RESOLUTION # 18-81

OF THE Navajo COUNTY BOARD OF SUPERVISORS

WHEREAS, ARS 11-291 gives to County Boards of Supervisors the sole and exclusive responsibility to provide all necessary medical care to indigent county residents; and

WHEREAS, ARS 36-551 et seq grants to the Arizona Department of Economic Security the authority to transfer mentally retarded individuals as defined in ARS 36-551 to community residential alternatives where care and treatment for such conditions may be better rendered; and

WHEREAS, the Boards of Supervisors have recognized the need to provide reimbursement to a county rendering medical services to certified indigent individuals residing in a county other than that in which they resided at the time they entered residential care for the express purpose of receiving services for mental retardation pursuant to ARS 36-551, et seq.

WHEREAS, the Board of Supervisors have recognized this need and have previously stated those conditions necessary pursuant to providing such reimbursement in Agreement #_____.

Now therefore, be it resolved by the Board of Supervisors of Navajo County that Agreement #_____ is approved.

APPROVED: March 17, 1981

Chairman
Board of Supervisors

ATTEST:

Clerk
Board of Supervisors

Sent Copy to Dorothy 4-2-81

ARIZONA ASSOCIATION OF COUNTIES
1820 WEST WASHINGTON STREET
PHOENIX, ARIZONA 85007
PHONE (602) 252-6563

RICHARD W. CASEY
EXECUTIVE DIRECTOR

May 15, 1981

MEMO TO: COUNTY ATTORNEYS (except Apache & Pinal)

SUBJECT: INTERGOVERNMENTAL AGREEMENT: Indigent medical assistance for mental retardation services.

You may be aware of an intergovernmental agreement among 12 Arizona counties to provide services for mentally retarded indigents, setting forth the services and obligations of the "parent county" of the individual and the acceptance of billing by the "parent county" from the "provider county" for services under the agreement. During 1979, we became involved in assisting the Department of Economic Security in gathering signatures on the original intergovernmental agreement supported by resolutions of the various counties. Pinal and Apache counties have elected not to participate.

While it has taken some time to secure all of the necessary board actions, we now find that the IGA cannot be recorded with the Secretary of State without endorsement by the individual county attorneys on the agreement. The attorney general's office has referred us to A.R.S. 11-952 (D) and (F).

We are coordinating our efforts with the Office of Intergovernmental Operations of the Department of Economic Security and request that you review: [1] the intergovernmental agreement enclosed and the resolution adopted by your board of supervisors; [2] the synopsis of background information; [3] work out any problems that you have prior to our mid-year conference at Rio Rico, June 10-12. What we are attempting to do is secure as many signatures of county attorneys as possible at that time to avoid the unfortunate circumstance we encountered with the original IGA of circulating it from county to county sometimes involving delays and anxious moments over loss of the document. You must sign the original intergovernmental agreement.

If you have any questions or need any additional assistance, please do not hesitate to contact us at the above telephone number or address, or Pete Meder at DES Office of Intergovernmental Operations, 255-3882. Your assistance is most appreciated.

Enclosures

cc: Chairman, Board of Supervisors

DF

APACHE COCHISE COCONINO GILA GRAHAM GREENLEE MARICOPA
MOHAVE NAVAJO PIMA PINAL SANTA CRUZ YAVAPAI YUMA

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APPROVED: March 17, 1981

Chairman
Board of Supervisors

ATTEST:

Clerk
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INTERGOVERNMENTAL AGREEMENT #_____

Providing for recovery of costs associated with the provision of indigent medical assistance by certain counties.

Section 1. Purpose of Agreement

The purpose of this agreement is to allow counties rendering medical assistance as required by ARS 11-291 to individuals having been transferred to said county for purposes of receiving services for mental retardation as allowed and defined under ARS 36-551 et seq to seek financial compensation from the county in which that individual receiving medical assistance resided at the time he entered mental retardation residential care.

Section 2. Definitions

Provider County - A county rendering indigent medical services pursuant to ARS 11-291 to an individual who resided in another county at the time he entered mental retardation residential care. It is specifically understood that in the context of this agreement the individual is residing in the provider county as a result of a transfer made pursuant to ARS 36-551 et seq.

