THE 33 YEAR OLD SAGA OF ARNOLD vs. SARN

1. Supreme Court Decision
2. Notice to Class Members
3. The Blueprint: Implementing Services to the Seriously Mentally Ill
4. Order of Reinstatement
5. Letter of Resignation 1981
6. Affidavit of Charles L. Arnold in Support of the Stipulation for Providing Community Services and Terminating the Litigation
7. Stipulation for Providing Community Services and Terminating the Litigation

Supreme Court Decision 1989

IN THE SUPREME COURT OF THE STATE OF ARIZONA
En Banc

CHARLES ARNOLD, MARICOPA COUNTY PUBLIC FIDUCIARY, as guardian and next friend on behalf of JOHN GOSS; NANCY E. ELLISTON, as guardian, conservator and next friend on behalf of CLIFTON DORSETT and as next friend on behalf of RICHARD SCHACHTERLE and SUSAN SITKO; TERRY BURCH; and on behalf of all others similarly situated, Plaintiffs-Appellees, vs. ARIZONA DEPARTMENT OF HEALTH SERVICES, ARIZONA STATE HOSPITAL, and MARICOPA COUNTY BOARD OF SUPERVISORS, Defendants-Appellants.	Supreme Court No. CV 87-0454-T/AP Court of Appeals Nos. 1 CA-CIV 9262 1 CA-CIV 9291 (Consolidated) Maricopa County No. C-432355

Appeal from the Superior Court of Maricopa County

The Honorable Bernard J. Dougherty, Judge

AFFIRMED

Robert K. Corbin, Attorney General
by Anthony B. Ching, Solicitor General
Robert A. Zumoff, Assistant Attorney General
Attorneys for State Defendants-Appellants — Phoenix

Tom Collins, former Maricopa County Attorney
by Gordon J. Goodnow, Jr.
Mariannina E. Preston
Deputy County Attorneys
Attorneys for Defendant-Appellant Maricopa County — Phoenix

Brown & Bain — Phoenix
by Amy J. Gittler
(formerly Director of Arizona Center for Law in the Public Interest)
and

Arizona Center for Law in the Public Interest
by Tannis Fox
Attorneys for Plaintiffs-Appellees

Phoenix

Mental Health Law Project
by Arlene S. Kanter
Attorney for Amici Curiae

Washington, D.C.

G R A N T, Judge

I. PREFATORY STATEMENT

The issue presented is whether the state legislature, through various statutes, has mandated that state and county governments provide mental health care to the chronically mentally ill and whether those governments have breached that statutory duty.

We do not here consider any common law duty or obligation of the state or county to care for the chronically mentally ill but only construe the statutes by which the legislature has declared such a duty. Nor do we deal here with the question of funding. The legislature must fund whatever programs it has required and we are not presented with and do not answer the question of what happens if the legislature fails to do so.

The legislature may determine how government will interact with the governed. The constitution and the legislature set forth duties the state and counties have to the people. The legislature may create different duties based on differing needs of parts of the population. In Arizona, as is true elsewhere, a portion of the population is chronically mentally ill. The

legislature's response to the particular needs of this portion of our population is the subject of this case.

We write today from the bottom rung of the ladder. The record before us demonstrates that Arizona is last among the states of this union in providing care and treatment for its indigent chronically mentally ill.[1] This is the first case in the nation in which a trial court has ordered broad and all-encompassing relief for the CMI under a comprehensive state statutory design. The Director of the Arizona Department of Health Services (DHS), the Superintendent of the Arizona State Hospital (ASH), and the Maricopa County Board of Supervisors (the County) sought review in the court of appeals of the trial court's order to create a unified, cohesive, and well-integrated system of community health services for the CMI as mandated by Arizona health care statutes. This court accepted transfer of this appeal from the court of appeals, Division 1, at the request of that court pursuant to Rule 19(a)(3), Ariz. R. Civ. App. P., 17B A.R.S. This court has jurisdiction of this appeal pursuant to Rule 8, Ariz. R. P. Sp. Act., and A.R.S. § 12-2101. We affirm the orders of the trial court.

---

1. We shall use the parties' abbreviation for the plaintiff class: CMI.

II. PROCEDURAL HISTORY

On March 26, 1981, the Arizona Center for Law in the Public Interest (the Center) filed this action on behalf of five chronically mentally ill individuals. The named plaintiffs -- John Goss, Clifton Dorsett, Richard Schachterle, Susan Sitko and Terry Burch -- alleged that the state and county defendants failed to provide them and a class of similarly situated CMI individuals with adequate community mental health services. The complaint sought relief under federal law, special action relief in the nature of mandamus pursuant to the Rules of Procedure for Special Actions, 17A A.R.S., and declaratory relief pursuant to A.R.S. § 12-831 et seq. The trial court dismissed the federal claims upon the defendants' motion. On December 1, 1982, it certified the lawsuit as a class action pursuant to Rule 23(b)(2), Ariz. R. Civ. P., 17 A.R.S. The case was tried to the court. On January 16, 1985, following post-trial briefing, the trial court determined that the plaintiffs were entitled to judgment. On June 24, 1985, the trial court signed an order including findings of fact and conclusions of law. Following an evidentiary hearing, the trial court ordered the defendants to pay costs and attorney's fees. A judgment was entered on August 1, 1986. The defendants appealed.

III. THE CHRONICALLY MENTALLY ILL

A.R.S. § 36-550(3) describes the CMI as:

> [p]ersons, who as a result of a mental disorder as defined in § 36-501, paragraph 20, exhibit emotional or behavioral functioning which is so impaired as to interfere substantially with their capacity to remain in the community without supportive treatment or services of a long-term or indefinite duration. In these persons mental disability is severe and persistent, resulting in a long-term limitation of their functional capacities for primary activities of daily living such as interpersonal relationships, homemaking, self-care, employment and recreation.

According to the record chronic mental illness is an incurable illness, although attempts are made to manage it. This illness is characterized by an acute or psychotic phase and a residual phase. A patient in the psychotic phase often suffers hallucinations and delusions and exhibits bizarre behavior. A patient in the residual phase acts less bizarre, but is still unusually vulnerable to stress, which may cause a reversion to the psychotic phase. The residual stage patient is also very dependent, has difficulty relating to others and lacks skills needed for everyday living. The CMI are people whose emotional or behavioral functioning is so impaired as a result of mental illness that they cannot live in society without treatment and economic assistance for an indefinite length of time -- often for the remainder of their lives. A.R.S. § 36-550(3). An estimated 4,500 CMI persons reside in Maricopa County. The Center's expert, Dr. Leonard Stein, estimates that only 10 to 15 percent of the CMI could be economically self-sufficient, even when receiving appropriate treatment in the community.

The record contains a thorough history of the treatment of chronic mental illness. According to Dr. Stein, the CMI first encountered problems receiving treatment in the United States in the mid-nineteenth century after the great wave of immigration from Europe. This over-taxed the limited resources available to care for the CMI, further compounded by the fact that no one had the legal responsibility for them. In response to this problem, social crusader Dorothea Dix lobbied for the creation of state hospitals for the mentally ill. As a result of her efforts, the state hospital system in this country began in the mid-nineteenth century.

Most CMI, including those in Arizona, were institutionalized in state hospitals until the mid-twentieth century. ASH reached its peak population in the early 1960's at 1,750 patients. Beginning in 1953, increased usage of psychotropic[2] medication, which was effective in controlling the acute psychotic phase of chronic mental illness, allowed mental health institutions to release the CMI into the community. Outplacing of patients into the community, considered the first half of deinstitutionalization, accelerated during the 1960's and 1970's. See Westwood Homeowners' Ass'n v. Tenhoff, 155 Ariz. 229, 231, 745 P.2d 976, 978 (App. 1987), review granted Dec. 15, 1987. The census at ASH dropped from 1,750 in 1962 to 450 in 1984.

---

2. Psychotropic is defined as "exerting an effect upon the mind; capable of modifying mental activity." Dorland's Illustrated Medical Dictionary (25th ed. 1974).

The second half of deinstitutionalization was the creation of a comprehensive, community-based system of care -- a system that never really developed in most of the country. The parties to this lawsuit agree that the main elements of such a system should include a full continuum of care: medications, case management, day treatment, crisis stabilization, transportation, residential services, work adjustment, socialization, recreation, outreach, and mobile crises services. Because the psychotropic medications used to control the acute or psychotic phase of the illness are not at all effective in treating the residual impairments, the residual phase must be controlled through social skills training, case management, outreach and other modalities. Like many other major illnesses such as diabetes, cancer, high blood pressure and heart disease, chronic mental illness is not cured by any treatment, but it can be effectively managed. Non-compliance with treatment is a frequent symptom of chronic mental illness but is not an indicator that a CMI person would not benefit from appropriate mental health services.

IV. THE CLASS

The class consists of approximately 4,500 indigent CMI residents of Maricopa County who could reasonably benefit from appropriate medical services. All named plaintiffs are members of the class.

V. THE NAMED PLAINTIFFS

TERRY BURCH

Terry Burch, a high school and junior college graduate, has a long history of mental illness. His first psychotic episode occurred at 17. In his mid-30s at the time of trial, Burch is regarded as a classic casualty of an inadequate mental health care system.

His afflictions are legion. He has had problems with drugs and alcohol and has attempted suicide many times. He has sometimes lived on the street. Doctors diagnosed him as having a bipolar disorder, of the manic-depressive and schizo-affective type. Manifestations of his illness include poor judgment, insensitivity, impulsivity, and bizarre or socially unacceptable behavior such as making threatening arm movements (similar to karate moves). He also has frequent, severe, and uncontrollable episodes of destructive acting out, euphoria, and grandiosity.

Burch's illness causes him to deny the affliction and essentially oppose the entire medical system. As a result, his history indicates that he has repeatedly rejected offered treatments, perhaps because of negative side effects. Despite this, county and state officials continued their efforts to get Burch into self-motivated treatment programs.

At one point, he was found to be a danger to himself and was hospitalized at ASH for several months. When he was ready for discharge, ASH staff attempted to find an opening for him at

a community residential facility. Because of delays, an opening at such a facility was filled by another patient. Burch subsequently discharged himself against medical advice and went to a boarding home. One expert witness testified that Burch could do much better than wandering the streets. At the time of trial, Burch was receiving Social Security payments and living in a boarding home.

SUSAN SITKO

Susan Sitko is a college graduate fluent in Spanish, French and English. She taught French and worked as a librarian in Pennsylvania. After suffering psychiatric problems in Pennsylvania, she moved to Arizona to live with an aunt. Like Terry Burch, Sitko suffers from a bipolar disorder.

Her talents and potential were obvious to her doctor and guardian. In conversations she would switch among her three languages with ease. She wrote lucid and coherent poetry. She had a long-term relationship with a boyfriend and was involved with a church. Her problems, however, were also obvious. Her thoughts were often disjointed, making conversation difficult. She often thought she had polio and would assume a twisted posture. Sitko was hospitalized at ASH at one point and upon discharge received a variety of services from Maricopa County, such as visits to her supervisory care home. Like many other CMI, however, Sitko preferred to be left alone and resisted treatment. One witness who visited Sitko testified that she

seemed reasonably satisfied with her life and had no complaints about her living conditions. Another expert witness testified, however, that Sitko could benefit by "a strong commitment" from an adequate mental health system and rehabilitative psychosocial programming, perhaps even to the extent of putting her back into the workforce as a teacher. At the time of trial, Sitko was in her late 30s, living in a boarding home on Social Security disability payments.

CLIFTON DORSETT

Clifton Dorsett was born June 30, 1915, in Bexley, Mississippi. He had only a fourth grade education and had worked since childhood. While working in a sugarcane factory he developed a silicosis-type lung disorder that prevented him from doing strenuous physical labor. His mental illness did not manifest itself until 1966, when he was committed to ASH for one year for the murder of his first common-law wife.

Dorsett was again committed to ASH in 1967. He spent the next 13 years in a locked ward. This commitment followed a Rule 11 determination of incompetency to stand trial for the murder and beheading of his second common-law wife (Maricopa County Superior Court No. CR-53352). Rule 11, Ariz. R. Crim. P., 17 A.R.S.

Dorsett was discharged from ASH following this 13-year commitment on January 14, 1981, and was placed under the guardianship of Nancy Elliston, owner of a private fiduciary service.

At the time of his discharge, Dorsett was diagnosed as schizophrenic-paranoid type and was taking several different types of medication, some psychotropic and some for his lung condition.

Though she had considerable difficulty finding a home that would accept Dorsett, Elliston was finally able to place him in the Happy-Happy boarding home. Happy-Happy did not fully provide the quality of care Dorsett required; there were no doctors on staff, no locks on doors, no structured activities nor any supervision of residents' activities. Dorsett lived at Happy-Happy from January 1981 until March 1982, when Happy-Happy was closed. Until February 1984, Dorsett lived in three other boarding homes. His physical condition then deteriorated, and he was placed in Maricopa Medical Center Psychiatric Annex (the county hospital) for treatment. He died there on March 17, 1984, at age 68, seven months before the trial of this case.

JOHN GOSS

John Goss, born February 19, 1936, was committed to ASH at the end of 1980, pursuant to a Rule 11 finding of incompetency to stand trial for bank robbery (Maricopa County Superior Court No. CR-112612). Rule 11, Ariz. R. Crim. P., 17 A.R.S. At the time of admittance, Goss complained of having constant headaches and of hearing voices. He said that he robbed the bank in order to return to institutional care. Goss had previously been admitted to ASH in 1971, 1972, 1973, and from 1974 to 1978.

Goss was honorably discharged from the Air Force in 1965, and until 1970 held jobs as a stockbroker, insurance salesman, welder and warehouse clerk. From 1970 until his death in 1984 he was unemployed.

Goss first became psychotic in 1967 at age 31. Hospital records described him as intelligent, quiet, and non-violent, but disheveled, lacking in socialization skills, and unable to comprehend even simple matters. His clinical diagnosis at his last discharge from ASH in early 1981 was chronic undifferentiated schizophrenia. Following this discharge, Goss was placed in a supervisory care home under the guardianship of the Maricopa County Fiduciary. ASH directed him to continue on medication and to receive health services from the community. According to his treating physician, Dr. John O'Steen, "[t]he treatment Goss received while living in the community was adequate to control his overt psychotic behavior, but no more was done for him. He was not socially integrated. He was an unhappy man. I never saw him interact with anyone else. He usually spent his time roaming around the streets of Phoenix, or sitting by himself at the boarding home . . . . He lived a miserable, lonely, isolated life." Goss died of heart failure at age 48, several months before trial of this case.

RICHARD SCHACHTERLE

Richard Schachterle was born on May 10, 1952, and has suffered from chronic schizophrenia since his late teens. He

graduated from a Yuma, Arizona, high school and received an associate of arts degree from Arizona Western College. He has no police record nor history of substance abuse, and has never been in a state mental hospital.

At the time of trial he was unemployed and living in a Phoenix boarding home. His sole source of income was Social Security disability payments. His medical care was covered through the Arizona Health Care Cost Containment System, and he received treatment through the Maricopa County Health Department's outpatient clinic.

In February 1980, Schachterle stopped taking his anti-psychotic drugs and suffered an acute psychotic episode. He was admitted to the county hospital and diagnosed as having a "schizophrenic reaction, paranoid-type, severe." During his relatively short stay, an examining physician described Schachterle in the following way: "The patient came in the office looking disheveled and frightened. He sat down and his lips were moving rapidly but he was mute. He stared at the examiner in a questioning gaze and then around the room . . . . He would get out a word or so but then would walk away, stop, think and look, and try to speak. He was attempting to be friendly."

Schachterle was discharged in March 1980 to the care of the A-1 Guest Lodge, with follow-up in the community. By fall 1984, Schachterle's condition had improved. He was able to dress himself, shave with an occasional reminder to do so, make his own

bed, and eat regular meals. When asked, he would also perform simple chores for the boarding home. Most importantly, he had overcome his social withdrawal. He was socializing with other boarding home residents and had developed a very close relationship with the home's operator. Schachterle's guardian ad litem, Nancy Elliston, attributed his improvement to the care he received at the boarding home: "It appears [the boarding home operator] did this all by encouraging him and offering him cigarettes for good behavior and withholding cigarettes when necessary for inappropriate behavior. If Richard can change the amount that he has with that type of assistance, I think there is a very good potential for him with professional programs and treatment."

Despite this obvious improvement, the trial court found that Schachterle had previously functioned at higher levels than that at which he was functioning at the time of trial. The court noted that although he was unable to do so at the time of trial, Schachterle had previously carried on conversations, prepared meals, used public transportation, driven an automobile, and gone out without supervision. More importantly, the trial court found that Schachterle would function at a higher level if he were provided with appropriate mental health services.

VI. THE MENTAL HEALTH SYSTEM IN THE STATE AND COUNTY

The statutes creating Arizona's mental health care system require, among other things, that DHS officials establish

a statewide residential treatment program for the CMI and administer a unified mental health care system involving ASH and community programs. A.R.S. §§ 36-550.01(A) and 36-104(1)(c) (renumbered as A.R.S. § 36-3403(B)(1)). Other statutes require counties to provide health care to the indigent sick. A.R.S. §§ 11-251(5) and 11-291(A).

The present system operating at the state and county levels, however, falls far short of an adequate system. In its findings of fact, the trial court describes the present mental health system. The parties agree with these findings, with the exception of ASH's role in discharge planning, which we shall discuss.

A. In General.

Many CMI individuals in Maricopa County receive no mental health services at all. The public fiduciary testified, and the county acknowledged, that less than 1% of all CMI receive vocational services. Homeless CMI individuals stay in temporary shelters for extended periods of time because no residential programs are available. A lack of transportation prevents many class members from obtaining the few services that are available.

B. The Current System.

Treatment of the indigent CMI residents of Maricopa County is supposed to be the coordinated responsibility of the Arizona Department of Health Services, the Arizona State Hospital and the Maricopa County Health Department. The three agencies,

however, essentially operate independently. As a result, the present level of care that they provide to the CMI is tragically low.

1. Arizona Department of Health Services (DHS).

DHS has the responsibility to lead in integrating, coordinating, and ensuring an adequate mental health system. The 1984 Behavioral Health Plan[3] reads in pertinent part:

> The department is the single state authority as mandated by law, and therefore is responsible to take the lead in ensuring a state-wide system of behavioral health services through integration and coordination of its activities with those of other state departments, local governments, community behavioral health programs, and public and private service providers.

(Emphasis in original.)

Experts at trial said, however, that the "system" is extremely fragmented, without leadership, lacking in cooperation, experiencing hostilities between the agencies, and suffering from neglect. In fact, one expert, Dr. Stewart Hollingsworth, director of Maricopa County's mental health hospital, said that there is "no system at all," and that what care exists is "chaotic."

---

3. This plan was developed by DHS in late 1983 and early 1984 at the request of then-Governor Bruce Babbitt to show how DHS would use existing funds and new appropriations in a revamped behavioral-health-services system. Under the plan, the state would be divided into geographic regions, with one administrative entity receiving, and then handing out, behavioral-health funding for each region. The plan provided for funding of programs for the CMI among others. At the time of trial, DHS had designated the geographic boundaries and was seeking proposals from organizations that wanted to act as regional administrative entities.

2. Arizona State Hospital (ASH).

Legislation requires ASH to be an integrated component of the mental health care system. See A.R.S. §§ 36-104(1)(c) (renumbered as 36-3403(B)(1)); 36-204; 36-511. As part of that system, ASH is to prepare coordinated treatment plans and provide outpatient mental health services for discharged patients.

The record demonstrates, however, that ASH has failed to work with community agencies and has not functioned as an integrated component of the mental health system. ASH has a long history of refusing to negotiate interagency agreements with other components of the mental health system. The record establishes that the superintendent of ASH has often refused to sign such agreements, and that DHS has never enforced the requirement for agreements between community agencies and ASH.

ASH must provide treatment planning for discharged patients but has failed to do so. The state disputes this finding by the trial court, but the record supports it. ASH discharges patients with no plan for continuing care. They are sent into the community without medications, medical records necessary to provide appropriate treatment, or notification to any other agency prior to their discharge. Dr. Louisa Stark, former director of a Phoenix shelter for the homeless, testified that discharged ASH patients had shown up at the St. Vincent de Paul temporary shelter wearing their hospital gowns. The record contains a litany of such horrors, but their numbers have failed

to compel the mental health professionals to perform their statutory duty.

3. Maricopa County.

Maricopa County has the responsibility to provide adequate community mental health services including but not limited to case management, monitoring outreach, crisis services, and day treatment programs for all class members who would benefit.

Dr. Leonard Stein, an expert witness who evaluated Maricopa County's mental health care system, testified that the services provided are grossly inadequate and delivery of the extant services is fragmented. As a result, "patients are lost to the system."

Dr. Stein said that case management services, a clinically effective means of reducing rehospitalization and a fiscally responsible way to expend resources, were not being adequately provided by the county. He said that the Maricopa County readmission rate of 50 to 60 percent was a direct consequence of the lack of case management services. Ironically, Maricopa County was aware of the fiscal and clinical benefits of case management services; it conducted a study during 1979-82 that confirmed Stein's opinion and showed that an effective long-term case management program could save more than $2.5 million in the cost of inpatient hospital care.

The county's provision of outreach, crisis and day treatment services was found to be similarly deficient. One day treatment program director told Stein that her program actually could benefit 10 to 12 times the number of CMI patients enrolled.

C. An Adequate System.

The trial court enumerated requirements for an adequate community mental health system. The system must provide a full continuum of care with each service available to all CMI individuals who would reasonably benefit therefrom. The first major precept of an adequate system is that the dollar follow the patient; that is, the funding received by the provider must be directly related to serving the patient in the community, thus discouraging unnecessary utilization of costly inpatient care.

A second major precept is that each CMI patient receives case management services to develop an individualized treatment plan and to monitor the patient's progress. Individualized treatment plans require a continuum of housing services, including group homes with 24-hour supervision; apartments with mental health professionals on-site; cooperative apartments with off-site, outreach teams; and independent living settings. Day treatment services must be available and must include life skills training, vocational training, socialization, and recreation. An adequate system must also include sufficient crisis stabilization beds and mobile crises teams of mental health professionals. An adequate system also must provide transportation to enable CMI

individuals to reach appropriate services. Case managers, providers and family members must all be integrally involved with the CMI patient in formulating treatment and discharge plans.

Basically, all parties to this lawsuit concur on the benefits of an adequate system of care for the CMI.

VII. TRIAL COURT ORDER

The trial court entered a detailed order requiring the defendants to provide community mental health services to all class members, as prescribed by law. The emphasis on "all" was in the original order. Specifically, the order mandates that defendants shall "fulfill their mandatory non-discretionary duties to all class members"; "provide a continuum of care for all class members"; and "provide a unified and cohesive system of community mental health care." Additionally, the court ordered defendants to "take any and all actions necessary for full implementation of this order including, but not limited to, requests for funding and appropriations, if necessary." The order then set forth general and specific responsibilities of the three defendants for carrying out their statutory duties.

VIII. ISSUES PRESENTED FOR REVIEW

A. Did the trial court exceed its special action jurisdiction thereby violating the separation of powers between the legislature, the executive, and the judiciary?

B. Did the trial court properly rule that the defendants have a mandatory, non-discretionary duty to provide community mental health services to the indigent CMI?

C. Did the trial court err in concluding that defendants breached a duty to provide community mental health services to the named plaintiffs?

1. Did ASH breach its legal duty when it failed to provide discharge plans to patients or their guardians?

2. Did Maricopa County breach its duty to provide community mental health services to the named plaintiffs?

3. Did defendants establish that it is impossible to provide comprehensive mental health services to all CMI?

D. Did the trial court correctly certify a class action brought on behalf of 4,500 individuals?

E. Did the trial court err in awarding attorney's fees to the plaintiffs?

IX. LEGAL ARGUMENT

A. Did the trial court exceed its special action jurisdiction and violate the separation of powers between the legislature, the executive, and the judiciary?

The state claims that the trial court exceeded its special action jurisdiction and intruded into areas reserved for the legislative and executive branches of state government. The county claims that the judiciary has usurped the legislature's role, in violation of the separation of powers doctrine set forth in the first three articles of the Arizona Constitution.

We find no merit in the defendants' separation of powers argument. We hold that the trial court merely set forth in its order duties already mandated by the legislature. The trial court did not create duties for the defendants -- it held that the legislature had created the duties. It is an appropriate judicial function to determine whether the legislature has created a duty and whether the duty has been breached. Klostermann v. Cuomo, 61 N.Y.2d 525, 475 N.Y.S.2d 247, 463 N.E. 2d 588 (1984).

B. Did the trial court properly rule that the defendants have a mandatory, non-discretionary duty to provide community mental health services to the indigent CMI?

