

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Requesting Secretary of Health and Human Services to Direct Centers for Medicare
and Medicaid to Waive Licensure Requirement)

RESOLUTION NO. 13-023

1 **WHEREAS, the Constitution of the Tohono O'odham Nation vests the Legislative Council with the**
2 **authority "to promote, protect and provide for public health, peace, morals, education**
3 **and general welfare of the Tohono O'odham Nation and its members. . ." and with the**
4 **authority to "consult with the Congress of the United States and appropriate federal**
5 **agencies regarding federal activities that affect the Tohono O'odham Nation. .**
6 **."(Constitution, Article VI, Section 1(c)(2) and Section 1(j)); and**

7 **WHEREAS, recently during a September 27, 2012 tribal consultation, Arizona's Medicaid program,**
8 **Arizona Health Care Cost Containment System ("AHCCCS"), provided the Legislative**
9 **Health and Human Services Committee and other tribes information regarding a**
10 **licensure issue with the Centers for Medicaid and Medicare ("CMS"); and**

11 **WHEREAS, AHCCCS provided a July 20, 2012 letter from CMS in which CMS asks AHCCCS to**
12 **terminate a practice dating back at least eleven years of accepting official tribal**
13 **attestations to meet CMS licensure requirements for private entities operating on**
14 **reservations that are neither IHS or self-governance contract facilities; and**

15 **WHEREAS, in a September 14, 2012 response, AHCCCS questions why after years of accepting**
16 **tribal attestations and affirming tribal rights to self-governance and self-**
17 **determination, CMS is now implementing a change in policy without meaningful tribal**
18 **consultation; and**

19 **WHEREAS, CMS's July 20, 2012 letter also indicates that instead of tribal attestations, the private**
20 **health facilities operating on reservations that are neither IHS or self-governance**
21 **contract facilities would have to obtain state licensure pursuant to 42 CFR 440 Subpart**
22 **A; and**

23 **WHEREAS, the Tohono O'odham Nation has one such facility operating on the Nation's lands**
24 **providing therapeutic and counseling services to 159 youth and 91 adults and receives**
25 **AHCCCS reimbursements for AHCCCS enrollees; and**

26 **WHEREAS, under the Department of Health and Human Services' Tribal Consultation Policy, each**
27 **"division shall, to the extent practicable and permitted by law, consider any**
28 **application by an Indian Tribe for a waiver with a general view toward increasing**
29 **opportunities for utilizing flexible approaches at the Indian Tribal level when the**
30 **proposed waiver is consistent with the applicable Federal policy objectives and is**
31 **otherwise appropriate." (Tribal Consultation Policy, Section 15); and**

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1 **WHEREAS, the Centers for Medicare and Medicaid's Tribal Consultation Policy affirms that "CMS**
2 **will fully comply with Section 15 of the HHS Tribal Consultation Policy on Tribal**
3 **waivers and process all requests routinely received for waivers under existing**
4 **program authorities with the statutorily set timeframes." (CMS Tribal Consultation**
5 **Policy, Section 13); and**

6 **WHEREAS, the current practice of accepting tribal attestations in lieu of state inspection and**
7 **licensing has been in place for at least eleven years and the CMS demand for state**
8 **licensure is a policy change that will significantly affect the tribes in Arizona,**
9 **including the Tohono O'odham Nation; and**

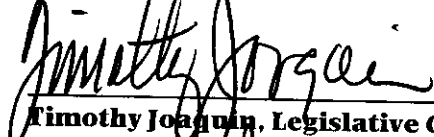
10 **WHEREAS, the Tohono O'odham Nation is requesting a waiver from the Centers for Medicare and**
11 **Medicaid for the requirement of state inspection and licensure of private facilities**
12 **operating on the Nation which are not IHS or self-governance facilities.**