Parent County - That county in which an individual resided at the time he entered mental retardation residential care. It is specifically understood that in the context of this agreement, the individual was transferred from the parent county as a result of a transfer made pursuant to ARS 36-551 et seq.

Indigent Individual - An indivdual defined as such in accordance with ARS 11-291.

Indigent Medical Services - Those medical services normally provided to an indigent individual by county. These services shall include all services normally rendered by the provider county regardless of the availability of such services in the parent county.

Section 3. Services to be Performed by Parent County

The provider county agrees to render all indigent individuals, residing in such county for purposes of receiving services for mental retardation, all necessary medical services customarily provided to indigent individuals. Said services shall not be restricted in any manner.

Section 4. Obligation of Parent County

The parent county hereby agrees to remit to the provider county all costs associated with the provision of indigent medical services as required in Section 3 of this agreement. It is specifically understood and agreed that such renumeration shall include payment for services regardless of such services being available in the parent county for those individuals as categorized

indigent by the parent county regardless of whether or not such categories are equivalent to those of the provider county.

Section 5. Acceptance of Billing

The parent county hereby agrees to accept as valid and due payable all billings certified as such by the provider county. Nothing contained herein, however, shall prevent the parent county from contesting the validity of billings through that process customarily available to any other billing recipient. Once a final determination has been made in the normal course of such appeal process, the parent county is under full obligation to fully remit and satisfy the due bills.

Section 6. Duration of Agreement

The agreement shall be in effect in perpetuity unless terminated in accordance with Section 7 as set forth herein below.

Section 7. Termination of Agreement

This agreement shall be considered terminated by an undersigned party when that party provides a 60-day notice to all other undersigned parties as to its intent to withdraw from the obligations of this agreement. The withdrawal of one party, however, shall in no way affect the obligations of any other except in regards to that party indicating withdrawal.

Section 8. Severability

If any provision of this agreement or application thereof to any undersigned party, person, or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this agreement, which can be given effect without the invalid provision or application and to this end the provisions of this agreement are declared to be severable.

IN WITNESS WHEREOF, the parties have hereby executed this agreement on this _____ day of _____ 1978.

SIGNATURES:

Robert P. Casellas Gila

[illegible] Navajo

[illegible]

[illegible] Yavapai

[illegible]

[illegible] Cochise

Hawley Atkinson Maricopa

(See attached)

E.S. B. Walker PIMA

[illegible] Greenlee

William D. Barnett (PR)

Dio A. Dorchias COCONINO - 4/6/81

x Robt W. Kennerly - YUMA

Robert W. Kennerly, Chairman 1/19/81

§ 11-952. Intergovernmental agreements and contracts

A. If authorized by their legislative or other governing bodies, two or more public agencies by direct contract or agreement may contract for services, or jointly exercise any powers common to the contracting parties and may enter into agreements with one another for joint or cooperative action, except that if two or more school districts arrange to become contracting parties under the terms of this section, such contract shall first be approved by the state board of education.

B. Any such contract or agreement shall specify the following:

1. Its duration.
2. Its purpose or purposes.
3. The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor.
4. The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.
5. Any other necessary and proper matters.

C. No agreement made pursuant to this article shall relieve any public agency of any obligation or responsibility imposed upon it by law.

D. Every agreement or contract involving any public agency, board or commission made pursuant to this article shall, prior to its execution, be submitted to the attorney for each such public agency, board or commission, who shall determine whether the said agreement is in proper form and is within the powers and authority granted under the laws of this state to such public agency, board or commission.

E. Any agreement or contract submitted to the attorney general shall be filed with the secretary of state and shall become effective on the date provided in the agreement, but in no event prior to the date it is filed with the secretary of state. The secretary of state shall prepare a cross-index of the names of all public agencies who coordinate with the attorney general and secretary of state and file an agreement under this section.

F. Any agreement or contract submitted to an attorney other than the attorney general shall be filed with the secretary of state if the agreement affects more than one county and shall be filed with the county recorder if only one county is affected and shall become effective on the date provided in the agreement but in no event prior to the date it is filed with the proper officer.

G. Appropriate action by ordinance, resolution or otherwise pursuant to the laws applicable to the governing bodies of the participating agencies approving or extending the duration of the agreement or contract shall be necessary before any such agreement, contract or extension may be filed or become effective.