The trial court found that the Arizona legislature mandated by statute that DHS has primary responsibility for providing mental health services to all class members. A.R.S. §§ 36-102, 36-104(1)(c), 36-104(5), 36-104(16), 36-104(17), and 36-550. The trial court concluded that DHS must provide a full continuum of care for all class members, including, but not limited to: inpatient care, case management, residential services, day treatment, outreach, medications, outpatient counseling, crisis stabilization, mobile crises services, socialization, recreation, work adjustment, and transportation. The trial court found that, contrary to the mandates of the statutory design, DHS breached its duty to provide community mental health services to the plaintiff class.

The trial court further concluded that ASH has a mandatory non-discretionary duty under A.R.S. §§ 36-511(c) and 36-204 to the plaintiff class. The trial court found that the duty has been breached.

The trial court concluded that under A.R.S. §§ 11-251(5), 11-291(A), and 36-550 et seq. the county has mandatory non-discretionary duties to provide community mental health services to the plaintiff class. Again, the trial court found that the duty has been breached.

1. The State

The state, on behalf of DHS and ASH, contends that the legislature neither mandated nor intended to create the comprehensive system of community mental health services for all CMI individuals that the trial court ordered. Further, the state claims that the trial court judicially created duties never intended by the legislature. DHS, the state claims, has only limited duties under A.R.S. § 36-550 through § 36-550.08, the Community Mental Health Residential Treatment System.

A.R.S. § 36-550.01(A) states that DHS:

> [s]hall establish a statewide plan for a community residential treatment system by July 1, 1983. Such plan shall provide for a statewide system of mental health residential treatment programs which provides to the chronically mentally ill a wide range of programs and services, as identified in § 36-550.05, as alternatives to institutional care.

The state argues that the legislature never intended that DHS's plan be self-executing and that the role of the state as an actual provider of services is limited. The state claims that the control of DHS's role as a provider of services rests with the legislature through its annual appropriations process and that DHS has never failed to use all funds appropriated for the "1057 program." A.R.S. § 36-550.03.[4]

The state also asserts that the trial court's construction of A.R.S. § 36-104 as creating a mandatory duty to provide a full continuum of mental health services to all the CMI is inconsistent with the limited scope of A.R.S. § 36-550.03. Because A.R.S. § 36-550 et seq. is both later in time and more specific than § 36-104, the state contends any inconsistency should be resolved by giving precedence to the more specific statute, citing Anderson v. State, 135 Ariz. 578, 663 P.2d 570 (App. 1983). Additionally, the state maintains that A.R.S. § 36-550 et seq. is more specific and supersedes all other statutes pertaining to responsibilities of DHS.

DHS acknowledges that it is the authority mandated by statute to ensure a statewide system of behavioral health services. The 1984 Behavioral Health Plan as set forth in part on p. 16, infra, requires that the Department lead a statewide

---

4. The Community Health Residential Treatment System created in 1981 is also known as the "1057 program" because it was created by Senate Bill 1057. DHS implemented its first 1057 program in July 1981.

system of behavioral health services through integration and coordination of its activities with other state departments, local governments, community behavioral health programs, and private providers.

The state also argues that the legislature has utilized the appropriations process to limit the scope of the mental health program, as it did in Cochise County v. Dandoy, 116 Ariz. 53, 567 P.2d 1182 (1977). Dandoy is inapplicable to this case. In Dandoy, the legislature refused to appropriate any funds for the Medicaid program. The court held that unless the legislature appropriates funds, the program cannot function. Here, however, the legislature has not refused to appropriate money to fund the mental health programs in Arizona. Quite the contrary; the legislature appropriates millions of dollars every year.[5] The record contains extensive testimony about how the money appropriated by the legislature could be put to the use required by the statutes. According to expert testimony, significant improvements could be made by reallocating existing funds. Based on the statutes and DHS's acknowledgement, we hold that the legislature has collectively imposed substantial legal duties on DHS to the plaintiff class.

We view the state's position on the issue before us as two-fold: first, that DHS has only limited duties pursuant to

5. Laws 1988, Ch. 9, § 1, subdiv. 24; Ch. 315, § 3.

A.R.S. § 36-550 et seq.; and second, even if the duties are not limited, DHS could do nothing more than has been done because of limited funding. The second point we discuss later in this opinion.

As to the first point, where there is no inconsistency between general and specific statutes on the same subject, the statutes must be read together. Anderson v. State, 135 Ariz. at 584, 663 P.2d at 576 (citing Arden-Mayfair, Inc. v. State Dep't of Liquor Licenses and Control, 123 Ariz. 340, 342, 599 P.2d 793, 795 (1979)). Because the trial court's legal conclusions are reviewable de novo by this court, we shall review all the statutes that pertain to DHS's responsibilities. Polk v. Koerner, 111 Ariz. 493, 533 P.2d 660 (1975).

The comprehensive statute establishing the state's general responsibility to provide indigent health care is A.R.S. § 36-104(17).[6] Other general statutes include A.R.S. § 36-102, establishing the Department of Health Services, and A.R.S. § 36-104(5), requiring the Director of DHS to provide a system of "unified and coordinated health services and programs between the state and county." A.R.S. § 36-104(16) requires the DHS director to promote effective utilization of "health manpower and health facilities which provide health care for the citizens of this state." These general statutes must be read and harmonized with

6. The statute requires the DHS director to "[t]ake appropriate steps to provide health care services to the medically dependent citizens of this state."

all other health care statutes; otherwise, the result would be to render these general statutes superfluous. Well-accepted principles of statutory construction require that, whenever possible, the law must be given effect so that no clause or provision is rendered superfluous, void, contradictory or trivial. State v. Superior Court for Maricopa County, 113 Ariz. 248, 550 P.2d 626 (1976). We hold the general statutes to be in force and controlling upon the state.

We also hold that the specific statutes found at A.R.S. § 36-550 et seq. apply to the state in relationship to its duty to the plaintiff class, and that they are mandatory. DHS must provide a community residential treatment system that coordinates with all available treatment services and resources for the CMI in the community. A.R.S. § 36-104(1)(c) (renumbered as A.R.S. § 36-3403(B)(1)) requires the assistant director of DHS to administer a system of:

> unified mental health programs, to include the functions of the state hospital and community mental health.

The statute is clear on its face. No contradictions exist within the statutory design.

The state and county both argued in post-trial motions that legislation enacted subsequent to the trial court's order changed their statutory obligations significantly. We do not agree. Much of the new legislation deals with planning and administrative issues rather than direct services to the CMI and

is not germane to this appeal. The legislation does require DHS to set up pilot programs between July 1987 and September 1990 to study methods of delivering mental health services to the CMI. Laws 1986, Ch. 398, § 59. Only 500 of the 4,500 class members in Maricopa County are scheduled to receive services from these pilot programs during this three-year period. Laws 1986, Ch. 398, § 62. There is no evidence that the legislature intended these pilot programs to supersede an overall, comprehensive mental health system. The pilot program is experimental and an addition to the statutes upon which the trial court relied in its order. The details of the pilot program support the trial court's order. The pilot program is a means of experimenting with different methods of providing mental health services to the CMI. The pilot program and the general statutes are mutually supportive rather than contradictory. Legislative intent may be inferred both from the overall purpose of the statutory scheme and any subsequent enactments. Perez v. Maricopa County, 158 Ariz. 40, 760 P.2d 1089 (App. 1988).

2. The County

The county's position is that it does not have a mandatory, non-discretionary duty to treat all CMI individuals, but rather a general duty to treat the indigent sick pursuant to A.R.S. § 11-251(5). The county points out that the statutes

concerning its duty to provide health care are general in nature and do not refer to mental health care.

Division 2 of the Court of Appeals has held that A.R.S. § 11-291 imposes upon the county "the sole and exclusive authority to provide for the hospitalization and medical care of the indigent sick in the county." That court held this to be a mandatory duty. Perez v. Maricopa County, 158 Ariz. at 41, 760 P.2d at 1090 (citing Hernandez v. County of Yuma, 91 Ariz. 35, 36, 369 P.2d 271, 272 (1962)).

The county further claims that the more specific statutes in Title 36 control the general ones in Title 11. Title 36 specifically provides that the state must furnish services or contract to provide services for the CMI. Contracts may be with counties or non-profit agencies. A.R.S. § 36-550.02 states that counties are responsible only for developing an individual county profile of existing programs. The county believes this is a minor role that does not indicate the county should be responsible for CMI programs as a whole. Furthermore, the county claims that the general nature of the indigent health care statutes does not render them appropriate for declaratory relief.

The county argues that the statutes relied on by the trial court, A.R.S. §§ 11-251(5) and 11-291(A), do not mention mental illness or chronic mental illness and therefore create no duty on the part of the county to the CMI. The county relies on the Pennsylvania case of In Re Schmidt, 494 Pa. 86, 429 A.2d 631

(1981), for the proposition that its duty to the mentally ill is very limited in nature. We find the case neither helpful nor persuasive. The issue in Schmidt was which governmental unit -- county or state -- had the responsibility to assume the initiative in developing appropriate placement for a mentally retarded individual. The decision was based on Pennsylvania statutes relating to the mentally retarded that are quite different than the Arizona statutes before us.

We hold that A.R.S. §§ 11-251(5) and 11-291(A) mandate that the county provide mental health services to the CMI class. The county's duty under the statutes to provide medical care for the indigent sick includes a duty to provide community mental health services to the indigent chronically mentally ill. Legislation subsequent to the trial court's order removes any doubt as to the legislative intent. Although the pilot program terminates in 1990 pursuant to Laws 1986, Ch. 298, § 72, A.R.S. § 36-3403(B)(1) continues to mandate a unified mental health program that includes the county. All of the statutes relied upon by the trial court were specifically exempted from the sunset provision of Laws 1986, Ch. 398, § 72. We agree with the plaintiffs that the statutes, when read together, create complimentary duties of the state and county that are mutually supportive rather than inconsistent. See Bellino v. Superior Court, 70 Cal. App. 3d 824, 829, 137 Cal. Rptr. 523, 526 (1977).

C. Did the trial court err in concluding that the defendants breached a duty to provide community mental health services to the named plaintiffs?

The parties all agree that the five named plaintiffs were chronically mentally ill. They all agree that plaintiffs Goss, Dorsett, Sitko, and Burch each had been hospitalized at both ASH and the county hospital. Plaintiff Schachterle had been hospitalized at the county hospital, but not at ASH. All plaintiffs had received psychiatric outpatient services from the county.

The defendants argue that the five named plaintiffs had reached the highest level at which they were capable of functioning. Moreover, the defendants claim that the plaintiffs expressly declined further mental health services. The county says in its brief that "forcing services on patients who do not want them, raises questions which are more of a philosophical or moral nature than a legal nature." The state claims that the evidence showed that ASH has provided discharge plans for the named plaintiffs and for CMI individuals generally, but that the state and ASH have no duty to provide outpatient care.

The trial court found that the named plaintiffs have not received all of the community mental health services from which they would benefit. Following discharge from ASH and the county hospital, Mr. Goss received outpatient services amounting only to a medication review of 10 to 15 minutes per month. Mr. Dorsett was hospitalized at ASH for 13 years. ASH did not provide him

with adequate discharge plans. Although ASH knew Mr. Dorsett was a potential hazard to the community, ASH discharged him to a boarding home that did not provide the constant supervision and assistance with medication that his condition required. Mr. Schachterle, in the past, functioned at a much higher level than he was functioning at the time of trial. At the time of trial he lived at the A-1 Guest Lodge run by untrained staff. Ms. Sitko, a college graduate fluent in three languages, was living in a monotonous setting with no trained mental health professionals. ASH had dropped her from its tracking system. Mr. Burch also did not receive an adequate discharge plan from ASH and was hospitalized longer than necessary because adequate community care did not exist. Once back in the community, ASH failed to track him and he did not have adequate care to enable him to function on an appropriate level.

The state does not dispute any of the trial court's findings with respect to lack of treatment or services for the five named plaintiffs. The state, therefore, has waived this issue. DeElena v. Southern Pac. Co., 121 Ariz. 563, 592 P.2d 759 (1979).

The county disputes these findings and argues that the five named plaintiffs were appropriately treated. Our review of the record reveals that none of the trial court's findings on this issue is contrary to the evidence. Polk v. Koerner, supra. We shall not substitute our judgment for that of the trial court.

Petefish By and Through Clancy v. Dawe, 137 Ariz. 570, 672 P.2d 914 (1983); Harris Cattle Co. v. Paradise Motors, Inc., 104 Ariz. 66, 448 P.2d 866 (1968).

1. ASH breached its legal duty when it failed to provide discharge plans to patients or their guardians.

The state claims that ASH has fulfilled its duties under A.R.S. § 36-511(c), arguing that the evidence does not support the trial court's findings and that we should review the matter de novo. It claims the Center presented no evidence that the plaintiffs' guardian or the plaintiffs ever complained to the state about the lack of discharge plans. The failure of the CMI to complain, however, cannot negate ASH's statutory duty to provide adequate discharge plans for each patient to the patient or patient's guardian sufficiently in advance of discharge to constitute notice. The record contains sufficient evidence to support the trial court's finding of a breach of duty by ASH in the failure to timely provide adequate discharge plans. Whittemore v. Amator, 148 Ariz. 173, 713 P.2d 1231 (1986).

2. The county breached its duty to provide community mental health services.

Our review of the record once again reveals sufficient evidence to support the trial court's findings. The county has a duty to provide community mental health care services to the plaintiff class. A.R.S. §§ 11-251(5) and 11-291(A). Legislative

history reveals an intent to coordinate program planning and development at the county level. Laws 1980, Ch. 227, §§ 1(5), 2(2), 2(4). Testimonial evidence coupled with the county's position that it had no duty to provide services demonstrates that the county breached its duty to the CMI. We affirm the order of the trial court that the county must provide community mental health treatment and services to the plaintiff class.

3. The defendants failed to establish that it is impossible to provide comprehensive mental health services to all CMI.

Defendants argue that, even if a duty exists and even if that duty was breached, the breach was justifiable because lack of funds rendered the duty impossible to perform. At the oral argument it became clear that this issue is not before us at this time as it is not ripe for our review. The parties did not present any direct evidence to the trial court that performance was impossible due to lack of funds. The trial court was deciding only whether the state and county have a duty to provide mental health care for the CMI and whether that duty had been breached. In that respect this case is similar to Harrison v. Riddle, 44 Ariz. 331, 36 P.2d 984 (1934). In an action to compel racial segregation in public schools, this court held:

> It is a general rule that a want of funds or means of obtaining them is a ground for denial of the writ as its issuance will be unavailing. 18 R.C.L. 227, § 151; 38 C.J. 556, § 28. But this is not an action to compel defendants to draw their warrant or warrants to pay the expenses of segregation, but an action to compel segregation and to

> provide accommodations made necessary thereby--"an act which the law specially imposes as a duty resulting from" defendants' office of trustee. Section 4396, Rev. Code 1928. If and when the question of paying the expenses of segregation ever arises, the defense of inability to pay them because of lack of funds or means of obtaining them might well be interposed, but not under the facts of this case.

44 Ariz. at 335, 36 P.2d at 986.

The trial court in this case ruled that the defense of impossibility was never factually established at trial. We affirm. State v. Angle, 54 Ariz. 13, 91 P.2d 705 (1939); Carr v. Frohmiller, 47 Ariz. 430, 56 P.2d 644 (1936).

D. Did the trial court correctly certify a class action brought on behalf of 4,500 individuals?

We must determine the appropriateness of bringing a special action as a class action. Despite an earlier pronouncement to the contrary, we decide today that a special action may be litigated as a class action. We look first to Town of Chino Valley v. State Land Dep't, 119 Ariz. 243, 580 P.2d 704 (1978) and a subsequent decision in Clark v. State Livestock Sanitary Bd., 131 Ariz. 551, 642 P.2d 896 (App. 1982) that relate to this issue.

In Chino Valley we held that a special action challenging amendments to the Groundwater Code would not be certified as a class action, noting the absence of express authorization in the Rules of Procedure for Special Actions. We distinguish Chino Valley from the case before us as Chino Valley

was an original jurisdiction case filed directly with this court and not an appeal from a special action filed in the superior court. Ariz. Const. art. 6, § 5(1). The supreme court has original jurisdiction of extraordinary writs to state officers. Unlike this court, the trial court has the ability to carry out those procedural steps necessary for certification of a special action. See Rule 2, Ariz. R. P. Sp. Act., 17B A.R.S.; rule 23, Ariz. R. Civ. P., 16 A.R.S.

Additionally, the parties in Chino Valley paid only cursory attention to the special action/class action issue, so it was in no way fully and adequately briefed.[7] Therefore, we

---

7. The issue literally received only cursory attention. In their petition for special action, the Chino Valley petitioners merely stated that they:

> bring this action on behalf of themselves and other persons, corporations, or other legal entities too numerous to make it practical to bring all before the Court, all of whom constitute a class similarly situate [sic] and to all of whom there is a common question of law affecting their several rights and the common relief herein sought, and will hereinafter be referred to as Petitioners.

There was no discussion of whether the petitioners legally could be organized as a class to begin with; they jumped to step two, which was deciding whether they complied with the class-action-certification rule.

The respondents also did not address the threshhold issue of whether the petitioners, regardless whether they could be certified, even could organize as a class action. The respondents only objected to a class action because they claimed that the petitioners were not similarly situated.

believe that Chino Valley applies only to original jurisdiction special actions filed in appellate courts.

Several justifications exist for allowing special actions in the superior court to proceed as class actions. First, nothing in the Rules of Procedure for Special Actions intimates that class actions are impermissible. Our basis for concluding in Chino Valley that special action/class actions could not be maintained was that the special action rules contained nothing that specifically permits such litigation. 119 Ariz. at 246, 580 P.2d at 707. We think the more appropriate way to view the issue in the present context, considering that class actions are allowed in mandamus actions in other courts, is whether the special action rules indicate such litigation is impermissible. Mountain States Tel. & Tel. Co. v. Arizona Corp. Comm'n, 28 Ariz. Adv. Rep. 3 (1989). Rule 2, Rules of Procedure for Special Actions, 17B A.R.S., grants judges discretion in determining the parties to a special action; in fact, rule 2(b) allows judges to "order [other persons'] joinder as parties . . . ." This is essentially what happens when a trial judge certifies a class action. See generally Rule 23, Ariz. R. Civ. P., 16 A.R.S.

Second, class actions are accepted vehicles in other states and in the federal courts in actions for mandamus relief. See, e.g., Elliott v. Weinberger, 564 F.2d 1219 (9th Cir. 1977), aff'd sub nom. Califano v. Yamasaki, 442 U.S. 682, 99 S.Ct. 2545,

61 L. Ed.2d 176 (1979); Lowry v. Obledo, 111 Cal. App.3d 14, 169 Cal. Rptr. 732 (1980); Watterson v. Miller, 117 Ill. App.3d 1054, 454 N.E.2d 373 (1983); Turner v. Reed, 52 A.D.2d 739, 382 N.Y.S.2d 391 (1976). Arizona maintains the essence of the writ of mandamus within the special action as stated explicitly in Rule 1 of the Rules of Procedure for Special Actions, and art. 6, § 5 of the Arizona Constitution. Ample authority exists that those states that continue to have mandamus allow class actions, apparently without reserve, provided that the plaintiffs comply with the class action rules. Based on this, we find no reason Arizona should not allow special action/class actions in the trial court.

Third, we find persuasive New York's position on this issue. Arizona followed New York's lead in consolidating the extraordinary writs into the special action. See comment to Rule 1, Ariz. R. P. Sp. Act., 17B A.R.S. New York courts have held that nothing in their special action rules precludes the bringing of special actions as class actions. Young v. Shuart, 67 Misc. 2d 689, 325 N.Y.S.2d 113 (1971).

Finally, our citizens must be allowed to maintain a class action so they will have appropriate access to the judicial system. Mandamus -- special action -- is the proper avenue for compelling public officials to perform non-discretionary acts. State v. Phelps, 67 Ariz. 215, 193 P.2d 921 (1948). The petitioners in this special action could not obtain relief if they could not proceed by a special action sounding in mandamus.

If we preclude them from bringing a class action here, we have effectively shut off a procedural avenue to the court.

We have interpreted the Arizona Constitution as requiring equal access to justice regardless of the plaintiff's financial status. Hampton v. Chatwin, 109 Ariz. 98, 505 P.2d 1037 (1973). Our constitution states:

> Section 13. No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.

Ariz. Const. art. 2, § 13. In Hampton, we held that, based on our constitution, an indigent must be allowed to seek waiver of an appeal bond when appealing a justice court decision to the superior court. Likewise, we have invalidated a statute as violating the constitutional privileges and immunities clause because it specifically did not allow for waiver of a cost bond. Eastin v. Broomfield, 116 Ariz. 576, 570 P.2d 744 (1977). Not allowing the bond to be waived denied the indigent access to the courts. Id. at 586, 570 P.2d at 754.

We find the same type of barrier in this case. The 4,500 indigent CMI petitioners could not bring individual special actions to compel the state and county to provide them with adequate mental health care. Because a special action sounding in mandamus is their remedy, they must be allowed to maintain a class action to pursue their goals. The state constitution and practical considerations of judicial economy require it.

We reject the defendants' contention that special actions, by their very nature, should preclude class actions. A court can maintain the narrow focus required by a special action regardless of the number of petitioners seeking relief. See e.g. United States v. Superior Court, 144 Ariz. 265, 697 P.2d 658 (1985). Furthermore, we find no merit in the state's argument that the trial court abused its discretion in certifying the class due to the fact that each class member has an individualized need. The plaintiffs met the typicality requirement. We affirm the trial court's certification of the class.

E. Did the trial court err in awarding attorney's fees to the plaintiffs?

The trial court awarded attorney's fees to the prevailing party pursuant to A.R.S. § 12-348. The state does not contest that A.R.S. § 12-348(A)(5) applies to this case. The statute provides for an award of attorney's fees in a special action proceeding brought by the party to challenge an action by the state against the party. The state argues, however, that the statute contains a limitation that the trial court failed to apply.

The trial court awarded the fees based on prevailing market rates. A.R.S. § 12-348(D)(2) reads:

> D. The court shall base any award of fees as provided in this section on prevailing market rates for the kind and quality of the services furnished, except that:
>
> . . . .

> 2. The award of attorney's fees may not exceed the amount which the prevailing party has paid or has agreed to pay the attorney or a maximum amount of seventy-five dollars per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding involved, justifies a higher fee.

The state argues that this statute requires an actual agreement to pay. Alano Club 12, Inc. v. Hibbs, 150 Ariz. 428, 724 P.2d 47 (App. 1986). Here no agreement to pay exists because the Center pursued this matter pro bono. The state asks that if the Center does prevail the award should be limited to the actual costs of litigating the case rather than a "fictitious prevailing rate." The state compares A.R.S. § 12-341.01(B), providing for reasonable attorney's fees in contract litigation, and then cites several cases under the former statute limiting contract action attorney's fees to the actual fee arrangement. See, e.g., Associated Indem. Corp. v. Warner, 143 Ariz. 567, 570, 694 P.2d 1181, 1184 (1985). The trial court, however, found that it was not bound by the limitations of A.R.S. § 12-348(D)(2) because of the existence of a special factor: the limited availability of qualified attorneys to provide representation.

We agree with the trial court. The plaintiffs are entitled to attorney's fees pursuant to A.R.S. § 12-348. Attorney's fees should not be limited by the fact that the plaintiffs are indigent and that their attorneys accepted the case on a pro bono basis. It would be a paradox to hold that litigants who are able to pay will have their attorney's fees reimbursed

while attorneys who represent litigants unable to pay will be forced to remain unpaid. Such a result would be contrary to the legislative intent in enacting A.R.S. § 12-348. Laws 1981, Ch. 208, § 1. Alano Club 12, relied upon by the state, is not applicable as it turns on the question of whether an attorney-client relationship even existed. There was evidence before the trial court to support a determination that no attorneys other than the Center would have undertaken this case. The evidence justifies the trial court's decision to pay fees at the market rate rather than the statutory rate. The reasoning of the United States Supreme Court supports this decision, even though a federal statute was involved. Blum v. Stenson, 465 U.S. 886, 104 S. Ct. 1541, 79 L. Ed.2d 891 (1984).

We believe this case meets the criteria of superior quality of service and exceptional success justifying the trial court's award. London v. Green Acres, 11 Ariz. Adv. Rep. 83 (1988); see also Skelton v. Central Motors Corp., 860 F.2d 250 (7th Cir. 1988); Save Our Cumberland Mountains, Inc. v. Hodel, 857 F.2d 1516 (D.C. Cir. 1988). The attorney's fees here should be calculated according to prevailing market rates, regardless of the fact that plaintiffs are represented by non-profit counsel. Blum v. Stenson.

