

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Approving Tohono O'odham Nation's Position on Arizona's March 31, 2011**  
**Demonstration Waiver to Centers for Medicare and Medicaid Services)**

**RESOLUTION NO. 11-278**

- 1 **WHEREAS, the Constitution of the Tohono O'odham Nation authorizes the Legislative Council**  
2 **to "promote, protect and provide for public health, peace, morals education and**  
3 **general welfare of the Tohono O'odham Nation and its members" and to "consult**  
4 **with . . . appropriate federal agencies regarding federal activities that affect the**  
5 **Tohono O'odham Nation" (Constitution, Article VI, Section 1(c)(2), and Section 1(j));**  
6 **and**
- 7 **WHEREAS, the Arizona Health Care Cost Containment System ("AHCCCS") is a Medicaid**  
8 **"demonstration project" under Section 1115 of the Social Security Act (42 U.S.C.**  
9 **§1315); and**
- 10 **WHEREAS, AHCCCS's status as a demonstration project allows the Secretary of Health and**  
11 **Human Services to waive certain statutory requirements that would normally apply**  
12 **to state Medicaid plans; and**
- 13 **WHEREAS, on March 31, 2011, Arizona Governor Janice K. Brewer requested a new Section 1115**  
14 **Research and Demonstration Waiver ("Demonstration Waiver") for AHCCCS for the**  
15 **period from October 1, 2011 to September 30, 2016; and**
- 16 **WHEREAS, certain proposals under Governor Brewer's requested Demonstration Waiver**  
17 **benefit the Tohono O'odham Nation and its members and other proposals negatively**  
18 **impact the Nation's members; and**
- 19 **WHEREAS, the Tohono O'odham Nation's Department of Health and Human Services**  
20 **("TODHHS"), which oversees and administers health, social, and United States**  
21 **Department of Agriculture Food Distribution Programs for Tohono O'odham**  
22 **Nation's members under Legislative Council Resolution No. 94-393 and through**  
23 **public law 93-638 Indian Education and Self Determination Act contracting, actively**  
24 **follows, discusses, and informs the Tohono O'odham Nation regarding Arizona's**  
25 **proposals to reform AHCCCS in order to balance the state's budget; and**
- 26 **WHEREAS, the TODHHS and the Legislative Health and Human Services Committee met with the**  
27 **Tucson Area Indian Health Service ("TAIHS"), the Phoenix IHS Area and Navajo IHS**  
28 **Area, the Intertribal Council of Arizona ("ITCA"), the Pascua Yaqui Tribe, AHCCCS's**  
29 **staff, and the Director of Region IX U.S. Department of Health and Human Services**  
30 **to address the ongoing impacts to Arizona tribes and tribal members from the**  
31 **proposals to reform AHCCCS; and**
- 32 **WHEREAS, on May 11, 2011, the Tucson Area IHS advised the Legislative Council that Arizona's**  
33 **requested Demonstration Waiver would negatively impact the Tucson Area IHS's**  
34 **ability to fully provide quality health care services to the Nation's members; and**

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- 1 **WHEREAS, one proposal in the Demonstration Waiver would eliminate new enrollment of**  
2 **childless adults after July 1, 2011 and will negatively impact an estimated 1000 or**  
3 **more Nation's members; and**
- 4 **WHEREAS, an estimated 27,130 American Indians statewide who are currently eligible for**  
5 **AHCCCS enrollment will no longer be eligible under the childless adults category if**  
6 **the Demonstration Waiver is approved by the Centers for Medicaid and Medicare**  
7 **("CMS"); and**
- 8 **WHEREAS, another proposal in the Demonstration Waiver would implement a fee for missed**  
9 **appointments outside the IHS system or tribal 93-638 facilities and will penalize**  
10 **rural and Native populations who struggle with transportation to and from health**  
11 **care facilities; and**
- 12 **WHEREAS, the proposal to require redeterminations of eligibility for childless adults and**  
13 **parents every six months, although framed as a "common sense" change, will only**  
14 **add a time-consuming and burdensome requirement for an already vulnerable and**  
15 **resource-deprived population; and**
- 16 **WHEREAS, proposals in the requested Demonstration Waiver will also impact the four Tucson**  
17 **Area IHS Sells Service Unit facilities on the Tohono O'odham Nation; and**
- 18 **WHEREAS, these facilities provide primary care services to the Nation's members and may lose**  
19 **\$3-\$6 million from outpatient care services if the Demonstration Waiver is**  
20 **approved; and**
- 21 **WHEREAS, approximately 171 current Tucson Area IHS full time employee positions, who are**  
22 **compensated from AHCCCS third party reimbursements for health services provided**  
23 **to Nation's members enrolled in AHCCCS, will be at risk if reimbursement at 100%**  
24 **Federal Medical Assisted Percentages ("FMAP") for services provided in IHS facilities**  
25 **does not continue; and**
- 26 **WHEREAS, other proposals under the requested Demonstration Waiver would benefit the**  
27 **Nation and its members; and**
- 28 **WHEREAS, proposal D -- Benefit Changes would allow AHCCCS to continue to cover non-**  
29 **emergency medical transportation ("NEMT") "provided through the Indian Health**  
30 **Service of 638 facilities regardless of the enrollee's county or residence and without**  
31 **requiring a copayment"; and**
- 32 **WHEREAS, proposal E -- Request to Avoid Cost Shift to Indian Health Services and Tribally**  
33 **Owned/Operated 638 Facilities would continue to benefit IHS and tribal public law**