H. If a school district is a party to an agreement made pursuant to subsection A, the parties to such agreement may extend the duration of the agreement by notification to the proper officer with whom the agreement is filed pursuant to subsection E or F and the state board of education. Such agreement may be extended as many times as is desirable, but each extension may not exceed the duration of the previous agreement. As amended Laws 1979, Ch. 110, § 1, eff. Apr. 21, 1979.

Cross References

Cancellation of state contracts, conflicts of interest, public officers and employees, see § 38-511.

Public transportation services, contracts and agreements, see § 40-1152.

Real estate department and public safety department, see § 32-2181.

School lunch program agreements, see § 15-1123.

Special education programs, intergovernmental agreements, see § 15-1015.

Supplementary Index to Notes

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Counsel 3
Grants 4

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2. Council of government

Council of government does not qualify as a governmental agency under § 11-951 relating to intergovernmental agreements and contracts so as to exclude it from the provisions of § 41-1051 et seq. relating to contracts for outside professional services. Op.Atty.Gen. No. R75-244, p. 115, 1975-76.

Department of economic security could enter into a contract with a council of government which was not incorporated as long as the department was carrying out its authorized responsibilities and the council was otherwise authorized to enter into such a contract which would be enforceable against the council. Id.

3. Counsel

County board of supervisors cannot unilaterally employ civil counsel to render general legal advice in place of the county attorney, and power of supervisors to select other counsel to handle matters likely to result in litigation is subject to concurrence by the county attorney. Op.Atty.Gen. No. 77-80, p. 154, 1976-77.

4. Grants

School districts may participate in projects funded by land and water conservation grants and administered by the Arizona outdoor recreation coordinating commission if the grant recipient is a city, town or county which will provide matching funds and enter into a corresponding intergovernmental agreement with the school district. Op. Atty.Gen. No. 78-16.

MEMORANDUM

December 26, 1978

RE: Mental Retardation; County Contribution

The issue of whether Chapter 213 Section 8 of Laws of 1978 abrogates and repeals Chapter 198 Laws of 1978 has been addressed extensively by the courts in the Judicial Doctrine of Implied Repeal both in Arizona and across the nation.

By way of background the state legislature amended section 36-562 A.R.S. by two separate acts during the 2nd Regular Session of the 1978 Legislature. Section 36-562 A.R.S. deals with parental financial obligation for mentally retarded minors in state programs. The law provides for financial support based on a percentage of gross income.

Chapter 213 (Arizona Income Tax Act of 1978) Section 8 amended the existing section 36-562 by providing that gross income would be as defined in the United States Internal Revenue Code. Chapter 213 was approved by the legislature on June 1, and signed by the Governor June 14. Sec. 8 becomes effective on December 31, 1978.

Chapter 198, (Mental Retardation - Programs and Services), was a comprehensive rewrite of Arizona's existing Mental Retardation law. Section 24 of Chapter 198 substantially amended Section 36-562, changing the percentages of gross income required for parental support and identifying county participation not to exceed $175 per person per month. Chapter 198 was approved by the legislature on June 4, and signed by the Governor June 7, 1978, Section 24 is effective September 3, 1978.

Based on this background did the legislature, in passing chapter 213, intend to undo or repeal the effects of Chapter 198 passed during the same legislative session?

Two sections of law address the question of amending existing law by the legislature. In Section 1-245 A.R.S. the law declares that, legislative action through amendment or repeal abrogates and repeals the existing law, whether or not the two are consistant. Section 41-1304.03 gives authority to the Arizona Legislative Council to combine sections of statute added or amended by two or more chapters of law in the same legislative session. A.R.S. 1-245 would appear not to apply since neither Chapter 198 nor 213 constituted existing law when passed by the legislature. Chapter 198 did not become law until September 3 and Chapter 213 becomes law on January 1.

From a review of the cumulative pocket parts for use in 1978-79 for Title 36 to 37, Volume 11A, Arizona Revised Statutes, it appears that the Legislative Council did not exercise their authority under 41-1304.03. However, section 36-562 appears twice in the pocket parts; as amended by Chapter 198 and Chapter 213.

