

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

EFFECTIVE DATES: 07/01/16, 04/03/19, 10/01/19, 10/01/21

APPROVAL DATES: 01/04/17, 01/03/19, 08/15/19, 04/01/21

**I. PURPOSE**

This Policy applies to ACC, ALTCS E/PD, DCS/ Comprehensive Health Plan (CHP), DES/DDD (DDD), and RBHA Contractors; Fee-For-Service (FFS) Programs as referred to within this Policy including: American Indian Health Program (AIHP), Tribal ALTCS, TRBHA; and all FFS populations, excluding Federal Emergency Services (FES). (For FES, refer to AMPM Chapter 1100). This Policy establishes guidelines, as applicable, for the provision and coordination of behavioral health services regarding the Pre-petition Screening, Court Ordered Evaluation, and Court Ordered Treatment process.

**II. DEFINITIONS**

Definitions are located on the AHCCCS website at: [AHCCCS Contract and Policy Dictionary](#).

**III. POLICY**

This Policy outlines the processes and responsibilities applicable when it is necessary to initiate Court Ordered Evaluation (COE) and Court Ordered Treatment (COT) proceedings as specified in A.R.S. § 36-501 et seq. This process is used to ensure the safety of an individual, or the safety of others when, due to an individual's mental disorder, that individual is unable or unwilling to participate in treatment. Contractor responsibilities may vary for pre-petition screening and COE based on contractual arrangements between AHCCCS, Contractors, and Arizona counties. The Contractor shall ensure providers responsible for the COE/COT process adhere to requirements of this Policy. When necessary, as specified in A.A.C. R9-21-501 and A.R.S. § 36-520, any responsible individual may submit an application requesting an agency conduct a pre-petition screening when another individual is alleged to be, as a result of a mental disorder:

1. Danger to Self (DTS).
2. Danger to Others (DTO).
3. Persistently or Acutely Disabled (PAD), or
4. Gravely Disabled (GD).

If the individual who is the subject of a court ordered commitment proceeding is subject to the jurisdiction of a Tribal nation, rather than the state, the laws of that tribal nation will

govern the commitment process. Information about the tribal commitment process and the procedures under state law for recognizing and enforcing a tribal court order are found in this Policy.

Pre-petition screening includes an examination of the individual's mental status and/or other relevant circumstances by a designated screening agency. Upon review of the application, examination of the individual and review of other pertinent information, a licensed screening agency's medical director or designee will determine if the individual meets criteria for DTS, DTO, PAD, or GD as a result of a mental disorder.

If the pre-petition application screening indicates that the individual may be DTS, DTO, PAD, or GD, the screening agency shall file an Application for Emergency Admission for Evaluation, as specified in A.R.S. § 36-524 for a COE. Based on the immediate safety of the individual or others, an emergency admission for evaluation may be necessary. The screening agency, upon receipt of the application shall determine the need for continued evaluation and immediately act as prescribed, not to exceed 48 hours of the filing of the application excluding weekends and holidays as specified in A.R.S. § 36-520.

Based on the COE, the evaluating agency may petition for COT on behalf of the individual. The subsequent hearing is the determination as to whether the individual will be court ordered to treatment as specified in A.R.S. § 36-539. COT may include a combination of inpatient and outpatient treatment. Inpatient treatment days are limited contingent on the individual's designation as DTS, DTO, PAD, or GD. Individuals identified as:

1. DTS may be ordered up to 90 inpatient days per year.
2. DTO and PAD may be ordered up to 180 inpatient days per year, and
3. GD may be ordered up to 365 inpatient days per year.

If the court orders a combination of inpatient and outpatient treatment, a mental health agency will be identified by the court to supervise the individual's outpatient treatment. Before the court can order a mental health agency to supervise the individual's outpatient treatment, the agency medical director shall agree and accept responsibility by submitting a written treatment plan to the court.

At every stage of the pre-petition screening, COE, and COT process, an individual who manifests the capacity to give informed consent as specified in A.R.S. § 36-518 will be provided an opportunity to change their status to voluntary. Under voluntary status, the individual will voluntarily receive an evaluation and is unlikely to present as DTS/DTO during the time pending the voluntary evaluation.

