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POLICY: 109, Pre-Petition Screening, Court Ordered Evaluation and Court Ordered Treatment

1. PURPOSE:

- a. This policy is applicable to behavioral health providers under contract with a Regional Behavioral Health Authority (RBHA) and/or a Tribal Regional Behavioral Health Authority (TRBHA).
- b. At times, it may be necessary to initiate civil commitment proceedings to ensure the safety of a person, or the safety of other persons, due to a person's mental disorder when that person is unable or unwilling to participate in treatment. In Arizona, state law permits any responsible person to submit an application for pre-petition screening when another person may be, as a result of a mental disorder:
 - i. A danger to self (DTS);
 - ii. A danger to others (DTO);
 - iii. Persistently or acutely disabled (PAD); or
 - iv. Gravely disabled (GD).
- c. If the person who is the subject of a court ordered commitment proceeding is subject to the jurisdiction of an Indian tribe rather than the state, the laws of that tribe, rather than state law, will govern the commitment process. Information about the tribal court process and the procedures under state law for recognizing and enforcing a tribal court order are found in subsection 3.g.
- d. Pre-petition screening includes an examination of the person's mental status and/or other relevant circumstances by a designated screening agency. Upon review of the application, examination of the person and review of other pertinent information, a licensed screening agency's medical director or designee will determine if the person meets criteria for DTS, DTO, PAD, or GD as a result of a mental disorder.
- e. If the pre-petition screening indicates that the person may be DTS, DTO, PAD, or GD, the screening agency will file an application for a court-ordered evaluation. Based on the immediate safety of the person or others, an emergency admission for evaluation may be necessary. Otherwise, an evaluation will be arranged for the person by a designated evaluation agency within timeframes specified by state law.
- f. Based on the court-ordered evaluation, the evaluating agency may petition for court-ordered treatment on behalf of the person. A hearing, with the person and his/her legal representative and the physician(s) treating the person, will be conducted to determine whether the person will be released and/or whether the agency will petition the court for court-ordered treatment. For the court to order ongoing treatment, the person must be determined, as a result of the evaluation, to be DTS, DTO, PAD, or GD. Court-ordered treatment may include a combination of inpatient and outpatient treatment. Inpatient treatment days are limited contingent on the person's designation as DTS, DTO, PAD, or GD. Persons identified as:

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- i. DTS may be ordered up to 90 inpatient days per year;
 - ii. DTO and PAD may be ordered up to 180 inpatient days per year; and
 - iii. GD may be ordered up to 365 inpatient days per year.
- g. If the court orders a combination of inpatient and outpatient treatment, a mental health agency may be identified by the court to supervise the person's outpatient treatment. In some cases, the mental health agency may be a RBHA; however, before the court can order a mental health agency to supervise the person's outpatient treatment, the agency medical director must agree and accept responsibility by submitting a written treatment plan to the court.
- h. At every stage of the pre-petition screening, court-ordered evaluation, and court-ordered treatment process, a person will be provided an opportunity to change his/her status to voluntary. Under voluntary status, the person is no longer considered to be at risk for DTS/DTO and agrees in writing to receive a voluntary evaluation.
- i. County agencies and RBHA contracted agencies responsible for pre-petition screening and court-ordered evaluations must use the following forms prescribed in [9 A.A.C. 21, Article 5](#) for persons determined to have a Serious Mental Illness; agencies may also use these forms for all other populations:
- iv. [Policy Form 109.1, ADHS/DBHS MH-100, Application for Involuntary Evaluation;](#)
 - v. [Policy Form 109.2, ADHS/DBHS MH-103, Application for Voluntary Evaluation;](#)
 - v. [Policy Form 109.3, ADHS/DBHS MH-104, Application for Emergency Admission for Evaluation;](#)
 - vi. [Policy Form 109.4, ADHS/DBHS MH-105, Petition for Court-Ordered Evaluation;](#)
 - vii. [Policy Form 109.5, ADHS/DBHS MH-110, Petition for Court-Ordered Treatment;](#) and
 - viii. [Policy Form 109.6, ADHS/DBHS MH-112, Affidavit, Addendum No. 1 and Addendum No. 2.](#)
- j. In addition to court ordered treatment as a result of civil action, an individual may be ordered by a court for evaluation and/or treatment upon: 1) conviction of a domestic violence offense; or 2) upon being charged with a crime when it is determined that the individual is court ordered to treatment, or programs, as a result of being charged with a crime and appears to be an "alcoholic." RBHAs and RBHA providers responsibilities for the provision and coverage of those services, is described in subsection 3.f.
- k. The intent of this section is to provide a broad overview of the pre-petition screening, court-ordered evaluation, and court-ordered treatment process. Depending on a behavioral health provider's designation as a screening, evaluation, or court-ordered treatment agency, the extent of involvement with persons receiving pre-petition screening, court-ordered evaluation, and court-ordered treatment services will vary.

