ADHS Contract # HG 532023 AUG 2 6 2004

Filed with the Secretary of State
Date Filed: 07/27/04
Secretary of State
By: D. Groenewold

INTERGOVERNMENTAL AGREEMENT

BETWEEN THE

MARICOPA COUNTY BOARD OF SUPERVISORS

AND THE

ARIZONA DEPARTMENT OF HEALTH SERVICES

(FOR FISCAL YEAR 2004/2005)

~~(C39010012)~~ C3904018200

This Intergovernmental Agreement ("Agreement") is entered into by and between the Maricopa County Board of Supervisors ("County") and the Arizona Department of Health Services ("Department").

WHEREAS, the County and the Department have statutory duties to provide mental health services to the seriously mentally ill ("SMI") indigent, adult residents of Maricopa County ("Class Members"), as noted in *Arnold v. Arizona Department of Health Services,* 160 Ariz. 593, 775 P.2d 521 (1989) *("Arnold v. Sarn");* and

WHEREAS, the County and the Department desire to develop a unified continuum of behavioral health and mental health care services for Class Members in Maricopa County, which will benefit all of the residents of Maricopa County; and

WHEREAS, the Department, in furtherance of the statutory duties, may choose to provide services directly or indirectly to Class Members through a regional behavioral health authority in Maricopa County ("RBHA"); and

WHEREAS, The County has the authority to enter into agreements with the Department for the provision of behavioral health and mental health services pursuant to A.R.S. §§ 11-201, 11-297, 11-952, 36-104, 36-545.06, 36-545.07, and 36-550.03; and

WHEREAS, A.R.S. §§ 11-952, 36-104, 36-545.07, and 36-550.03 authorize the Department to enter into agreements for the provision of behavioral health and mental health services in Maricopa County; and

IN CONSIDERATION of the mutual covenants contained herein, the parties agree as follows:

ARTICLE 1

TERM

Upon the filing of this Agreement with the Arizona Secretary of State's office, this Agreement shall become effective, subject to the provisions of Section 4.2 and Article 8, and shall remain in effect until June 30, 2005, unless further amended, extended, or terminated pursuant to the provisions of this Agreement,

ARTICLE 2

SCOPE OF SERVICES

2.1 Duties of the Department. During the term of this Agreement, the Department shall fulfill the obligations set forth below in this Section 2.1.

2.1.1 Services to Class Members and to Non-SMIs

2.1.1.1 Services to Class Members. The Department shall provide to all Class Members, either directly or through a contract with the RBHA under Section 2.1.4 below, behavioral health and mental health care services, and medical services, to the extent such medical services are routinely associated with commonly accepted psychiatric practices or are medically necessary for psychiatric diagnosis and treatment to fulfill the obligations imposed by the judgment in *Arnold v. Sarn*. The foregoing services, shall be provided to the extent that such services are required of the County under A.R.S. §§ 11-297, 11-251(5), and § 36-550, et seq., or under any other state law, statute or regulation in effect during the term of this Agreement.

2.1.1.2 Services to Non-SMIs. The County has an obligation to provide certain behavioral health services to indigent residents of Maricopa County who are not Class Members ("Non-SMIs"). In addition, the County has historically provided substance abuse services directly or indirectly at the Local Alcohol Reception Center ("LARC") to non-SMI substance abusers ("LARC Services"). To ensure a unified system, the Department shall provide these Non-SMI and LARC Services to the extent of the Non-SMI Payment and the LARC Payment as defined in Article 4 of this Agreement.

2.1.2 Maintain a Unified System. Under *Arnold v. Sarn* it is the County and the Department's responsibility to develop and maintain a unified system of care for the SMI, and to the extent practicable, for the non-SMI population.

2.1.3 Compliance With Laws. All services provided by the Department pursuant to this Agreement, either directly or indirectly, or by contract with the RBHA or otherwise, shall be rendered in accordance with applicable law, community professional and ethical standards, and the rulings of the Arizona Supreme Court in *Arnold v. Sarn.*

2.1.4 Department Contracts with RBHA. The Department shall incorporate this Agreement and the *Arnold v. Sarn* provisions into any and all contracts between it and the RBHA for behavioral health and mental health care services provided in Maricopa County.

