TITLE: 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 Arizona Health Care Cost Containment System Provider Participation Agreements Between the Navajo Nation Division of Behavioral and Mental Health Services and the Arizona Health Care Cost Containment System

Date posted: November 18, 2021 at 4:35PM

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DATE: November 17, 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 ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM PROVIDER PARTICIPATION AGREEMENTS BETWEEN THE NAVAJO NATION DIVISION OF BEHAVIORAL AND MENTAL HEALTH SERVICES AND THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

PURPOSE: If approved, this resolution will approve a limited waiver of sovereign immunity expressed in the Arizona Health Care Cost Containment System Provider Enrollment Forms between the Navajo Nation Division of Behavioral and Mental Health Services and the Arizona Health Care Cost Containment System. The Provider Participation Agreements will allow the Navajo Nation Division of Behavioral and Mental Health Services seek reimbursements from the Arizona Health Care Cost Containment System for 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.
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 ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM PROVIDER PARTICIPATION AGREEMENTS BETWEEN THE NAVAJO NATION DIVISION OF BEHAVIORAL AND MENTAL HEALTH SERVICES AND THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

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).
C. The Naabik’iýáti’ Committee is a standing committee of the Navajo Nation Council and reviews legislation which requires final action by the Navajo Nation Council. 2 N.N.C. §§ 700(A) and 164(A)(9).

D. The Navajo Nation Council is the governing body of the Navajo Nation, 2 N.N.C. §102(A).

E. The Navajo Nation Code provides, “[c]ontracts shall not waive the sovereign immunity of the Navajo Nation or its entities unless approved by two-thirds (2/3) vote of the full membership of the Navajo Nation Council.” 2 N.N.C. § 223(C).

SECTION TWO. FINDINGS

A. The Navajo Division of Behavioral and Mental Health Services (DBMHS) is a program under the Navajo Department of Health with the purpose of providing “a comprehensive, culturally-centered holistic approach for prevention, treatment, and aftercare of alcohol, controlled substance use disorder, and violent behavior through an integrated behavior and mental health system.” Plan of Operation, Resolution HEHSCJA-01-18.

B. In order for Division of Behavioral and Mental Health Services to provide services, bill for services, such as outpatient and residential behavioral and mental health treatment services, and receive Medicaid reimbursement payments for those services from the Arizona Health Care Cost Containment System (AHCCCS), the Division of Behavioral and Mental Health Services must enter into Provider Participation Agreements with AHCCCS.

C. The Provider Enrollment Forms contain the Provider Participation Agreement on pages 15—19 in Exhibit A-1 through A-13.

D. DBMHS completed the Participation Agreements for each of the sites it operates at the following locations: Chinle Outpatient Treatment Center (see Exhibit A-1), Dilkon Outpatient Treatment Center (Exhibit A-2), Fort Defiance Outpatient Treatment Center (Exhibit A-3), Kaibeto Outpatient Treatment Center (Exhibit A-4), Kayenta Outpatient Treatment Center (Exhibit A-5), Tuba City Outpatient Treatment Center (Exhibit A-6), Red Mesa Outpatient Treatment Center (Exhibit A-7), Shiprock
(NRBHC) Outpatient Treatment Center (Exhibit A-8), Newlands Outpatient Treatment Center (Exhibit A-9), Gallup Outpatient Treatment Center (Exhibit A-10), Chinle Residential Treatment Center (Exhibit A-11), and Navajo Regional Behavioral Health Center Adult Residential and Adolescent Residential Centers (Exhibit A-12 and Exhibit A-13).

E. Navajo Nation Department of Justice reviewed the Arizona Health Care Cost Containment System Provider Enrollment Forms for DBMHS to enter into a Provider Participation Agreement with the Arizona Health Care Cost Containment System and provided a memo expressing concerns regarding an indirect waiver of sovereign immunity.

F. The Provider Participation Agreement requires the Navajo Nation to consent:
   1. to indemnification of the state at Section B(12),
   2. agree that any appeals or claims filed by DBMHS shall be adjudicated in accordance with the AHCCCS Rules under Arizona Administrative Code at section B(14),
   3. to waiving any right to attorneys’ fees in any administrative or judicial proceeding concerning, arising out of or otherwise related to the Agreement, at section B(14),
   4. agree that if DBMHS uses the AHCCCS/ALTCS/Kidscare or other program logo or design without written approval, AHCCCS may seek injunctive relief and DBMHS shall bear the cost and expense of any judicial proceeding including all attorneys fees and costs incurred by AHCCCS at section B(21).

SECTION THREE. APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY

A. The Navajo Nation hereby approves a limited waiver of sovereign immunity for the Navajo Nation Division of Behavioral and Mental Health Services to enter into the Provider Participation Agreements with the State of Arizona attached as Exhibit A-1 through A-13.
B. The Navajo Nation authorizes the President of the Navajo Nation to sign the Provider Participation Agreement on page 19 of the Provider Enrollment Form attached as Exhibit A-1 through A-13.