



Section 3.18

Pre-Petition Screening, Court-Ordered Evaluation and Court-Ordered Treatment

- I. Statement of Purpose
- II. References
- III. Definitions
- IV. Standards
- V. Procedures
 - A. Licensing requirements
 - B. Pre-petition screening
 - C. Court-ordered evaluation
 - D. Voluntary evaluation
 - E. Court-ordered treatment following civic proceedings.
 - F. Court-ordered treatment for persons charged with, or convicted of, a crime.
 - G. Court-ordered treatment for American Indian Tribal members in Arizona

I. STATEMENT OF PURPOSE:

This section is only applicable to behavioral health providers under contract with the Pascua Yaqui (PY) Tribal Regional Behavioral Health Authority (TRBHA).

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, due to a mental disorder:

- 1. A danger to self (DTS);
- 2. A 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 *Subsection F*, below.

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. Otherwise, an evaluation will be arranged for the person by a designated evaluation agency within timeframes specified by state law.

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 may be identified by the court to supervise the person's outpatient treatment. In some cases, the mental health agency may be a TRBHA; 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.

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.

County agencies and TRBHA 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 under the following Arizona Health Care Cost Containment System (AHCCCS) determinations:

AHCCCS Form MH-100, Application for Involuntary Evaluation;
AHCCCS Form MH-103, Application for Voluntary Evaluation;
AHCCCS Form MH-104, Application for Emergency Admission for Evaluation;
AHCCCS Form MH-105, Petition for Court-Ordered Evaluation;
AHCCCS Form MH-110, Petition for Court-Ordered Treatment; and
AHCCCS Form MH-112, Affidavit, Addendum No. 1 and Addendum No. 2.



Agencies may also use these forms for all other populations.

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.” TRBHA providers responsibilities for the provision and coverage of those services, is described in *Subsection 3.18.7-E*.

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. This TRBHA will provide explicit expectations for behavioral health providers regarding this content area within *Subsection 3.18.7*.

II. REFERENCES:

The following PY/CSP Provider Manual sections can serve as additional resources for this content area:

Section 3.4, Premiums and Co-payments
Section 3.9, Assessment and Service Planning
Section 3.10, Serious Mental Illness (SMI) Eligibility Determination
Section 3.17, Transition of Persons
Section 3.11, General and Informed Consent to Treatment
Section 4.2, Behavioral Health Medical Record Standards

The following citations can also serve as a resource for this content area:

A.R.S. Title 36, Chapter 5
A.R.S. § 12-136
A.R.S. § 36-2005
A.R.S. § 13-3601.01
A.R.S. Title 14, Chapter 5
R9-20-802
R9-20-803
9 A.A.C 21, Article 5

III. DEFINITIONS:

Danger to Self (DTS): Behavior which, as the result of a mental disorder:

1. Constitutes a danger of inflicting serious physical harm upon oneself, including attempted suicide or the serious threat thereof, if the threat is such that, when considered in the light of its context and in light of the individual's previous acts, it is substantially supportive of an expectation that the threat will be carried out; or,



2. Will, without hospitalization, result in serious physical harm or serious illness to the person, except that this definition shall not include behavior which establishes only the condition of gravely disabled.

Danger to Others (DTO): The judgment of a person who has a mental disorder is so impaired that he is unable to understand his need for treatment and as a result of his mental disorder his continued behavior can reasonably be expected, on the basis of competent medical opinion, to result in serious physical harm to others.

Persistently or Acutely Disabled (PAD) Means a severe mental disorder that meets all of the following criteria:

1. If not treated has a substantial probability of causing the person to suffer or continue to suffer severe and abnormal mental, emotional, or physical harm that significantly impairs judgment, reason, behavior, or capacity to recognize reality;
2. Substantially impairs the person's capacity to make an informed decision regarding treatment and this impairment causes the person to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment and understanding and expressing an understanding of the alternatives to the particular treatment offered after the advantages, disadvantages, and alternatives are explained to that person.; and
3. Has a reasonable prospect of being treatable by outpatient, inpatient, or combined inpatient and outpatient treatment.

Gravely Disabled (GD): A condition evidenced by behavior in which a person, due to a mental disorder, is likely to come to serious physical harm or serious illness because he/she is unable to provide for his/her basic physical needs.

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 patient. The purpose of the interview with the proposed patient is to assess the problem, explain the application and, when indicated, attempt to persuade the proposed patient to receive, on a voluntary basis, evaluation or other services.

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; and

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.

Mental Disorder: A substantial disorder of the person's emotional processes, thought, cognition or memory. Mental disorder is distinguished from:

1. Conditions that are primarily those of drug abuse, alcoholism, or mental retardation, unless, in addition to one or more of these conditions, the person has a mental disorder;
2. The declining mental abilities that directly accompany impending death; and
3. Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors that are abnormal and prohibited by statute unless the behavior results from a mental disorder.

IV. **STANDARDS:**

Behavioral health providers are informed of the pre-petitioning screening, court-ordered evaluation and court-ordered treatment process for persons who are unable or unwilling to seek behavioral health treatment and, due to a mental disorder, may be DTS, DTO, PAD or GD.

Arizona law provides for the recognition and enforcement or "domestication" of tribal court orders for involuntary commitment to treatment, including admission to the Arizona State Hospital (AzSH) for American Indians residing on tribal reservations. The Arizona statute (see A.R.S. § 12-136) is necessary, as Tribal governments are sovereign and have sole jurisdiction over Tribal members on reservations. Legal, jurisdictional, and continuity of care issues exist related to the coordination of tribal and state courts ordering treatment for American Indians.