The above cited statutes, then, do not appear to clearly resolve the issue. In Sutherland Statutory Construction, Revision of the Third Edition, Section 23.17 (p. 250) it states:

> "If the same legislative session enacts two or more acts on the same subject they are presumed to have been actuated by the same policy and intended to have effect together. The rules of construction and interpretation of acts in pari materia apply with singular force to enactments promulgated by the same legislative body, with the consequent strengthening of the presumption against implied repeals.....
>
> The enactment of the two statutes upon the same subject at the same session was held in itself to be an indication of the intent of the legislature that both acts should have concurrent operation.
>
> In the absence of an irreconcilable conflict between two acts of the same session, each will be construed to operate within the limits of its own terms in a manner not to conflict with the other. However, when two acts of the same session cannot be harmonized or reconciled, that statute which is the latest enactment will operate to repeal a prior statute of the same session to the extent of any conflict in their terms." (See Attached)

Arizona's courts have addressed this issue of implied repeal in a number of court cases. In GAC Properties, Inc. of Ariz. v. Farley (1971) 14 Ariz. App. 156 the court held:

> "Repeals by implication are not favored unless it is manifest from inherent repugnancy or inconsistency that legislature must have intended to repeal earlier enactment by later one."

In another case, the court held:

> "When subsequent act of legislature is in conflict with prior act, it by implication repeals so much of prior act as is in conflict with latter act."
> City of Bisbee v. Cochise County (1934) 44 Ariz 233

Further, in State ex. rel. Purcell v. Superior Court In and For Maricopa County (1971) 107 Ariz 224 the court ruled that:

> "Court has duty to harmonize statutes and will not construe statute as repealed by implication if it can avoid doing so."

State v. Carpenter (1965) 1 Ariz App. 522, stated:

> "Implied repeals of statutes are not favored and it is only when by no reasonable construction can two statutes be operative that latter act repeals earlier act by implication."

These cases identify two basic principals by which the court will exercise an implied repeal; 1) that the two statutes are so in conflict that they cannot be interpreted independent of each other, and 2) that in exercising implied repeal only those sections which are in direct conflict will be repealed.

In applying these principals to the question of whether Chapter 213, by becoming effective after Chapter 198, creates an implied repeal of Chapter 198 by the legislature a careful reading of the new language, contained in the two acts, where such language amends or repeals prior law section 36-562, should decide the question. Where one act amends prior section 36-562 and the other act is silent it would appear no conflict exists and therefore no implied repeal could be considered. Chapter 198 adds new subsection G. through L. Chapter 213 amends subsections C. of section 36-562 and has no subsections G. through L. Without corresponding language a conflict cannot exists and it would appear that new subsections G through L would not be subject to an implied repeal. Based on the above, Chapter 213, Laws of 1978, does not appear to abrogate and repeal Chapter 198 Laws of 1978 in its entirety.

Arizona Association of Counties
1820 West Washington Street
December 26, 1978

ARIZONA ASSOCIATION OF COUNTIES
1820 WEST WASHINGTON STREET
PHOENIX, ARIZONA 85007
PHONE (602) 252-6563

RICHARD W. CASEY
EXECUTIVE DIRECTOR

June 25, 1979

MEMO TO: Gene Brazeel, Yuma County Manager

FROM: Mike Smith, Assistant Director

SUBJECT: Mental Retardation Indigent Health Care County Liability

By way of background, in the 1978 legislative session the state legislature significantly changed the direction of the State Mental Retardation Program. In essence what they did was to place the responsibility with the division of mental retardation, Department of Economic Security to de-institutionalize the mental retardation program. That is to say, the mandate required the division to find alternative programs in communities closest to where the individual normally would reside, or, if a program is more advantageous elsewhere in the state, to place the child in that program.

This legislation has a direct impact on the indigent health care programs of the individual counties. An example will help illustrate this circumstance. A child from Yavapai County was in the Coolidge facility, operated by the division of mental retardation, prior to the establishment of this new law. Under the new law, the director of the division would be required to review alternative programs other than Coolidge and if one was more suitable to the child, with the consent of the child's parents, place the child in that program. Assuming a program was discovered in Cochise County which was more suitable. The question then is does Yavapai County have the indigent responsibility or does Cochise County have the responsibility?