The trial court held the county responsible for one-third of the fee award under the "private attorney general doctrine," also known as the "substantial benefits doctrine." In

State v. Boykin, 112 Ariz. 109, 114, 538 P.2d 383, 388 (1975), we recognized the existence of a "private attorney general doctrine" that allows an award to a prevailing plaintiff for vindicating an important public policy, but found it inapplicable there. The county claims the trial court erred in awarding fees against it under this theory. There are no Arizona cases awarding fees under the "private attorney general doctrine." See Roe v. Arizona Bd. of Regents, 23 Ariz. App. 477, 534 P.2d 285 (1975), vacated on other grounds, 113 Ariz. 178, 549 P.2d 150 (1976).

The Center relied upon Serrano v. Priest, 20 Cal. 3d 25, 569 P.2d 1303, 141 Cal. Rptr. 315, (1977), to justify the award. The county attempts to distinguish Serrano because its holding was restricted to the vindication of a public policy having a constitutional rather than statutory basis. This is incorrect. In re Head, 42 Cal. 3d 223, 227, 721 P.2d 65, 67, 228 Cal. Rptr. 184, 185-86 (1986) (California statute creating right to attorney's fees applies to actions vindicating statutory as well as constitutional rights).

The "private attorney general theory" or the "substantial benefits doctrine" has been recently discussed by Arizona courts. Kadish v. Arizona State Land Dep't, 155 Ariz. 484, 747 P.2d 1183 (1987), petition for cert. granted, ___ U.S. ___, 108 S. Ct. 2842, 101 L. Ed.2d 880 (1988); Roe v. Arizona Bd. of Regents, supra; Sleesman v. State Bd. of Educ., 156 Ariz. 496, 753 P.2d 186 (App. 1988); Matter of Estate of Brown, 137

Ariz. 309, 312, 670 P.2d 414, 417 (App. 1983). In Kadish, Justice Feldman and Chief Justice Gordon expressed support for the doctrine. They declared that "courts have inherent equitable power to award fees, notwithstanding the 'American Rule . . . .'" 155 Ariz. at 497, 747 P.2d at 1196 (citing Hall v. Cole, 412 U.S. 1, 93 S. Ct. 1943, 36 L. Ed.2d 702 (1973)).

The private attorney general doctrine is an equitable rule which permits courts in their discretion to award attorney's fees to a party who has vindicated a right that:

(1) benefits a large number of people;

(2) requires private enforcement; and

(3) is of societal importance.

Comment, Important Rights and the Private Attorney General Doctrine, 73 Calif. L. Rev. 1929 (1985). The purpose of the doctrine is "to promote vindication of important public rights." Comment, Equitable Attorney's Fees to Public Interest Litigants in Arizona, 1984 Ariz. St. L.J. 539, 554.

Although Arizona has long recognized the private attorney general doctrine, we have not applied it before. We do so now.

Whether to adopt the private attorney general doctrine involves a policy choice between encouraging public interest litigation and preserving the "American Rule" of each party bearing its own attorney's fees absent a statute or contract directing otherwise. The "American Rule", although long-standing, has been eroded by statute and by judicial decision on

both the state and federal level. In Arizona, we have at least 73 statutes providing for fee-shifting. See, e.g., A.R.S. § 12-348 (award of fees and other expenses against the state, or a city, town, or county). There are a number of judicial exceptions to the "American Rule" such as the Common Fund Doctrine. Steinfeld v. Zeckendorf, 15 Ariz. 335, 138 P. 1044 (1914), aff'd, 239 U.S. 26, 36 S. Ct. 14, 60 L. Ed. 125 (1915). Given the eroded status of the "American Rule" and the benefit to Arizona citizens from public interest litigation, we adopt and apply the private attorney general doctrine here.

X. CONCLUSION

It has been stated that "[t]he moral test of government is how it treats those who are in the dawn of life, the children; those who are in the twilight of life, the aged; and those who are in the shadows of life, the sick, the needy and the handicapped."[8] Arizona has imprisoned its CMI in the shadows of public apathy. The legislature was the first to speak on the issues before us. We find no evidence in this record that the legislature intended to pass sham legislation. The legislature thoroughly, carefully and completely mandated duties of the state and county to the CMI population in Arizona. We hold that the legislature has mandated that the state and the county have a

8. Hubert Horatio Humphrey (1911-78), as reported in Newsweek, p. 23, Jan. 23, 1978.

duty to jointly and harmoniously provide mental health care to the plaintiff class. In so holding we note that the duty may well be more expensive in the breach than in the fulfillment. (See Appendix)

The trial court found that the duty existed and that the duty has, thus far, been breached. We affirm the judgment of the trial court and the award of attorney's fees.

SARAH D. GRANT, Judge

CONCURRING:

STANLEY G. FELDMAN, Vice Chief Justice

JAMES DUKE CAMERON, Justice

JAMES MOELLER, Justice

Chief Justice Frank X. Gordon, Jr. did not participate in this decision; pursuant to Ariz. Const. art. 6, § 3, Chief Judge Sarah D. Grant of the Court of Appeals, Division One, was designated to sit in his stead; Justice William Holohan retired before the decision of this case; Justice Robert J. Corcoran did not participate in the determination of this case.

APPENDIX

The following sampling will give an idea of the cost to society of an inadequate mental health care system:

State v. Johnson, 156 Ariz. 464, 753 P.2d 154 (1988): The defendant, a long-time victim of severe mental illness, was found not guilty by reason of insanity. From the onset of his disease he led a nomadic life interrupted by frequent hospitalizations after episodes of bizarre behavior. After being medicated and stabilized in the hospital he would typically relapse upon release. He was twice hospitalized at ASH. Upon his second release, failing to obtain outpatient treatment or medication, he again relapsed with tragic consequences. Two months after release he beat his arthritic, wheelchair-bound neighbor to death with a tire iron. Upon the verdict of not guilty by reason of insanity, Johnson was again committed to ASH. As a result of a hearing pursuant to A.R.S. § 13-3994, the trial court ordered his release from ASH on a conditional basis. The case came to us because "[t]he state had difficulty finding a facility which would accept Johnson under the terms of the conditional release order."

State v. Coconino County Superior Court, Div. II, 139 Ariz. 422, 678 P.2d 1386 (1984): Mauro, the real party in interest, had a long history of mental disorders. He unsuccessfully tried to kill his pregnant wife, and believing he had killed her, he attempted suicide. Ultimately he killed his small son by stuffing a sock and soiled diapers down the child's throat after locking him in a bathroom for three days. See also State v. Mauro, 149 Ariz. 24, 716 P.2d 393 (1986), rev'd sub nom. Arizona v. Mauro, 481 U.S. 520, 107 S.Ct. 1931, 95 L. Ed.2d 458 (1987), on remand State v. Mauro, ___ Ariz. ___, 766 P.2d 59 (1988).

Cooke v. Berlin, 153 Ariz. 220, 735 P.2d 830 (App. 1987): Tanya Robinson, a 22-year-old University of Arizona student, sought help for mental problems at Southern Arizona Mental Health Center (a state facility). She was diagnosed and put on medication but did not follow through with treatment. As a result of her mental disorder, she developed a delusion which led her to kill a Tucson disc jockey

whom Robinson believed was observing her through her radio.

Hamman v. County of Maricopa, 26 Ariz. Adv. Rep. 42 (1989): John Carter was treated in the emergency clinic of the county hospital where he was taken by his concerned and frightened parents. He was admitted to the hospital and medicated. Upon his release 16 days later, he was given directions to continue taking the medication. The parents were not informed of his release. After many days of bizarre behavior, the parents took Carter back to the county hospital. He spent 30 minutes in the crisis center and was released with prescriptions. Two days later Carter attacked his stepfather by beating him over the head with wooden dowels. The stepfather suffered a heart attack during the beating as well as severe brain damage as the result of blows to the head. Carter was found not guilty of assault by reason of insanity.

State v. McPherson, 158 Ariz. 502, 763 P.2d 998 (1988): Malcolm McPherson was charged with armed residential burglary and theft, both dangerous felonies, for breaking into an unoccupied house and taking food, clothing and a rifle. The offense occurred just one week after McPherson discharged himself from self-commitment at ASH. He was found incompetent to stand trial and was committed to ASH in November 1986. He was released from ASH, and in March 1987 a bench warrant issued for his arrest. He was placed back in the Coconino County Jail where he refused certain psychotropic medications and quickly deteriorated. McPherson was once again found incompetent to stand trial and was readmitted to ASH in April 1987. By September 1987, his doctors declared him competent to stand trial and discharged him from ASH back to the county jail. Once again his condition deteriorated and in December 1987 he was recommitted to ASH for treatment. Examining physicians agreed that McPherson's condition could not be treated by simply placing him on medications while in jail; he needed a total therapeutic environment. The charges were ultimately dismissed. McPherson is a classic example of the revolving door syndrome that characterizes the treatment of CMI.

Notice to Class Members

IMPORTANT NOTICE

PLEASE READ

TO: ALL CHRONICALLY MENTALLY ILL PERSONS, THEIR FAMILIES AND FRIENDS.

The purpose of this notice is to let you know that if you, a family member, or a friend are chronically mentally ill, you may have certain rights which you should know about. A lawsuit has been filed on behalf of certain chronically mentally ill persons, and the Court has now agreed that the attorney may represent everyone who:

1. Is chronically mentally ill; and
2. Is indigent (poor); and
3. Lives in Maricopa County; and
4. Would reasonably benefit from appropriate medical treatment.

Therefore, if you, your family member, or a friend meet all of these requirements, you or they are now part of a lawsuit.

The lawsuit is against the Arizona Department of Health Services, the Maricopa County Board of Supervisors, and the Arizona State Hospital. The lawsuit claims that the State and County have failed to provide the services necessary to meet the needs of chronically mentally ill persons in the community. The State and County disagree. The Court has not yet ruled on who is right. However, any decisions by the Court will affect all persons who are chronically mentally ill, and poor, and live in Maricopa County and would reasonably benefit from appropriate medical treatment.

The lawsuit asks the Court to order the State and County to provide the chronically mentally ill in Maricopa County who are poor and who could benefit from appropriate treatment, with the mental health services to which they are entitled by law, and to establish the legal rights of the chronically mentally ill.

The chronically mentally ill are represented by the Arizona Center for Law in the Public Interest through its attorneys; Amy J. Gittler has primary responsibility for the case. The address is 112 North Fifth Avenue, Phoenix, Arizona 85003, telephone number 252-4904.

If you, your family member, or friend are chronically mentally ill, and poor, and live in Maricopa County and would reasonably benefit from appropriate medical treatment, you, your family member, or friend can:

1. First, if you have any questions, or <u>if you have any information which you believe may be helpful to this case or which you want to let someone know about</u>, such as the kinds of mental health services you, your family member, or friend are receiving, feel you should receive or have been denied, please call the Mental Health Associations of Arizona and Maricopa County between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday at 274-0527. People are ready and willing to answer your questions and take the information. <u>Please don't hesitate to call if you have any information, facts, or concerns about the mental health services in Maricopa County</u>.

2. In addition, if you feel that the Arizona Center for Law in the Public Interest and its attorneys will fairly

represent you, you don't have to do anything except to call the Mental Health Associations of Arizona and Maricopa County at 274-0527 if you wish;

3. If you do not believe that the Arizona Center for Law in the Public Interest and its attorneys will adequately represent your interests, you may want to contact your own lawyer. With or without a lawyer, you have the right to request the Court to allow you to participate in this case.

Although this notice does not require you, your family member or friend to do anything, you should read the information carefully. You could be legally affected by any orders of the Court in this case.

DATED this 10 day of December, 1982.

/s/ William T. Moroney
William T. Moroney, Judge
Maricopa County Superior Court
C432355

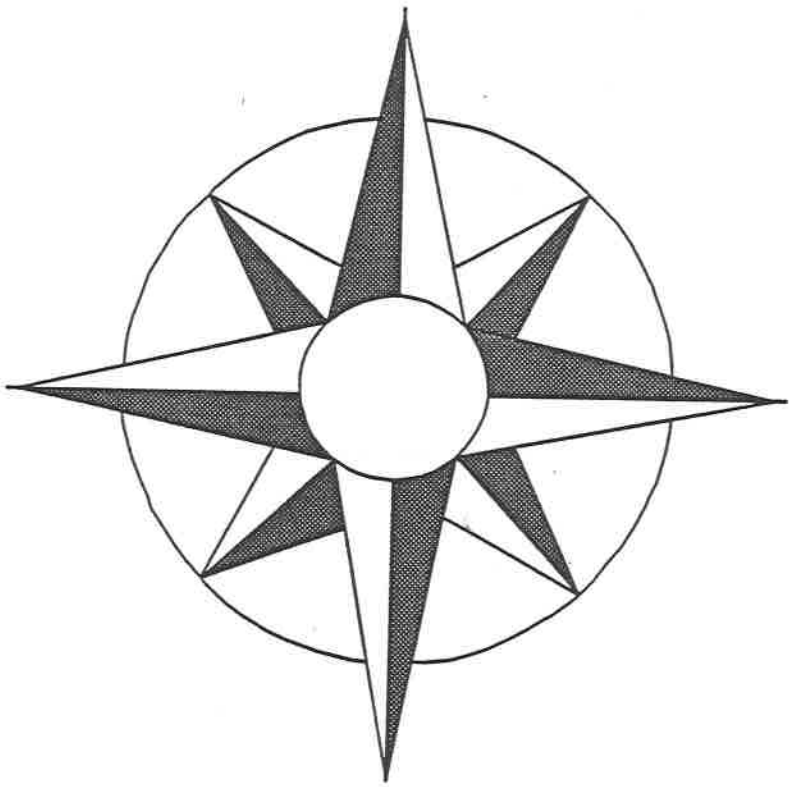
THE BLUEPRINT:

Implementing Services to the Seriously Mentally Ill

ARIZONA DEPARTMENT OF HEALTH SERVICES
AND THE
MARICOPA COUNTY DEPARTMENT OF HEALTH SERVICES

THE BLUEPRINT:

IMPLEMENTING SERVICES TO THE SERIOUSLY MENTALLY ILL



ARIZONA DEPARTMENT OF HEALTH SERVICES

TED WILLIAMS
DIRECTOR

BOYD DOVER
ASSISTANT DIRECTOR
DIVISION OF BEHAVIORAL HEALTH SERVICES

MARICOPA COUNTY BOARD OF SUPERVISORS

TOM FREESTONE
CHAIRMAN

ADOLFO ECHEVESTE
DIRECTOR
DEPARTMENT OF HEALTH SERVICES

Table of Contents

I. PRELIMINARY MATTERS

A. Judgment

1. All the provisions of the Court's Judgment of Au 1, 1986 and the Supreme Court opinion affirming it are incorporated herein by reference.

B. Plaintiff Class

2. As certified by the Court's order dated Decembe 1982, the plaintiff class consists of those persons who:

a. Are residents of Maricopa County,

b. Are indigent,

c. Are chronically mentally ill, and

d. Would reasonably benefit from appropriate treatment due to their illness.

3. Persons with chronic mental illness are those persons who:

> as a result of a mental disorder as defined in § 36-501, exhibit emotional or behavioral functioning which is so impaired as to interfere substantially with their capacity to remain in the community without supportive treatment or services of a long-term or indefinite duration. In these persons mental disability is severe and persistent, resulting in a long-term limitation of their functional capacities for primary activities of daily living such as interpersonal relations, homemaking, self-care, employment and recreation.

A.R.S. § 36-550(3).

4. "Mental disorder" means:

> a substantal disorder of the person's emotiona processes, thought, cognition or memory. Mental disorder is distinguished from:

(a) Conditions which are primarily those of drug abuse, alcoholism, or mental retardation, unless, in addition to one or more of these conditions, the person has a mental disorder.
(b) The declining mental abilities that directly accompany impending death.
(c) Character and personality disorders characterized by life long and deeply ingrained antisocial behavioral patterns, including sexual behaviors which are abnormal and prohibited by statute unless the behavior results from a mental disorder.

A.R.S. § 36-501(22).

C. Purposes of Implementation Plan

5. This Implementation Plan is intended to ensure that, by September 30, 1995, the Court's Judgment of August 1, 1986 as affirmed is fully implemented and a comprehensive community mental health system for class members is established and to prevent unnecessary and inappropriate hospitalization and the attendant deprivation of liberty.

II. DEFINITIONS

6. The following definitions shall apply to this Implementation Plan:

a. "AHCCCS" shall mean the Arizona Health Care Cost Containment System.

b. "ASH" shall mean the Arizona State Hospital.

c. "Board" shall mean the Maricopa County Board of Supervisors.

d. "Case manager" refers to the person responsible for locating and monitoring the provision of services to class members in conjunction with a clinical team.

e. "Chronically mentally ill" shall have the definition provided in paragraph 3 herein.

f. "Clinical team" refers to the interdisciplinary team of persons who are responsible for providing continuous treatment and support to a class member and for providing or accessing all needed services. A clinical team consists of a psychiatrist (minimum of twenty hours per week), a psychiatric nurse, a social worker, case managers, and other professionals, such as a psychologist and vocational or rehabilitation specialist, as needed, based on the individual needs of the class member. One of the members of the team shall be the team coordinator.

g. "Community services" refers to community mental health services that may include, but are not limited to: clinical case management, outreach, housing and residential services, crisis intervention and resolution services, mobile crisis teams, day treatment, vocational training and opportunities, rehabilitation services, peer support, social support, recreation services, advocacy, family support services, outpatient counseling and treatment, transportation, and medication evaluation and maintenance.

h. "County Annex" shall mean the Maricopa County Mental Health Annex of the Maricopa County Medical Center.

i. "Court" shall mean the Maricopa County Superior Court which exercises continuing jurisdiction in Arnold v. Arizona Department of Health Services, No. C-432355.

j. "DBHS" shall mean the Division of Behavioral Health

Services of the Arizona Department of Health Services.

k. "Defendants" shall mean director of the Arizona Department of Health Services, and his or her successors; the superintendent of Arizona State Hospital, and his or her successors; and the Maricopa County Board of Supervisors, and their successors; all in their official capacities.

l. "Designated representative(s)" means any person or persons designated by a class member or guardian to aid the class member in protecting his or her rights under this Implementation Plan and mental health laws. (Any payment for the services of such designated representative(s) shall not be borne by defendants.)

m. "DHS" shall mean the Arizona Department of Health Services.

n. "Generic services" shall mean services other than mental health services for which class members may have a need. These services include, but are not limited to, health, dental and vision care, housing arrangements, social organizations, recreational facilities, jobs, and educational institutions.

o. "Implementation Plan" or "Blueprint" shall refer to this document.

p. "Individualized treatment plan" or "ITP" refers to the written document prepared by a class member's clinical team, the class member, and the class member's guardian or designated representative(s), if any. The ITP includes an assessment of the class member's strengths and needs, and describes the class

member's goals and objectives and the services the class member needs to meet those goals and objectives.

q. "Judgment" shall refer to the Findings of Fact, Conclusions of Law, and Order in this cause, dated August 1, 1986.

r. "Monitor" shall refer to the independent monitor appointed by the Court.

s. "Mental health services" refer to services that include community services, as defined above, and long-term psychiatric hospitalization.

t. "Parties" shall mean the plaintiffs and defendants, as defined herein.

u. "Plaintiffs," "class members," or "clients" shall mean the members of the plaintiff class, as certified by the Court's order dated December 1, 1982 and set forth in paragraph 2 herein.

v. "Seriously mentally ill" shall have the same meaning as "chronically mentally ill," as defined above.

w. "Service areas" refers to the geographic areas used by DHS to administer and organize the provision of community services. DHS currently uses three service areas for Maricopa County.

x. "Subcontract" refers to a contract for community services between a provider of services and an agency under contract with a defendant whereby the service contracted for is funded in whole or in part through the funds of the defendant.

III. RIGHTS OF CLASS MEMBERS

A. Rights

7. The statutory rights of each class member include, but are not limited to:

a. The right to a continuum of care in a unified and cohesive system of community mental health services that is well integrated, facilitates the movement of class members among programs, and ensures continuity of care.

b. The right to a continuum of care that consists of, but is not limited to, clinical case management, outreach, housing and residential services, crisis intervention and resolution services, mobile crisis teams, vocational training and opportunities, day treatment, rehabilitation services, peer support, social support, recreation services, advocacy, family support services, outpatient counseling and treatment, transportation, and medication evaluation and maintenance.

c. The right to a continuum of care with programs that have different levels of intensity in order to meet the individual needs of each class member.

d. The right to appropriate mental health treatment, based on each class member's individual and unique needs, and to those community services from which the class member would reasonably benefit.

e. The right to community services provided in the most normal and least restrictive setting according to the least restrictive means appropriate to the class member's needs.

f. The right to clinical case management services and a case manager. The clinical team negotiates and oversees the provision of services and ensures their smooth transition with providers and among agencies.

g. The right to a written ITP, based on individual needs.

h. The right to participate in treatment decisions and in the development and implementation of one's ITP, and the right to participate in choosing the type and location of services, consistent with the ITP.

i. The right to a written discharge plan from ASH and the County Annex and to follow-up from ASH and the County Annex to ensure that the discharge plan is actually carried out.

j. The right to give informed consent to all community services and the right to refuse community services, except as provided for in A.R.S. §§ 36-520 - 544 and 13-3994.

k. The right to equal access to existing generic services operated by the defendants.

l. Class members have the same rights as do all other citizens of Arizona, including the right to marry, to have a family, and to live in the community of their choice without constraints upon their independence, except those constraints to which all citizens are subject.

m. This paragraph 7 shall not be construed to confer upon class members constitutional rights not already present.

B. Grievances

8. Notwithstanding any other remedies available under law, class members, or guardians or designated representatives acting on their behalves, may bring grievances claiming that the actions, practices, procedures, policies, or the development and implementation of ITPs (as provided for in paragraph 82 herein) by the defendants or of any agency licensed, certified, approved, funded, contracted or subcontracted by or through defendants to provide mental health services, violate the terms of this Implementation Plan, the Judgment, or any other applicable law or regulation.

9. By July 1, 1991 DHS and the Board shall each separately draft rules for the processing of grievances. The draft rules shall incorporate the provisions set forth in paragraphs 8-14 and 82 herein. The draft grievance rules shall be submitted to counsel for plaintiffs for their review and comment and to the monitor for his or her review and recommendations in accordance with paragraph 20 of the Appointment of Monitor. By August 15, 1991 DHS and the Board shall respectively provide the notice required by A.R.S. §§ 41-1022, 11-217, or 39-203 et seq. and thereafter shall each promulgate the grievance rules in accordance with the Arizona Administrative Procedure Act, A.R.S. §§ 41-1001 et seq., if applicable. Immediately following the date the recommendations of the monitor are resolved pursuant to paragraph 20 of the Appointment of Monitor, each defendant shall implement the draft grievance rules as policy.

10. The grievance rules shall include provisions for giving adequate notice to class members of the right to file grievances, the procedure by which grievances may be filed, the timelines for each step of the procedure, the right to be assisted throughout the grievance procedure by a designated representative(s), and the right to present witnesses and other information throughout the grievance procedure. The notice shall list and briefly describe the advocacy services available through the state Protection and Advocacy System, established pursuant to 42 U.S.C. §§ 10801-10885, peer advocates and omsbud services through DHS.

11. The grievance procedure shall be designed to assure speedy resolution of matters aggrieved. It shall be conducted pursuant to the Arizona Administrative Procedure Act, and shall include provision for a hearing, recorded verbatim, before an impartial hearing officer, who is not an employee of defendants or of any agency under contract or subcontract with defendants. An expedited procedure shall be available for complaints concerning ITPs and for emergency complaints.

12. Grievances arising in the community, at ASH or at the County Annex shall be addressed to the agency employee designated to hear grievances. The employee shall promptly investigate the grievance and shall issue a written decision in accordance with the provisions of this paragraph. Decisions may be appealed to an impartial hearing officer, or to the director of DHS or to the assistant county manager for the Maricopa County

Department of Health (or their designees), whichever of the latter two is applicable. If appealed to the impartial hearing officer, the decision may be appealed to the director of DHS or the assistant county manager, whichever is applicable. The decision rendered by the director of DHS or the assistant county manager shall be the final agency action subject to judicial review pursuant to A.R.S. §§ 12-901 et seq. and 36-113. All decisions referred to in this paragraph shall be in writing and shall set forth the reasons for the decision and the remedial action, if any, to be taken.

13. Grievances may be brought by individual class members, groups of class members, or on their behalf by their designated representative(s).

14. Grievances may be brought by any person or agency charged with investigating violation of client rights or with delivering or monitoring mental health services. In such case, the grievances need not be brought on behalf of an identified class member.

