



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

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I. PURPOSE

This Policy applies to Acute Care, Arizona Long Term Care System/Elderly and Physically Disabled (ALTCS/EPD), Children's Rehabilitation Services (CRS), Regional Behavioral Health Authorities (RBHAs) Contractors, Tribal Regional Behavioral Health Authorities (TRBHAs), and Tribal ALTCS. This Policy establishes guidelines for the provision of behavioral health services regarding the pre-petition screening, court-ordered evaluation, and court-ordered treatment process.

II. DEFINITIONS

COURT ORDERED EVALUATION

A professional multidisciplinary analysis based on data describing the person's identity, biography and medical, psychological and social conditions carried out by a group of persons consisting of not less than the following:

1. Two licensed physicians, who shall be qualified psychiatrists, if possible, or at least experienced in psychiatric matters, and who shall examine and report their findings independently. The person against whom a petition has been filed shall be notified that he may select one of the physicians. A psychiatric resident in a training program approved by the American Medical Association or by the American Osteopathic Association may examine the person in place of one of the psychiatrists if he is supervised in the examination and preparation of the affidavit and testimony in court by a qualified psychiatrist appointed to assist in his training, and if the supervising psychiatrist is available for discussion with the attorneys for all parties and for court appearance and testimony if requested by the court or any of the attorneys.
2. Two other individuals, one of whom, if available, shall be a psychologist and in any event a social worker familiar with mental health and human services which may be available placement alternatives appropriate for treatment. An evaluation may be conducted on an inpatient basis, an outpatient basis or a combination of both and every reasonable attempt shall be made



to conduct the evaluation in any language preferred by the person.

**COURT ORDERED
TREATMENT (COT)**

In accordance with the A.A.C. R9-21-101 and A.R.S. § 36-533 In Arizona, an individual can be ordered by the court to undergo mental health treatment if found to fit one of the following categories due to a mental disorder:

1. A Danger to Self;
2. A Danger to Others;
3. Gravely Disabled, which means that the individual is unable to take care of his/her basic physical needs; or
4. Persistently or Acutely Disabled, which means that the individual is more likely to suffer severe mental or physical harm that impairs his/her judgment such that the person is not able to make treatment decisions for himself.

**PRE-PETITION
SCREENING**

The review of each application requesting court-ordered evaluation, including an investigation of facts alleged in such application, an interview with each applicant and an interview, if possible, with the proposed member. The purpose of the interview with the proposed member is to assess the problem, explain the application and, when indicated, attempt to persuade the proposed member to receive, on a voluntary basis, evaluation or other services.

**VOLUNTARY
EVALUATION**

An inpatient or outpatient evaluation service that is provided after a determination that a person will voluntarily receive an evaluation and is unlikely to present a danger to self or others until the voluntary evaluation is completed. A voluntary evaluation is invoked after the filing of a pre-petition screening but before the filing of a court ordered evaluation and requires the informed consent of the person.

III. POLICY

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 accordance with Arizona state law In accordance with the A.A.C. R9-21-101 and A.R.S. § 36-533 any responsible person may submit an application for pre-petition screening when another person 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 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 this Policy under Subsection J, Court-Ordered Treatment for American Indian Tribal Members in Arizona.

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.

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. The screening agency, upon receipt of the application shall act as prescribed within 48 hours of the filing of the application excluding weekends and holidays as described in A.R.S. §36-520.

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:

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 person's outpatient treatment. 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.



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.

Entities responsible for court-ordered evaluations must ensure the use of the following forms prescribed in 9 A.A.C. 21, Article 5 for persons determined to have a Serious Mental Illness and may also use these forms for all other populations:

1. AMPM Policy 320-U, Exhibit 320-U-1, Application for Involuntary Evaluation,
2. AMPM Policy 320-U, Exhibit 320-U-2, Application for Emergency Admission for Evaluation,
3. AMPM Policy 320-U, Exhibit 320-U-3, Petition for Court-Ordered Evaluation,
4. AMPM Policy 320-U, Exhibit 320-U-4, Petition for Court-Ordered Treatment,
5. AMPM Policy 320-U, Exhibit 320-U-5, Affidavit, Addendum No. 1 and Addendum No. 2, and,
6. AMPM Policy 320-U, Exhibit 320-U-7, Application for Voluntary Evaluation.

Although the Contractor may not be contracted for pre-petition screening services, emergency/crisis petition filing, and court ordered evaluation services in all counties, the Contractor must provide policies and procedures for providers outlining these processes.

Arizona counties may contract with AHCCCS Contractors for pre-petition screening services, emergency/crisis petition filing, and court ordered evaluation services.