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RBHAs will provide explicit expectations for behavioral health providers regarding this content area within subsection 3.g.

2. TERMS:

Definitions for terms are located online at <http://www.azdhs.gov/bhs/definitions/index.php>. The following terms are referenced in this section:

American Indian Tribal Member
Court-Ordered Evaluation
Danger to Self (DTS)
Danger to Others (DTO)
Domestication or Recognition of Tribal Court Order
Gravely Disabled (GD)
Mental Disorder
Persistently or Acutely Disabled (PAD)
Pre-petition Screening
Tribal sovereignty in the United States

3. PROCEDURES:

a. Licensing Requirements

- i. Behavioral health providers who are licensed by the Arizona Department of Health Services/Division of Assurance and Licensing Services/Office of Behavioral Health Licensing (OBHL) as a court-ordered evaluation or court-ordered treatment agency must adhere to OBHL requirements.

b. Pre-Petition Screening

- i. Arizona Counties are responsible for managing, providing, and paying for pre-petition screening and court-ordered evaluations and are required to coordinate provision of behavioral health services with the Arizona Department of Health Services/Division of Behavioral Health Services (ADHS/DBHS) system. Some counties contract with RBHAs to process pre-petition screenings and petitions for court-ordered evaluations.
- ii. Counties may contract with RBHAs for pre-petition screening services, or counties may provide their own pre-petition screening services. Procedures for pre-petition screening are outlined below.
- iii. The pre-petition screening includes an examination of the person's mental status and/or other relevant circumstances by a designated screening agency. The designated screening agency must follow these procedures:
 - (1) The pre-petition screening agency must offer assistance, if needed, to the applicant in the preparation of the application for court-ordered evaluation (see [Policy Form 109.1, ADHS/DBHS MH-100, Application for Involuntary Evaluation](#)).

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- (2) Any behavioral health provider that receives an application for court-ordered evaluation (see [Policy Form 109.1, ADHS/DBHS MH-100, Application for Involuntary Evaluation](#)) must immediately refer the applicant for pre-petition screening and petitioning for court-ordered evaluation to the RBHA designated pre-petition screening agency or county facility.
- iv. RBHAs may be contracted to provide pre-petition screening while other RBHAs are not contracted to provide pre-petition screening. In other areas, both sections may be applicable to RBHAs whose geographic service areas (GSAs) include multiple counties. RBHAs must develop and make available to providers policies and procedures that specifically define the requirements for their GSA.
- v. When the RBHA is contracted to provide pre-petition screening services
 - (1) When the county contracts with a RBHA for pre-petition screening and petitioning for court-ordered evaluation, the RBHA must refer the applicant to a designated pre-petition screening agency. The pre-petition screening agency must follow these procedures:
 - (a) Provide pre-petition screening within forty-eight hours excluding weekends and holidays;
 - (b) Prepare a report of opinions and conclusions. If pre-petition screening was not possible, the screening agency must report reasons why the screening was not possible, including opinions and conclusions of staff members who attempted to conduct the pre-petition screening;
 - (c) Have the medical director or designee of the RBHA review the report if it indicates that there is no reasonable cause to believe the allegations of the applicant for the court-ordered evaluation;
 - (d) Prepare a petition for court-ordered evaluation and file the petition if the RBHA determines that the person, due to a mental disorder, including a primary diagnosis of dementia and other cognitive disorders, is DTS, DTO, PAD, or GD. [Policy Form 109.4, ADHS/DBHS Form MH-105, Petition for Court-Ordered Evaluation](#) documents pertinent information for court-ordered evaluation;
 - (e) If the RBHA determines that there is reasonable cause to believe that the person, without immediate hospitalization, is likely to harm himself/herself or others, the RBHA must ensure completion of [Policy Form 109.3, ADHS/DBHS Form MH-104, Application for Emergency Admission for Evaluation](#), and take all reasonable steps to procure hospitalization on an emergency basis;
 - (f) Contact the county attorney prior to filing a petition if it alleges that a person is DTO; and
 - (g) RBHAs must develop and make available to providers policies and procedures that specifically define the procedures the designated pre-petition screening agencies and all other providers must follow.