C. Reports

15. DHS shall incorporate in the Division of Behavioral Health Services annual report by each January 1 a report of all grievances appealed to the director of DHS. The report shall summarize the issues raised, findings made and remedial action taken, and shall be submitted to the monitor and plaintiffs' counsel.

D. Client Rights Rules

16. By July 1, 1991 DHS shall draft rules setting forth the rights of clients of mental health services. The draft rules shall include all applicable terms of this Implementation Plan and the Judgment, and other rights including rights concerning medication, abuse, neglect, exploitation, control of property, compensation for labor, consent to care or treatment, seclusion, restraint, civil rights, visitation, termination of services, monitoring of client rights, and access to services. The draft client rights rules shall be submitted to counsel for plaintiffs for their review and comment and to the monitor for his or her review and recommendations in accordance with paragraph 20 of Appointment of Monitor. By August 15, 1991 DHS shall provide the notice required by A.R.S. § 41-1022 and thereafter shall promulgate the client rights rules in accordance with the Arizona Administrative Procedure Act, A.R.S. §§ 41-1001 et seq. Immediately following the date that the recommendations of the monitor are resolved pursuant to paragraph 20 of Appointment of Monitor, DHS shall implement the draft client rights rules as policy.

IV. PRINCIPLES GOVERNING A COMPREHENSIVE COMMUNITY MENTAL HEALTH SYSTEM

17. The following principles shall govern defendants in the development and in the overall and day-to-day administration and maintenance of the comprehensive community mental health system to meet class members' needs:

a. Class members are at all times entitled to respect for their individuality and to recognition that their personalities, abilities, needs, and aspirations are not determinable on the basis of a psychiatric label. All community services shall be designed so as to enhance class members' individuality, strengths, dignity and independence.

b. Class members are entitled to participate in all decisions concerning their treatment and in the development and implementation of their ITPs. They are entitled to participate in choosing the type and location of services which they receive, consistent with their ITPs.

c. Family members can often be a helpful component in the treatment of class members. When a class member desires the participation of a family member in treatment, the family member should be encouraged and permitted to participate appropriately. Class members have the right to designate one or more of their family members as their designated representative(s).

d. Class members have individualized needs which may change or vary in intensity over time and according to the individual's circumstances. Needs may span those for housing, financial security, health and dental care, companionship, spiritual growth, recreation, transportation, education, vocational opportunity and training, emotional support, psychiatric treatment, and crisis intervention and resolution services. Services to meet these needs must be delivered according to flexible models which accommodate changes in

individual class members' needs and the variations in the intensity of their needs. The services shall be flexible so that support may be increased or decreased as the class member's needs change and to the extent possible without requiring the class member to move to another setting.

e. All services within the comprehensive mental health system shall be oriented to supporting class members to continue to live in the community and to avoid hospitalization. When class members require psychiatric hospitalization due to medical necessity, services shall be oriented to hospitalizing them in facilities nearest their homes and thereafter discharging them to the community with all necessary supports as soon as medically possible.

f. The mental health system shall be designed so as to integrate class members into the community. Class members have the right to receive treatment in the most normal and least restrictive setting according to the least restrictive means appropriate to their needs. The community mental health system shall be designed so as to facilitate movement of clients to less restrictive settings.

g. Since housing and residential programs shall be designed to be the most normal and least restrictive environments appropriate for the clients, smaller housing and residential settings, such as apartments and single family homes, shall be preferred to larger ones. All residential and housing settings shall be home-like.

h. The service system shall be designed so as to promote the use by class members of generic services available to all citizens of the community. Defendants shall ensure that class members have equal access to generic services which they operate.

i. The comprehensive mental health system shall be designed and services shall be delivered based on identified individual needs in the ITP.

j. Services will be offered, to the maximum extent possible and entirely if possible, on a voluntary basis and with due regard for the class member's dignity and personal autonomy. Class members have the right to give informed consent to all services and to refuse all or some of the services offered, subject to the exceptions noted in paragraph 7j. A class member's refusal of a particular mode or course of treatment shall not be grounds per se for refusing a class member's access to other services which the class member accepts.

V. DEVELOPMENT OF A COMPREHENSIVE COMMUNITY MENTAL HEALTH SYSTEM

A. General

18. Defendants shall take all actions necessary to secure the funding, and ensure the development and operation of a comprehensive community mental health system in accordance with the terms of this Implementation Plan and the Judgment. The comprehensive community mental health system shall provide a continuum of services that includes, but is not limited to, the services referred to in paragraph 6g. Within the continuum there

shall be varying levels of intensity in order that each class member's individual needs may be met. Development of services shall be based to the greatest extent possible on class members' actual need for the planned services.

19. DHS shall assume primary responsibility for the development and operation of the comprehensive community mental health system. Defendants shall ensure through contract, subcontract or the direct provision of services that the terms of this Implementation Plan are fully implemented.

20. For each DHS service area, there shall be a single agency that is responsible for intake and case management services.

21. Defendants shall ensure that all class members are provided continuity of care.

22. Defendants shall establish a unified, cohesive and harmonious community mental health system. As provided for in paragraphs 204-06 below, DHS and the Board shall enter into an intergovernmental agreement on or before July 1, 1992 that ensures a unified system between the state and county.

23. Agencies with which defendants contract or subcontract shall be required by contract to comply fully with the applicable provisions of this Implementation Plan. Such agencies shall be subject to sanctions for noncompliance, including, but not limited to, revocation of the contract or subcontract.

B. Development Plan

1. Schedule of Service Development Requirements

24. DHS shall develop and maintain new community

services in accordance with an agreed-upon Schedule of Service Development Requirements that ensures that the Judgment is fully implemented by September 30, 1995. The Schedule of Service Development Requirements shall set forth, by each service area in Maricopa County, the community services to be developed during each fiscal year from fiscal year 1990-91 through fiscal year 1994-95. The Schedule of Service Development Requirement shall be based on the estimated population of class members, as provided for in paragraphs 25 and 87-90. The Schedule of Service Development Requirements shall set forth the community services to be developed based on objective and quantifiable measures, e.g., number of beds, number of clients, that are mutually agreed upon by DHS, the monitor and counsel for plaintiffs. DHS shall prepare service development requirements for the following services:

a. Clinical teams. For purposes of the Schedule of Service Development Requirements, the clinical teams shall be divided among intensive clinical teams and clinical case management teams, as provided for in paragraphs 93-107 below. The Schedule of Service Development Requirements also shall provide for the number of case managers needed.

b. Housing and residential services. For purposes of the Schedule of Service Development Requirements, housing and residential services shall be divided among intensive residential services, semi-supervised residential services, and supportive housing with assistance, as provided for in paragraphs 115-21 below.

c. Mobile crisis teams, as provided for in paragraphs 134-35 below.

d. Short-term residential crisis services, as provided for in paragraphs 136-37 below.

e. Vocational training and opportunities, as provided for in paragraphs 138-41 below.

f. Peer support, social support, and recreation services, as provided for in paragraphs 142-45 below. The Schedule of Service Development Requirements shall include the number of drop-in centers, clubhouses or other peer support programs to be developed each year.

g. Family support services, including respite care and family support, education and intervention services, as provided for in paragraphs 150-156 below.

h. Medication evaluation and maintenance, as provided for in paragraph 160 below.

25. To the greatest extent possible, the Schedule of Service Development Requirements shall be based on data of actual client needs. Toward this end, DHS shall use its best efforts to ensure that such data are available through its providers and its data system. To the extent that client needs data are not available, the service development requirements shall be based on the formulas or ratios agreed upon by DHS, the monitor and counsel for plaintiffs. Said formulas and ratios are set forth in section VIII below. The formulas or ratios may be modified pursuant to paragraph 28 below.

26. The Schedule of Service Development Requirements also shall set forth a schedule for the development of each of the community services listed above for the remainder of the state (but not by service area). The Schedule of Service Development Requirements for the remainder of the state shall not be enforceable by the plaintiffs in Court.

27. Attached as Exhibit A, and incorporated herein, is the Schedule of Service Development Requirements and budget requirements for fiscal years 1990-91 through 1994-95.

28. By July 1 of each year this Implementation Plan is in effect, DHS shall review the Schedule of Service Development Requirements and shall make necessary modifications thereto. Such modifications shall be based on data of actual client needs (including data from interim ITPs, as provided for in paragraph 56, and from the evaluations of class members in ASH, supervisory care homes, and board and care homes, as provided for in sections X and XI.A); the amount of funding authorized by the Arizona legislature for the fiscal year beginning that July 1; the anticipated amount of federal revenue for the upcoming fiscal year; the service development that occurred during the past fiscal year; and information on new treatment models. All such modifications shall be designed to ensure full implementation of the Judgment by September 30, 1995. DHS, the monitor and counsel for plaintiffs shall agree upon all such modifications. Thereafter, the modifications to the Schedule of Service Development Requirements shall be submitted to the Court.

2. Costs of Community Services

29. DHS shall base its total costs for each type of community service within the Schedule of Service Development Requirements on unit costs for each type of service.

30. Within fifteen working days of the Court's order approving the parties' stipulation concerning this Implementation Plan, the parties shall prepare a list of the current unit costs for each type of community services, to be incorporated herein as Exhibit B.

31. By July 1 of each year this Implementation Plan is in effect, DHS shall review the unit costs for each type of community service and shall modify any such costs as needed to ensure adequate funding of all community services. Unit costs shall be sufficient to provide for: all necessary start-up costs; salaries for employees of providers that are at or above market rate; funds necessary to stimulate the development of necessary services; funds necessary to develop programs flexible enough to meet individual and unique client needs; and inflationary and cost of living increases. DHS shall submit all modifications of units costs to counsel for plaintiffs for their review and comment and the monitor for his or her review and recommendations in accordance with paragraph 20 of Appointment of Monitor.

3. DHS Budget Requests

32. The amount of each annual budget request of the director of DHS to Governor of the State for fiscal years 1991-92 through 1994-95 shall be sufficient to maintain the

community services currently existing in Maricopa County and statewide (with inflationary and cost of living increases); to remedy problems with existing services in Maricopa County and statewide; to fund and develop the new community services required in the Schedule of Service Development Requirements for the relevant fiscal year; and to fund and develop new community services statewide to ensure development of a comprehensive community mental health system statewide.

33. By October 1 of each year this Implementation Plan is in effect, the director of DHS shall prepare a proposed budget request for community services for the upcoming fiscal year. DHS shall submit a copy of the proposed budget request to counsel for plaintiffs and to the monitor thirty days prior to October 1. DHS, the monitor and counsel for plaintiffs shall mutually agree upon the budget requests. Thereafter, the proposed budget request shall be submitted to the Court.

34. DHS shall thereafter submit the agreed-upon budget request in accordance with the provisions set forth in paragraphs 207-08 below.

VI. INDIVIDUALIZED TREATMENT PLANS

35. Each class member, regardless of location, is entitled to receive an individualized treatment plan, as described below, which is developed by a clinical team in conjunction with the class member and coordinated and monitored by a case manager. Other service providers and family members of the class member as appropriate who are needed to ensure proper development and

implementation of the ITP may also be included in its development.

A. Identification, Application and Referral for Services

36. Defendants shall identify through outreach and other efforts class members in the community, in inpatient settings, and in the Maricopa County jail. ASH and the County Annex shall separately ensure that all class members in those facilities are identified.

37. Class members may apply for community services on their own or with the assistance of a referring agency, guardian, family member or designated representative. Class members may apply for community services while in the community, in an inpatient facility, or in the Maricopa County jail.

38. Upon identification of class members by defendants or their agencies, or upon application for services by class members, class members in the community, in an inpatient facility, or in the Maricopa County jail shall be assigned a case manager within three working days of identification or application for services. The assigned case manager shall meet promptly with the class member (wherever the class member is, if necessary) to assess the class member's eligibility for services and the class member's desire and need for services, and shall work to meet the class member's needs until such time as an ITP is developed. Class members who decline the services of a case manager or an ITP shall be informed that they may apply for these services at any subsequent time.

39. Upon application for services, all class members

shall be notified of their rights under this Implementation Plan and of their right to name a designated representative(s) to assist them, to receive notices of meetings, and to participate at ITP meetings and in the development of the ITP.

B. Eligibility Determination

40. Class members who apply for services or who are identified as possibly eligible for services shall be informed in writing whether they are eligible for services, that they may grieve the denial of eligibility, and the procedure for such grievance.

C. Comprehensive Assessment

41. Once an individual has been determined eligible for services, a comprehensive assessment of the class member's strengths and needs shall be undertaken by the clinical team. The comprehensive assessment shall be conducted pursuant to an established methodology that is consistent with accepted professional standards. The comprehensive assessment shall assess, at a minimum, the following areas: the class member's mental health status and history, social setting, health, daily living skills, criminal justice history, vocational and employment history, education and training, preferred language, legal status, and resource availability. If the class member needs assessment in a certain area or areas that are beyond the ability or expertise of the clinical team, such assessment shall be conducted by appropriately credentialed professionals, with the class member's consent.

42. The comprehensive assessment report shall set forth the actual needs of the client and shall not be based on the availability of services. It shall form the basis for the class member's ITP.

43. The case manager, consistent with A.R.S. §§ 36-507 and 36-517.01, shall ensure that a written report detailing the results of the comprehensive assessment is prepared and given to the class member and his or her guardian or designated representative(s), if any. The case manager shall inform the class member and guardian or designated representative(s), if any, of the class member's right to grieve the comprehensive assessment report.

D. Development of ITPs

1. General

44. The ITP is the principal tool through which class members' needs are identified. It is, therefore, a critical element in assuring that the community mental health system is responsible to class members' actual needs.

45. An ITP shall be developed by a clinical team no later than thirty days from the date of application or referral for community services.

2. Convening the ITP Meeting

46. The place, date and time of each ITP meeting shall be convenient for the class member and the class member's guardian or designated representative(s), if any. A class member and his or her guardian or designated representative(s), if any, shall be

notified by the case manager of the place, date and time of each ITP meeting at least ten days prior to the meeting date, except when the meeting is being convened to address an emergency, in which case notice shall be reasonable under the circumstances. The case manager shall actively encourage the class member to attend the ITP meeting. The class member shall be notified that he or she may bring a designated representative or representatives to assist the class member, and the case manager shall encourage the class member to do so. If the class member has limited capacity, the case manager shall make every effort to obtain an appropriate representative for the class member.

3. ITP Meeting

47. At the ITP meeting, class members and their guardians or designated representative(s), if any, shall participate in the development of the ITP. Family members, when appropriate and consented to by the class member, shall be encouraged to participate. If a class member does not attend an ITP meeting, the case manager shall communicate the class member's views on issues to the clinical team. If the class member, guardian or designated representative(s) is unable to attend, the case manager shall notify the individual that he or she may submit information in writing for consideration at the meeting.

48. The ITP meeting shall include explanation and discussion of the class member's needs in terms of assessed strengths and weaknesses, the class member's preference regarding services, recommended long-range or interim services, potential

and present service providers, recommended dates for commencement of each service, the procedure for completion and implementation of the ITP process, the procedure for class members to request changes in the ITP, the means to ensure that services are provided in a coordinated and complementary fashion, and the means for monitoring the effectiveness of the services to be provided.

4. Preparation and Distribution of ITP

49. An ITP is a written plan that shall be based upon consideration of a class member's individual housing, financial, vocational, rehabilitation, educational, social, recreational, general health, dental, emotional, psychological and psychiatric strengths and needs as well as potential need for crisis intervention and resolution services.

50. There are many generic services and resources in the community for which class members have a need, but to which their access is limited. In ITPs, class members' needs for generic services and resources shall not be ignored and their access to them shall not be presumed. To the maximum extent possible, DHS shall not use or develop segregated services for a class member when services otherwise available to the general public would be adequate to meet the class member's needs. Instead, DHS and case managers shall work diligently to meet class members' needs by increasing the accessibility of generic services and resources through advocacy, education, support and special programs.

51. Services to assist the class member in meeting identified needs shall be described. Goals shall be written for

each service. Short-term objectives shall be stated such that their achievement leads to attainment of overall goals. Goals and short-term objectives shall be stated in terms which allow objective measurement of progress and which the class member, to the maximum extent possible, both understands and adopts.

52. Particular emphasis shall be placed on providing services in the most normal and least restrictive setting and on providing services which maximize the class member's strengths, independence and integration into the community.

53. Any change in placement, especially a change in a class member's housing or residential setting, has the potential to be disruptive and destabilizing for the class member. It is particularly important during times of transition to provide the necessary support to class members, to foster the maintenance of key relationships of the class member, and to provide necessary orientation to the class member. Therefore, the ITP shall specifically set forth the support and monitoring to be provided during the first two months (and thereafter if necessary) after any change in a class member's housing or residential setting (including discharge from an inpatient setting) in order to ensure a smooth and successful transition to the new setting.

54. All services in the ITP shall be based upon the actual needs of the class member rather than on what services are currently available.

55. If at the time of the ITP meeting, the team members know that the needed services are unavailable, they shall note

them as "unmet service needs" on the ITP and shall develop an interim ITP based on available services which meet as nearly as possible the actual needs of the class member. If at the time of the ITP meeting, the team members do not know whether the needed services are available, the case manager shall use diligent efforts to try to locate the needed services. If the services are unavailable, the ITP meeting shall be reconvened to develop an interim ITP.

56. In all cases requiring an interim ITP, the case manager shall forward a description of the unmet service needs to the director of the agency providing case management for the class member. The director shall use his or her best efforts to try to locate the needed services through existing services in Maricopa County. If the needed services cannot be located through existing services or through reallocating existing resources, the director of the agency shall forward a description of the unmet service needs to the assistant director of DBHS, and DBHS shall use this information to provide the needed services by locating the services or by reallocating existing resources or, if necessary, to plan for the development of the needed services, in accordance with paragraphs 24-28, to ensure their provision within the next fiscal year.

57. Within one week of the ITP meeting, the case manager shall provide the class member and guardian or designated representative(s), if any, with a written copy of the ITP. The ITP shall set forth the right to grieve the ITP and the grievance

procedure should the class member disagree with any aspect of the ITP, the assessments upon which the ITP is based, or become dissatisfied later with the ITP's implementation. The case manager shall personally explain to the class member the contents of the ITP, the right to grieve the ITP, and the grievance procedure.

5. Class Member Acceptance of ITP

58. Services shall be initiated with agreement of the class member or as defined by court order. The class member may accept some or all of the services set forth in the ITP. If the class member rejects some or all of the services set forth in the ITP, the class member may grieve the ITP in accordance with the provisions set forth in paragraphs 8-14.

59. For each class member that is identified as needing an alternative housing or residential setting (including class members in supervisory care homes and board and care homes), DHS and the pertinent mental health agency shall inform them of alternative living arrangements in a housing or residential setting consistent with the requirements of paragraph 126 herein and shall use their best efforts to effect a change of placement of that class member. These efforts may include explaining to the class member the support that will be provided at the new residence, showing the class member the house(s) or apartment(s) in which he or she could reside, introducing the class member to other residents of the housing or residential setting as appropriate, and permitting the class member to live in the

alternative setting on a trial basis. Class members who choose not to move from, or who elect to move into, their residential setting shall be informed that they may elect to move at any time in the future.

E. Implementation of ITPs

60. Following development of an ITP, the case manager, in conjunction with the clinical team, is responsible for locating the services identified in the ITP and monitoring their delivery to assure that they are delivered in accordance with the terms of the ITP.

61. Because class members have different levels of independence at various times, and because the identified service needs could be either routinely available, highly specialized or scarce, a case manager's efforts to locate and ensure delivery of services will vary according to circumstances. At times a simple referral of the class member to a known resource and subsequent periodic telephone contact with the class member and/or service provider may be adequate to assure proper delivery. At other times the case manager may need to take a more active role. A more active role may include, but not be limited to, assist in the development of a currently non-existing resource, assisting in providing transportation, visiting the class member at home, accompanying a class member to appointments, and actively helping a class member to resolve problems.

62. When the case manager does locate the needed services, he or she shall include the names of the providers and

their performance expectations in the ITP.

63. When the service to be delivered is from an agency funded by, licensed by, certified by, approved by, or under contract or subcontract with defendants, the case manager shall implement a written service agreement with the provider. The service agreement shall describe the service to be provided and any applicable terms included in the ITP and shall include the provisions that:

a. The provider will abide by the applicable terms of this Implementation Plan.

b. The provider will not discontinue or otherwise interrupt services without:

i. modification of the ITP; and

ii. obtaining prior written approval from the class member's clinical team.

c. If prior written approval is obtained, the provider shall give thirty days written notice to the class member, the class member's guardian, if any, and the class member's case manager. If the class member poses a threat of imminent harm to persons employed or served by the provider, the provider shall give notice which is reasonable under the circumstances.

d. The provider will cooperate with DHS in collecting data necessary to meet its obligations under this Implementation Plan.

e. The provider agrees that it shall maintain current class member records that chart progress toward achievement of

goals in the ITP and which meet applicable requirements of law, regulation, contract and professional standards.

F. Modification of ITPs

64. No services shall be modified, terminated, interrupted or discontinued except upon modification of the ITP by the clinical team in conjunction with the class member and guardian or designated representative(s), if any.

65. All modifications of the ITP may be grieved by the class member, and the case manager shall inform all class members of this right whenever an ITP is modified. If a class member grieves a modification, no services shall be modified, terminated, interrupted or discontinued until the grievance, and any judicial review thereof, are final.

G. Review of ITPs

66. ITPs shall be reviewed and revised every six months, and shall be reviewed more frequently whenever necessary.

H. Full Implementation of ITPs

67. As soon as possible, but no later than March 31, 1993, DHS shall ensure that all class members have ITPs that conform to the terms of this Implementation Plan. Prior to implementation of ITPs in conformance with this Implementation Plan, providers shall continue to use accepted methods of treatment planning and assessment. To ensure compliance with this paragraph, DHS shall ensure that by the following dates the following percentage of all identified class members have ITPs:

October 1, 1991: ten percent

March 31, 1992: thirty three percent

September 30, 1992: sixty percent

March 31, 1993: one hundred percent

68. DHS shall target class members residing in ASH, supervisory care homes, and board and care homes to first receive ITPs.

I. ASH and County Annex Treatment and Discharge Plans

69. While class members are admitted to ASH and the County Annex they shall receive treatment according to a written individualized treatment and discharge plan, which shall be incorporated into the class member's ITP as a discrete subpart.

70. All ASH and County Annex class members shall have a preliminary treatment and discharge plan developed within three days of admission and a treatment and discharge plan within seven days thereafter. This plan shall be reviewed and revised as frequently as necessary, but in no case less frequently than within thirty days of development, every sixty days thereafter for the first year, and every ninety days thereafter.

71. For class members who are currently without a case manager, a designated member of the hospital treatment team shall, upon admission and in no event later than three days of admission, make a referral to the appropriate agency for assignment of a case manager. For class members who have a case manager, that same designated member of the hospital treatment team shall, upon admission and in no event later than three days of admission, ensure that the assigned case manager is notified of the class

member's admission. Once a case manager has been assigned, the designated member of the hospital treatment team shall be responsible for assuring that planning meetings are scheduled at dates and times when the case manager is available to meet and that the case manager is notified of all hospital planning meetings, is provided with periodic progress and other necessary reports, and is apprised of the anticipated discharge date. The designated member of the hospital treatment team shall be responsible for ensuring that information is exchanged between the hospital and the clinical team so that the hospital treatment and discharge plan and the ITP are compatible.

72. ASH and the County Annex shall establish a mechanism for the proper credentialing of qualified case managers and other members of the clinical team in order that they may participate in planning meetings at the hospital.

73. The discharge plan shall be written under the direction of the clinical team. Any disagreement in clinical judgment between the clinical treatment and the hospital treatment team shall be mediated by DHS or the County Annex, whichever is applicable.

74. The class member and his or her guardian or designated representative(s), and appropriate community service providers shall participate in the development of the discharge plan.

75. ASH and the County Annex shall provide a copy of the discharge plan to the class member and guardian or designated

representative(s), if any, at least three days prior to the date of discharge.

76. The case manager and ASH or the County Annex shall each separately ensure that the housing or residential arrangement and community mental health services specified in the discharge plan and ITP are provided and that the class member actually receives the specified services upon discharge. Upon the class member's discharge, the individual's case manager shall meet with the class member within four days of discharge. Within thirty days, the class member's ITP shall be reviewed and revised as necessary.

77. The provisions in this subsection I shall not be construed so as to prevent the discharge of a class member when a case manager has not been assigned in conformity to this section.

78. For class members who decline the services offered by a case manager, but who nevertheless will require and accept some post-discharge community services, the case manager nonetheless shall be responsible for making necessary contacts with community providers, scheduling appointments as necessary, providing information, and otherwise taking all steps necessary to assure that the community services, including adequate housing arrangements, are arranged for and actually provided to the class member upon discharge.

