

## EXHIBIT A

# Choctaw Nation Mental Health and Substance Abuse Code

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## **Chapter 1: General Provisions.**

### **Section 101. Short Title**

This code shall be known and may be cited as the “Mental Health and Substance Abuse Code.”

### **Section 102. Sovereign Immunity**

Nothing in this Code shall be construed as a waiver, in whole or in part, of the sovereign immunity of the Choctaw Nation, its departments, agencies, entities, officials, or employees.

### **Section 103. Application and Scope; Geographical Considerations**

- A. This Code shall apply to all Facilities owned or operated by the Choctaw Nation and to all Mental Health and Behavioral Health services provided by the Choctaw Nation Health Services Authority or the Department of Behavioral Health, except as otherwise provided by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, or by Federal law or agreement with a state.
- B. Services governed by this Code shall be provided to adult members of the Choctaw Nation within the Geographical Boundaries of the Choctaw Nation to the extent practicable as provided by this Code.
- C. Services governed by this Code may be provided to the extent practicable under this Code to the following:
  - 1. Adult Members of the Choctaw Nation outside the Geographical Boundaries of the Choctaw Nation;
  - 2. Adult Members of other federally recognized Indian tribes; and
  - 3. Other adult persons as specifically allowed by law or contract.

### **Section 104. Presumption of Competence**

No person admitted to any Behavioral Health Services or Mental Health Services Facility shall be considered or presumed to be mentally or legally incompetent, except those persons who have been judicially determined to be mentally or legally incompetent.

### **Section 105. Tribal Prosecutor to Represent the Choctaw Nation in Proceedings for Involuntary Admissions**

The Tribal Prosecutor or an Assistant Tribal Prosecutor shall represent the Choctaw Nation in all court proceeding provided for in this Code in which the Choctaw Nation of Oklahoma, including any Choctaw Nation entity is the petitioner for involuntary commitment.

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### Section 106. Definitions

As used in this Code, unless the context otherwise requires:

1. “Behavioral Health” includes, but is not limited to, a person’s state of being and how the person’s behavior and choices affect overall health and wellness;
2. “Behavioral Health Services” include, but are not limited to, diagnosis and treatment of a wide variety of conditions including, but not limited to, (i) depression, (ii) anxiety, (iii) diabetes management, (iv) weight loss, (v) tobacco usage, (vi) dependence on, and abuse of, illegal drugs, prescription medication, and alcohol, (vii) addiction to certain behaviors which have become destructive, including, but not limited to, sex and gambling;
3. “Chief” means the Chief of the Choctaw Nation;
4. “Choctaw Nation” means the Choctaw Nation of Oklahoma;
5. “Choctaw Nation Health Services Authority” means the entity established in Section 1 of the Choctaw Nation Health Service Act of 2019, and includes all departments, divisions, and other parts thereof;
6. “Code” means the Mental Health and Substance Abuse Code;
7. “Correctional Institution” means a tribal correctional center operated by or for the Choctaw Nation including, but not limited to, (i) a correctional center operated pursuant to a Public Law 93-638 Self-Governance Compact, or (ii) a state or local government prison, jail, reformatory, or detention facility subject to an agreement between the Choctaw Nation and the state or local government for the detention or correction of persons charged with or convicted of a criminal offense or civil or criminal contempt;
8. “Department” means the Choctaw Nation Department of Behavioral Health within the Choctaw Nation Health Services Authority providing Behavioral and Mental Health Services;
9. “Department Director” means the administrative head of the Choctaw Nation Department of Behavioral Health;
10. “District Court” means the District Court of the Choctaw Nation;
11. “Emergency Detention” means the detention of a person who appears to be a Person Requiring Treatment in a Facility approved by the Choctaw Nation Health Services Authority as appropriate for such detention after the completion of an Initial Assessment or emergency examination, either in person or via telemedicine, and a determination that Emergency Detention is warranted for a period not to exceed one hundred twenty (120) hours or five (5) days, excluding weekends and holidays, except upon a court order authorizing detention beyond this period or pending the hearing on a Petition requesting involuntary commitment or treatment as provided by this Code;