2.2 Duties of the County. During the term of this Agreement, the County shall fulfill the obligations set forth below in this Section 2.2.

2.2.1 Commitment Proceedings. To the extent obligated by law, the County shall retain financial responsibility for Court proceeding expenses for commitment actions brought under Title 36, including, but not limited to, the costs of independent evaluators and the fees and costs for the attorneys for the prosecution, and the court-appointed defense attorneys. The Department will consult with the County regarding any effort to redesign the court commitment and evaluation process, and any such redesign will consider the financial impact on the County.

2.2.2 Space for RBHA Intake Office. As long as the County is a service provider to the RBHA, and as long as the County continues to own and have day-to-day responsibility for operations at its behavioral health facilities, it shall make available adequate space for the RBHA to operate an intake office at its behavioral health facilities. The RBHA shall utilize such space to determine the clinical eligibility of Class Members, to authorize admission and discharge of Class Members, and to ensure that all Class Members receive coordinated care in accordance with the terms of their respective individual service plans, and for no other purposes, unless the RBHA obtains the prior written approval of the County, which approval shall not be unreasonably withheld.

2.2.3 Psychiatric Residency. The County shall continue to use its best efforts to work with the Department and the Monitor and her designees to evaluate and define those things necessary to ensure that the psychiatric residency program maintained and operated by the County ("Residency Program") remains a part of the community-based system in a manner consistent with the Accreditation Council for Graduate Medical Education ("ACGME") requirements; provided, however, that any provision in this Agreement to the contrary notwithstanding, the educational integrity of the Residency Program and compliance with all ACGME requirements shall be ensured.

2.2.4 Transfer of Operational Contract. The Department acknowledges that the County may transfer or delegate the day-to-day operational responsibility of the Medical Center or its behavioral health facilities to one or more third parties.

2.3 Limitations on Scope of Duties. Subject to the provisions of Sections 2.1 and 2.2.1, the County and the Department have no obligation under this Agreement to provide behavioral health services through the Adult Probation Program, the Superior Courts of Maricopa County, the Maricopa County Public Defender's Office, the Maricopa County Juvenile Court and the Maricopa County Public Fiduciary's Office, or to provide services (other than case management services) at any Maricopa County jail facility; provided, however, nothing in this Agreement shall reduce the statutory obligations of any party.

ARTICLE 3

USE OF MARICOPA MEDICAL CENTER AND BEHAVIORAL HEALTH FACILITIES

3.1 Medical Center and Behavioral Health Facility Compliance Requirements. For so long as the Maricopa Medical Center's Behavioral Health Facilities (the "BHF") are licensed to provide behavioral health services, all physicians and mental health professionals employed or retained by the RBHA who are authorized to admit, discharge or treat patients at the Medical Center shall comply with the standards, rules, regulations, procedures, bylaws and policies of the BHF credentialing requirements.

3.2 Department and County Compliance Requirements. To the extent that the BHF are licensed to provide behavioral health services, all admissions to the BHF and operations of the BHF shall be in compliance with Arizona Administrative Code, Title 9, Chapter 21, all applicable County rules, and all applicable Department rules and regulations. In the event of a conflict between the rules of the County and the rules of the Department, the Department's rules shall take precedence.

ARTICLE 4

FUNDING

4.1 County Funding. The County shall compensate the Department for services rendered under this Agreement in accordance with this Article 4.

4.2 County Contribution. Subject to the provisions of Sections 4.2.1 and 4.3, the County shall pay the Department an annual sum for each fiscal year during the term of this Agreement (beginning with the fiscal year which commences on July 1, 1998), which shall be the sum of the components set forth in the table below (the "County Contribution"). In arriving at the County Contribution, the parties agree that the following components were reviewed:

1) Base County funding for services to Class Members;
2) Non-SMI Services;
3) The transition of Class Members from the Arizona State Hospital to the community as required by the Stipulation; and
4) LARC Services.
5) Payment shall be made in twelve equal installments, and shall be prorated for periods of less than one (1) year, if any. Installments shall be made monthly on or before the fifteenth (15th) day of each successive calendar month during the term of this Agreement. The County Contribution under this Agreement for the 2004/2005 fiscal year shall be $34,319,770 or $2,859,980.80 per installment.