American Indians living off of or experiencing a crisis off of the Tribal reservation are subject to county jurisdiction and can be court ordered under state law (see A.R.S. Title 36, Chapter 5).



V. PROCEDURES:

A. Licensing requirements:

Behavioral health providers who are licensed by AHCCCS as a court-ordered evaluation or court-ordered treatment agency must adhere to Bureau of Medical Facility Licensing (BMFL) requirements.

B. Pre-petition screening:

1. Counties may contract with the TRBHA for pre-petition screening services, or counties may provide their own pre-petition screening services. Procedures for pre-petition screening are outlined below.
2. 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:
 - a. The pre-petition screening agency must offer assistance, if needed, to the applicant in the preparation of the application for court-ordered evaluation (see AHCCCS Form MH-100, Application for Involuntary Evaluation);
 - b. Any behavioral health provider that receives an application for court-ordered evaluation (see AHCCCS Form MH-100, Application for Involuntary Evaluation) must immediately refer the applicant for pre-petition screening and petitioning for court-ordered evaluation to the TRBHA designated pre-petition screening agency or county facility.
3. Pima and Maricopa Counties do not contract with CSP TRBHA for pre-petition screening services.
4. When the county contracts with the CSP TRBHA for pre-petition screening and petitioning for court-ordered evaluation, the TRBHA 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 TRBHA 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 TRBHA 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. AHCCCS Form MH-105, Petition for Court-Ordered Evaluation documents pertinent information for court-ordered evaluation;
- e. If the CSP TRBHA determines that there is reasonable cause to believe that the person, without immediate hospitalization, is likely to harm himself/herself or others, the TRBHA must ensure completion of AHCCCS 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
 - a. When the county is not contracted to provide pre-petition screening services.
 - b. Pima and Maricopa Counties do not contract with CSP TRBHA for pre-petition screening services. CSP TRBHA must refer the applicant to a designated pre-petition screening agency.

C. Court-ordered evaluation:

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.

No counties within the CSP TRBHA's geographic service areas contract with CSP to perform court-ordered treatment.

- 1. When the county is contracted with the TRBHA to perform court-ordered evaluations, the TRBHA 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;



PY TRBHA - CSP
Provider Manual - 2023



- b. A person who is determined to be DTO, DTS, PAD or GD due to a mental disorder must have a petition for court-ordered treatment prepared, signed and filed by the TRBHA Medical Director or designee; and
 - c. Title XIX/XXI funds must not be used to reimburse court-ordered evaluation services.
 2. TRBHAs are encouraged to utilize outpatient evaluation or inpatient only court orders.
 3. TRBHAs 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).
- D. Voluntary evaluation:
 1. Any TRBHA contracted behavioral health provider that receives an application for voluntary evaluation must immediately refer the person to the facility responsible for voluntary evaluations.
 2. The TRBHA contracted behavioral health provider must follow these procedures:
 - a. The evaluation agency must obtain the individual’s informed consent prior to the evaluation (see AHCCCS Form MH-103, 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.
 3. If a behavioral health provider conducts a voluntary evaluation service as described in this section, the comprehensive clinical record (see *Section 4.2, Behavioral Health Medical Record Standards*) must include:
 - a. A copy of the application for voluntary evaluation, AHCCCS Form MH-103, Application for Voluntary Evaluation;
 - b. A completed informed consent form (see *Section 3.11, 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 TRBHA for court-ordered evaluations:
5. No counties in the CSP TRBHA geographic service areas contract with CSP to provide court-ordered evaluation services. Pima County provides these evaluations primarily at Banner University Medical Center - South, but may use other area hospitals. Maricopa County provides evaluations at Maricopa Integrated Health Systems for inpatient Court-Ordered Evaluations and Med-Pro for Outpatient Court-Ordered Evaluations.

E. 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 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 AHCCCS 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 AHCCCS 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 in which the 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.

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 serious mental illness, the TRBHA must:

1. Conduct an evaluation to determine if the person has a serious mental illness in accordance with *Section 3.10, 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 *Section 3.9, Assessment and Service Planning*; and

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 *Section 3.9, Intake, Assessment and Service Planning*).
3. TRBHAs must 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. Transfer from one behavioral health provider to another.
5. A person ordered by the court to undergo treatment can be transferred from a 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; and
 - c. The consent of the court for the transfer is obtained as necessary (see *Section 3.17, Transition of Persons*, for more details).

F. Court-Ordered Treatment for persons charged with, or convicted of, a crime

TRBHAs or TRBHA 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."

Domestic Violence Offender Treatment

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 TRBHA 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. Additionally, TRBHAs will cover DV services for Non-Title XIX/XXI eligible persons determined to have SMI who pay premiums for behavioral health coverage in accordance with requirements in PM Section 3.4, Premiums and Co-payments. For Non-TXIX/XXI eligible persons court ordered for DV treatment, the individual can be billed for the DV services.



G. 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. 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.

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.

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.

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. Attachment 3.18.1, A.R.S. § 12-136 Domestication or Recognition of Tribal Court Order is a flow chart demonstrating the communication between tribal and state entities.

TRBHA 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, TRBHAs and TRBHA 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. TRBHAs are encouraged to enter into agreements with tribes to address behavioral health needs and improve the coordination of care for tribal members.

This process must run concurrently with the tribal staff's initiation of the tribal court ordered process to communicate and ensure clinical coordination with the appropriate TRBHA. This clinical communication and coordination with the



PY TRBHA - CSP
Provider Manual - 2023



TRBHA 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

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." TRBHAs 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. 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.

Court ordered substance abuse evaluation and treatment

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 AHCCCS or a TRBHA receives a claim for such services, the claim will be denied with instructions to the provider to bill the responsible county, city or town.