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- vi. When the RBHA is not contracted to provide pre-petition screening services
 - (1) RBHAs must develop and make available to providers policies and procedures regarding specifically where a behavioral health provider would file pre-petition screens and court-ordered evaluations if other than the RBHAs contracted, designated pre-petition screening agency.

- c. Court-Ordered Evaluation
 - i. If the pre-petition screening indicates that the person may be DTS, DTO, PAD, or GD, the screening agency will file an application for a court-ordered evaluation. The procedures for court-ordered evaluations are outlined below:
 - ii. The following actions include requirements for RBHAs contracted to provide court-ordered evaluations and for RBHAs not contracted to provide court-ordered evaluations. Both sections may be applicable to RBHAs whose GSAs include multiple counties. RBHAs must develop and make available to providers policies and procedures that specifically define the requirements for their GSA.
 - iii. When the RBHA is contracted to provide court-ordered evaluations
 - (1) When the county contracts with the RBHA to perform court-ordered evaluations, the RBHA or its subcontracted behavioral health provider must follow these procedures:
 - (a) A person being evaluated on an inpatient basis must be released within seventy-two hours if further evaluation is not appropriate, unless the person makes application for further care and treatment on a voluntary basis;
 - (b) A person who is determined to be DTO, DTS, PAD, or GD as a result of a mental disorder must have a petition for court-ordered treatment prepared, signed and filed by the RBHA medical director or designee; and
 - (c) Title XIX/XXI funds must not be used to reimburse court-ordered evaluation services.
 - (2) RBHAs shall not be responsible to pay for the costs associated with Court Ordered Evaluation outside of the limited “medication only” benefit package available for Non-Title XIX persons determined to have SMI, unless other prior payment arrangements have been made with another entity (e.g. County, hospital, provider).
 - iv. Voluntary Evaluation
 - (1) Any RBHA contracted behavioral health provider that receives an application for voluntary evaluation must immediately refer the person to the facility responsible for voluntary evaluations. RBHAs must develop and make available to providers information regarding specifically where a behavioral health provider would refer a person for a voluntary evaluation.
 - (2) The RBHA contracted behavioral health provider must follow these procedures:
 - (a) The evaluation agency must obtain the individual’s informed consent prior to the evaluation (see [Policy Form 109.2, ADHS/DBHS Form MH-103](#),

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- [Application for Voluntary Evaluation](#)) and provide evaluation at a scheduled time and place within five days of the notice that the person will voluntarily receive an evaluation;
- (b) For inpatient evaluations, the evaluation agency must complete evaluations in less than seventy-two hours of receiving notice that the person will voluntarily receive an evaluation; and
 - (c) RBHA specific requirements as developed and made available by the RBHA for providers.
- (3) If a behavioral health provider conducts a voluntary evaluation service as described in this section, the comprehensive clinical record (see [Policy 802, Behavioral Health Medical Record Standards](#)) must include:
- (a) A copy of the application for voluntary evaluation, [Policy Form 109.2, ADHS/DBHS Form MH-103, Application for Voluntary Evaluation](#);
 - (b) A completed informed consent form (see [Policy 107, General and Informed Consent to Treatment](#)); and
 - (c) A written statement of the person's present medical condition.
- (4) When the county does not contract with the RBHA for court-ordered evaluations
- (a) RBHAs must develop and make available to providers policies and procedures regarding which counties, if any are contracted with the RBHA for court-ordered evaluations and indicate when the county is responsible for court-ordered evaluations and voluntary evaluations.
- d. Court-Ordered Treatment following Civil Proceedings under A.R.S. Title 36
- i. Based on the court-ordered evaluation, the evaluating agency may petition for court-ordered treatment. The behavioral health provider must follow these procedures:
 - (1) Upon determination that an individual is DTS, DTO, GD, or PAD, and if no alternatives to court-ordered treatment exist, the medical director of the agency that provided the court-ordered evaluation must file a petition for court-ordered treatment (see [Policy Form 109.5, ADHS/DBHS Form MH-110, Petition for Court-Ordered Treatment](#));
 - (2) Any behavioral health provider filing a petition for court-ordered treatment must do so in consultation with the person's clinical team prior to filing the petition;
 - (3) The petition must be accompanied by the affidavits of the two physicians who conducted the examinations during the evaluation period and by the affidavit of the applicant for the evaluation (see [Policy Form 109.6, ADHS/DBHS Form MH-112, Affidavit and attached addenda](#));
 - (4) A copy of the petition, in cases of grave disability, must be mailed to the public fiduciary in the county of the patient's residence, or the county in which the