D.E.S. brought this question to the state attorney general's office. The state A.G. contacted the Association of Counties and requested our assistance in seeing if there wasn't some kind of solution that could be developed short of litigation. We agreed to attempt a solution utilizing an intergovernmental agreement. The two basic issues involved in the intergovernmental agreement are: (1) in the two counties involved whose indigent standard shall prevail and, (2) whose services shall be utilized.

The AACo staff developed an intergovernmental agreement (copy enclosed) in cooperation with the A.G.'s office and presented the proposed agreement to the Supervisor's Association. The key elements of the proposed intergovernmental agreement are: (1) that only mental retards residing in a county as a result of a transfer made under the new law would be covered by the agreement, (2) that the medical services customarily provided to indigent individuals in the county where the M.R. has been placed would be the services the M.R. was eligible to receive, (3) that the determination on whether or not the individual qualified for indigency would be based on the standards of the county in which the M.R. residency normally would occur were the child not in a state program. Finally, should the M.R. qualify for indigency based on the standards of the parent county, the M.R. will receive the standard medical services normally provided to an indigent in the provider county. The parent county would agree to pay the cost of that medical service rendered.

The proposed agreement would work in the following way. Given the example above, when the mental retard appeared in Cochise County seeking medical services, Cochise County would take the necessary information on income and other resources and forward it to Yavapai County for consideration of eligibility. Yavapai County would then notify Cochise County on whether or not the individual qualified. Should the individual qualify, Cochise County would then render all medical services that Cochise County would normally render to an indigent of Cochise County. Cochise County would then bill Yavapai County for the total medical cost rendered to the individual. A key section within the intergovernmental agreement is section 5, "Acceptance of Billing". It is important to note that it states "nothing contained herein however, shall prevent the parent county from contesting the validity of the billings through that process customarily available to any other billing recipient".

In the earlier discussions with the A.G.'s office it was their position that, if it was necessary for them to go to court they would seek a court ruling that, wherever the indigent M.R. is placed, that county has responsibility for the medical care and will pay the full cost.

On the issue of liability, there are a number of points of view. I have enclosed a copy of an opinion from the Yavapai County attorney's office to the Yavapai County Board of Supervisors which, in effect, suggests that the county has no obligation for a mental retard indigent placed in a state mental retard program. The state attorney general has received this opinion and takes exception to it. Should a county decide to stand on this position it seems pretty clear that the state attorney general will proceed to court to clarify it. A second issue is the question of what

happens to a county who has entered into the agreement and they receive billing or a request for support from a county who has not entered into the agreement. What is the status in that circumstance? We discussed this with the state attorney general's office and for what it is worth they suggested that the A.G. would look upon those counties who voluntarily entered into the intergovernmental agreement with "more indulgence", than those counties who failed to take any action at all. In addition, the Department of Economic Security is putting increasing pressure on the state attorney general to resolve the issue once and for all. The A.G.'s office would like to avoid court action and litigation. They would like to see the intergovernmental agreement ratified by all 14 counties, and thus remove them from responsibility of having to litigate against a select number of counties.

One final comment on this issue, when we were discussing the possibility of an intergovernmental agreement among 14 counties with the state attorney general, the question of procedure came up. It was agreed that the counties would pass a resolution at a formal regular board meeting indicating their willingness to enter into an intergovernmental agreement and authorizing the chairman to sign such an agreement. This would relieve the problem of each county having to pass the intergovernmental agreement at a formal board meeting and then signing it and then going to the next county having them pass it, and signing and to the next county, etc.

I have enclosed Yuma County's resolution formally passed with the cover letter. The problem is some counties have not passed the resolution yet. The question then becomes can they still sign the intergovernmental agreement and will that then maintain the legality of the agreement. I do not currently have a resolution from the following counties, Apache County, Greenlee County, Maricopa County, Navajo County.

Gene, this is the essence of what the intergovernmental agreement contains and what it attempts to do. If the counties fail to take action on the intergovernmental agreement, the state attorney general has indicated that they will have to seek court action to clarify the question of indigent responsibility.

I hope this addresses the questions you had concerning the intergovernmental agreement. If I can be of any further assistance on this matter don't hesitate to call.

MS:sk

Enclosures

cc: Charlie Guinn