

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0241-21_

SPONSOR: Daniel E. Tso

TITLE: An Action Relating to Health, Education and Human Services, Budget and Finance and Naabik'iyáti' Committees and the Navajo Nation Council; Approving a Limited Waiver of Sovereign Immunity in the State of New Mexico Medical Assistance Division Provider Participation Agreement Between the Navajo Nation Division of Behavioral and Mental Health Services and the State of New Mexico

Date posted: November 15, 2021 at 5:30 PM

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0241-21

DATE: November 15, 2021

TITLE OF RESOLUTION: AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, BUDGET AND FINANCE AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY IN THE STATE OF NEW MEXICO MEDICAL ASSISTANCE DIVISION PROVIDER PARTICIPATION AGREEMENT BETWEEN THE NAVAJO NATION DIVISION OF BEHAVIORAL AND MENTAL HEALTH SERVICES AND THE STATE OF NEW MEXICO

PURPOSE: If approved, this resolution will approve a limited waiver of sovereign immunity expressed in the State of New Mexico Medical Assistance Division Provider Participation Agreement between the Navajo Nation Division of Behavioral and Mental Health Services and the State of New Mexico. The Provider Participation Agreements will allow the Navajo Nation Division of Behavioral and Mental Health Services seek reimbursements from the State of New Mexico for the services DBMHS provides.

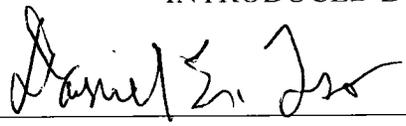
This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: Ysreahase
Website Posting Time/Date:
Posting End Date: November 20, 2021
Eligible for Action: November 21, 2021

Health Education & Human Services Committee
Thence
Budget & Finance Committee
Thence
Naabik'iyáti' Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL – Third Year, 2021

INTRODUCED BY



(Sponsor)

TRACKING NO. 0241-21

AN ACTION

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, BUDGET AND FINANCE AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY IN THE STATE OF NEW MEXICO MEDICAL ASSISTANCE DIVISION PROVIDER PARTICIPATION AGREEMENT BETWEEN THE NAVAJO NATION DIVISION OF BEHAVIORAL AND MENTAL HEALTH SERVICES AND THE STATE OF NEW MEXICO

BE IT ENACTED:

SECTION ONE. AUTHORITIES

- A. The Health, Education and Human Services Committee is a standing committee of the Navajo Nation Council and has authority to review and recommend contracts negotiated with state governments and Navajo health authorities subject to applicable laws of the Navajo Nation. 2 N.N.C. §§ 400(A) and 401(B)(6)(b).
- B. The Budget and Finance Committee is a standing committee of the Navajo Nation Council and has authority to authorize to approve and accept contracts between the Navajo Nation and the State upon the recommendation of the standing committee which has oversight of the program that requested the contract. 2 N.N.C. §§ 300(A) and 301(B)(15).

- 1 C. The Naabik'iyáti' Committee is a standing committee of the Navajo Nation Council
2 and reviews legislation which requires final action by the Navajo Nation Council. 2
3 N.N.C. §§ 700(A) and 164(A)(9).
- 4 D. The Navajo Nation Council is the governing body of the Navajo Nation, 2 N.N.C.
5 §102(A).
- 6 E. The Navajo Nation Code provides, “[c]ontracts shall not waive the sovereign immunity
7 of the Navajo Nation or its entities unless approved by two-thirds (2/3) vote of the full
8 membership of the Navajo Nation Council.” 2 N.N.C. § 223(C).
- 9

10 **SECTION TWO. FINDINGS**

- 11 A. The Navajo Division of Behavioral and Mental Health Services (DBMHS) is a program
12 under the Navajo Department of Health with the purpose of providing “a
13 comprehensive, culturally-centered holistic approach for prevention, treatment, and
14 aftercare of alcohol, controlled substance use disorder, and violent behavior through an
15 integrated behavior and mental health system.” Plan of Operation, Resolution
16 HEHSCJA-01-18.
- 17 B. In order for DBMHS to provide services, bill for services, such as outpatient and
18 residential behavioral and mental health treatment services, and receive Medicaid
19 reimbursement payments for those services from the State of New Mexico, the
20 DBMHS must enter into a Provider Participation Agreement with the State of New
21 Mexico Medical Assistance Division, as noted at Article XII of the Agreement attached
22 as **Exhibit A-1 through A-7**.
- 23 C. DBMHS completed the Participation Agreements for each of the sites it operates at the
24 following locations: the Chinle Residential Treatment Center (see **A-1**), Fort Defiance
25 Outpatient Treatment Center (see **A-2**), Gallup Outpatient Treatment Center (see **A-3**),
26 Newlands Outpatient Treatment Center (see **A-4**), Red Mesa Outpatient Treatment
27 Center (see **A-5**), Navajo Regional Behavioral Health Center for Adult and Adolescent
28 Residential Treatment (see **A-6** and **A-7**).
- 29
- 30

1 D. Navajo Nation Department of Justice reviewed the State of New Mexico Provider
2 Participation Agreements and provided a memo expressing concerns regarding an
3 indirect waiver of sovereign immunity

4 E. The Provider Participation Agreement requires DBMHS to consent:

5 1. That the Agreement shall be governed by the laws of the State of New Mexico
6 and all legal proceedings arising from unresolved disputes under the Agreement
7 are subject to administrative and judicial review as provided for in Article XVI
8 of the Agreement.

9 2. To abide by Human Services Department and Medical Assistance Division
10 Program Policy Manual.

11 3. That the Navajo Nation shall indemnify the State of New Mexico as provided
12 for in Article XVIII of the Agreement.

13
14 **SECTION THREE. APPROVING A LIMITED WAIVER OF SOVEREIGN**
15 **IMMUNITY**

16 A. The Navajo Nation hereby approves a limited waiver of sovereign immunity for the
17 Navajo Nation Division of Behavioral and Mental Health Services to enter into the
18 Provider Participation Agreement with the State of New Mexico Medical Assistance
19 Division attached as **Exhibits A-1 through A-7**.

20 B. The Navajo Nation authorizes the President of the Navajo Nation to sign the Provider
21 Participation Agreement on page 14 of the attached as **Exhibits A-1 through A-7**.