RECURRING COUNTY CONTRIBUTION
(For Fiscal Year 2004 / 2005)

SMI Payment	$29,463,194	
Non-SMI Payment	$3,366,705	
	Subtotal	$32,829,899
LARC Payment	$1,489, 871	
	Total	$34,319,770

4.2.1 LARC Payment. The Department and County agree that the County may terminate its obligation to pay the Department $1,489,871 for the LARC Services under Sections 4.2 and 2.1.1.2 upon ninety (90) days written notice to the Department. However, in the event that such payment is terminated, the County shall assure that there will be no material decrease in the level of LARC services provided to members of the class.

4.3 Adjustments. The County SMI Payment portion of the County Contribution identified in Section 4.2 above shall be re-computed and adjusted prospectively on an annual basis. The adjustment procedure shall reflect only the change made in accordance with Section 4.4 below and any change made to correct computational errors. All future payments shall be adjusted upon completion of the annual recalculation. Any payment required as a result of a computational adjustment shall be made by payment of the County to the Department, or reimbursement by the Department to the County, as appropriate; provided, however, the County may elect to credit any amount due from the Department to the County against the next monthly payment of County Contribution due from the County to the Department.

The County Non-SMI Payment and the LARC Payment portions of the County Contribution identified in Section 4.2 may be re-computed and adjusted only to correct computational errors.

4.4 POST-2001 Funding. The County and the Department acknowledge that any increase in the amount of the county's contribution is limited to the increase in inflation in accordance with A.R.S. § 11-297(A)(3).

4.5 Federal Matching Funds. Federal matching funds generated by Department's use of the County Contribution pursuant to this Agreement shall be spent in Maricopa County for the benefit of Class Members, and subject to programmatic and financial audits by County, as noted in Section 4.6 and Section 10.1.

4.6 Financial Reporting. At the close of each fiscal year quarter, effective with the fiscal quarter ending June 30, 2000, ADHS shall provide to Maricopa County a copy of the "Quarterly RBHA Financial Statement" within five working days from the time the RBHA's Financial Statement is received by ADHS.

ARTICLE 5

DIVERSION

The County and the Department agree to cooperate, to the extent to which they are legally capable, with the RBHA to develop diversion alternatives for placement of Class Members in appropriate programs and locations outside the judicial and law enforcement system.

ARTICLE 6

INSURANCE

6.1 Department and County Insurance Obligations. The parties acknowledge that the Department and the County are self-insured, in whole or in part, pursuant to statutory authority. The parties agree that the general liability coverage and the professional liability coverage afforded by these insurance/self-insurance programs are sufficient to meet the purposes of this Agreement.

6.2 RBHA Insurance Obligations. The Department will require the RBHA to purchase and maintain adequate general liability coverage and professional liability coverage; furthermore, the Department will require the RBHA to name the County as an additional insured on any and all such insurance policies,

ARTICLE 7

INDEMNIFICATION

7.1 Mutual Indemnification. To the extent permissible under A.R.S. §§ 41-621, et seq. and 11-981 and not prohibited by A.R.S. § 35-154, each party does hereby indemnify and hold harmless the other party from any and all liability which is the result of the intentional conduct or negligence or omission of the indemnifying party, its officers, employees, contractors, agents or anyone acting under its direction, in connection with the performance of their respective responsibilities under this Agreement.

7.2 The Department's Indemnification. Without limiting the rights of any party under Section 7.1 of this Agreement, the Department does hereby indemnify and hold harmless the County from any and all liabilities incurred by County which arise from the performance (or failure to perform) by the Department of its obligations under this Agreement, including any liability arising from the insufficiency or inadequacy of services provided by, through, or at the direction of the Department; provided, however, that if the County is a service provider to the RBHA, then this indemnification shall not extend to any liability of the County arising directly from its performance as a service provider. The foregoing indemnity shall also not extend to any proceedings which seek to hold the County in contempt, if such proceeding is based solely upon the actions or inactions of the County. Nothing herein shall be construed as releasing the County from any

obligation to increase its contribution if so ordered by a court of competent jurisdiction.

