. Providers are being cautious to avoid unnecessary legal issues associated with the court order. Because it’s taking up to 48 hours to recognize the court order, and tribes don’t have a facility to place the members, jail is the only alternative. Without receiving behavioral health services while patients are waiting for the recognition process to be fulfilled they continue to spiral downward.”</p> <p><b>C:</b> “One of the challenges we have is getting the court ordered evaluation.”</p> <p><b>R:</b> “We understand that is a concern and something the system needs to address. This bill does not address that. This bill only talks about the provider off tribal lands being able to recognize court ordered treatment pending recognition in Superior Court. We understand the court ordered evaluation process needs some further discussion.”</p>

**Q:** “Do I understand you are taking out reference to Arizona State Hospital (ASH) in the bill and taking it out of Behavioral Health Services and adding AHCCCS? Is that accurate?”

**A:** “The reason we removed the Department of Health Services (DHS) out of Subsection B and added in AHCCCS is because the Division of Behavioral Health Services (DBHS) has merged with AHCCCS and so arranging follow-up transportation and outpatient treatment now falls under AHCCCS’ jurisdiction and not the DHS. That language is separate and apart from ASH. ASH will still be a mental health treatment facility under this order. We just struck the word State to make it clear that a member can access any mental health treatment facility and not just ASH. It broadens the facilities that the member could go to beyond ASH. It’s not meant to exclude ASH it’s meant to include more facilities.”

**Q:** “I don’t see reference to the word State in the proposal, can you give me a little more direction.”

**A:** “As we work with Representative Eddie Farnsworth, the potential sponsor of the bill, the language is evolving. We do have the general framework we are moving forward with. In Section C there have been minor changes. Moving forward there may be changes following this discussion. We have eliminated the word State to make it clear that it’s any mental health treatment facility not just ASH that members can use.”

**Q:** “I have a question related to the last question. You’re striking the need for an IGA between the tribe and Department of Health? ASH is the only institution that’s left under the Department of Health. Are you saying that ASH does not want to enter into IGA’s with tribes?”

**A:** “No. That sentence you’re referring to in Subsection B doesn’t have to do with inpatient treatment where we changed it from DHS to AHCCCS. That IGA is speaking to the tribes and AHCCCS entering into agreements that once the person is discharged from the mental health facility they are getting appropriate care and transportation back to the tribal court’s jurisdiction. That language never had to do anything with ASH it’s really about getting them transported back to the tribal court’s jurisdiction.”

**Q:** “Any IGA would now have to be with AHCCCS?”

**A:** “I would encourage the tribes to have agreements with ASH to the extent that they are using their facilities or coordinate that through AHCCCS. The IGA for transportation and follow-up would now be with AHCCCS and not DHS.”

**Q:** “When you say AHCCCS, does it matter if the patient is on AHCCCS or not?”

**A:** “To the extent it’s a service that DBHS would have provided whether or not the person is entitled to Medicaid, it is now a service AHCCCS would provide. In terms of having an IGA with the tribes, in order to help facilitate

the outpatient follow-up and transportation of the tribal member back to the tribal court's jurisdiction, AHCCCS would be involved in that agreement whether or not the person qualified for Medicaid.

**Q:** "Is there a contact phone number available for problems that might arise during this process?"

**A:** "If the member is a member of a Regional Behavioral Health Authority (RBHA) then the number would be the RBHA that the tribal member belongs to. If they are receiving services through a Tribal Regional Behavioral Health Service (TRBHA) then we encourage the person to reach out to their TRBHA case manager. Beyond that if the RBHA or TRBHA doesn't apply to the member then contact Markay Adams, in DFSM, 602-417-7558.

**Q:** "Are there any anticipated changes to the rules?"

**A:** "We don't anticipate any changes to the rules only those required by the new legislation should the bill pass. We're open to suggestions for improvement to the process." **(Superior Court Response)**

**C:** "Under the current rule, the day we file a tribal court order seeking recognition, it should be recognized and treated the same as a Superior Court ruling."