Entities responsible for COE shall ensure the use of the forms as specified in 9 A.A.C. 21, Article 5 for individuals with a Serious Mental Illness (SMI) designation, though they may also use these forms for individuals who do not have a SMI designation, as applicable.

Although the Contractor may not be contracted for providing pre-petition screening services, emergency/crisis petition filing, and COE services in all counties, the Contractor shall provide policies and procedures to providers outlining these processes.

For FFS members not residing on a reservation, the FFS provider (mental health agency) shall follow all legal authorities in the State and county of the FFS member's place of residence or the county in which treatment was ordered because of a behavioral health crisis occurring off tribal land. FFS members residing on a reservation are subject to the tribe's laws and tribal court jurisdiction. FFS providers (mental health agencies) shall ensure clinical coordination with the appropriate entities including but not limited to American Indian tribes, TRBHAs, and tribal courts.

#### **A. LICENSING REQUIREMENTS**

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

#### **B. PRE-PETITION SCREENING**

1. Unless otherwise indicated in an Intergovernmental Agreement (IGA) with AHCCCS, Arizona counties are responsible for managing, providing, and paying for Pre-Petition Screening and COEs and are required to coordinate the provision of behavioral health services with the member's Contractor or the FFS program that is responsible for the provision of behavioral health services. For additional information, visit the AHCCCS website, <https://www.azahcccs.gov>.  
During the Pre-Petition Screening, the designated Screening Agency shall offer assistance, if needed, to the applicant in the preparation of the application for involuntary COE. Any behavioral health provider that receives an application for COE shall immediately refer the application for Pre-Petition Screening and petitioning for COE to the Contractor designated Pre-Petition Screening agency or county facility.
2. The Contractor shall develop policies that outline its role and responsibility related to the treatment of individuals who are unable or unwilling to consent to treatment. The policy shall conform to the processes as specified in A.R.S. Title § 36-501 et seq., and at a minimum address:
  - a. Involuntary evaluation,
  - b. Petitioning process,
  - c. COE/COT process, including tracking the status of Court orders,
  - d. Execution of Court orders, and
  - e. Judicial Review.

#### **C. RESPONSIBILITY FOR PROVIDING PRE-PETITION SCREENING**

When a Contractor is responsible through an IGA with a county for pre-petition screening and petitioning for COE, the Contractor shall refer the applicant to a subcontracted pre-petition screening agency.

The pre-petition screening agency shall follow these procedures:

1. Provide pre-petition screening within 48 hours excluding weekends and holidays.
2. Prepare a report of opinions and conclusions. If pre-petition screening was not possible, the screening agency shall report reasons why the screening was not possible, including opinions and conclusions of staff members who attempted to conduct the pre-petition screening.
3. Ensure the agency's medical director or designee review of the report if the report indicates that there is no reasonable cause to support the allegations for COE by the applicant.
4. Prepare a petition for COE and file the petition if the screening agency determines that due to a mental disorder, there is reasonable cause to believe that the individual meets the criteria as specified in A.R.S. § 36-521(D).
5. Ensure completion of application for Emergency Admission for Evaluation, as specified in A.R.S. § 36-524, take all reasonable steps to procure hospitalization on an emergency basis, if it determines that there is reasonable cause to believe that the individual, without immediate hospitalization, is likely to harm themselves or others.
6. Contact the county attorney prior to filing a petition if it alleges that an individual is DTO.

#### **D. EMERGENT/CRISIS PETITION FILING PROCESSES**

When it is determined that there is reasonable cause to believe that the individual being screened is in a condition that without immediate hospitalization is likely to harm themselves or others, an emergent application shall be filed. The petition shall be filed at the appropriate agency as determined by the Contractor. As specified in A.R.S. § 36-501 et seq., when considering the emergent petition process, the following shall apply:

1. Only applications indicating DTS and/or DTO can be filed on an emergent basis.
2. The applicant shall have knowledge of the behavior(s) displayed by the individual that is a danger to self or others consistent with requirements as specified in A.R.S. § 36-524.
3. The applicant shall complete application for Emergency Admission for Evaluation, as specified in A.R.S. § 36-524.
4. The applicant and all witnesses identified in the application as direct observers of the dangerous behavior/s may be called to testify in court if the application results in a petition for COE.
5. Immediately upon receipt of an application for Emergency Admission for Evaluation, as specified in A.R.S. § 36-524, and all corroborating documentation necessary to

successfully complete a determination, the admitting physician will determine if enough evidence exists for an emergency admission for evaluation.