ARTICLE 8

TERMINATION

8.1 Termination Without Cause. Either party shall have the right upon ninety (90) days' written notice to the other party and to the Arnold v. Sarn Court Monitor, to terminate this Agreement, in whole or in part, without cause.

8.2 Termination for Cause. In the event of a material breach of any of the provisions of this Agreement, the non-defaulting party may terminate this Agreement by delivering written notice to the defaulting party and to the Monitor specifically setting forth the nature of the breach. Upon being served with such notice, the defaulting party shall have sixty (60) days in which to cure said breach. If said breach has not been cured within the sixty (60) days, then this Agreement shall be deemed terminated as set forth in the notice, and both parties hereto shall perform their respective obligations up to the effective date of such termination.

8.3 Termination Under A.R.S. 38-511. The parties may cancel this agreement without penalty or further obligation pursuant to A.R.S. § 38-511. The Department and the County each represent that, as of the date of execution of this Agreement, they are not aware of any facts or circumstances which would give rise to a cancellation right in favor of any party pursuant to A.R.S. § 38-511.

8.4 Payments Upon Termination. In the event of termination of this Agreement, the Department shall be paid as provided herein all amounts due through the date of termination.

8.5 Impact on Order. Termination of this Agreement for any reason shall not limit the effect of the obligations of the parties under the March 10, 1994 Order, entered by the Court in Arnold v. Sam, as amended pursuant to the provisions of Section 4.5 of this Agreement.

8.6 Miscellaneous. Termination of this Agreement pursuant to this Article does not limit or affect the obligations of any party under any court order.

ARTICLE 9

NOTICES

Any and all written notices required or permitted under this Agreement shall be given in writing and personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, or by a recognized overnight delivery service, addressed as follows:

A. Notice to Department shall be addressed as follows:

Catherine R. Eden, Director
Arizona Department of Health Services
1740 West Adams Street
Phoenix, AZ 85007

with copies to:

Leslie Schwalbe, Deputy Director
Division of Behavioral Health Services
150 N. 18th Ave, Suite 200
Phoenix, AZ 85007

B. Notices to the County shall be addressed as follows:

David Smith, County Administrative Officer
301 West Jefferson Street, 10th Floor
Phoenix, AZ 85003

and

Maricopa County Board of Supervisors
Attn: Clerk of the Board
301 West Jefferson Street, 1Oth Floor
Phoenix, AZ 85003

and

Louis B. Gorman, Esq.
Office of County Counsel
Security Center Building
222 North Central Avenue, Suite 1100
Phoenix, Arizona 85003

C. Notice to the Monitor shall be addressed as follows:

Ms. Nancy E. Diggs
Office of the Monitor
4201 N. 16th Street
Suite 220
Phoenix, AZ 85016
with copies to:

Charles L. Arnold, Esq.
3101 N. Central, Ste 1600
Phoenix, AZ 85012

Notice shall be deemed given upon hand or courier delivery or three (3) business days after deposit in the United States mail.

ARTICLE 10

RECORD KEEPING AND AUDITS

10.1 Record Keeping by the Department and the County. The Department and the County agree to keep in a form acceptable to both parties, adequate, records of Class Members and Non-SMIs served pursuant to this Agreement. The content of such records shall be acceptable to both parties and shall include, but not be limited to: financial, demographic, service type, duration information, individual treatment plans and results. The parties further agree that they shall have access to the others' records kept pursuant to this paragraph, and that such records shall be kept in a manner as to provide ready access, review and evaluation by either party.

10.2 Maintenance of Records. The Department and the County agree to maintain all records required by Section 10.1 above for a period of at least five (5) years.

ARTICLE 11

EXTENSIONS AND AMENDMENTS

11.1 Amendment. This Agreement contains the entire agreement of the parties and may not be changed orally. Any change, modification or extension of this Agreement must be in the form of a written amendment to this Agreement signed by duly authorized representatives of both parties.

11.2 Notice to Monitor. Notice of any amendment proposed by the County or the Department shall be submitted to the Monitor at least 60 days before its proposed effective date.