13 **NOW, THEREFORE, BE IT RESOLVED by the Tohono O'odham Legislative Council that it requests**
14 **the Secretary of Health and Human Services to direct the Centers for Medicare and**
15 **Medicaid to waive the requirement of state inspection and licensure of private**
16 **facilities operating on the Nation which are not IHS or self-governance facilities and**
17 **to continue the practice of accepting tribal attestations.**

18 **BE IT FINALLY RESOLVED by the Tohono O'odham Legislative Council that it authorizes the**
19 **Nation's chairperson or official designee to advocate for this waiver request and to**
20 **communicate directly with CMS and other appropriate state or federal departments**
21 **and agencies.**

22 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 11TH Day**
23 **of JANUARY, 2013 at a meeting at which a quorum was present with a vote of 2,678.30 FOR; 102.30**
24 **AGAINST; -0- NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by Article**
25 **VI, Section 1 (c)(2) and (j) of the Constitution of the Tohono O'odham Nation, adopted by the Tohono**
26 **O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary -**
27 **Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48**
28 **Stat. 984).**

29
30 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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32
33 **Timothy Joaquin, Legislative Chairman**

34
35 11 day of January, 2013
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ATTEST:

Evonne Wilson
Evonne Wilson, Legislative Secretary

11 day of January, 2013.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 11 day of January, 2013 at 3:15 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Timothy Joaquin
Timothy Joaquin, Legislative Chairman

APPROVED

on the 11 day of January, 2013

DISAPPROVED

at 4:15 o'clock, P.M.

Ned Norris, Jr.
NED NORRIS, JR., CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 11 day of

January, 2013, at 4:42 o'clock, P.M.

Evonne Wilson
Evonne Wilson, Legislative Secretary

ACTION: REQUESTING SECRETARY OF HEALTH AND HUMAN SERVICES TO DIRECT CENTERS FOR MEDICARE AND MEDICAID TO WAIVE LICENSURE REQUIREMENT

Moved: COUNCILWOMAN FRANCES G. ANTONE

SECOND: COUNCILWOMAN SANDRA ORTEGA

DATE: JANUARY 11, 2013

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 342.0	1. FRANCES MIGUEL (Roberta Harvey)	171.0	X			
	2. FRANCES G. ANTONE (Vernon Smith)	171.0	X			
CHUKUT KUK 302.2	1. ETHEL GARCIA (Sara Mae Williams)	151.10	X			
	2. BILLMAN LOPEZ ()	151.10	X			
GU ACHI 244.9	1. TIMOTHY L. JOAQUIN ()	122.45	X			
	2. CYNTHIA E. MANUEL (Louis L. Johnson)	122.45	X			
GU VO 226.7	1. GRACE MANUEL (Floyd Flores)	113.35	X			
	2. PAMELA ANGHILL ()	113.35	X			X
HICKIWAN 186.3	1. LOUIS R. LOPEZ (Michelle Ortega)	93.15	X			
	2. SANDRA ORTEGA ()	93.15	X			
PISINEMO 200.7	1. CHESTER ANTONE (Tony Murrietta)	100.35	X			
	2. EDWARD MANUEL (Gerald Fayuant)	100.35	X			
SAN LUCY 204.6	1. LORRAINE EILER ()	102.30		X		
	2. JANA MONTANA (Gloria Ramirez)	102.30	X			
SAN XAVIER 215.8	1. HILARION CAMPUS (Racheal Vilson-Stoner)	107.90	X			X
	2. OLIVIA VILLEGAS-LISTON (Eugene Enis)	107.90	X			
SCHUK TOAK 169.8	1. FRANCES B. STEPHENS (Anthony J. Rios)	84.90	X			
	2. FREDERICK JOSE (Phyllis Cachora)	84.90	X			
SELLS 475.7	1. ARTHUR WILSON (Kimberly Mull)	237.85	X			
	2. MARIA ACKERMAN ()	237.85	X			
SIF OIDAK 211.9	1. NICHOLAS JOSE ()	105.95	X			
	2. MARY LOPEZ ()	105.95	X			
TOTAL		2,780.60	2,678.30	102.30	-0-	[02]