If there is enough evidence to support the emergency admission for evaluation, the appropriate facility is not currently operating at or above its allowable member capacity, and the individual does not require medical care, then, facility staff will immediately coordinate with local law enforcement for the detention of the individual and transportation to the appropriate facility.

6. If the individual requires a medical facility, or if appropriate placement cannot be arranged within the 48-hour timeframe identified above relating to the application for Emergency Admission for Evaluation, as specified in A.R.S. § 36-524, the Medical Director of the Contractor, or for FFS members, the FFS Provider's Medical Director, shall be consulted to arrange for a review of the case.
7. The application for Emergency Admission for Evaluation, as specified in A.R.S. § 36-524 may be discussed by telephone with the facility admitting physician, the referring physician, and a peace officer to facilitate transportation of the individual to be evaluated.
8. An individual proposed for emergency admission for evaluation may be apprehended and transported to the facility under the authority of law enforcement using the application for Emergency Admission for Evaluation, as specified in A.R.S. § 36-524, A.R.S § 36-524(D) and A.R.S § 36-525(A), which outlines criteria for a peace officer to apprehend and transport an individual based upon either a telephonic or written application for emergency admission.
9. An emergency admission for evaluation begins at the time the individual is detained involuntarily by the admitting physician who determines if there is reasonable cause to believe that the individual, as a result of a mental disorder, is a DTS or DTO and that during the time necessary to complete pre-screening procedures the individual is likely, without immediate hospitalization, to suffer harm or cause harm to others.
10. During the emergency admission period of up to 23 hours the following occurs:
  - a. The individual's ability to consent to voluntary treatment is assessed,
  - b. The individual shall be offered and receive treatment to which they may consent; otherwise, the only treatment administered involuntarily will be for the safety of the individual or others, i.e. seclusion/restraint or pharmacological restraint as specified in A.R.S. § 36-513, and
  - c. When applicable, the psychiatrist will complete the Voluntary Evaluation within 24 hours of determination that the individual no longer requires an involuntary evaluation.

**E. COURT ORDERED EVALUATION**

1. If, after review of the petition for evaluation, the individual is reasonably believed to be DTS, DTO, PAD, or GD as a result of a mental disorder, the court can issue an order directing the individual to submit to an evaluation at a designated time and place. The order shall specify whether the evaluation will take place on an inpatient or an outpatient basis.

The court may also order that, if the individual does not or cannot submit, the individual be taken into custody by a peace officer and delivered to an evaluation agency. For further requirements surrounding COEs on an inpatient basis, refer to A.R.S. § 36-529.

2. If the pre-petition screening indicates that the individual may be DTS, DTO, PAD, or GD, the screening agency will file a petition for COE. When, through an IGA with a county, the Contractor is contracted to provide COE, they shall adhere to the following requirements when conducting COEs:
  - a. An individual who is reasonably believed to be DTS, DTO, PAD, or GD as a result of a mental disorder shall have a petition for COE prepared, signed and filed by the Medical Director of the agency or designee,
  - b. An individual admitted to an evaluation agency shall receive an evaluation as soon as possible, and receive care and treatment as required by their condition for the full period they are hospitalized,
  - c. A clinical record shall be kept for each individual which details all medical and psychiatric evaluations and all care and treatment received by the individual,
  - d. An individual being evaluated on an inpatient basis shall be released within 72 hours (not including weekends and court holidays) if further evaluation is not appropriate, unless the individual makes application for further care and treatment on a voluntary basis, or unless an application for COT has been filed, and
  - e. On a daily basis at minimum, an evaluation shall be conducted throughout the COE process for the purposes of determining if an individual desires to be switched to a voluntary status or qualifies for discharge.
3. For information on individuals being released from COE, and on COE dispositions, refer to A.R.S. § 36-531.
4. For FFS members undergoing COE, the FFS provider (evaluation agency) is responsible for all aspects of care coordination with the appropriate entities, including but not limited to the screening agency conducting the pre-petition screening if applicable, treatment agency if applicable, and AHCCCS DFSM.