ARTICLE 12

NON-DISCRIMINATION

It is understood that each of the parties shall comply with the provisions of State Executive Order 99-4, Title VI of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans With Disability Act.

ARTICLE 13

MISCELLANEOUS

13.1 Materiality. The parties agree that all of the conditions set forth herein are material to this Agreement and a breach of any condition is a breach of this Agreement.

13.2 Grammatical Items. When used in this Agreement, the terms "include" or "including" shall mean without limitation by reason of the enumeration. Whenever the masculine gender has been used herein, the same shall include the feminine

if the context so indicates. Also, the singular shall include the plural whenever the context indicates. The term "person" shall include an individual, corporation, limited liability company, partnership, trust, estate or any other entity. The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision, section or exhibit.

13.3 Waiver. The failure of either party to insist in any one or more instances upon the full and complete performance of any of the terms and provisions of this Agreement to be performed on the part of the other or to take any action permitted as a result thereof shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either party of sums less than may be due and owing at any time shall not be construed as an accord and satisfaction.

13.4 Captions. Captions and section headings used in this Agreement are for convenience of reference purposes only and shall not be used to define, limit or describe the scope or intent of this Agreement.

13.5 Construction. The substantive laws of Arizona (without reference to any choice of law principles) shall govern the interpretation, validity, performance and enforcement of this Agreement.

13.6 No Third Party Beneficiaries. Nothing in this Agreement is intended to create any third party beneficiary rights in any party and the Department and the County expressly state that this Agreement does not create any third party rights of enforcement.

13.7 Recitals. All recitals set forth above are fully incorporated in and made a part of this Agreement.

13.8 Further Instrument and Documents. Each party shall, promptly upon the written request of the other party, acknowledge and deliver to the other party all future instructions and assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement.

13.9 Integration Clause. This Agreement represents the entire agreement of the parties with respect to the subject matter of this Agreement, and all prior agreements, if any, entered into between the parties regarding the parties' obligations under the Judgment and any then effective order of the Court in Arnold v. Sam are revoked and superseded by this Agreement. This Agreement is the result of negotiations between the parties and shall not be strictly construed for or against any party.

13.10 Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original hereof.

13.11 Time Computation. If the last day of any time period stated herein shall fall on a Saturday, Sunday or legal holiday in the State of Arizona, then the duration of such time period shall be extended to that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday. Time is of the essence of this Agreement.

13.12 Mediation. In the event of a dispute regarding the scope or meaning of any provision of this Agreement, or non-compliance of any party with any provision of this Agreement, the parties shall meet and confer (with the assistance of the Monitor if requested) in an effort to resolve such dispute. In the absence of agreement on the subject, the parties may jointly submit their differences either to non-binding mediation before a mutually acceptable person or, in the absence of agreement, to a person (other than the Monitor) selected by the Court in Arnold v. Sam. In the event of a dispute, the parties agree to use arbitration only to the extent required by A.R.S. § 12-1518 (B) or (C).

13.13 No Assignment. Except as expressly provided herein, no party may delegate or assign its rights or responsibilities under this Agreement without prior written approval of the other party and any purported assignment or delegation in violation of this provision shall be void.

IN WITNESS WHEREOF, the parties hereto execute this Agreement:

MARICOPA COUNTY
BOARD OF SUPERVISORS

By: _____

ARIZONA DEPARTMENT
OF HEALTH SERVICES

By: _____
Catherine R. Eden, Director

ATTEST:

_____
Clerk of the Board 060204

APPROVED AS TO FORM:

Attorney General Contract No. which is an Agreement between Public agencies, has been reviewed pursuant to A.R.S. § 11-952 who has determined that it is in the proper form and is within the powers granted under the laws of the State of Arizona to those parties to the Agreement represented by the Attorney General.

Terry Goddard
Attorney General

By: Robert J. Sorce

Robert J. Sorce
Print Name

Date: 8/6/04

Pursuant to A.R.S. § 11-952, the undersigned Attorney has determined that this Intergovernmental Agreement is in proper form and is within the powers and authority granted under the laws of Arizona.

RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

By: Louis Barry Gorman

L B GORMAN
Print Name

Date: 7/8/04