79. ASH and the County Annex shall provide free copies of necessary medical records to appropriate community providers at least three days prior to discharge.

80. As soon as possible, but no later than October 1, 1991, all class members at ASH and County Annex shall have treatment and discharge plans which conform to the terms of this Implementation Plan.

J. ITP Rules

81. By July 1, 1991 DHS shall draft rules that govern the application for services and the development and implementation of ITPs, hospital treatment plans and discharge plans. The draft rules shall incorporate the provisions set forth in paragraphs 35-66 and 69-79 above and shall set forth the timelines for each step in the ITP process. The draft rules shall be submitted to counsel for plaintiffs for their review and comment and to the monitor for his or her review and recommendation in accordance with paragraph 20 of Appointment of Monitor. By August 15, 1991 DHS shall provide the notice required by A.R.S. § 41-1022 and shall thereafter promulgate the rules in accordance with the Arizona Administrative Procedure Act, A.R.S. §§ 41-1001 et seq. Immediately following the date the recommendations of the monitor are resolved pursuant to paragraph 20 of Appointment of Monitor, DHS shall implement the draft rules as policy.

K. ITP Grievances

82. Notwithstanding any other remedies available under law, class members, or guardians or designated representatives acting on their behalves, may grieve, pursuant to the grievance procedure provided for in paragraphs 8-14 above, the following

actions of defendants or of any agency licensed by, certified by, approved by, funded by, or under contract or subcontract with defendants as not appropriate, adequate or in the least restrictive environment:

a. The denial of eligibility for community services;

b. The comprehensive assessment report;

c. The contents of the ITP, hospital treatment plan, or discharge plan;

d. The implementation of the ITP, hospital treatment plan, or discharge plan;

e. All modifications to the ITP, hospital treatment plan, or discharge plan;

f. All reviews of the ITP, hospital treatment plan, or discharge plan.

VII. CLASS POPULATION

A. Generally

83. DHS shall ensure that all class members, as referred to in paragraph 2, are identified and provided those community services from which they would reasonably benefit.

B. Class Members with Organic Disorders

84. DHS shall ensure that appropriate persons with an organic disorder who meet the criteria of paragraphs 3-4 above are identified as seriously mentally ill and are provided those community services from which they would reasonably benefit.

85. By October 1, 1991 DHS shall define and include appropriate individuals with organic disorders within the existing

SMI Checklist, subject to agreement of counsel for the plaintiffs and the monitor.

86. Beginning the date this Implementation Plan is effective, DHS shall work diligently with AHCCCS to ensure that those class members with organic disorders who are eligible for AHCCCS acute care services and/or long-term care services (including home- and community-based services) are identified and referred for those services. Toward this end, DHS shall identify through the evaluation procedure provided for in section XI.A below those class members with organic disorders at ASH who are possibly eligible for long-term care services through AHCCCS and shall ensure that application for long-term care services is made promptly on their behalves.

C. Estimated Population

87. In order to develop the Schedule of Service Development Requirements provided for in paragraphs 24-28, DHS shall estimate the number of class members in Maricopa County and the number of seriously mentally ill individuals statewide, whether or not these individuals have actually been identified by defendants. DHS shall rely on the 1990 United States census to determine the total population of Maricopa County and the state for 1990, and on reliable state data to estimate population growth from 1991 through 1995. To determine the prevalence rate of serious mental illness, DHS shall rely on accepted national prevalence studies, such as the 1988 National Institute of Mental Health catchment area study, the Goldman, Gattozi, and Taube

study, and the Ashbaugh and Manderscheid study; prevalence rates of communities or states that have well developed community mental health systems; local and state data of the number of seriously mentally ill persons identified; and reliable local and state data on the number of seriously mentally ill persons not identified.

88. Within fifteen working days of the Court's order approving the parties' stipulation concerning this Implementation Plan, the parties shall prepare an estimate of the number of class members in Maricopa County and the number of persons with serious mental illness statewide from fiscal year 1990-91 through fiscal year 1994-95, to be incorporated herein as Exhibit C.

89. By July 1 of each year this Implementation Plan is in effect, DHS shall review the estimated number of class members and, for purposes of service planning and budgeting, shall modify its estimate based on the factors referred to in paragraph 87 above. DHS, the monitor and counsel for plaintiffs shall mutually agree on the modifications to the estimated number of class members.

90. The service development requirements required by this Implementation Plan for each service area shall be based on and proportionate to the estimated number of class members in need of services in each service area. Funding for community services to each service area shall be proportionate to the estimated number of class members to be served in each service area. DHS may deviate from this service planning and budgeting requirement if it documents that a service area will incur a significant

increase or decrease in the number of class members placed or identified in its area or if a service area requires the development of community services with expensive start-up costs.

VIII. CONTINUUM OF COMMUNITY SERVICES

A. Service Development Requirements

91. The following community services shall be planned for, developed and maintained by defendants in each of the three Maricopa County service areas in numbers sufficient to ensure that all class members receive those services from which they would reasonably benefit, and in accordance with the Schedule of Service Development Requirements incorporated herein and the provisions of section V herein:

a. clinical case management, including outreach,

b. housing and residential services,

c. crisis intervention and resolution services, including short-term crisis residential treatment and mobile crisis teams,

d. vocational training and opportunities,

e. peer support, social support and recreation services,

f. advocacy services,

g. family support services,

h. outpatient counseling and treatment,

i. transportation, and

j. medication maintenance and evaluation.

The above services shall be accessible geographically to class members.

B. Clinical Case Management, Including Outreach

1. General

93. Each class member shall be assigned a clinical team. The clinical team shall be responsible for developing ITPs for each of its clients and for providing continuous treatment and care. Thus, the clinical team shall serve a clinical function and shall not merely purchase or broker services on behalf of their clients. The clinical team shall have the authority and the resources either to directly provide or to access all needed mental health services. DHS shall determine which services the clinical teams shall directly provide and which they shall access.

94. There shall be two types of clinical teams, intensive clinical teams and clinical case management teams. Each of these teams is described more fully below in this subsection VIII.B.

95. Each class member shall have an assigned case manager within the clinical team. The case manager in concert with the clinical team shall be responsible for locating and obtaining the services called for in the class member's ITP. They shall also have the following duties: participation at all hospital discharge planning meetings; monitoring of services delivered pursuant to the ITP in order to assess their continued appropriateness and effectiveness in meeting the class members' needs; appraising progress toward and identifying impediments to the achievement of class member goals and objectives; promoting ongoing class members involvement in the review and implementation

of their ITPs; attempting to resolve problems with respect to any component of the ITP; participating in the delivery of crisis intervention and resolution services and providing follow-up services to assure that the crisis is resolved; assisting in the exploration of less restrictive alternatives to hospitalization; assisting in resolving emergencies which may arise by mobilizing resources or by intervening directly; and otherwise providing personalized support to the class member.

96. The clinical teams shall be mobile and shall be available to class members wherever they are: at home, at work, in social groups, in the hospital, in jail, on the streets, or at other social service agencies.

97. Class members may request a change in case manager, psychiatrist or clinical team, which request shall be honored to the extent possible.

98. By December 1, 1991 all identified class members shall be assigned to a clinical team.

2. Intensive Clinical Teams

99. Intensive clinical teams shall serve the functions provided for in paragraphs 93 and 95-96 and shall serve the clients with the most challenging needs. These clients usually have a history of repeated hospitalization and are often those who are reluctant or unable to participate in traditional mental health services. They are individuals who are at risk of becoming homeless, being hospitalized, becoming involved in the criminal justice system, or becoming dependent on substances. These

clients require intensive personal support and a specialized approach. The two most important components of this approach are strong case management and assertive outreach that ensure that problems are recognized and addressed, and that clients are encouraged to participate in support services. This approach is designed to assist people with the most serious disabilities to live in the community, to decrease their need for psychiatric hospitalization and to enhance their quality of life.

100. The intensive clinical team shall be composed of the professionals provided for in paragraph 6f. The ratio of case managers to clients shall not exceed 1 to 10. The number of clients per intensive clinical team shall not exceed 100.

101. The intensive clinical teams shall be available twenty-four hours per day, seven days per week.

102. For purposes of developing the service development requirements as provided for in paragraphs 24-28, there shall be intensive clinical teams for ten percent of the plaintiff class.

3. Clinical Case Management Teams

103. Every class member not assigned to an intensive clinical team shall be assigned to a clinical case management team, which shall serve the functions provided for in paragraphs 93 and 95-96.

104. The clinical case management teams shall be composed of the professionals provided for in paragraph 6f. The ratio of case managers to clients shall be no greater than 1 to 25. The number of clients per clinical case management team shall not

exceed 150.

105. The clinical case management teams shall operate a minimum of one shift each day, five days per week, with scheduled nighttime and weekend emergency backup at all other times.

4. Outreach

106. All services should be provided, to the maximum extent possible and entirely if possible, on a voluntary basis. There are however some class members who do not desire or are unable to participate in services. Therefore assertive outreach is a key component in the community mental health system. Outreach shall be provided both to individuals who are clients of the system and to persons who are reluctant to participate in services. Such efforts, if conducted in a manner that is sensitive to the needs of the individual and respectful of the person's individual rights and opinions, are effective in engaging persons in services on a voluntary basis.

107. The clinical teams shall provide effective and assertive outreach to their clients and to class members who have not availed themselves of services in order to engage class members in services voluntarily.

108. DHS shall ensure that by September 1, 1991 each service area has a written plan to provide outreach to clients and to non-client class members. The plans shall be submitted to counsel for plaintiffs for their review and comment and to the monitor for his or her review and recommendations in accordance with paragraph 20 of the Appointment of Monitor. So long as this

Implementation Plan is in effect, each September 1 the outreach plans shall be updated to meet the needs of the service area. The updated plans shall be submitted to counsel for plaintiffs for their review and comment and to the monitor for his or her review and recommendations in accordance with paragraph 20 of Appointment of Monitor.

C. Housing and Residential Services

109. DHS shall plan for, develop and maintain a variety of housing and residential options for class members which can accommodate varying levels of supportive assistance to class members, depending on class members' individual needs. Some class members will live independently in their own homes, some will require support in their homes, and some will require residential settings with varying levels of support and staff. Housing and residential services shall be designed to integrate class members into the community and to provide each class member with the support and supervision appropriate to his or her level of independence. Services shall be flexible so that support and supervision may be initiated, discontinued, increased or decreased as the class member's needs change and so that the class member is not required to move to another setting as his or her needs change. DHS shall develop permanent, stable housing and residential settings that have the flexibility to meet these changing needs. Housing and residential settings shall not place arbitrary time limits on the length of stay.

110. DHS shall ensure that all housing and residential

settings are designed to integrate class members into the community to the greatest extent possible. Smaller settings shall be preferred to larger settings, and all housing and residential settings shall be in apartment or home-like settings, rather than in larger facilities.

111. Non-residential support services shall to the extent appropriate be separate from and occur outside the class member's housing or residential setting.

112. Class members shall be given a range of alternative, appropriate housing and residential settings and locations from which to choose to live.

113. Housing and residential programs shall not discriminate on the basis of handicap, race, sex, national origin, ethnicity, religion, sexual preference, marital status, or family status.

114. Housing and residential options required to be developed include, but are not limited to, those provided for in paragraphs 115-22 below.

1. Intensive Residential Services

115. Long-term intensive residential services: stable, long-term housing with rehabilitation and support services providing twenty-four hour staff, seven days a week, with a high staff to client ratio. Staffing patterns shall be appropriate to meet the individual needs of the clients. In conjunction with the long-term intensive residential program, DHS shall ensure a full range of support services, where appropriate, including vocational

services, peer support, recreation, daily living skills and group counseling.

2. Semi-Supervised Residential Services

116. Semi-supervised residential services are residential services up to twenty-three hours per day. Each client has a uniquely designed living situation based on his or her individual needs. Only a few types of semi-supervised residential are provided below.

117. Semi-supervised group living: minimally staffed supportive living arrangement in a range of settings including apartments and homes. This program provides class members the opportunity to function as part of a household, develop independence in daily living and become involved in a wide range of activities during the day, including vocational opportunities and community activities. Staff are available to provide support and recreation as needed.

118. Supportive housing: a living situation where services of any nature, e.g., skills training, visiting nurses, personal care attendant, are provided to allow the client to remain in his or her own home or apartment.

119. Specialized home care: opportunity to live in a family-like setting other than that of the natural family. Role-modeling and other services are provided by the specialized home care providers or other providers.

120. Respite services: services to provide periodic relief to the normal caregiver. Respite can be provided in a

class member's home or in a residential setting.

3. Supportive Housing with Assistance

121. Supportive housing with assistance: clients who need case management and other services but who can live independently only with assistance with the resources necessary to maintain themselves independently.

4. Specialized Residential Services

122. Specialized residential services: specialized services adapted to any of the housing or residential programs described above in paragraphs 115-21 to assist class members with their special needs, such as a dual diagnosis of serious mental illness and substance abuse or mental retardation.

123. By September 30, 1995 all class members shall receive those housing and residential services from which they would reasonably benefit and in accordance with their ITPs.

124. Any system needs fewer program slots than actual number of clients because clients will be served in other ways. To meet class members' housing and residential needs, DHS shall fund, develop and maintain intensive residential services for 7% of class members; semi-supervised residential services for 30% of class members; and supportive housing with assistance for 18% of class members.

125. By December 1, 1991 DHS shall draft rules that govern the standards for all residential programs. The draft rules shall incorporate the provisions set forth in paragraphs 109-22 and 126-29. The draft rules for residential programs shall

be submitted to plaintiffs' counsel for their review and comment and to the monitor for his or her review and recommendations in accordance with paragraph 20 of the Appointment of Monitor. By January 15, 1992 DHS shall provide the notice required by A.R.S. § 41-1022 and thereafter shall promulgate the residential program rules in accordance with the Arizona Administrative Procedure Act, A.R.S. §§ 41-1001 et seq. Immediately following the date that the recommendations of the monitor are resolved pursuant to paragraph 20 of the Appointment of Monitor, DHS shall implement the draft rules as policy.

126. After September 30, 1992 DHS shall not place a class member in any residential program of more than eight persons or in any residential program in an apartment setting where more than 25% of the apartment units are occupied by class members placed in such a setting by or through DHS, whichever program is larger. The above limitation is subject to the exceptions in paragraph 128 below. For purposes of service development and placement, DHS and its agencies shall have a preference for housing and residential programs of four persons or less. "Residential program," as referred to in paragraphs 125-28, is defined as any program for class members that is licensed by, certified by, approved by, funded by or through, or under contract or subcontract with the State. It does not include shelters for homeless persons, nursing homes or residential arrangements established through collaborative efforts of the residents.

127. After January 1, 1991 DHS shall not develop any

residential programs of more than eight persons or any residential programs in an apartment setting where more than 25% of the apartment units are occupied by class members placed in such a setting by or through DHS.

128. The above limitation in paragraph 126 on the use of large residential programs shall not apply to class members who elect to live in residential programs after being afforded the option to move or to be placed elsewhere, in accordance with the provisions of paragraph 59, provided that the residential program is existing and licensed as behavioral health residential service pursuant to Ariz. Adm. Code R9-10-1029 or as a semi-supervised residential service approved for funding by DHS as of the date this Implementation Plan is entered and doesnot have more than eighteen beds. The above limitation in paragraph 126 does apply to facilities licensed as supervisory care homes pursuant to Ariz. Adm. Code R9-10-612 et seq. For programs that are currently licensed by DHS as behavioral health residential services or funded as semi-supervised residential services that have more than eight residents, DHS shall monitor and evaluate such programs annually to ensure that they effectively integrate class members into the community. By January 1 of each year this Implementation Plan is in effect DHS shall submit an annual report of its monitoring and evaluation to plaintiffs' counsel and the monitor.

129. By September 1, 1991 DHS shall employ one housing specialist who shall: coordinate and access federal housing and subsidy resources, including, but not limited to, section 202 and

section 8 funding from the United States Department of Housing and Urban Development and Stewart B. McKinney grants; design capitalization, bond and loan programs for providers to develop physical sites; assist in the development of regulations governing all residential programs, including supported housing with assistance; work with zoning authorities on zoning and other related housing issues; design legislation and work with the legislature to resolve statewide zoning problems that affect housing for seriously mentally ill persons; assist in the development of model housing and residential programs; design and obtain approvals for contracting for start-up and capital improvement grants for provider renovation projects; and provide guidance and technical assistance to the mental health agencies, providers and local groups involved in housing development projects.

130. By October 1, 1991 DHS shall fund and require each service area in Maricopa County to have one full-time housing specialist who shall be responsible for the duties listed above in paragraph 129 for that service area and who shall coordinate with the DHS housing specialist.

131. By July 1 of each year this Implementation Plan is in effect, DHS shall assess the need for other such housing personnel within DHS and each service area. DHS shall report its need assessment to counsel for plaintiffs for their review and comment and to the monitor for his or her review and recommendations in accordance with paragraph 20 of the Appointment

of Monitor. If it is determined that there is a need for additional housing personnel, DHS shall provide for this in its annual budget request, through reallocation of existing resources, and/or through contract with its agencies.

D. Crisis Intervention and Resolution Services

1. General

132. DHS shall plan for, develop and maintain adequate crisis services to ensure that all class members are provided effective crisis intervention and resolution. Crisis intervention and resolution services shall not be operated primarily as screening or transportation services prior to admission to an inpatient hospital setting. The primary purpose of the service shall be to avoid hospitalization through community-based resolution of crises. Agencies providing crisis services shall have the capacity to make multiple contacts with class members in crisis and shall follow up as needed with the class member's clinical team.

133. By September 30, 1995 all class members shall be provided those crisis services form which they would reasonably benefit.

2. Mobile Crisis Teams

134. Mobile crisis teams shall have the ability to respond timely on-site to a crisis. Each team shall be adequately staffed in order to operate twenty-four hours per day, three shifts per day, seven days per week.

135. By September 30, 1995 DHS shall fund, develop and

maintain one mobile crisis team for every 225,000 general population in Maricopa County.

3. Short-Term Crisis Residential Treatment

136. DHS shall plan for, develop and maintain adequate short-term crisis residential treatment. DHS shall develop three types of short-term crisis residential beds with the capacity to provide the following:

a. Intensive crisis stabilization services to meet the needs of class members who are in acute crisis and who, absent such alternative, would require hospitalization.

b. Short-term, intensive residential treatment for individuals who cannot be stabilized within the time period of a short term crisis unit, but who do not need to be in an inpatient hospital setting.

c. Twenty-four hour intensive crisis care in the community for individuals who, because they exhibit violent, suicidal or other severe psychiatric symptoms, require intense medical and psychiatric stabilization.

137. By September 30, 1995 DHS shall fund, develop and maintain nine short-term crisis residential beds for every 100,000 general population in Maricopa County.

E. Vocational Training and Opportunities

138. DHS shall plan for, develop and maintain adequate vocational opportunities and training for class members. These programs shall include, but not be limited to, vocational counseling, employment preparation programs which focus upon the

development of work-related skills, supported employment programs, and competitive employment referral services.

139. The purpose of such vocational training and opportunities is to enable class members to function more independently in the community and to earn income. DHS shall emphasize psychiatric rehabilitation through vocational programs that are goal-oriented and designed to increase class members' ability to function independently in the community.

140. By September 30, 1995 all class members shall receive those vocational services from which they would reasonably benefit and in accordance with their ITPs.

141. By September 30, 1995 DHS shall fund, develop and maintain sufficient vocational program capacity to serve fifty percent of class members. By September 30, 1992 DHS, the monitor and counsel for plaintiffs shall reevaluate this percentage.

F. Peer Support, Social Support and Recreation Services

142. DHS shall plan for, develop and maintain adequate peer support, social support and recreation programs for class members. These services provide self-help opportunities and are important to class members' ability to cope and to their quality of life. They can also provide an effective base for operating work programs. Generic services to meet these needs shall be preferred to special programs for class members. To the extent special programs are developed, DHS shall ensure the development of a range of models, including consumer-run drop-in centers, peer

support services, clubhouses and other consumer-designed and consumer-oriented services.

143. By September 30, 1995 all class members shall receive those peer support, social support and recreation services from which they would reasonably benefit and in accordance with their ITPs.

144. By September 30, 1995 DHS shall fund, develop and maintain one consumer-run or consumer-managed peer support program for every 450,000 general population in Maricopa County.

145. By September 30, 1995 DHS shall fund, develop and maintain sufficient peer support, social support and recreation programs to serve forty percent of class members.

G. Advocacy and Ombuds Services

146. Defendants shall ensure that class members' rights are protected and enforced, and that class members are assisted in the protection of their rights, including their right to an ITP and their right to file grievances.

147. By October 1, 1991 DHS shall employ one full-time ombudsperson for class members. The ombudsperson shall be independent of all service providers. The ombudsperson shall be responsible for resolving grievances on behalf of class members and shall have training appropriate to his or her responsibilities.

148. By October 1, 1991 DHS shall ensure that all service areas each have one ombudsperson for class members. By the same date, the County Annex shall ensure that it has one ombudsperson.

149. By August 1, 1991 DHS shall prepare a draft

information brochure that shall describe class members' rights under the Judgment, this Implementation Plan, and pertinent state and federal law. DHS shall submit the draft rights brochure to counsel for plaintiffs for their review and comment and to the monitor for his or her review and recommendations in accordance with paragraph 20 of the Appointment of Monitor. Mental health agencies licensed by, certified by, approved by, funded by, or under contract or subcontract with defendants shall thereafter post and regularly distribute such brochures to class members, including, but not limited to, distributing a copy to each class member upon application for services.

H. Family Support Services

150. DHS shall plan for, develop and maintain adequate family support services for each class member. These services shall include, but not be limited to:

a. Respite care, and

b. Family support, education and intervention services.

151. Respite care is a break between the client and his or her normal caregivers. It may be provided in-home or in a residential setting.

152. By September 30, 1995 all class members shall be provided respite care when needed.

153. By September 30, 1995 DHS shall fund, develop and maintain sufficient respite capacity so that one-quarter of class members could be provided fourteen days of respite care each year. By September 30, 1992 DHS, the monitor and counsel for

plaintiffs shall reevaluate this percentage.

154. Family support, education and intervention services are provided on an as-needed basis to persons with serious mental illness and their families, primarily in their homes. Such services shall be provided primarily by the clinical teams.

155. By September 30, 1995 all class members and their families shall be provided those family support, education and intervention services from which they can reasonably benefit.

156. Family support, education and intervention services shall be planned for by the clinical teams as needed based on the individual needs of their clients. By September 30, 1995 DHS shall ensure that, on-average, one-third of class members receive an average of sixty-five hours of family support, education and intervention services each year. By September 30, 1992 DHS, the monitor and counsel for plaintiffs shall reevaluate this percentage.

I. Outpatient Counseling and Treatment

157. The clinical teams shall provide the primary source of support and counseling for class members. Some class members, however, need specialized counseling services. The clinical teams shall assess each of their clients to determine whether they would reasonably benefit from specialized counseling services, whether individual counseling, group counseling, or family counseling. If a class member needs outpatient counseling services beyond the scope of the clinical team's abilities and expertise, the class members' ITP shall reflect the need for such counseling and the

clinical team shall ensure that it is provided.

J. Transportation

158. DHS shall ensure that class members have adequate transportation services to and from community services that are provided for in the client's ITP. To accomplish this, DHS shall ensure that case managers have the ability to transport their clients when necessary and shall ensure that the clinical teams provide sufficient training to clients on use of the public transportation system.

159. Transportation of class members necessary for daily living and to get to and from services shall not be assumed by the clinical team, but shall be planned for in class members' ITPs.

K. Medication Evaluation and Maintenance

160. DHS shall ensure that each class member who would reasonably benefit from medication, and gives informed consent, receives such services. DHS shall plan for and maintain sufficient funds for medication for class members in accordance with the service development requirements provided for in paragraphs 24-28.

161. The clinical team shall be the primary source for the prescription and monitoring of medication.

L. Provision of Services

162. Existing services to class members shall not be reduced in order to comply with the terms of the Judgment or this Implementation Plan.

163. The defendants have obtained agreement of plaintiffs

upon the Schedule of Service Development Requirements recognizing that defendants cannot immediately fully implement their respective obligations under the Judgment. However, nothing to which the parties have agreed in this Implementation Plan shall be interpreted to deprive any individual class member of his or her right under the Judgment to community services.

IX. NAMED PLAINTIFFS

164. Defendants shall ensure that the named plaintiffs are immediately provided all community services from which they would reasonably benefit.