**F. VOLUNTARY EVALUATION**

1. The Contractor shall require behavioral health providers who receive an application for voluntary evaluation to immediately refer the individual to a facility responsible for voluntary evaluations. The voluntary evaluation may be on an inpatient or outpatient basis. Voluntary evaluation may be carried out only if chosen by the

individual during the course of a pre-petition screening after an application for evaluation has been made.

2. When an individual consents to voluntary evaluation, the evaluating agency shall follow these procedures:
  - a. Obtain the individual's informed consent prior to the evaluation,
  - b. Provide an evaluation at a scheduled time and place within five business days of the notice that the individual will voluntarily receive an evaluation, and
  - c. For inpatient voluntary evaluations, complete evaluations in less than 72 hours (not including weekends and court holidays) of receiving notice that the individual will voluntarily receive an evaluation.
3. The Contractor shall require behavioral health providers that conduct voluntary evaluation services to include the following in the comprehensive clinical record as specified in AMPM Policy 940):
  - a. A copy of the application for voluntary evaluation,
  - b. A completed informed consent form as specified in AMPM Policy 320-Q, and
  - c. A written statement of the individual's present medical condition.

#### **G. COURT ORDERED TREATMENT FOLLOWING CIVIL PROCEEDINGS**

Based on the COE, the evaluating agency may petition for COT. As specified in A.R.S. § 36-501 et seq., the Contractor shall require behavioral health providers to follow these procedures:

1. Upon determination that an individual is DTS, DTO, GD, or PAD, and if no alternatives to COT exist, the Medical Director of the agency that provided the COE shall file a petition with the court for COT.
2. Any behavioral health provider filing a petition for COT shall do so in consultation with the individual's clinical team prior to filing the petition.
3. The petition shall 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.
4. In cases of GD, a copy of the petition shall be mailed to the public fiduciary in the county of the individual's residence, or the county in which the individual was found before evaluation, and to any individual nominated as Health Care Decision Maker (HCDM). In addition, a copy of all petitions shall be mailed to the superintendent of the Arizona State Hospital (AzSH).
5. For information regarding court options for treatment, release, discharge, annual reviews, or COT violations, refer to A.R.S. § 36-540 et seq. For requirements relating to Judicial Review, see A.R.S. § 36-546 and § 36-546.01.
6. For COT relating to DUI/Domestic Violence or other Criminal Offenses, refer to ACOM Policy 423.

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

When an individual referred for COT is Title XIX/XXI eligible and/or determined or suspected to meet criteria for an SMI determination, the Contractor shall:

1. Conduct an evaluation to determine if the individual has an SMI as specified in AMPM Policy 320-P, and conduct a behavioral health assessment to identify the individual's service needs in conjunction with the individual's clinical team, as specified in AMPM Policy 320-O.
2. Provide necessary COT and other covered behavioral health services in accordance with the individual's needs, as determined by the individual's clinical team, family members, other involved parties.
3. Perform, either directly or by contract, all treatment as specified in A.R.S. Title § 36, Chapter 5, Article 5 and 9 A.A.C. 21, Article 5.

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

Arizona tribes are sovereign nations and tribal courts have jurisdiction over their members residing on reservation. American Indian members may be petitioned for COE or COT through the county governed process as specified in A.R.S. § 36-501 et seq., or may be subject to the jurisdiction and laws of the tribal nation, dependent on where the behavioral health crisis occurred.

Several Arizona tribes have adopted procedures in their tribal codes, which are similar to Arizona law for COE and COT, however, each tribe has its own laws which shall be followed for the tribal court process.