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1                   **93-638 programs at 100% FMAP and avoid the projected \$3-\$6 million loss of**  
2                   **reimbursement to the Tucson Area IHS Sells Service Unit facilities; and**

3 **WHEREAS, for all Arizona IHS Areas, AHCCCS has already eliminated Adult Wellness Exam Visits,**  
4                   **Podiatry, and Adult Dental services since October 1, 2010, and enrollment in the Kids**  
5                   **Care Program ("CHIPRA") has been frozen since January 2010; and**

6 **WHEREAS, if the March 31, 2011 AHCCCS 100% FMAP reimbursement and NEMT exemptions for**  
7                   **IHS and Public Law 93-638 programs are not approved by CMS, Tucson Area IHS is**  
8                   **anticipating a total FY 2011 impact above the current 6% reduction in revenues**  
9                   **based on the wellness adult service benefit reduction from October 1, 2010; and**

10 **WHEREAS, in its May 27, 2011 letter to the Centers for Medicare and Medicaid Services, the Inter**  
11                   **Tribal Council of Arizona establishes similar positions on Arizona's Section 1115**  
12                   **Research and Demonstration Waiver Proposal; and**

13 **WHEREAS, it is in the Nation's best interest to provide the Nation's official position to CMS on**  
14                   **the specific proposals supported and opposed by the Nation in Arizona's March 31,**  
15                   **2011 Demonstration Waiver.**

16 **NOW, THEREFORE, BE IT RESOLVED by the Tohono O'odham Legislative Council that it adopts the**  
17                   **positions outlined in the May 27, 2011 Inter Tribal Council of Arizona's letter, which**  
18                   **is incorporated by this reference, as the Nation's official position on Arizona's March**  
19                   **31, 2011 Demonstration Waiver.**

20 **BE IT FURTHER RESOLVED by the Tohono O'odham Legislative Council that it approves the**  
21                   **following specific positions on Arizona's March 31, 2011 Demonstration Waiver:**

- 22                   **1. The Tohono O'odham Nation strongly opposes any proposals that eliminate**  
23                   **eligibility for childless adults, implement a six-month redetermination for**  
24                   **eligibility, or authorize charges for missed appointments.**  
25                   **2. The Tohono O'odham Nation strongly supports any proposals that continue**  
26                   **reimbursements to IHS and 638 facilities at 100% Federal Medical Assisted**  
27                   **Percentages ("FMAP").**  
28                   **3. The Tohono O'odham Nation strongly supports continuation of non-emergency**  
29                   **medical transportation ("NEMT") at 100% Federal Medical Assisted Percentages**  
30                   **reimbursement ("FMAP").**

31 **BE IT FURTHER RESOLVED that the Tohono O'odham Legislative Council requests CMS to restore**  
32                   **the following AHCCCS benefits that were previously reimbursable at 100% Federal**  
33                   **Medical Assisted Percentages ("FMAP") for critical services provided at IHS facilities**

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1                   and tribal 638 programs: adult wellness exam visits, podiatry, and adult dental  
2                   services.

3 **BE IT FURTHER RESOLVED** the Legislative Council urges CMS to fully consult with Arizona tribes  
4                   as required by Executive Order 13175, the November 5, 2009 Executive Memorandum  
5                   on tribal consultation, and applicable agency consultation policies concerning any  
6                   Demonstration Waivers that would impact Arizona tribes.