165. Upon approval of this Implementation Plan defendants shall provide quarterly reports beginning July 1, 1991 to plaintiffs' counsel and the monitor concerning the services being provided to the named plaintiffs, the status and progress of each named plaintiff and the treatment planning for each named plaintiff.

X. CLASS MEMBERS IN SUPERVISORY CARE HOMES AND BOARD AND CARE HOMES

166. There are approximately 900 class members in supervisory care homes and an unknown number in board and care homes in Maricopa County.

167. DHS, the monitor and plaintiffs shall engage in a joint evaluation process of all class members in supervisory care homes and board and care homes in order to plan for and develop more appropriate community services for these class members.

168. By July 1, 1991 DHS, the monitor and counsel for

plaintiffs shall mutually agree upon an instrument to evaluate and assess identified class members in supervisory care homes and board and care homes. The instrument shall assess class members' need for community services and generic services. By that date DHS, the monitor and counsel for plaintiffs shall agree upon a written protocol to evaluate class members in supervisory care homes and board and care homes that includes appropriate staff from the pertinent mental health agency, the monitor and expert consultants of the monitor.

169. By August 15, 1991 DHS, the monitor and expert consultants of the monitor shall have trained appropriate agency personnel on use of the instrument and shall have tested the instrument for its accuracy as an evaluation and assessment tool.

170. Beginning on or about August 15, 1991 DHS, the monitor, appropriate staff from the pertinent mental health agency, and expert consultants of the monitor shall evaluate all known class members in supervisory care homes and board and care homes through the agreed-upon instrument. The evaluations shall be completed by November 1, 1991.

171. By December 1, 1991 DHS, in conjunction with the monitor, shall compile a written report on the results of the evaluations which shall set forth the number of class members who would be more appropriately served in alternative housing arrangements and shall describe in detail the numbers and types of alternative community services needed by class members. The written report shall be submitted to counsel for plaintiffs for

their review and comment.

172. DHS shall use the information obtained from the evaluations to assist in the future development of ITPs for the class members evaluated; to develop a written placement schedule for class members that is mutually agreed upon by DHS, the monitor and counsel for plaintiffs; and to plan for the development of community services for class members and to develop budget requests, including developing the service development requirements for fiscal year 1992-93 and developing the DHS budget request for fiscal year 1992-93.

173. DHS shall ensure the smooth transition of each class member moving from supervisory care homes and board and care homes to alternate housing and residential settings.

174. By September 30, 1995 DHS shall develop sufficient services to ensure that all class members living in supervisory care homes and board and care homes are placed in appropriate housing settings and programs. Furthermore, DHS shall ensure by that date that all class members currently living in supervisory care homes and board and care homes are placed in appropriate housing and residential settings and are provided all services as set forth in their ITPs. In order to accomplish this, DHS shall ensure that the following percentages of class members in supervisory care homes and board and care homes are appropriately placed by the following dates:

October 1, 1992 - twenty-five percent

April 1, 1993 - fifty percent

April 1, 1994 - seventy-five percent

September 30, 1995 - one hundred percent

XI. CLASS MEMBERS IN ASH

175. DHS shall ensure through the development of community services that only class members with documented medical necessity are admitted to ASH, and that they are discharged into appropriate community settings as soon as hospitalization is no longer medically necessary.

A. Evaluations

176. DHS, the monitor and plaintiffs shall engage in a joint evaluation process of all long-term residents of ASH in order to plan for community services for class members. For purposes of this section XI, "long-term residents" are persons who have been admitted to ASH for ninety days or more and who are residents of Maricopa County.

177. By July 1, 1991 DHS, the monitor and counsel for plaintiffs DHS shall mutually agree upon an instrument to evaluate and assess long-term residents at ASH. The instrument shall assess class members' need for community services and generic services. By that date DHS, the monitor and counsel for plaintiffs shall also agree upon a written protocol to evaluate ASH long-term residents to include appropriate staff from ASH, the pertinent mental health agency, the monitor and expert consultants of the monitor.

178. By August 15, 1991 DHS, the monitor and expert consultants of the monitor shall have trained appropriate ASH and

agency personnel on use of the instrument and shall have tested the instrument for its accuracy as an evaluation and assessment tool.

179. Beginning on or about August 15, 1991 appropriate staff from ASH, the pertinent mental health agency, the monitor and expert consultants of the monitor shall evaluate all long-term residents of ASH through the agreed-upon instrument. The evaluations shall be completed by November 1, 1991.

180. By December 1, 1991 DHS, in conjunction with the monitor, shall compile a written report on the evaluations which shall set forth the number of ASH long-term residents that can be more appropriately served in the community and shall describe in detail the numbers and types of alternative community services needed by class members. The report shall be submitted to counsel for plaintiffs for their review and comment.

181. DHS shall use the information obtained from the evaluations to assist in the future development of ITPs for the class members evaluated; to plan for the development of community services for class members; and to develop budget requests, including developing the service development requirements for fiscal year 1992-93 and developing the DHS budget request for fiscal year 1992-93. By January 1, 1992 DHS, the monitor and counsel for plaintiffs shall agree upon a placement schedule for placement of class members from ASH for each of whom hospitalization is no longer medically necessary.

B. Assignment of Case Managers

182. By October 1, 1991 DHS shall ensure that each class member at ASH is assigned a case manager and that discharge planning at ASH is undertaken in accordance with paragraphs 69-79 above.

183. DHS shall ensure that after November 1, 1991 each class member at ASH over ninety days is evaluated in accordance with the evaluation process agreed upon above, except that expert consultants of the monitor shall not be included in the evaluations.

C. Reporting

184. Beginning October 1, 1991 DHS shall compile a quarterly written report to be submitted to counsel for plaintiffs and the monitor that shall include the following information:

a. the total census at ASH;

b. the number of new voluntary admissions to ASH, by county of residence;

c. the number of new involuntary admissions to ASH, by county of residence;

d. the number of readmissions to ASH from a conditional discharge, outpatient treatment order or the community, by county of residence;

e. the number of residents at ASH with lengths of stay between ninety days and six months, by county of residence;

f. the number of residents at ASH with lengths of stay between six months and one year, by county of residence;

g. the number of residents at ASH with lengths of stay between one year and two years, by county of residence;

h. the number of residents at ASH with lengths of stay between two years and five years, by county of residence;

i. the number of residents at ASH with length of stay between five years and ten years, by county of residence;

j. the number of residents at ASH over ten years, by county of residence;

k. the number of residents from each group of b-j above that has an assigned case manager;

l. the number of residents from each group of b-j above that has a written discharge plan;

m. the number of residents from each group of b-j above that has been discharged during the month; and

n. the number of residents from each group of b-j who have not been discharged and the reasons why each resident has not been discharged.

D. Evaluation of Admissions

185. If necessary in light of ASH admission data, DHS, the monitor and plaintiffs shall on or about October 1, 1992 agree upon a review panel of professionals to assess the reasons why individuals have been admitted to ASH, evaluate the medical necessity for hospitalization, assess whether hospitalization could have been avoided with less restrictive community services, and make recommendations as to how DHS can divert persons from admission to ASH to treatment in appropriate settings.

E. Bed Size

186. DHS shall not construct, develop, build or undertake major renovation of beds at ASH or propose such construction, development, building or renovation, beyond the ninety behavioral management beds or the forty youth service beds planned for in ASH's Monitor Plan, p. 2.31 (revised Dec. 1989), until such time as those one hundred and thirty beds are constructed and are operating. After the one hundred and thirty beds are constructed and operating, DHS and plaintiffs shall review the need for beds at ASH. The review shall be based on data of actual service needs of individual clients at ASH and in Arizona and data on bed need from other states with well-developed community services. DHS, the monitor and plaintiffs shall then mutually agree on a plan for the construction, development, building, renovation, reallocation, regionalization or phase-down of beds at ASH.

F. Payment

187. By January 1, 1992 DHS shall develop a plan of incentives and disincentives for the utilization of ASH, which shall include a plan whereby the clinical teams may have the responsibility for payment for admission of their clients to ASH. The plan shall be submitted to counsel for plaintiffs for their review and comment and the monitor for his or her review and recommendations in accordance with paragraph 20 of the Appointment of Monitor.

XII. SPECIAL POPULATIONS

188. DHS shall ensure that class members who are within

the special populations groups listed below receive appropriate treatment, based on their individual needs.

189. For each special population below, DHS shall develop a written plan that ensures that each class member in the group receives appropriate services. Each plan shall estimate the number of persons within the special population group and the number and types of community services that shall be developed, including the specialized services needed by each group.

190. For each group listed below, DHS shall develop a plan on or before the following date:

a. Homeless: October 1, 1991

b. Elderly: October 1, 1991

c. Dually diagnosed mentally ill and substance abuser: January 1, 1992

d. Jail population: February 1, 1992

e. Dually diagnosed mentally ill and mentally retarded: April 1, 1992

f. Native Americans (to the extent the law allows): July 1, 1992

g. Other special populations identified by DHS: December 1, 1992

191. The plan for the jail population shall propose an intergovernmental agreement with the appropriate Maricopa County authority and shall set forth the proposed terms for such agreement.

192. DHS shall submit each special populations plan to

counsel for plaintiffs and the monitor for their review. A final plan for each group shall be mutually agreed upon by DHS, the monitor and counsel for plaintiffs.

193. Each plan shall be fully implemented by September 30, 1995.

XIII. ADMINISTRATIVE STRUCTURE

194. DHS shall ensure through contract that by October 1, 1991 there is one agency responsible for case management in each of the service areas in Maricopa County. Each agency shall be responsible for providing or ensuring the provision of all community services to class members.

195. DHS shall ensure through contract that by September 30, 1995 each agency responsible for case management has the resources and the authority to provide or ensure the provision of all appropriate community services to each of their clients, in accordance with the client's ITPs.

196. DHS shall ensure that by October 1, 1991 all agencies that provide community services under contract or subcontract with DHS agree through contract to provide services in accordance with each client's ITP and to cooperate with the case management agency.

197. DHS shall ensure through contract that by October 1, 1991 the case management agency shall provide follow-up and outreach to class members who decline services. Such follow-up and outreach shall be consistent with class members' individual rights and dignity.

198. DHS shall ensure through contract that by October 1, 1991 the case management agency and all other agencies licensed by, certified by, approved by, funded by, or under contract or subcontract with DHS are obligated to comply with the applicable provisions in this Implementation Plan.

199. DHS shall ensure through contract that by July 1, 1991 each case management agency has an independent financial audit performed annually by a certified public accountant that is available to the public upon request.

200. DHS shall ensure that each case management agency shall employ the clinical teams, referred to in paragraphs 93-94.

201. DHS shall ensure through contract that by October 1, 1991 written agreements exist by and among each case management agency that ensure that class members have prompt and easy access to available services in all service areas in Maricopa County.

202. DHS shall ensure through contract that by October 1, 1991 each service area has a quality assurance program.

203. DHS shall ensure through contract that by October 1, 1991 each case management agency has at least one individual with serious mental illness and one family member of an individual with serious mental illness serving on their board of directors.

XIV. STATE-COUNTY RESPONSIBILITIES

204. DHS and the Board recognize their obligation under the Judgment to provide a continuum of care, to address the fragmentation of responsibility for community services between DHS and the Board and to provide a unified and cohesive system of

community mental health services.

205. Maricopa County shall provide community mental health services to class members as an adjunct to the primary responsibility of DHS in a complementary and supportive role as part of a unified mental health system.

206. DHS and the Board shall take the following actions to provide a unified and cohesive system:

a. By January 1, 1992 DHS and the Board shall prepare a preliminary intergovernmental agreement for unifying the mental health system. The draft intergovernmental agreement shall be submitted to counsel for plaintiffs for their review and comment and the monitor for review and recommendation in accordance with paragraph 20 of the Appointment of Monitor.

b. By July 1, 1992 DHS and the Board shall enter into an intergovernmental agreement which unifies the mental health system. Prior to execution of the intergovernmental agreement, defendants shall provide a draft to plaintiffs' counsel for their review and comment and the monitor for his or her recommendations in accordance with paragraph 20 of the Appointment of Monitor.

XV. FUNDING

A. DHS Budget Requests

207. Each year this Implementation Plan is in effect, the DHS director shall request in the annual DHS budget request to the Governor those funds which are necessary to implement this Implementation Plan and the Judgment fully by September 30, 1995. The amount of the budget request for community services for

individuals with serious mental illness shall be sufficient to continue, and to improve where necessary, existing community services; to provide for inflationary and cost of living increases; and to develop and maintain the community services set forth in the agreed-upon Schedule of Service Development Requirements (including the schedule for the entire state), attached as Exhibit A.

208. The annual budget request for community services for individuals with serious mental illness shall state that the amount requested is required in order to comply with the orders of the Arizona Supreme Court and the Maricopa County Superior Court and this Implementation Plan. The director of DHS shall use his or her best efforts to ensure that the Governor fully adopts the DHS budget request for community services for individuals with serious mental illness in the executive budget to the legislature. Furthermore, the director of DHS shall use his or her best efforts to secure from the legislature funds sufficient to continue existing services and to develop the community services as set forth in the Schedule of Service Development Requirements (including the schedule for the entire state).

B. Capitation

209. If DHS uses a system of capitation to fund community services for individuals with serious mental illness, the capitation rate or rates for purposes of budgeting shall be sufficient to ensure full implementation of this Implementation Plan and the Judgment.

210. By July 1 of each year this Implementation Plan is in effect, DHS shall review its capitation rate or rates to determine if it is sufficient to ensure full implementation of this Implementation Plan and the Judgment. DHS shall submit the capitation rate or rates and the basis of calculation to counsel for plaintiffs for their review and comment and to the monitor for his or her review and recommendations in accordance with paragraph 20 of the Appointment of Monitor.

C. Federal Funding

211. DHS shall use its best efforts to maximize the amount of federal funding for community services.

212. DHS shall use its best efforts to ensure that community services are funded to the extent feasible by Title XIX/Medicaid by October 1, 1992. To accomplish this, DHS shall, among other things, work cooperatively with AHCCCS, the Governor's Office and legislature.

213. DHS shall submit any plan or proposal to fund community services through Title XIX/Medicaid to counsel for plaintiffs for their review and comment and to the monitor for his or her review and recommendations in accordance with paragraph 20 of the Appointment of Monitor.

XVI. HUMAN RESOURCE DEVELOPMENT AND ADMINISTRATIVE CAPACITY

214. DHS shall use its efforts to ensure that DBHS and its provider agencies have sufficient administrative capacity to implement the terms of this Implementation Plan fully. Administrative capacity includes, but is not limited to, capacity

to: conduct all necessary contract negotiations; license, certify and approve agencies, programs and individuals; adequately monitor agencies, programs, individuals and contracts; maintain and operate a quality assurance program; conduct necessary training; conduct community relations; and provide ombuds services.

215. By October 1, 1991 DHS shall evaluate the administrative capacity of DBHS and its provider agencies to implement this Implementation Plan fully. The evaluation shall make recommendations that ensure that DBHS and its provider agencies have sufficient administrative capacity to implement this Implementation Plan fully, and shall include the number and type of personnel needed by DBHS and its agencies to implement this Implementation Plan fully. DHS shall submit its evaluation to counsel for the plaintiffs for their review and comment and to the monitor for his or her review and recommendations in accordance with paragraph 20 of the Appointment of Monitor. DHS shall thereafter incorporate all recommendations in its budgeting for fiscal years 1991-92 through 1994-95 and shall use its best efforts to secure such funds.

216. DHS shall use its best efforts to ensure the recruitment, hiring, training and retention of qualified individuals to administer and provide community services.

217. Promptly upon agreement of this Implementation Plan by the parties, defendants shall provide copies of it to all community service providers and agencies, to ASH, to the County Annex, and to the Maricopa County jail psychiatric units. Ninety

days thereafter DHS shall develop a written training program on the terms of the Implementation Plan and on the required specific performance obligations which the agencies must meet to receive future funding or licensing in order to meet the terms of this Implementation Plan. The training model shall be agreed upon by counsel for plaintiffs and the monitor. By September 1, 1991 defendants shall deliver said training to all appropriate employees of all community service providers, ASH and the County Annex. DHS shall make the training available on video tape so that all future new employees receive the training in orientation.

218. By December 1, 1991 DHS shall develop a written orientation training program for all appropriate employees of community service providers, ASH and the County Annex who perform mental health services as defined in this Implementation Plan. The orientation training program shall reinforce the principles set forth in section IV above and shall also reinforce the philosophy that the mental health system is intended to support clients on the basis of their needs, and that agencies and employees must, therefore, have the flexibility to recognize and respond to highly individualized and varying needs, to listen, and to work in concert with other workers in the community support network and, especially, with the clients themselves.

219. Specific topics in orientation training programs shall include, but not be limited to, the following: the terms of this Implementation Plan and the Judgment; the legal and human rights of persons with mental illness; principles of normalization

and least restrictive environment; identification of, response to, and reporting of client abuse, neglect, and exploitation; client grievance procedures; development and implementation of ITPs; the role, responsibility and authority of the case manager and clinical team; the agency mission and philosophy of community support; principles of staff/client interaction designed to facilitate individuals' health, growth and recovery; and client privacy and confidentiality. Training on the perspectives and values of consumers of mental health services shall be prepared and delivered by consumers, and DHS shall recruit and assist consumers as necessary.

220. If applicable to the agency, training shall also be provided in physical intervention techniques.

221. Non-medical staff shall additionally be trained in the basics of: identification of adverse reactions to psychoactive medications; identification of client illnesses and injury; preliminary medical emergency care and reporting requirements.

222. The orientation training program shall be submitted to counsel for plaintiffs for their review and comment and to the monitor for his or her review and recommendations in accordance with paragraph 20 of the Appointment of Monitor.

223. Beginning February 1, 1992 new appropriate employees shall not be assigned to duties requiring direct involvement with clients until they have received the orientation training program. Notwithstanding the foregoing, new employees may be

assigned to duties requiring direct involvement with clients if their employer verifies that they have already received training appropriate to their duties. All employees shall nonetheless receive the orientation training program as soon as possible.

224. Specific training may be waived for any employee whom the agency verifies has recently received the training through prior employment at another community mental health agency.

225. By February 1, 1992 defendants shall ensure that all current and all new appropriate employees of all community service providers, ASH and the County Annex shall receive training and orientation as set out in paragraphs 218-22.

226. Agencies shall provide ongoing training to all staff emphasizing quality of care, including new approaches in the mental health field.

XVII. QUALITY ASSURANCE, INTERNAL MONITORING, AND REPORTING

227. Defendants shall ensure that their rules, policies and practices are designed to facilitate the timely development and delivery of community services, the smooth operation of the community mental health system, to identify problems, and to resolve problems as expeditiously as possible. Defendants shall not take any actions which interfere with, threaten, undermine or impede the timely development and delivery of community services under this Implementation Plan.

228. DHS shall be responsible for assuring the quality of services required by the Implementation Plan and for monitoring and evaluating all mental health services, programs and other

systems required to carry out the terms of this Implementation Plan. In meeting this responsibility, DHS shall:

A. Licensing, Certification, Approval

229. DHS shall develop licensing, certification or approval standards for all agencies and facilities providing community services. The standards shall be consistent with the terms of this Implementation Plan and shall cover all its terms. Standards shall govern both practices and policies, and licensing, certification or approval reviews shall be conducted in a manner to assure compliance with both.

B. Contracts

230. DHS's contracts and subcontracts with agencies for the provision of nonemergent community services shall require the agencies to accept referrals of all class members. Once the clinical team determines that the class member requires specific services, no agency under contract or subcontract with DHS to provide those same specific services may unreasonably refuse to provide those services except when, in the case of a residential program, there are no vacancies, and in the case of other services, the extension of services would cause the agency to exceed pre-established staff/client ratios. All refusals to provide services for whatever reason shall be reported in writing to the medical director of DBHS.

231. Recognizing that defendants provide most community services through contract or subcontract, defendants shall ensure that the contracting process, between and among defendants and the

agencies with which they contract and subcontract, is undertaken so as to guarantee full implementation of this Implementation Plan and the Judgment. Defendants shall undertake their best efforts to ensure that the contracting process facilitates the smooth operation of the community mental health system and does not impede the smooth delivery of services, and that defendants identify any problems with the contracting process and resolve all problems as expeditiously as possible. The contracting process includes, but is not limited to, the allocation of funds, contract bidding, contract negotiations, contract approval, contract payment, contract modifications and amendments, rate setting, timely payments, start-up costs and contracts, inflationary and costs of living allowances, equipment and capital improvements, audits, and all such processes between agencies that relate to subcontracts through defendants.

C. Program Rules

232. By January 1, 1992 DHS shall draft rules that govern the standards for all non-residential programs. The draft program rules shall be submitted to plaintiffs' counsel for their review and recommendations and to the monitor for his or her review and recommendations in accordance with paragraph 20 of the Appointment of Monitor. By February 15, 1992 DHS shall provide the notice required by A.R.S. § 41-1022 and thereafter shall promulgate non-residential program rules in accordance with the Arizona Administrative Procedure Act, A.R.S. §§ 41-1001 et seq. Immediately following the date that the recommendations of the

monitor are resolved pursuant to paragraph 20 of the Appointment of Monitor, DHS shall implement the draft rules as policy.

D. Quality Assurance and Internal Monitoring

233. By August 1, 1991 DHS and the Board shall design a comprehensive system of monitoring, evaluation and quality assurance for all of their respective areas covered by this Implementation Plan.

234. The system of quality assurance shall include provision for appropriateness, individualization and effectiveness of services. The system shall include consumer and family satisfaction with services. The system of quality assurance shall be submitted to counsel for plaintiffs for their review and comment and to the monitor for his or her review and recommendations in accordance with paragraph 20 of the Appointment of Monitor.

235. As part of the system of quality assurance, DHS shall perform by October 1 of each year this Implementation Plan is in effect an annual random statistically significant review of class members residing both at ASH and in the community to measure DHS's compliance with this Implementation Plan in meeting individual class members' needs and in protecting their rights under this Implementation Plan. The instrument used to conduct this review shall be mutually agreed upon by DHS, the monitor and counsel for plaintiffs. The monitor shall oversee the training for the evaluation and the evaluations, and shall use expert consultants to the extent necessary to ensure that the evaluations

are properly done. A report of the evaluations shall be in writing and shall be submitted to counsel for plaintiffs and to the monitor.

E. Data System

236. DHS shall ensure that there is a data system with the necessary information for adequate planning and for tracking of every class member.

F. Progress Reports

237. Beginning October 1, 1991 defendants shall prepare quarterly written reports on their progress in meeting and complying with the terms of this Implementation Plan. The format for the quarterly reports shall be agreed upon by defendants, the monitor and counsel for plaintiffs. These reports shall make specific reference to the headings and structure of this Implementation Plan, and will contain a description of efforts made and progress achieved.

238. The quarterly progress reports shall include a report, by each service area, of the numbers of community services developed under each category from paragraph 91; the number of class members identified; the number of class members identified who have written ITPS; the number of class members receiving services from a clinical team; and the number of class members receiving services in each category identified in paragraph 91. The quarterly reports shall include the average unit cost of each community service listed in paragraph 91 and, by service area, the total amount spent on each community service category listed in

paragraph 91 during the fiscal year.

239. In the quarterly reports, defendants shall note all areas where compliance has not been achieved, provide an explanation of the reasons for their noncompliance, and a description of the efforts they will undertake during the forthcoming quarter to come into compliance.

240. Quarterly progress reports shall be submitted to counsel for the plaintiffs and to the monitor. Defendants shall send copies to oversight bodies, including the State Mental Health Planning Council (or its equivalent), the Advisory Committee on the Chronically Mentally Ill and the Arizona State Hospital Advisory Board, and to any other interested party that requests a copy.

G. Plaintiffs' Access to Defendants' Staff and Documents

241. Defendants shall provide plaintiffs' counsel reasonable access to their staffs and to documents concerning matters relating to this Implementation Plan and the Judgment. Defendants do not hereby waive any right to confidentiality based on executive privilege or A.R.S. §§ 36-443 et seq., 36-2401 et seq., and 36-441 et seq.

XVIII. CLASS NOTICE

242. Within fifteen working days of the Court's order approving stipulation of the parties concerning this Implementation Plan, the parties shall prepare a Notice of Implementation Plan in Class Action Lawsuit, to be attached as Exhibit D. Defendants shall ensure that within forty-five days

after such order and for so long as this Implementation Plan is in effect, said Notice is distributed to and posted in plain view by all agencies licensed by, certified by, approved by, funded by, or under contract or subcontract with defendants to provide the services described in this Implementation Plan. ASH shall ensure that by the same date and for so long as this Implementation Plan is in effect, the Notice is posted in plain view on all units at ASH and the Board shall ensure that during the same time period the Notice is posted in plain view on all units at the County Annex and on each psychiatric unit of the Maricopa County jail. Defendants shall ensure that all identified class members, consumer organizations, mental health agencies, shelters, supervisory care homes, board and care homes, and any other interested party that requests a copy receive a copy of the Notice.