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- patient was found before evaluation, and to any person nominated as guardian or conservator; and
- (5) A copy of all petitions must be mailed to the superintendent of the Arizona State Hospital.
- e. Persons who are Title XIX/XXI eligible and/or determined to have a Serious Mental Illness (SMI).
- i. When a person referred for court-ordered treatment is Title XIX/XXI eligible and/or determined or suspected to have a Serious Mental Illness, the RBHA must:
 - (1) Conduct an evaluation to determine if the person has a Serious Mental Illness in accordance with [Policy 106, SMI Eligibility Determination](#), and conduct a behavioral health assessment to identify the person's service needs in conjunction with the person's clinical team, as described in [Policy 105, Assessment and Service Planning](#).
 - (2) Provide necessary court-ordered treatment and other covered behavioral health services in accordance with the person's needs, as determined by the person's clinical team, the behavioral health recipient, family members, and other involved parties(see [Policy 105, Assessment and Service Planning](#)); and
 - (3) Perform, either directly or by contract, all treatment required by [A.R.S. Title 36, Chapter 5, Article 5](#) and [9 A.A.C. 21, Article 5](#).
 - (4) RBHAs must develop and make available to providers policies and procedures that specifically define the requirements for their GSA
 - ii. Transfer from one behavioral health provider to another.
 - (1) A person ordered by the court to undergo treatment can be transferred from one behavioral health provider to another behavioral health provider if:
 - (a) The person does not have a court appointed guardian;
 - (b) The medical director of the receiving behavioral health provider accepts the transfer;
 - (c) The consent of the court for the transfer is obtained as necessary (see [Policy 901, Inter-RBHA Coordination of Care](#), for more details); and
 - (d) RBHAs must develop and make available to providers policies and procedures that specifically define the requirements for their GSA
- f. Court-Ordered Treatment for persons charged with, or convicted of, a crime
- i. T/RBHAs or T/RBHA providers may be responsible for providing evaluation and/or treatment services when an individual has been ordered by a court due to:
 - (1) conviction of a domestic violence offense; or
 - (2) upon being charged with a crime when it is determined that the individual is court ordered to treatment, or programs, as a result of being charged with a crime and appears to be an "alcoholic."

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- ii. Domestic Violence Offender Treatment
 - (1) Domestic violence offender treatment may be ordered by a court when an individual is convicted of a misdemeanor domestic violence offense. Although the order may indicate that the domestic violence (DV) offender treatment is the financial responsibility of the offender under [A.R.S. § 13-3601.01](#), the T/RBHA will cover DV services with Title XIX/XXI funds when the person is Title XIX/XXI eligible, the service is medically necessary, required prior authorization is obtained if necessary, and/or the service is provided by an in-network provider. For Non-TXIX/XXI eligible persons court ordered for DV treatment, the individual can be billed for the DV services.
- iii. Court ordered substance abuse evaluation and treatment
 - (1) Substance abuse evaluation and/or treatment (i.e., DUI services) ordered by a court under [A.R.S. § 36-2027](#) is the financial responsibility of the county, city, town or charter city whose court issued the order for evaluation and/or treatment. Accordingly, if ADHS/DBHS or a T/RBHA receives a claim for such services, the claim will be denied with instructions to the provider to bill the responsible county, city or town.
- g. Court-Ordered Treatment for American Indian Tribal Members in Arizona
 - i. Arizona tribes are sovereign nations, and tribal courts have jurisdiction over their members residing on reservation. Tribal court jurisdiction, however, does not extend to tribal members residing off the reservation or to state court ordered evaluation or treatment ordered because of a behavioral health crisis occurring off reservation.
 - ii. Although some Arizona tribes have adopted procedures in their tribal codes, which are similar to Arizona law for court ordered evaluation and treatment, each tribe has its own laws which must be followed for the tribal court process. Tribal court ordered treatment for American Indian tribal members in Arizona is initiated by tribal behavioral health staff, the tribal prosecutor or other person authorized under tribal laws. In accordance with tribal codes, tribal members who may be a danger to themselves or others and in need of treatment due to a mental health disorder are evaluated and recommendations are provided to the tribal judge for a determination of whether court ordered treatment is necessary. Tribal court orders specify the type of treatment needed.
 - iii. Additional information on the history of the tribal court process, legal documents and forms as well as contact information for the tribes, T/RBHA liaisons, and tribal court representatives can be found on the ADHS/DBHS web page titled, [Tribal Court Procedures for Involuntary Commitment - Information Center](#).
 - iv. RBHAs must develop and make available to providers policies and procedures that specifically define the requirements for their GSA and/or tribes for this process.
 - v. Since many tribes do not have treatment facilities on reservation to provide the treatment ordered by the tribal court, tribes may need to secure treatment off