**R:** "We hadn't thought of it that way. However you analyze it in terms of the literal wording of the rule, what we understand is that Providers are uncomfortable with the current situation so there is a practical reason as well a legal reason to reassure the provider they will not have legal problems if a lawsuit is filed against them. They are uncomfortable with the interpretation of the rule." **(Superior Court response)**. "The issue with the Providers is they are unwilling to admit patients until the court order has been recognized." **(AHCCCS response)**

**Q:** "Are Providers aware of existing Rule 2 that clearly states that tribal court orders are treated in the same manner as an involuntary commitment order issued by a state court? It seems to me that the current rule is well known and may address the issue. I want to make sure that we don't change rules that are already favorable. Let's coordinate with any legislative changes.

**A:** "Rule making is a public process. This legislation doesn't have the affect of changing any rules. This legislation does give Providers a certain level of comfort. This also covers the scenario in which there is doubt as to the recognition of the tribal court's order if it is challenged on jurisdiction or due process grounds. With this legislation, the member will continue to receive treatment while the challenge process is going on. This legislation creates some efficiency. It also puts into statute what may already functionally be there in rule so it gives it a little more weight.

**C:** "Its right in current law that says that the State Attorney General shall be given notice of the filing at the time the commitment order is filed and shall

have 5 days. So that's in the actual law plus it's in the rule that there is a 5 day process. I understand for some of our patients 5 days is too long and at the time this requiring 5 days was seen in the 90's, when it was passed, was seen as being much more expeditious than what the tribes had been experiencing in accessing mental health services. If we can improve upon the 5 days I understand the rule has an emergency process already where it can be done faster than 5 days."

**R:** "That's one of the issues that this legislation helps to clarify. Even if the attorney general responds within that 5 day period it may end up halting the recognition depending on what happens. In the meantime because of the change in this legislation, the tribal member will still be getting treatment based on the tribal court order. We believe that this makes the process more efficient while the recognition process is going on. This legislation just clarifies that the member can get treatment right away based on the tribal court order so long as the filing for the recognition is done the next day that the court is open."

**C:** "The legislation has some good goals. It would be helpful to circulate the Supreme Court rule as well so we can make sure the rules implementing the statute are consistent with the statutory changes."

**R:** "We're happy to provide a link to the Supreme Court rules but again we defer any rule making on this topic to the Courts because those are their rules. We can't comment on how the judiciary wants to create or set its rules."

**Q:** "This is a question for the tribes. Is the timeframe appropriate for the tribes on their side of the process, filing by the close of business the next day the court is open following the admission of the patient? That's more on the State's side where you're trying to make sure the order is filed so the Provider can determine if they are going to discharge the patient."

**A:** "That's a point of emphasis from the feedback we've received. One of the things we want to accomplish is to talk about that. We want to hear from individual tribes on whether or not that timeline is appropriate or if it needs to be extended."

**Q:** "Are you referring to the new language in Section C that says "by the close of business the next day". Is that correct?"

**A:** "Yes, the next business day the court is open. If they are admitted on a Friday they have until Monday. Whether or not that 24 hour period is sufficient enough is a conversation we should have collectively. We don't want to place any burden on tribes that might have a barrier to getting that done."

**C:** "At one time in the 90's when this law was adopted, the Superior Court was not accepting FAX orders. The case manager would have to drive the order from the tribal court to the county seat."

**R:** “There are tribes closer to the urban population and tribes more rural but I think we’re far removed from faxing. Now there are opportunities for e-filing to get the order submitted quickly. That is why we want to have this specific discussion on whether or not getting these orders submitted the next business day the court is open would work for everybody. If not then we can discuss 48 hours or whatever might be appropriate at this point. This is a starting point that we worked out with the Courts”

**Q:** “Do you know if e-filing options are available at all of the county Superior Courts?”

**A:** “I do not know if all the Superior Courts have e-filing, many of them do. It sometimes doesn’t apply to every area of law. For example, In Maricopa County you can e-file almost everything except for judicial reviews of administrative decisions. I do believe most of the Superior Courts are moving toward making their processes electronic and more efficient.” **(AHCCCS response)**. “I don’t know if all counties have e-filing of probate and mental health cases. I will have to check on that. If there are areas and situations that are problematic please let us know so we can work with local courts.” **(Superior Court response)**

**C:** “If we don’t know if this is a statewide practice (e-filing), I don’t feel comfortable putting this distinct language in the law.”