XIX. IMPLEMENTATION PLAN

A. Modification of Implementation Plan

243. This Implementation Plan may be modified only upon written agreement of the parties and Order of the Court issued thereon, upon motion by a party, or by the Court's own motion.

B. Term of Implementation Plan

244. This Implementation Plan shall be in effect until the Judgment in this case is fully implemented, but in any event until September 30, 1995.

245. By July 1, 1995 the parties shall have undertaken a joint evaluation as to whether the Judgment has been fully implemented. The parties shall make their recommendations,

EXHIBIT A

	CURRENT FY 91			FY 1992			FY 1993			FY 1994			FY 1995			TOTAL			TOTAL MARICOPA COUNTY	TOTAL STATEWIDE NEED
	E	S	N	E	S	N	E	S	N	E	S	N	E	S	N	E	S	N		
I. CASE MANAGEMENT																				
(a) Intensive Clinical Teams	0	0	0	1	1	1	1	1.5	1.5	0	2	1	0	1	1	2	5.5	4.5	12	17.5 TEAMS
(b) Clinical Teams	4	6	15	2	5	2	3	5	3	3	6.5	3.5	3	5	4	15	27.5	27.5	70	106.0 TEAMS
II. RESIDENTIAL																				
(a) Intensive (24 hour)	42	120	73	26	44	56	26	44	56	26	44	56	29	46	57	149	298	298	745	1145 BEDS
(b) Semi-supervised	78	127	145	100	250	0	200	250	0	200	250	0	60	398	0	638	1275	1275	3188	4905 BEDS
(c) Supported Living and Assistance	0	0	0	75	100	100	75	200	200	75	200	200	158	265	265	383	765	765	1913	2943 BEDS
(d) Respite/Family Support	2	0	5	5	10	10	5	10	10	5	10	10	4	10	5	21	40	40	101	156 BEDS
III. CRISIS STABILIZATION																				
(a) Combination Crisis and Short-term Treatment Beds	9	11	15	5	10	10	5	10	10	8	10	10	0	13	9	27	54	54	135	274 BEDS
IV. MOBILE CRISIS STABILIZATION TEAMS																				
No. of Teams	0	2	3	1	1	1	1	1	1	0	1	0	0	0	0	2	5	5	12	19 TEAMS
V. VOCATIONAL, SUPPORTED WORK, WORK ADJUSTMENT																				
No. of Clients	124	813	34	235	300	500	235	300	500	235	300	500	233	413	592	1062	2126	2126	5314	8175 CLIENTS
VI. SOCIALIZATION, RECREATION, ADVOCACY																				
(a) Clients	30	819	614	150	220	250	175	220	300	175	220	250	321	221	286	851	1700	1700	4251	6540 CLIENTS
(b) Clubhouses	0	1	1	1	0	0	0	1	1	0	0	0	0	0	0	1	2	2	5	8 CLUBHOUSES
VII. ELDERLY																				
(a) Intensive (24 hour)	0	0	0	0	15	15	16	27	27	16	27	27	16	27	27	48	96	96	240	370 BEDS
(b) Semi-supervised	0	0	0	0	0	0	16	32	32	16	32	32	16	32	32	48	96	96	240	370 BEDS
(c) Supported Living and Assistance	0	0	0	0	0	0	7	12	12	7	12	12	6	14	14	20	38	38	96	147 BEDS
(d) Respite/Family Support	0	0	0	0	0	0	2	2	2	2	2	2	0	3	3	4	7	7	18	28 BEDS
(e) Rehabilitation/Partial	0	0	0	0	0	0	25	50	50	25	50	50	26	54	54	76	154	154	384	592 CLIENTS

2-Mar-91

E = EAST VALLEY S = SOUTHERN MARICOPA COUNTY N = NORTHERN MARICOPA COUNTY

ADULT SERIOUSLY MENTALLY ILL SERVICES

FUNDING NEEDS/COSTS WITH TITLE XIX (1) FY 1995

FISCAL YEAR	STATE [1]		FEDERAL [2]	TOTAL
	ADHS [3]	AHCCCS		
CURRENT BASE	49,173,400	.00	.00	49,173,400
1991/1992	27,231,327	.00	.00	27,231,327
1992/1993	28,611,840	18,117,897	42,127,338	88,857,075
1993/1994	29,279,870	4,109,380	9,571,965	42,961,215
1994/1995	29,505,700	931,043	2,171,071	32,607,814
	163,802,137	23,158,320	53,870,374	240,830,831

(1) ASH AND SAMHC NOT INCLUDED. ASSUMES TITLE XIX IMPLEMENTATION EFFECTIVE 10/01/92.

(2) 18% OF THE AHCCCS ELIGIBLE WILL NOT BE ELIGIBLE UNDER FEDERALLY MATCHED ELIGIBILITY CATEGORIES AND INSTEA WILL BE ELIGIBLE FOR MEDICALLY NEEDY/MEDICALLY INDIGENT PROGRAMS FUNDED 100% BY STATE DOLLARS. THE STAT MAY CHOOSE TO COVER MENTAL HEALTH SERVICES THROUGH AHCCCS ONLY FOR THOSE ELIGIBLE UNDER FEDERA CATEGORIES IN WHICH CASE THESE DOLLARS MOVE TO AHCCCS BUT DO NOT "DISAPPEAR". THE AMOUNT LISTE REPRESENTS THE TOTAL COST OF SERVICES.

(3) THE STATE MATCH FOR FEDERAL DOLLARS IS INCLUDED UNDER ADHS.

ELDERLY SERIOUSLY MENTALLY ILL SERVICES

FUNDING NEEDS/COSTS WITH TITLE XIX (1) FY 1995

ADHS [2]	AHCCCS [1]	FEDERAL TITLE XIX	TOTAL
15,835,078	4,133,996	14,055,588	34,024,662

(1) 100% STATE DOLLARS.

(2) THE STATE MATCH FOR FEDERAL DOLLARS IS INCLUDED UNDER ADHS.

Order of Reinstatement

OFFICE DISTRIBUTION

APPEALS	
BONDS REFUND	
FORFEITURE	
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	

IN THE SUPERIOR COURT

OF

MARICOPA COUNTY, STATE OF ARIZONA

41 DIV | April 21, 1981 DATE | HON. JAMES E. MC DOUGALL JUDGE OR COMMISSIONER | WILSON D. PALMER, Clerk c.faust Deputy

C 433192

CHARLES L. ARNOLD, etc. — Herbert L. Ely

vs.

FRED KOORY, JR., et ux., et al. — Wm. R. Jones, Jr.
Edward Hochuli

This matter having been under advisement and the Court having considered all of the testimony and evidence presented, as well as the memoranda and arguments of counsel, the Court issues the following decision:

Faced with the conflicting interests of his employer and his clients, this case finds Mr. Arnold between the proverbial rock and a hard place. On the one hand Mr. Arnold was faced with his employer's budgetary interest in keeping governmental spending to a minimum and on the other hand he was faced with his clients legal interest to seek redress in court for their grievances against his employer. He placed the interests of his clients above those of his employer and was fired. He is now in this Court asking that the termination of his employment be declared illegal and that this Court enjoin his employer from discharging him until a final hearing on the merits.

On March 26, 1981, Cause No. C 432355 was filed in the Superior Court In and For Maricopa County. This lawsuit, a class action, seeks an order directing the State of Arizona and Maricopa County to provide adequate and appropriate mental health services to the chronically mentally ill. Charles Arnold, Maricopa County Public Fiduciary, is a plaintiff in this action in his representative capacity as guardian and next friend of John Goss, and all other unnamed plaintiffs similarly situated. The Maricopa County Board of Supervisors is listed as a defendant in the action.

It is the duty of the Public Fiduciary, when so appointed

(cont'd)

OFFICE DISTRIBUTION

APPEALS	
BONDS REFUND	
FORFEITURE	
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	

IN THE SUPERIOR COURT

OF

MARICOPA COUNTY, STATE OF ARIZONA

41 DIV. April 21, 1981 DATE HON. JAMES E. MC DOUGALL JUDGE OR COMMISSIONER

WILSON D. PALMER, Clerk
C. faust Deputy

C 433192 ARNOLD, etc. vs. KOORY, JR., et ux., et al.

(cont'd)

by the Superior Court, to act as guardian and conservator for persons who are mentally or physically unable to care for themselves. Pursuant to A.R.S. 14-5602, the Public Fiduciary can be appointed only where there is no other person or corporation qualified and willing to act as the persons guardian and conservator. He is directly responsible to the Superior Court for the performance of his duties as the guardian and conservator of his ward. Once appointed, the Public Fiduciary has the duty, pursuant to A.R.S. 14-5312, of providing his ward with medical and psychiatric treatment necessary to protect his physical and mental well-being. Specifically, in regard to persons who are gravely disabled as a result of a mental disorder, it is the duty of the Public Fiduciary, pursuant to A.R.S. 36-547.04 and A.R.S. 36-547.05, to seek the least restrictive means of treatment for the condition of his ward.

Mr. Arnold has testified that he became a plaintiff in Cause No. C 432355 because he felt that his clients were not getting treatment necessary for their physical and mental well-being, treatment which he believes the State of Arizona and Maricopa County have a legal obligation to provide to his clients, and that it was his duty to seek the assistance of the courts on behalf of his clients.

On April 6, 1981, Mr. Arnold's employment as the Maricopa County Public Fiduciary was terminated by unanimous vote of the Maricopa County Board of Supervisors.

In the present action Mr. Arnold alleges, among other things, that his employment was terminated for exercising his statutory and constitutional rights on behalf of his clients and is therefore invalid.

OFFICE DISTRIBUTION

APPEALS	
BONDS REFUND	
FORFEITURE	
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	

IN THE SUPERIOR COURT

OF

MARICOPA COUNTY, STATE OF ARIZONA

41 DIV. April 21, 1981 DATE HON. JAMES E. MC DOUGALL JUDGE OR COMMISSIONER

WILSON D. PALMER, Clerk
C. faust Deputy

C 433192 ARNOLD, etc. vs. KOORY, JR., et ux., et al.

(cont'd)

The defendants respond that the Public Fiduciary is an employee-at-will and therefore can be discharged for any reason whatsoever. The defendants admit that his participation in this other lawsuit was one of the reasons for Mr. Arnold's termination but decline to state any other reasons, claiming that to disclose them would violate the confidentiality of Executive Sessions under A.R.S. 38-431.03.

At the outset, the parties stipulated that this Court has jurisdiction to consider the merits of the Plaintiff's Complaint. Independent of such stipulation, the Court finds that this action falls within the scope of Rule 3 of the Arizona Rules of Procedure for Special Actions and that the plaintiff has no other plain, speedy or adequate remedy at law. Therefore, the Court accepts jurisdiction to consider the merits of the Plaintiff's Complaint.

Because there is no definite term of office for the Public Fiduciary, there is no written employment contract and there are no statutes specifically governing his employment, the job of the Public Fiduciary can be correctly classified as an "employment-at-will".

Under Arizona Law, it is clear that either party may terminate an employment-at-will contract at anytime for any reason. Daniel v. Magna Copper Co. _____ Ariz. App. _____, 620 P.2d 699(1980) Larsen v. Motor Supply Company, 117 Ariz. 507, 573 P.2d 907(1977). Moreover, it appears that under the ruling in the Daniel case, supra., an employee-at-will of a private corporation can be terminated even if such termination is motivated by bad faith or malice, or is based on retaliation for the filing of a lawsuit for personal gain against the employer by the employee.

However, the Daniels and Larsen cases, supra., have both recognized, without disapproval, a growing minority of jurisdictions which have created an exception to the traditional employment-at-will rule where the termination contravenes a strong public

FORM 43 17 (cont'd)

OFFICE DISTRIBUTION

APPEALS	
BONDS REFUND	
FORFEITURE	
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	

IN THE SUPERIOR COURT

OF

MARICOPA COUNTY, STATE OF ARIZONA

41 DIV. April 21, 1981 DATE HON. JAMES E. MC DOUGALL JUDGE OR COMMISSIONER WILSON D. PALMER, Clerk c. faust Deputy

C 433192 ARNOLD, etc. vs. KOORY, JR., et ux., et al.

(cont'd)

policy. The court believes that the present case is distinguishable from the Daniels case, supra., in that here we are dealing with a public employee whose employment has been terminated apparently based upon the employee's participation in a lawsuit against his employer on behalf of his clients in accordance with his statutory duties and in furtherance of his constitutional rights. The court finds that this case fits within the exception to the traditional termination of employment-at-will rule.

It cannot be seriously disputed that a person has a fundamental constitutionally protected right to seek access to the courts in an effort to obtain redress for alleged wrongs or the enforcement of alleged rights. United States Transportation Union v. Michigan, 401 U.S. 576, 28 L.Ed 2d 339, 9 S.Ct. 1076 (1971), Cruz v. Beto, 405 U.S. 319, 31 L.Ed 2d 263, 92 S.Ct. 1079 (1972).

As unwise as it might have been to become a party plaintiff to a lawsuit against his employer, the Public Fiduciary has a constitutionally protected right of access to the courts to seek redress for the grievances of his clients under the First Amendment to the U.S. Constitution, and the Board of Supervisors cannot terminate his employment because he has exercised these rights.

The Public Fiduciary stands in the shoes of the people for whom he is appointed to act as guardian and conservator. As guardian and conservator, where he perceives that his ward has been wronged or that the rights of his ward have been violated, he has the right and a legal duty to seek the assistance of the courts to protect the interests of his client. Because of the unique duality of allegiance of the Public Fiduciary there may be times,as in this case, that the exercise of this constitutionally protected right may come in conflict with the interests of his employer.

OFFICE DISTRIBUTION

APPEALS	
BONDS REFUND	
FORFEITURE	
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	

IN THE SUPERIOR COURT

OF

MARICOPA COUNTY, STATE OF ARIZONA

41 DIV. April 21, 1981 DATE HON. JAMES E. MC DOUGALL JUDGE OR COMMISSIONER WILSON D. PALMER, Clerk c. faust Deputy

C 433192 ARNOLD, etc. vs. KOORY, JR., et ux., et al.

(cont'd)

In order to effectively represent the interests of the people of this county who, for mental reasons, are unable to represent themselves, the Public Fiduciary should not be inhibited in taking whatever action is necessary to redress their grievances.

To permit the Board of Supervisors to discharge a Public Fiduciary, whenever his actions, on behalf of his clients in the exercise of his constitutional rights and in furtherance of his statutory duties, conflict with the interests of the Board of Supervisors, would indeed have a chilling affect on any future Public Fiduciary and would frustrate the public policy of this state.

Defendants argue A.R.S. 12-1808 prohibits the court from granting an injunction between employer and employee. At first glance this would appear to be the case. However, after examining the source and history of this statute, this court does not believe that the legislature intended to prohibit an injunction under the circumstances of this case.

At the hearing herein the Plaintiff had the burden of showing to this court that his Complaint had some basis in fact and law, and demonstrating a probability of success on the merits. The court believes that he has sustained his burden of proof. The plaintiff has alleged and has introduced evidence which establishes prima facie that his participation in Cause No. C 432355 was at least the major reason, if not the sole reason, for his termination by the Board of Supervisors. In response to this allegation and the evidence submitted, the defendants have presented evidence that there may have been other reasons but have declined to disclose such reasons. Therefore, the only evidence the court has before it, at this time, supports the plaintiff's claim.

In order to justify the issuance of a Preliminary Injunction, the plaintiff must also show that some irreparable harm would result to the plaintiff if the Injunction were not issued. To allow

OFFICE DISTRIBUTION

APPEALS	
BONDS REFUND	
FORFEITURE	
CHANGE OF VENUE	
JURY FEES	
REMANDS	
SENTENCING	

IN THE SUPERIOR COURT

OF

MARICOPA COUNTY, STATE OF ARIZONA

41 DIV | April 21, 1981 DATE | HON. JAMES E. MC DOUGALL JUDGE OR COMMISSIONER | WILSON D. PALMER, Clerk c. faust Deputy

C 433192 ARNOLD, etc. vs. KOORY, JR., et ux., et al.

(cont'd)

the Board of Supervisors to terminate the Public Fiduciary's employment based upon his participation in Cause No. C 432355 would be to permit an impairment of his First Amendment rights. Unquestionably, the loss or potential loss of freedom under the First Amendment constitutes an irreparable injury. Elrod v. Burns, 427 U.S. 347, 49 L.Ed. 2d 547, 96 S.Ct. 2673 (1976).

THEREFORE, IT IS ORDERED ENJOINING THE DEFENDANTS OR THEIR AGENTS FROM TERMINATING THE EMPLOYMENT OF CHARLES A. ARNOLD AS THE PUBLIC FIDUCIARY OF MARICOPA COUNTY ON THE BASIS OF HIS PARTICIPATION IN CAUSE NO. C 432355, OR ON THE BASIS OF HIS FILING OF THE LAWSUIT HEREIN, OR IN RETALIATION FOR HIS ACTION IN EITHER CASE, UNTIL FURTHER ORDER OF THE COURT.

The court's decision in this matter recognizes the authority of the Board of Supervisors to terminate the employment of Mr. Arnold for any other reason, with or without cause, so long as the reason for his discharge does not violate his constitutional rights or is not otherwise in contravention of some strong public policy. The Board of Supervisors has the authority to convene an Executive Session for the purpose of discussion or consideration of the termination of the employment of an employee. This decision and the orders of this court do not prevent the exercise of this authority. To allow the Board of Supervisors to now retreat to Executive Session and discharge the plaintiff for reasons hidden by the confidentiality of Executive Sessions would be to allow this proceeding to become a sham and a mockery. Therefore, in order to insure compliance with the decision of this court during the pendency of this action, the court issues the following order.

IT IS FURTHER ORDERED THAT IN THE EVENT FURTHER ACTION IS TAKEN BY THE BOARD OF SUPERVISORS TO DISCHARGE THE PLAINTIFF, THE DECISION OF THE BOARD OF SUPERVISORS, AND THE SPECIFIC REASONS FOR ANY SUCH DISCHARGE, SHALL BE STATED ON THE RECORD PUBLICLY.

Trial on the Plaintiff's Complaint shall be set at a time mutually agreeable to the court and counsel.

FORM 43-17

Letter of Resignation 1981

MARICOPA COUNTY PUBLIC FIDUCIARY

125 West Washington
Phoenix, Arizona 85003

602- 261-5801

June 4, 1981

Maricopa County Board Of Supervisors
111 South Third Avenue
Phoenix, AZ 85003

Gentlemen:

As you know, some weeks ago, I filed an action on behalf of people under the protection of the Maricopa County Public Fiduciary's office, seeking improved mental health services for them in a community setting. Subsequently, the Board of Supervisors saw fit to fire me for that reason. Immediately thereafter, the Maricopa County Superior Court ordered that I be reinstated, ultimately finding that the Board's decision to discharge me violated my constitutional rights, as well as the constitutional rights of my wards. Moreover, the Court found that the actions of the Board violated public policy by serving to preclude the Public Fiduciary from carrying out his fiduciary responsibility, as well as his duty as owed to the Courts and his wards.

As of today, the Superior Court has entered a permanent injunction and final judgment fully affirming the important principles of public policy and law for which I fought. The Court's order establishes the principle that you, as a Board, cannot interfere with the appropriate exercise of a Public Fiduciary's duties. The fact that you may not agree with the manner in which those duties are carried out does not give you license to terminate the employment of a Public Fiduciary for constitutionally impermissible reasons.

I have now accomplished my objective of establishing this legal principle. This litigation having been resolved in this manner will provide for the protection of the people under the care of the Maricopa County Public Fiduciary's office. At no time was it my wish or intention to gain financially in any manner from the suit, and so, I have waived any claim I may have for damages arising from the wrongful and constitutionally improper actions of the Board. My motivation was not for personal gain, but rather to fully protect and serve as an advocate for my wards. I now feel that I have accomplished that objective.

CHARLES L. ARNOLD
PUBLIC FIDUCIARY

There has clearly developed a chasm between you, as a Board, and my office as a result of your failure to properly understand the needs of our wards or my motivation in seeking to provide for their care.

This has resulted in a difficult situation which I have determined would be best solved by my resignation as Public Fiduciary, submitted hereby, to be effective June 15, 1981.

I earnestly hope that the Board will act quickly in appointing a new Public Fiduciary, and that he will be left to carry out the duties of this important public office with integrity, keeping in mind at all times the rights and needs of those people under his protection.

Very truly yours,

Charles L. Arnold

Charles L. Arnold

Affidavit of Charles L. Arnold in Support of the Stipulation for Providing Community Services and Terminating the Litigation

FRAZER RYAN GOLDBERG & ARNOLD, L.L.P.
3101 North Central Avenue, Suite 1600
Phoenix, Arizona 85012-2615
Telephone: (602) 277-2010
Facsimile: (602) 277-2595
Charles L. Arnold, SBN 002561
James E. McDougall, SBN 002452
Keith R. Lyman, SBN 025905
Joshua N. Mozell, SBN 030865
E-Docs@frgalaw.com

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

CHARLES ARNOLD, MARICOPA PUBLIC FIDUCIARY, as guardian and next friend on behalf of JOHN GOSS, NANCY E. ELLISTON, as guardian, Maricopa County Conservator and next friend on behalf of CLIFTON DORSETT and as next friend on behalf of RICHARD SCHACHTERLE and SUSAN SITKO, TERRY BURCH, and on behalf of all others similarly situated, Plaintiffs, v. ARIZONA DEPARTMENT OF HEALTH SERVICES, ARIZONA STATE HOSPITAL, MARICOPA COUNTY BOARD OF SUPERVISORS, JANET NAPOLITANO, GOVERNOR OF ARIZONA, Defendants.	No. CV0000-432355 **AFFIDAVIT OF CHARLES L. ARNOLD IN SUPPORT OF THE STIPULATION FOR PROVIDING COMMUNITY SERVICES AND TERMINATING THE LITIGATION**

STATE OF ARIZONA)
) ss
County of Maricopa)

COMES NOW CHARLES L. ARNOLD, affiant, and upon oath duly says as follows:

1. My name is Charles L. Arnold, and, as Maricopa County Public Fiduciary, I, along with others, served as a named-Plaintiff in the above-mentioned matter.

2. As Maricopa County Public Fiduciary, I, together with my staff, served as Guardian and Conservator for approximately 600 adults within Maricopa County, many of whom had been diagnosed with a serious mental illness.

3. I resigned as Maricopa County Public Fiduciary in late 1981, and since that time have been actively engaged in the practice of law as a mental health lawyer in Phoenix, Arizona.

4. In 1991, upon the execution of the original "Implementation Plan" or "Blueprint," which provided for the appointment of a Court Monitor, I served as attorney for the Court Monitor, until 2010, at which time the Office of the Court Monitor was terminated.

5. During my time as attorney for the Court Monitor, I gained direct insight into the complex nature of negotiations in this matter, the challenges posed by the difficult issues addressed herein, and the constant tension resulting from threats to repeal the statute providing for a comprehensive community based system of care for persons with serious mental illness, the foundation upon which this case is based.

6. In my service as attorney for the Court Monitor, as well as my service to my clients, I have come to recognize the critical importance of supported housing, supported employment, family and peer support services, and enhanced crisis services in order to enhance an individual's opportunity for recovery, and to live a productive life within a community setting. I believe that currently the system does not have sufficient capacity in supported housing, supported employment and Assertive Community Treatment and that the need for these specific services is compelling.

7. Supported housing and supported employment are evidence-based practices that significantly improve outcomes for individuals with serious mental illness, and have proven successful in diverting such individuals from emergency rooms, jails, and homeless shelters.

8. I have reviewed the Stipulation in this case and strongly support it. The Stipulation provides for an expansion of services that are critical to avoid the unnecessary placement of individuals with serious mental illness in institutional care. These services include additional supported housing services for 1,200 class members, additional supported employment services for 750 class members, the establishment of eight additional assertive community (ACT) teams, and the enhancement of consumer operated services for 1,500 class members, all of which shall occur during fiscal years 2015 and 2016. Thereafter, in fiscal year 2017, the Agreement provides that the Arizona Department of Health Services shall develop supported housing services for 300 additional class members, supported employment services for 500 additional class members, and five additional ACT teams. This substantial expansion of the most important community services will finally achieve the goals of this case and should result in compliance with the state statute. It clearly will make a difference for many persons with serious mental illness.

9. Moreover, and of critical importance, the Stipulation provides for an independent quality service review with the termination of the Office of the Monitor, and the eventual termination of the Court's oversight of the system, in my opinion it is imperative that there be independent, credible mechanism to evaluate whether individuals are receiving the services necessary to meet their behavioral health needs. The Quality Service Reviews will fill that critical function and make the need for a separate Office of the Monitor less pressing.