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- reservation for tribal members. To secure court ordered treatment off reservation, the court order must be “recognized” or transferred to the jurisdiction of the state.
- vi. The process for establishing a tribal court order for treatment under the jurisdiction of the state is a process of recognition, or “domestication” of the tribal court order (see [A.R.S. § 12-136](#)). Once this process occurs, the state recognized tribal court order is enforceable off reservation. The state recognition process is not a rehearing of the facts or findings of the tribal court. Treatment facilities, including the Arizona State Hospital, must provide treatment, as identified by the tribe and recognized by the state. [Policy Attachment 109.1, A.R.S. § 12-136 Domestication or Recognition of Tribal Court Order](#) is a flow chart demonstrating the communication between tribal and state entities.
 - vii. Regional Behavioral Health Authorities and RBHA providers must comply with state recognized tribal court orders for Title XIX/XXI and Non-Title XIX SMI persons. When tribal providers are also involved in the care and treatment of court ordered tribal members, RBHAs and RBHA providers must involve tribal providers to ensure the coordination and continuity of care of the members for the duration of court ordered treatment and when members are transitioned to services on the reservation, as applicable. RBHAs are encouraged to enter into agreements with tribes to address behavioral health needs and improve the coordination of care for tribal members.
 - viii. This process must run concurrently with the tribal staff’s initiation of the tribal court ordered process in an effort to communicate and ensure clinical coordination with the appropriate RBHA. This clinical communication and coordination with the RBHA is necessary to assure continuity of care and to avoid delays in admission to an appropriate facility for treatment upon state/county court recognition of the tribal court order. The Arizona State Hospital should be the last placement alternative considered and used in this process
 - ix. [A.R.S. § 36-540\(B\)](#) states, “The Court shall consider all available and appropriate alternatives for the treatment and care of the patient. The Court shall order the least restrictive treatment alternative available.” RBHAs are expected to partner with American Indian tribes and tribal courts in their geographic service areas to collaborate in finding appropriate treatment settings for American Indians in need of behavioral health services.
 - x. Due to the options American Indians have regarding their health care, including behavioral health services, payment of behavioral health services for AHCCCS eligible American Indians may be covered through a TRBHA, RBHA or IHS/638 provider (see [Behavioral Health Services Payment Responsibilities](#) on the [ADHS/DBHS Tribal Court Procedures for Involuntary Commitment web page](#) for a diagram of these different payment structures).

4. REFERENCES:
[A.R.S. § 12-136](#)

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[A.R.S. § 13-3601.01](#)

[A.R.S. Title 14, Chapter 5](#)

[A.R.S. Title 36, Chapter 5](#)

[A.R.S. § 36-2005](#)

[A.R.S. § 36-2027](#)

[A.A.C. R9-20-802](#)

[A.A.C. R9-20-803](#)

[9 A.A.C. 21, Article 5](#)

[AHCCCS Contractor Operations Manual, Policy 423](#)

[ADHS/RBHA Contracts](#)

[Policy 105, Assessment and Service Planning](#)

[Policy 106, SMI Eligibility Determination](#)

[Policy 107, General and Informed Consent to Treatment](#)

[Policy 109, Inter-RBHA Coordination of Care](#)

[Policy 601, Co-payments](#)

[Policy 802, Behavioral Health Medical Record Standards](#)

[TAD 5, Information Sharing with Family Members of Adult Behavioral Health Recipients](#)

[ADHS/DBHS Tribal Court Procedures for Involuntary Commitment webpage](#)