**R:** “What the Courts mentioned is that many of them do (e-file). This is an efficiency they are working toward. This is information we can collect in working with the courts to see if the language we have now is appropriate.”

**C:** “When the law was passed, it was the case that tribal court orders would have to be taken in-person to the clerk of the court and they would have to check the language of the order to make sure all the parts were included in the order before it went to the judge to sign off.”

**R:** “We may have to get more information if the Court representatives (on the call) don’t know or are not involved in that part of the process. It could be tribal behavioral health providers on the call are involved in the transmission of the court orders to Superior Court. **(Tribal stakeholder response)**

**R:** “Our e-filing does not cover mental health cases. There is the ability to file by mail. That’s probably why tribes are going directly to the court rather than relying on mail.” **(Superior Court response)**. “We’ll have to discuss what may be more appropriate in implementing those efficiencies. To the extent that courts are requiring that the orders are filed in hard copy via mail or fax, that’s one way for some remote tribes to file tribal court orders. Is the requirement that a tribal court order be filed in Superior Court the next day the court is open, a reasonable amount of time? We’re hearing concerns from tribes. How much time do the tribes need to file? If we hear from the courts that they are accepting faxes that might help fix the problem or if we have a timeline of when e-filing is going to be up and running that might help



the problem as well.” **(AHCCCS response).**

**Q:** “Will they (courts), sometime in the future, accept involuntary commitment orders via e-file or is that going to be a process that is going to take more time for the Superior Courts to do?”

**A:** “No, it should be a matter that can be e-filed. What we have currently are general civil cases so a number of types of cases aren’t available in all counties for e-filing. It’s not because the case requires something different in terms of how it’s filed. With the tribal court orders, I don’t think a person should have to be there in order to verify the contents of the order. That’s something the rules provide, for the Superior Court to contact tribal courts if there is a problem with the contents of the order. That can be done by phone and any adjustments can be made between the judges and court staff. If that’s not happening and the courts have different expectations then we need to work through that.” **(Superior Court response).**

**C:** “At Pascua Yaqui we have developed a process with court ordered treatment amendments. The courts have wanted and required original paperwork so we have to drive it down there (to the courts).”

**R:** “If there are any other tribes that have experienced that we can look into that given the timeframe.” **(Superior Court response).** “What AHCCCS is hearing is that over time the courts will make their filing systems more efficient and electronic-based and to the extent that specific tribal programs are having difficulty with filings, because of long drive times or other sorts of barriers, the courts are willing to work with them. We encourage tribal programs to work with the courts.” **(AHCCCS response)**

**C:** “I have concerns that the 24 hour timeframe is going to be blanketly [sic] applied in every situation if that language is there.”

**R:** “AHCCCS is not mandating tribes comply with any timeframe. We’re not mandating that Providers even admit. We’re clarifying in language that would allow Providers admit so long as tribes are able file within the timeframe.

**C:** “When you have the language that says “must discharge the patient” that’s where it looks like its being mandated.”

**R:** “If the tribal court issues an order for court ordered treatment, they can file it whenever they want in Superior Court. This provision only kicks in if the Provider, who is off the reservation, accepts the patient based on the tribal court order and is there to make sure that the tribal court order gets filed for recognition in the Superior Court. Nothing is being mandated you don’t have to use the process. The Provider doesn’t have to admit the patient. It’s providing a vehicle for the patient to be seen in the off-reservation facility while the recognition process is taking place in Superior Court.”

	<p><b>Final comments:</b> This timeframe will be an on-going discussion. The language continues to evolve. AHCCCS will discuss this topic at tribal consultation on January 18, 2017.</p>
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**Meeting Adjourned** at 10:30 a.m.