10. I believe that it is also essential that the Stipulation requires an independent assessment of the capacity of the community mental health services in Maricopa County, designed to identify future service capacity needs. Throughout this litigation the parties have struggled to arrive at a mechanism to assess the system's capacity and produce reliable data on the gaps in the service array. The requirement that an independent entity

evaluate the system's capacity on an annual basis and use those findings to support further system funding and development is essential in my opinion.

11. As much as this litigation has been instrumental in transforming the community mental health system in Maricopa County, I believe that dismissing the case is now appropriate, assuming the state complies with its obligations this year. Making the dismissal subject to the state's compliance with all future obligations in 2017 and beyond is necessary; and explicitly providing for ongoing jurisdiction and enforcement by the court of these obligations is a sensible and fair procedure for terminating the case but ensuring the protection of class member rights under state law.

12. I have seen numerous generations of lawyers touch this case on both sides. It is gratifying to see the case come to a positive and respectful end I am confident that approval of this settlement will serve the interests of the Plaintiff class.

DATED this 20th day of February, 2014.

Frazer Ryan Goldberg & Arnold LLP

Charles L. Arnold

SUBSCRIBED AND SWORN TO before me this 20th day of February, 2014, by Charles L. Arnold.

My Commission Expires:

Notary Public

10-25-14

OFFICIAL SEAL
KELLY A. VALENTIN
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires October 25, 2014

Stipulation for Providing Community Services and Terminating the Litigation

Anne C. Ronan (State Bar #006041)
ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST
202 East McDowell Road, Suite 153
Phoenix, Arizona 85004
(602) 258-8850

Edward L. Myers III (State Bar #0018856)
ARIZONA CENTER FOR DISABILITY LAW
5025 E. Washington Street, Suite 202
Phoenix, Arizona 85034

Steven J. Schwartz
Cathy E. Costanzo
CENTER FOR PUBLIC REPRESENTATION
22 Green Street
Northampton, Massachusetts 01060
(413) 584-6838

Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

CHARLES ARNOLD, MARICOPA COUNTY PUBLIC FIDUCIARY, as guardian and next friend on behalf of JOHN GOSS; NANCY E. ELLISTON, as guardian, conservator and next friend on behalf of CLIFTON DORSETT and as next friend on behalf of RICHARD SCHACHTERLE and SUSAN SITKO; TERRY BURCH; and on behalf of all others similarly situated,

Plaintiffs,

vs.

ARIZONA DEPARTMENT OF HEALTH SERVICES, ARIZONA STATE HOSPITAL, MARICOPA COUNTY BOARD OF SUPERVISORS, and JANICE K. BREWER, Governor of Arizona,

Defendants.

No. C-432355

STIPULATION FOR PROVIDING COMMUNITY SERVICES AND TERMINATING THE LITIGATION

(Assigned to the Honorable Edward W. Bassett)

Plaintiffs[1] and State Defendants Arizona Department of Health Services ("ADHS") and Governor Janice K. Brewer ("Governor") hereby submit this Stipulation for Providing Community Services and Terminating the Litigation ("Stipulation").[2]

1. This Stipulation is designed to facilitate essential community services, which the Parties agree and acknowledge are best practices for persons with serious mental illness ("SMI"), including Assertive Community Treatment ("ACT"), Supported Housing, Supported Employment, and Consumer Operated Services. This Stipulation further provides a schedule for vacating the Judgment in this case, dismissing the lawsuit, and ensuring that the community mental health system in Maricopa County continues to meet the needs of persons with serious mental illness.

2. The Parties agree that this Stipulation, unless expressly modified by a subsequent Court order, shall be the exclusive means for establishing the specific obligations and requirements of the Defendants and the services and benefits to be provided to Class Members.

3. ADHS has no obligation to take any action or fulfill any requirement of this Stipulation that is solely the responsibility of Maricopa County. Similarly, Maricopa County has no obligation to take any action or fulfill any requirement of this Stipulation that is solely the responsibility of ADHS.

ARIZONA STATE HOSPITAL

4. ADHS shall make its best efforts to identify Class Members residing at the Arizona State Hospital ("ASH") who could benefit from community living arrangements

---

[1] For purposes of this Stipulation "Plaintiffs" and/or "Class Members" are defined as adults eighteen (18) years or older that reside in Maricopa County and have a serious mental illness, as set forth in A.R.S. §§ 36-550(4) and 36-550.06.

[2] Maricopa County will elect its new chairman on January 6, 2014, and it will review this Stipulation at its January 8, 2014 meeting. Maricopa County will file a joinder if it agrees. For purposes of this Stipulation, "Defendants" shall refer collectively to the Governor of the State of Arizona, the Arizona Department of Health Services, and Maricopa County. "Parties" shall refer collectively to Plaintiffs and Defendants.

and take steps to facilitate their discharge from ASH. ADHS will ensure that the census at ASH does not exceed fifty-five Class Members.

5. ADHS will not use ASH for acute admissions, but may continue to use ASH for Class Members who need long-term inpatient treatment, but only to the extent the community living arrangements and services are not appropriate to meet the needs of individual Class Members. Acute inpatient services for Class Members shall be provided in units, programs, or facilities which are cost-effective, federally reimbursable, integrated into the general medical provider system that serves nondisabled citizens as close to the home communities of Class Members as practical, and not associated with ASH.

6. ADHS will ensure that there are no admissions or readmissions of Class Members directly into ASH from community mental health agencies or other entities, programs, or persons. All admissions of Class Members to ASH shall follow attempts to treat in one of the units, programs, or facilities described in ¶ 5.

7. ADHS shall make its best efforts to assure that Class Members are not unnecessarily admitted to ASH and that all admissions to ASH are done in accordance with Chapter 5, Title 36, Arizona Revised Statutes and Title 9 of the Arizona Administrative Code.

SUPERVISORY CARE AND BOARD AND CARE HOMES

8. ADHS will use its best efforts to offer community living arrangements to Class Members who reside in supervisory care homes.

9. ADHS will not encourage or recommend Class Members to reside in a supervisory care home or place them in a supervisory care home.

COUNTY SERVICES

10. Some Class Members at the Maricopa County Jail ("Jail") could benefit from diversion prior to incarceration at the Jail. The County will make its best efforts to develop programs designed to review the appropriateness and necessity for Jail admission of Class Members and to divert Class Members from incarceration when appropriate.

SERVICES

Crisis Services

11. ADHS will make its best efforts to maintain a Crisis System, as described in ¶ 12, which provides timely and accessible services and (i) is available 24 hours per day, 7 days per week, to Class Members experiencing a behavioral health crisis, including a crisis due to substance abuse; (ii) stabilizes individuals as quickly as possible and assists them in returning to their pre-crisis level of functioning; (iii) provides solution-focused and recovery-oriented interventions designed to avoid unnecessary hospitalizations, incarceration, or placement in a more segregated setting; (iv) when safe and clinically appropriate, provides mobile services at the site of the crisis, including the Class Member's residence; and (v) assesses the individual's needs, identifies the supports and services that are necessary to meet those needs, and connects the individual to those services.

12. The Crisis System shall include at least the following components:

i. A Crisis Hotline that provides crisis intervention services over the phone, which includes triage and referral and telephone-based support to persons in crisis and which often serves as the first place of access to the behavioral health system. The service may also include a follow-up call to ensure the person is stabilized.

ii. Mobile Crisis Teams that provide crisis intervention services by a mobile team or individual who travels to the place where the person is having the crisis (e.g., person's place of residence, emergency room, jail, or community setting). Crisis intervention services include services aimed at the assessment and immediate stabilization of acute symptoms of mental illness, alcohol and other drug abuse, and emotional distress. The purpose of this service is to stabilize acute psychiatric or behavioral symptoms, evaluate treatment needs, and develop plans to meet the needs of the persons served.

Depending on the situation, the person may be transported to a more appropriate facility for further care (e.g., a crisis services center). Mobile crisis teams shall have the ability to respond, on an average, within one hour to a psychiatric crisis in the community (e.g. homes, schools, or hospital emergency rooms).

iii. Crisis stabilization settings that provide short-term crisis stabilization services (up to 72 hours) in an effort to successfully resolve the crisis, returning the individual to the community instead of transitioning to a higher level of care (i.e. an inpatient setting). Crisis stabilization settings can include licensed Level I sub-acute facilities, Level II facilities, and outpatient clinics offering access 24 hours per day, 7 days per week. Crisis stabilization settings can also include home-like settings such as apartments and single family homes, to the extent covered by Medicaid, where individuals experiencing a psychiatric crisis can stay to receive support and crisis services in the community before returning home.

Supported Employment

13. ADHS will make its best efforts to develop supported employment services as more fully described in ¶¶ 32-38. These are services through which Class Members receive assistance in preparing for, identifying, attaining, and maintaining competitive employment. The services provided include job coaching, transportation, assistive technology, specialized job training, and individually tailored supervision.

Assertive Community Treatment Teams

14. ADHS will make its best efforts to develop ACT capacity, as more fully described in ¶¶ 32-38. ACT teams will be available 24 hours per day, 7 days per week, and deliver comprehensive, individualized, and flexible support, services, and rehabilitation to individuals in their homes and communities. An ACT team is a multidisciplinary group of professionals including a psychiatrist, a nurse, a social worker,

a substance abuse specialist, a vocational rehabilitation specialist, and a peer specialist. Services are customized to an individual's needs and vary over time as needs change.

Family and Peer Support

15. ADHS will make its best efforts to develop a system of peer and family support services, including peer and family-run provider organizations, as set forth in ¶¶ 32-38.

16. Peer support services are delivered in individual and group settings by individuals who have personal experience with mental illness, substance abuse or dependence, and recovery to help people develop skills to aid in their recovery.

17. Family support services are delivered in individual and group settings and are designed to teach families skills and strategies for better supporting their family member's treatment and recovery in the community. Supports include training on identifying a crisis and connecting Class Members in crisis to services, as well as education about mental illness and about available ongoing community-based services.

Supported Housing

18. ADHS shall make its best efforts to provide supported housing services, consistent with the Substance Abuse and Mental Health Services Administration ("SAMHSA") definition, as set forth in ¶¶ 32-38. Supported Housing is permanent housing with tenancy rights and support services that enable people to attain and maintain integrated affordable housing. It enables Class Members to have the choice to live in their own homes and with whom they wish to live. Supported Housing will continue to be integrated, scattered site housing throughout Maricopa County.

19. Support services are flexible and available as needed but not mandated as a condition of maintaining tenancy. Support services are provided by ACT teams for Class Members who receive ACT. For all other Class Members in Supported Housing, support services are provided by the Maricopa County Regional Behavioral Health Authority ("RBHA") through its Supported Housing provider.

20. Supported Housing also includes rental subsidies or vouchers and bridge funding to cover deposits and other household necessities, although these items alone do not constitute Supported Housing.

Living Skills Training

21. ADHS will make its best efforts to develop living skills training services through which Class Members receive assistance and include learning independent living, social, and communication skills in order to maximize their ability to live and participate in the community and to function independently.

Respite Care

22. ADHS will make its best efforts to develop respite care services for Class Members to provide rest or relief for family members or other individuals caring for Class Members and may include a range of activities and may be provided in a range of settings, including apartments and single family homes, to the extent covered by Medicaid, to meet social, emotional, and physical needs of the Class Members during the respite period.

SERVICE STANDARDS

23. ADHS will ensure that providers of services listed in ¶¶ 11-22 have linguistic and cultural competencies to serve all individuals.

24. ADHS will adopt the SAMHSA models, definitions, and standards for ACT, Supported Housing, Supported Employment, and Consumer Operated Services,[3] by incorporating these SAMHSA standards into the RBHA contract. ADHS will require, through its contract with the RBHA, that all providers of ACT, Supported Housing, Supported Employment, and Consumer Operated Services comply with these standards. ADHS will use, and will require the RBHA to use, SAMHSA assessment tools and/or instruments for evaluating providers' compliance with SAMHSA standards for each service.

[3] Consumer Operated Services relates to the Family and Peer Support Services set forth in ¶¶ 15-17.

25. In 2014, ADHS will evaluate providers based upon the SAMHSA standards, using SAMHSA and National Association of State Mental Health Program Directors ("NASMHPD") consultants and the SAMHSA instruments. In 2015, ADHS will evaluate providers based upon the SAMHSA standards using the SAMHSA instruments, through RBHA and ADHS staff who have been trained by the SAMHSA and NASMHPD consultants and who have been determined to be qualified by ADHS. Consistent with a schedule recommended by the consultants, trained ADHS and RBHA staff will evaluate providers based upon the SAMHSA standards using the SAMHSA instruments.

26. The findings and conclusions of the SAMHSA fidelity evaluations will be made available to the public by ADHS. ADHS, through the RBHA, will take all necessary steps, system improvements, and corrective actions to ensure that each provider offers services consistent with the SAMHSA standards for ACT, Supported Housing, Supported Employment, and Consumer Operated Services.

QUALITY SERVICE REVIEWS

27. ADHS will use Quality Service Reviews ("QSR") to identify strengths, service capacity gaps, and areas for improvement at the system-wide level in Maricopa County. A QSR collects information through the use of a statistically significant sample of total SMI members and includes a medical record review as well as interviews of Class Members.

28. A QSR will objectively evaluate whether the needs of Class Members are being identified, whether Class Members need and are receiving each of the services identified in ¶¶ 11-22, whether these services are available, whether supports and services that they receive are meeting those needs, and whether supports and services are designed around Class Members' strengths and goals.

29. ADHS will conduct the QSR process annually to collect and analyze data.

30. ADHS will continue to contract with an independent entity to conduct the QSR. During 2014, the Parties will finalize the QSR content and process, which will include the data elements, collection methodology, the instrument, and the report.

SERVICE CAPACITY

31. During the term of this Stipulation, ADHS shall focus on assessing and adjusting the network capacity of a service or services described in ¶¶ 11-22, subject to available funding through legislative appropriation.

32. During Fiscal Years 2015 and 2016, ADHS will develop the following additional service capacity:

a. Supported Housing services capable of serving 1200 Class Members,

b. Supported Employment services capable of serving 750 Class Members,

c. 8 ACT teams, some of which may be specialized teams, and

d. Family and Peer Support services capable of serving 1500 Class Members.

ADHS will make reasonable progress to develop the service capacity described in ¶ 32 over the two year period, and will achieve the full increases in capacity by the completion of Fiscal Year 2016. ADHS will meet with Plaintiffs' counsel within thirty days of the enactment of the Fiscal Year 2015 budget to discuss ADHS' funding allocation strategy that will be spent for each of the services set forth in ¶¶ 11-22.

33. For Fiscal Year 2017, unless the service capacity assessment and determination described in ¶¶ 34-36 indicate that additional capacity is not needed in supported housing, supported employment, and/or ACT, ADHS will develop the following additional service capacity:

a. Supported Housing services capable of serving 300 Class Members;

b. Supported Employment services capable of serving 500 Class Members; and

c. 5 ACT teams, some of which may be specialized teams.

34. For every year after FY 2016, ADHS will implement a reliable process to assess the adequacy of community mental health services in Maricopa County for Class Members, as set forth in ¶¶ 35-36, with a focus on the adequacy of Supported Employment, Supported Housing, ACT, and Consumer Operated Services.

35. ADHS will use an independent entity like Mercer Government Human Services Consulting or another similarly qualified entity to conduct the service capacity assessment. This service capacity assessment set forth in ¶ 34 will include a need and allocation evaluation of Supported Housing, Supported Employment, Consumer Operated Services and ACT. The assessment shall utilize individual clinical reviews; an analysis of service utilization data; an analysis of outcome data; and interviews with key informants including Class Members, family members, providers and case managers. The assessment may also utilize customer satisfaction surveys; complaint data; geo-access mapping; hospital emergency room utilization; criminal justice records; homeless prevalence; employment data; suicide rates; public forums; and other data as appropriate that may indicate unmet need, utilization or availability of covered services. The independent qualified entity shall provide ADHS with the completed assessment annually.

36. The service capacity assessment, the QSR, and SAMHSA fidelity results will be posted on ADHS' website. ADHS will collect and analyze data from the QSR, the service capacity assessment, and the findings of the SAMHSA fidelity evaluations to determine the appropriate capacity for each of the services described in ¶¶ 11-22 to meet the needs of Class Members.

37. ADHS shall use the process described in ¶ 36 to develop its budget recommendations to the Governor's Office of Strategic Planning and Budget ("OSPB"). The Governor shall consider the information in ¶¶ 36-37 to develop the budget request to the Legislature.

38. ADHS agrees to submit to OSPB its anticipated budgetary needs to operate the behavioral health system in Maricopa County in accordance with this Stipulation and to continue to meet the needs of persons with serious mental illness. The Governor agrees to make best efforts to obtain this level of funding each year from the Legislature, based upon the Governor's assessment of the competing funding needs and priorities of all other state services. ADHS will make its best efforts to provide services, support, and benefits to Class Members as set forth in this Stipulation subject to available funding through legislative appropriation.

ENFORCEMENT AND DISMISSAL

39. Notwithstanding the provisions of this Stipulation that specifically reference best efforts, Defendants agree to make reasonable progress to implement all other terms of the Stipulation.

40. Prior to dismissal, Plaintiffs may bring any action to enforce this Stipulation for failure to substantially comply with its terms, provided, however, the Plaintiffs shall not allege contempt or initiate contempt proceedings prior to February 1, 2015. Prior to initiating any action for noncompliance, the Plaintiffs shall provide written notice to the Defendants detailing their allegations of noncompliance. The Parties agree to meet in person to seek a good faith resolution of these issues without court intervention prior to initiating any action.

41. The common law doctrine of impossibility of performance may be raised as a defense in any action or proceeding to enforce compliance with the terms of this Stipulation. This includes an inability of one or more Defendants to obtain the funds necessary to implement the requirements imposed by this Stipulation.

42. If any of the provisions of this Stipulation are held impossible to perform, the remaining provisions of this Stipulation shall remain binding and in full force and effect.

43. If no enforcement motion has been filed, the Parties shall file, between July 15 and September 1, 2014, a joint motion pursuant to Ariz. R. Civ. P. 41(a) to dismiss the

entire case. The motion shall attach and incorporate by reference this Stipulation, and authorize the Court to retain ongoing jurisdiction to enforce the Stipulation. The motion will further make clear that the Court is not vacating its order certifying the class.

44. After dismissal, Plaintiffs may bring any action to enforce this Stipulation for failure to substantially comply with its terms. Prior to initiating any action, the Plaintiffs shall provide written notice to the Defendants detailing their allegations of noncompliance. The Parties agree to meet in person to seek a good faith resolution of these issues without court intervention prior to initiating any action. If the Parties are unable to resolve these issues, Plaintiffs may file a motion to restore the matter to the Court's active docket and enforce the provisions of the Stipulation. In any action or proceeding related to this Stipulation, the Court shall apply a standard of substantial compliance, as defined by the Arizona Courts, to evaluate Defendants' compliance.

45. During the pendency of the Stipulation, no party shall engage in activities which delay, prolong or frustrate performance of the obligations set forth herein.

46. This Stipulation and any resulting Order entered by the Court may be amended, modified, or supplemented by a written agreement entered into between all Parties and subsequently approved by the Court. Any party may petition the Court to amend, modify or supplement this Stipulation if the Parties are unable to reach an agreement.

47. Other than contempt as set forth in ¶ 40, nothing herein is intended to alter the inherent authority of the court.

ATTORNEYS' FEES

48. The Parties agree that Class Members can recover reasonable and non-duplicative attorneys' fees and taxable costs incurred in this matter through calendar year 2015. Such attorneys' fees and costs are strictly limited to those incurred through the course of monitoring the implementation by Defendants regarding the obligations set forth in this Stipulation.

49. The Parties agree that reasonable attorneys' fees and taxable costs incurred by Class Members for monitoring any and all obligations set forth in this Stipulation shall be paid by the Defendants subject to a maximum cap in the amount of $225,000 for all time and expenses incurred during the period July 1, 2013 to December 31, 2015. Time spent on legislative lobbying is not a compensable monitoring activity. After December 31, 2015, there is no further right to fees for monitoring. In any judicial action brought by Plaintiffs to enforce this Stipulation, Plaintiffs may seek to recover reasonable attorneys' fees and taxable costs related to the enforcement action if they are the prevailing party and such an award is authorized by Arizona law.

50. The Parties agree that Class Members are to submit to Defendants a statement of attorneys' fees and taxable costs, a form of stipulation, and proposed order to the Court, in order to recover for attorneys' fees and costs incurred each quarter. Defendants shall be permitted a reasonable time to review each request and attempt to resolve any questions or concerns they may have with Class Members regarding the same. Any request for attorneys' fees and costs submitted by Class Members to Defendants for their attorneys' fees and taxable costs shall be submitted no more than three (3) months following the last calendar day for the three (3) month period. If a request is not submitted within this time to Defendants through their respective counsel(s), counsel for the Class Members shall be deemed to have waived any entitlement to recover any fees or costs incurred during the applicable period.

51. Class Members shall have the sole discretion to determine the individual lawyers who should perform work on their behalf and should therefore submit billing statements that provide sufficient detail of the work performed, the lawyer who did the work, and the time spent. The billing rate for Steven Schwartz shall be $400 per hour, Anne Ronan shall be $300 per hour, and Edward Myers (ACDL) shall be $240 per hour. If additional or different lawyers or paralegals than those stated above are to be included in the quarterly billings, Class Members shall notify Defendants in writing of their intent to submit billing statements and their hourly rates for such lawyers/paralegals. The

billing rates in this paragraph shall remain fixed during the term of this Stipulation/Order for all work billed. Class Members do not concede the rates represent fair market rates, because the Parties arrived at the rates through a process of negotiation and compromise.

52. The provisions of the Stipulation regarding attorneys' fees and taxable costs are applicable to proceedings brought in the Maricopa County Superior Court, the Arizona Court of Appeals, and the Arizona Supreme Court.

53. The Parties agree that Defendants' obligation to pay Class Members' attorneys' fees and taxable costs which are ordered by the Court may be satisfied by making payment to counsel for Plaintiffs who are affiliated with the Arizona Center for Law in the Public Interest, for deposit into that firm's trust account to be later disbursed to the other attorneys or firms of record who incurred fees and taxable costs through the course of their representation of Plaintiffs.

ADDITIONAL PROVISIONS

54. The Parties agree that Defendants' obligations under this Stipulation apply only to Class Members.

55. The Court shall hold a fairness hearing and provide reasonable notice to Class Members pursuant to Rule 23(d)(2), Arizona Rules of Civil Procedure, before entering its Order following submission of the Stipulation. The Parties will represent to the Court that this Stipulation is fair and reasonable under Rule 23. The Parties retain the right to appeal from any order which modifies or alters this document.

56. Although Defendants have agreed as part of the negotiation process, which was conducted under Ariz. R. Evid. 408, to undertake certain actions, such agreement and this Stipulation do not constitute an enlargement of the Judgment or an admission of any matter.

//

//

//

//

57. Once this Stipulation is approved, and a corresponding Order is entered by the Court, it shall be binding on all Parties.

RESPECTFULLY SUBMITTED this 8th day of January, 2014.

Anne Ronan
Attorney for Plaintiffs

Joseph Kanefield
Attorney for Governor Janice K. Brewer

Joseph Sciarrotta
Attorney for Governor Janice K. Brewer

Gregory Honig
Attorney for Arizona Department of Health Services

CERTIFICATE OF SERVICE

I certify that on this 8th day of January, 2014, I electronically transmitted a PDF version of this document to the Office of the Clerk of the Superior Court, Maricopa County, for filing using the AZTurboCourt System.

COPY of the foregoing mailed
this 8th day of January, 2014 to:

Gregory Honig
Office of the Arizona Attorney General
1200 W. Washington
Phoenix, AZ 85007

Joseph Sciarrotta
Office of the Governor
1700 W. Washington, 9th Floor
Phoenix, Arizona 85007
Counsel for Governor Janice K. Brewer

Joseph Kanefield
Ballard Spahr, LLP
1 East Washington St.
Suite 2300
Phoenix, Arizona 85004
Counsel for Governor Janice K. Brewer

Edward L. Myers III
Arizona Center for Disability Law
5025 E. Washington Street
Suite 202
Phoenix, AZ 85034

Steven J. Schwartz
Cathy E. Costanzo
Center for Public Representation
22 Green Street
Northampton, MA 01060
Attorneys for Plaintiffs

Bruce P. White
Maricopa County Attorney's Office
222 N. Central, Suite 1100
Phoenix, AZ 85004
Attorney for Maricopa County Board of Supervisors

/s/Sonya Batten