For Court Ordered treatment for DUI/Domestic Violence or other Criminal Offenses see ACOM Policy 423.

A. LICENSING REQUIREMENTS

Behavioral health providers who are licensed by the Arizona Department of Health Services/Division of Public Health Licensing as a court-ordered evaluation or court-ordered treatment agency must adhere to ADHS licensing requirements.

B. PRE-PETITION SCREENING

1. 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 member's Contractor responsible for the provision of behavioral health services.

2. Reimbursement for court ordered screening and evaluation services are the responsibility of the County pursuant to A.R.S.§36-545. For additional information regarding behavioral health services refer to 9 A.A.C. 22, 2 & 12. 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 Court Ordered Evaluation.

3. 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:

Offer assistance, if needed, to the applicant in the preparation of the application for court-ordered evaluation (see AMPM Policy 320-U, Exhibit 320-U-1).

4. Contractors shall develop policies that outline its role and responsibility related to the treatment of persons who are unable or unwilling to consent to treatment. The policy must address:
 - a. Involuntary evaluation/petitioning process,
 - b. Court ordered process, including tracking the status of Court orders,
 - c. Execution of Court orders, and
 - d. Judicial Review
5. Any behavioral health provider that receives an application for court-ordered evaluation (see AMPM Policy 320-U, Exhibit 320-U-1) must immediately refer the applicant for pre-petition screening and petitioning for court-ordered evaluation to the Contractor designated pre-petition screening agency or county facility.

C. RESPONSIBILITY FOR PROVIDING PRE-PETITION SCREENING

When a Contractor is responsible for pre-petition screening and petitioning for court-ordered evaluation, the Contractor must refer the applicant to a subcontracted pre-petition screening agency.

The pre-petition screening agency must 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 must 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 medical director or designee review of the report if, the report indicates that there is no reasonable cause to support the allegations for court- ordered evaluation by the applicant,
4. Prepare a petition for court-ordered evaluation and file the petition if the screening agency 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. AMPM Policy 320-U, Exhibit 320-U-3, documents pertinent information for court-ordered evaluation,
5. Ensure completion of AMPM Policy 320-U, Exhibit 320-U-2, and take all reasonable steps to procure hospitalization on an emergency basis, if it determines that there is reasonable cause to believe that the person, without immediate hospitalization, is likely to harm themselves or others.
6. Contact the county attorney prior to filing a petition if it alleges that a person is DTO.

D. EMERGENT/CRISIS PETITION FILING PROCESS FOR CONTRACTORS CONTRACTED AS EVALUATING AGENCIES

1. When it is determined that there is reasonable cause to believe that the person being screened is in a condition that without immediate hospitalization is likely to harm themselves or others, an emergent application can be filed. The petition must be filed at the appropriate agency as determined by the Contractor.
2. Only applications indicating DTS and/or DTO can be filed on an emergent basis.
3. The applicant must have personally seen or witnessed the behavior of the person that is a danger to self or others and not base the application on second hand information.
4. The applicant must complete AMPM Policy 320-U, Exhibit 320-U-2.
5. The applicant and all witnesses identified in the application as direct observers of the dangerous behavior, may be called to testify in court if the application results in a petition for COE.
6. Within 48 hours of receipt of AMPM Policy 320-U, Exhibit 320-U-2 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 facility is not currently operating at or above its allowable member capacity, and the person does not require medical



- care; then, facility staff will immediately coordinate with local law enforcement for the detention of the person and transportation to the appropriate facility.
7. If the person requires a medical facility, or if placement cannot be arranged within 48 hours after the approval of AMPM Policy 320-U, Exhibit 320-U-2, the Medical Director of the Contractor will be consulted arrange for a review of the case.
 8. An AMPM Policy 320-U, Exhibit 320-U-2, may be discussed by telephone with the facility admitting physician, the referring physician and a police officer to facilitate transportation of the person to be evaluated.
 9. A person proposed for emergency admission for evaluation may be apprehended and transported to the facility under the authority of law enforcement using the written AMPM Policy 320-U, Exhibit 320-U-2.
 10. A 23 hour emergency admission for evaluation begins at the time the person is detained involuntarily by the admitting physician who determines there is reasonable cause to believe that the person, as a result of a mental disorder, is a DTS or DTO and that during the time necessary to complete prescreening procedures the person is likely, without immediate hospitalization, to suffer harm or cause harm to others.
 11. During the emergency admission period of up to 23 hours the following will occur:
 - a. The person's ability to consent to voluntary treatment will be assessed.
 - b. The person shall be offered and receive treatment to which he/she may consent. Otherwise, the only treatment administered involuntarily will be for the safety of the person or others, i.e. seclusion/restraint or pharmacological restraint in accordance with A.R.S § 36-513.
 - c. The psychiatrist will complete the Evaluation within 24 hours of determination that the person no longer requires involuntary evaluation.