Additional information on the history of the tribal court process, legal documents and forms, a diagram of payment structures, as well as contact information for the tribes, tribal liaisons, TRBHAs, and tribal court representatives can be found on the AHCCCS website under Tribal Court Procedures for Involuntary Commitment.

1. Tribal COT in Arizona is initiated by the tribal behavioral health staff, the tribal prosecutor, or other individuals as authorized under tribal laws. As specified in tribal codes, tribal members who may be a danger to themselves or others and in need of treatment due to a mental disorder are evaluated and recommendations are provided to the tribal judge for a determination of whether tribal COT is necessary. Tribal court orders specify the type of treatment needed.
2. 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 reservation for tribal members. To secure COT off reservation, the court order shall be "recognized" or transferred to the jurisdiction of the state.



3. The process for establishing a tribal court order for treatment under the jurisdiction of the state is a process of recognition, or “enforcement” of the tribal court order as specified in 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 shall provide treatment, as identified by the tribe, and recognized by the state. Attachment B is a flow chart demonstrating the communication between tribal and state entities as specified in A.R.S. § 12-136.
4. The Contractor and providers shall comply with notice requirements as specified in A.R.S. § 12-136(B) and A.R.S. § 36-541.01.
5. The Contractor and providers shall comply with state recognized tribal court orders for Title XIX/XXI and Non-Title XIX individuals with an SMI determination. When tribal providers are also involved in the care and treatment of court ordered tribal members, Contractors, and providers shall involve tribal providers to ensure the coordination and continuity of care of the members for the duration of COT, and when members are transitioned to services on the reservation, as applicable. The Contractors are encouraged to enter into agreements with tribes to address behavioral health needs and improve the coordination of care for tribal members.
6. The enforcement process shall 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 Contractor. This clinical communication and coordination with the Contractor are 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 AzSH shall be the last placement alternative considered and used in this process.
7. The court shall consider all available and appropriate alternatives for the treatment and care of the member. The court shall order the least restrictive treatment alternative available as specified in A.R.S. § 36-540(B). The Contractor is expected to partner with American Indian tribes, TRBHAs, and tribal courts in their geographic service areas to collaborate in finding appropriate treatment settings for American Indians in need of behavioral health services.
8. Due to the options American Indians have regarding their health care, including behavioral health services, AHCCCS eligible American Indians may be covered and/or coordinate behavioral health services through a TRBHA, AIHP, Contractor, Tribal ALTCS, IHS or 638 tribal providers.

**J. REPORTING REQUIREMENTS**

COE and COT processes, tracking, and reporting shall align with, and adhere to, the requirements of A.R.S. § 36, Chapter 5 and A.A.C. Title 9 Chapter 21 including requirements for COE and COT forms as specified in A.A.C. Title 9 Chapter 21 Article 5:

1. Exhibit A - Application for Involuntary Evaluation.
2. Exhibit B - Petition for Court-Ordered Evaluation.
3. Exhibit C - Application for Emergency Admission for Evaluation.
4. Exhibit D - Application for Voluntary Evaluation.
5. Exhibit E - Affidavit.
6. Exhibit F - Petition for Court-ordered Treatment.
7. Exhibit G - Demand for Notice by Relative or Victim.
8. Exhibit H - Petition for Notice.
9. Exhibit I - Application for Voluntary Treatment.

The Contractor shall submit Outpatient Commitment COT Monitoring reporting as specified in Contract.

For FFS members receiving COT, FFS providers responsible for the treatment shall submit a copy of the Petition for Court-Ordered Treatment, as specified in A.A.C R9-21-504 Exhibit F, to AHCCCS/DFSM.

**K. REIMBURSEMENT**

1. Reimbursement for court ordered screening and evaluation services are the responsibility of the county as specified in A.R.S. § 36-545. For additional information regarding behavioral health services refer to 9 A.A.C. 22.
2. Refer to ACOM Policy 437 for clarification regarding financial responsibility for the provision of medically necessary behavioral health services rendered after the completion of a COE.
3. For COEs that do not require an inpatient stay, any medically necessary physical health services provided to the individual shall be the responsibility of the Contractor of enrollment.