7 **BE IT FINALLY RESOLVED** that the Tohono O'odham Legislative Council hereby authorizes the  
8                   Nation's Chairperson or official designee to provide this resolution to CMS as the  
9                   Nation's official position on Arizona's March 31, 2011 Demonstration Waiver and to  
10                  advocate the Nation's position with all appropriate tribal, state, and federal  
11                  governments.

12 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 30<sup>TH</sup> Day**  
13 **of JUNE, 2011 at a meeting at which a quorum was present with a vote of 2,780.60 FOR; -0- AGAINST;**  
14 **-0- NOT VOTING; and [03] ABSENT, pursuant to the powers vested in the Council by Article VI,**  
15 **Section 1 (c)(2) and 1(j) of the Constitution of the Tohono O'odham Nation, adopted by the Tohono**  
16 **O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary -**  
17 **Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48**  
18 **Stat. 984).**

19  
20 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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23  
24 **Timothy Joaquin, Legislative Chairman**

25  
26 30 day of June, 2011

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28 **ATTEST:**

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31 **Evonne Wilson, Legislative Secretary**

32  
33 30 day of June, 2011

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35 **Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham**  
36 **Nation on the 30 day of June, 2011 at 4:55 o'clock, P.M.,**  
37 **pursuant to the provisions of Section 4 of Article VII of the Constitution and will become effective**  
38 **upon his approval or upon his failure to either approve or disapprove it within 48 hours of**  
39 **submittal.**

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**TOHONO O'ODHAM LEGISLATIVE COUNCIL**

  
Timothy Joaquin, Legislative Chairman

APPROVED

on the 1 day of July, 2011

DISAPPROVED

at 4:05 o'clock, P.M.

  
NED NORRIS, JR., CHAIRMAN  
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 01 day of

July, 2011, at 4:24 o'clock, P.M.

  
Evonne Wilson, Legislative Secretary

**ACTION: APPROVING TOHONO O'ODHAM NATION'S POSITION ON ARIZONA'S MARCH 31, 2011 DEMONSTRATION WAIVER TO CENTERS FOR MEDICARE AND MEDICAID SERVICES**

**MOVED: COUNCILWOMAN FRANCES G. ANTONE**

**SECOND: COUNCILWOMAN ROBERTA HARVEY**

**DATE: JUNE 30, 2011**

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
<b>BABOQUIVARI</b> 342.0	1. FRANCES MIGUEL ( <i>Absent</i> ) (Roberta Harvey) ( <i>Present</i> )	171.0	X			
	2. FRANCES G. ANTONE (Vernon Smith)	171.0	X			
<b>CHUKUT KUK</b> 302.2	1. ETHEL GARCIA (Sara Mae Williams)	151.10	X			
	2. BILLMAN LOPEZ ( )	151.10	X			
<b>GU ACHI</b> 244.9	1. TIMOTHY L. JOAQUIN (Rose Johnson Antone)	122.45	X			
	2. CYNTHIA E. MANUEL (Louis L. Johnson)	122.45	X			
<b>GU VO</b> 226.7	1. GRACE MANUEL (Floyd Flores)	113.35	X			
	2. PAMELA ANGHILL (Angela Ortiz)	113.35	X			X
<b>HICKIWAN</b> 186.3	1. LOUIS R. LOPEZ (Michelle Ortega)	93.15	X			
	2. SANDRA ORTEGA ( )	93.15	X			
<b>PISINEMO</b> 200.7	1. CHESTER ANTONE ( )	100.35	X			
	2. EDWARD MANUEL (Gerald Fayuant)	100.35	X			
<b>SAN LUCY</b> 204.6	1. LORRAINE EILER ( )	102.30	X			
	2. JANA MONTANA (Gloria Ramirez)	102.30	X			
<b>SAN XAVIER</b> 215.8	1. HILARION CAMPUS ( )	107.90	X			X
	2. OLIVIA VILLEGAS-LISTON (Eugene Enis)	107.90	X			
<b>SCHUK TOAK</b> 169.8	1. FRANCES B. CONDE ( )	84.90	X			
	2. FREDERICK JOSE (Phyllis Cachora)	84.90	X			
<b>SELLS</b> 475.7	1. ARTHUR WILSON (Kimberly Mull)	237.85	X			
	2. EVELYN B. JUAN MANUEL ( )	237.85	X			X
<b>SIF OIDAK</b> 211.9	1. NICHOLAS JOSE ( )	105.95	X			
	2. MARY LOPEZ ( )	105.95	X			
<b>TOTAL</b>		<b>2,780.60</b>	<b>2,780.60</b>	<b>-0-</b>	<b>-0-</b>	<b>[03]</b>