E. COURT-ORDERED EVALUATION

1. 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:
2. When the Contractor is contracted to provide court-ordered evaluations, the following procedures must be followed:
 - a. A person being evaluated on an inpatient basis must be released within 72 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 Contractor's Medical Director or designee, and
 - c. Title XIX/XXI funds must not be used to reimburse court-ordered evaluation services.
3. For any Title XIX enrolled member, who has been admitted to an evaluation agency under a petition for court ordered treatment, the evaluation period is deemed to end upon the filing of a petition for court ordered treatment by the evaluation agency. At this time, the Contractor must pay for all medically necessary services associated with the period of time between the filing of the Petition for Court Ordered Evaluation and the hearing set for the purposes of a judicial determination for the need for Court Ordered Treatment.
 4. Contractor responsibility for payment of medically necessary days begins on the day a Petition for Court Ordered Treatment is filed following the completion of the COE, and is not automatically linked to the end of the 72 hour COE period.

F. VOLUNTARY EVALUATION

1. The Contractor shall require behavioral health providers that receive an application for voluntary evaluation to immediately refer the person to the facility responsible for voluntary evaluations. The Contractor shall develop and make available to providers information regarding specifically where a behavioral health provider would refer a person for a voluntary evaluation.
2. The evaluating agency shall follow these procedures:
 - a. To obtain the person informed consent prior to the evaluation (see AMPM Policy 320-U, Exhibit 320-U-7,) and provide evaluation at a scheduled time and place within five days of the notice that the person will voluntarily receive an evaluation, and
 - b. For inpatient evaluations, complete evaluations in less than 72 hours of receiving notice that the person will voluntarily receive an evaluation.
3. The Contractor shall require behavioral health providers that conduct voluntary evaluation services to include in the comprehensive clinical record (see AMPM Policy 940) the following:
 - a. A copy of the application for voluntary evaluation, AMPM Policy 320-U, Exhibit 320-U-7,
 - b. A completed informed consent form (see AMPM Policy 320-Q), and
 - c. A written statement of the person's present medical condition.

G. COURT-ORDERED TREATMENT FOLLOWING CIVIL PROCEEDINGS UNDER A.R.S. TITLE 36



Based on the court-ordered evaluation, the evaluating agency may petition for court-ordered treatment. The Contractor shall require behavioral health providers to follow these procedures:

1. Upon determination that a person 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 with the court, for court-ordered treatment (see AMPM Policy 320-U, Exhibit 320-U-4),
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 AMPM Policy 320-U, Exhibit 320-U-5), and
4. A copy of the petition, in cases of grave disability, must be mailed to the public fiduciary in the county of the person's residence, or the county in which the person was found before evaluation, and to any person nominated as guardian or conservator.

H. PERSONS WHO ARE TITLE XIX/XXI ELIGIBLE AND/OR DETERMINED TO HAVE A SERIOUS MENTAL ILLNESS (SMI).

When a person referred for court-ordered treatment is Title XIX/XXI eligible and/or determined or suspected to have a SMI, the Contractor shall:

1. Conduct an evaluation to determine if the person has a Serious Mental Illness in accordance with AMPM Policy 320-P, and conduct a behavioral health assessment to identify the person's service needs in conjunction with the person's clinical team, as specified in AMPM Policy 320-O,
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 person's, family members, and other involved parties, 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.

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

1. 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.

2. 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.
3. Additional information on the history of the tribal court process, legal documents and forms 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.
4. 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 court ordered treatment off reservation, the court order must be “recognized” or transferred to the jurisdiction of the state.
5. 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 (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. AMPM Policy 320-U, Exhibit 320-U-6, A.R.S. §12-136 is a flow chart demonstrating the communication between tribal and state entities.
6. Contractors and 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, Contractors and 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. Contractors are encouraged to enter into agreements with tribes to address behavioral health needs and improve the coordination of care for tribal members.



7. This enforcement 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 Contractor. This clinical communication and coordination with the Contractor 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.
8. A.R.S. §36-540(B) states, "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." The Contractor is 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.
9. Due to the options American Indians have regarding their health care, including behavioral health services, behavioral health services for AHCCCS eligible American Indians may be covered and/or coordinated through a TRBHA, Contractor, Tribal ALTCS, or IHS/638 provider. See on the AHCCCS website under Tribal Court Procedures for Involuntary Commitment-Tribal Court Procedures for Involuntary Commitment for a diagram of payment structures.