

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0244-21_

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 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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LEGISLATIVE SUMMARY SHEET

Tracking No. 0244-21

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

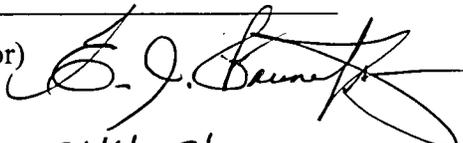
PURPOSE: If approved, this resolution will approve a limited waiver of sovereign immunity expressed in the Arizona Health Care Cost Containment System Provider Enrollment Forms between the Navajo Nation Division of Behavioral and Mental Health Services and the Arizona Health Care Cost Containment System. 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.

5-DAY BILL HOLD PERIOD: Johnson
Website Posting Time/Date: _____
Posting End Date: 11-23-21
Eligible for Action: 11-24-21

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

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION
2 24th NAVAJO NATION COUNCIL – Third Year, 2021
3 INTRODUCED BY

4
5 _____
6 (Sponsor) 
7

8 TRACKING NO. 0244-21

9
10 AN ACTION
11 RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, BUDGET
12 AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO
13 NATION COUNCIL; APPROVING A LIMITED WAIVER OF SOVEREIGN
14 IMMUNITY IN THE ARIZONA HEALTH CARE COST CONTAINMENT
15 SYSTEM PROVIDER PARTICIPATION AGREEMENTS BETWEEN THE
16 NAVAJO NATION DIVISION OF BEHAVIORAL AND MENTAL HEALTH
17 SERVICES AND THE ARIZONA HEALTH CARE COST CONTAINMENT
18 SYSTEM

19 BE IT ENACTED:

20
21 SECTION ONE. AUTHORITIES

- 22 A. The Health, Education and Human Services Committee is a standing committee of the
23 Navajo Nation Council and has authority to review and recommend contracts
24 negotiated with state governments and Navajo health authorities subject to applicable
25 laws of the Navajo Nation. 2 N.N.C. §§ 400(A) and 401(B)(6)(b).
26 B. The Budget and Finance Committee is a standing committee of the Navajo Nation
27 Council and has authority to authorize to approve and accept contracts between the
28 Navajo Nation and the State upon the recommendation of the standing committee
29 which has oversight of the program that requested the contract. 2 N.N.C. §§ 300(A)
30 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 Division of Behavioral and Mental Health Services to provide services, bill
18 for services, such as outpatient and residential behavioral and mental health treatment
19 services, and receive Medicaid reimbursement payments for those services from the
20 Arizona Health Care Cost Containment System (AHCCCS), the Division of Behavioral
21 and Mental Health Services must enter into Provider Participation Agreements with
22 AHCCCS.

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

25 D. DBMHS completed the Participation Agreements for each of the sites it operates at the
26 following locations: Chinle Outpatient Treatment Center (see **Exhibit A-1**), Dilkon
27 Outpatient Treatment Center (**Exhibit A-2**), Fort Defiance Outpatient Treatment
28 Center (**Exhibit A-3**), Kaibeto Outpatient Treatment Center (**Exhibit A-4**), Kayenta
29 Outpatient Treatment Center (**Exhibit A-5**), Tuba City Outpatient Treatment Center
30 (**Exhibit A-6**), Red Mesa Outpatient Treatment Center (**Exhibit A-7**), Shiprock

1 (NRBHC) Outpatient Treatment Center (**Exhibit A-8**), Newlands Outpatient
2 Treatment Center (**Exhibit A-9**), Gallup Outpatient Treatment Center (**Exhibit A-10**),
3 Chinle Residential Treatment Center (**Exhibit A-11**), and Navajo Regional Behavioral
4 Health Center Adult Residential and Adolescent Residential Centers (**Exhibit A-12** and
5 **Exhibit A-13**).

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

11 F. The Provider Participation Agreement requires the Navajo Nation to consent:

- 12 1. to indemnification of the state at Section B(12),
- 13 2. agree that any appeals or claims filed by DBMHS shall be adjudicated in
14 accordance with the AHCCCS Rules under Arizona Administrative Code at
15 section B(14),
- 16 3. to waiving any right to attorneys' fees in any administrative or judicial
17 proceeding concerning, arising out of or otherwise related to the Agreement, at
18 section B(14),
- 19 4. agree that if DBMHS uses the AHCCCS/ALTCS/Kidscare or other program
20 logo or design without written approval, AHCCCS may seek injunctive relief
21 and DBMHS shall bear the cost and expense of any judicial proceeding
22 including all attorneys fees and costs incurred by AHCCCS at section B(21).

23
24 **SECTION THREE. APPROVING A LIMITED WAIVER OF SOVEREIGN**
25 **IMMUNITY**

26 A. The Navajo Nation hereby approves a limited waiver of sovereign immunity for the
27 Navajo Nation Division of Behavioral and Mental Health Services to enter into the
28 Provider Participation Agreements with the State of Arizona attached as **Exhibit A-1**
29 **through A-13**.

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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.**