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12. "Facility" means any hospital, clinic, or building used for the care, treatment, or custody of a member of the Choctaw Nation or member of another federally recognized Indian tribe or other eligible person, as an individual with Mental Illness, Substance Abuse, gambling addiction, eating disorder, or in an opioid substitution treatment program;
13. "Facility Director" means the person in charge of a Facility regardless of title;
14. "Geographical Boundaries of the Choctaw Nation" means the boundaries recited in Section 2 of Article I of the Choctaw Constitution of 1983;
15. "Indian" means any person who is a member of a federally recognized Indian tribe, band, nation, pueblo, village, or community, that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law 103-454, 108 Stat. 4791, or Alaskan Natives, or a person considered by the Choctaw Nation to be Indian;
16. "Initial Assessment" means the examination of current and recent behaviors and symptoms of a person who appears to be a Person Requiring Treatment, whose condition is such that it appears to a Licensed Mental Health Professional that Emergency Detention may be warranted at an appropriate Facility;
17. "Inpatient treatment" means treatment services offered or provided for a continuous period of more than twenty-four (24) hours in a residence after admission to a mental health or substance abuse treatment Facility for the purpose of observation, evaluation, or treatment;
18. "Intermediate care" means an organized therapeutic environment in which a client may receive diagnostic services, counseling, vocational rehabilitation and/or work therapy while benefiting from the support which a full or partial residential setting can provide. Intermediate care should provide a transition between the inpatient detoxification facility and reintegration into community life. Intermediate care must include provision for a bed, three meals a day and medical support if needed;
19. "Licensed mental health professional" means a person who is not related by blood or marriage to the person being examined or does not have any interest in the estate of the person being examined, and who is:
  - a. a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology or American Osteopathic Board of Neurology and Psychiatry,
  - b. a physician licensed to practice medicine by the governing body in their state of residence or place of practice.
  - c. a clinical psychologist who is duly licensed by the governing body in their respective place of practice.
  - d. a professional counselor licensed pursuant to the governing board in their respective place of practice,
  - e. a person licensed as a clinical social worker pursuant to the governing board in their place of practice,
  - f. a marital and family therapist licensed by the governing board in their place of practice,

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- g. a behavioral practitioner licensed by the governing board in their place of practice,
  - h. an advanced practice nurse licensed by the governing board in their place of practice, a physician assistant, who is licensed in good standing in their place of practice, or
  - i. a licensed alcohol and drug counselor/mental health (LADC/MH) licensed by the governing board in their place of practice, For the purposes of this paragraph, "licensed" means that the person holds a current, valid license issued in accordance with the laws of their place of practice;
20. "Mental Health Evaluation" means an examination or evaluation of a person for the purpose of making a determination whether, in the opinion of the Licensed Mental Health Professional making the evaluation, the person is a Person Requiring Treatment and, if so, is in need of inpatient treatment and for the purpose of preparing reports or making recommendations for the most appropriate and least restrictive treatment. The Mental Health or Substance Abuse history of an eligible person may be used as part of the evaluation. The Mental Health or Substance Abuse history of the person shall not be the sole basis for any determination that the person is a Person Requiring Treatment;
21. "Mental Health Services" include, but are not limited to, diagnosis and treatment of Mental Illness, and include, but are not limited to, therapeutic, diagnostic, and counseling functions;
22. "Mental Illness" includes, but is not limited to, a substantial disorder of thought, mood, perception, psychological orientation, or memory that significantly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life. Mental Illness may include Substance Abuse, which is the use, without compelling medical reason, or any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordered behavior;
23. "Patient" means a person seeking or under care or treatment for mental illness, or substance abuse, who is admitted to a Facility pursuant to this Code or who is in intermediate care, outpatient care, or follow-up care status;
24. "Person Requiring Treatment" means:
- a. a person who, because of his or her Mental Illness or Substance Abuse:
    - (1) poses a substantial risk of immediate physical harm to herself or himself as manifested by evidence of serious threats of, or attempts at, suicide or other significant self-inflicted bodily harm;
    - (2) poses a substantial risk of immediate physical harm to another person as manifested by evidence of violent behavior or threats directed toward another person;
    - (3) has placed another person in reasonable fear of serious physical harm or violent behavior directed towards such person as manifested by serious and immediate threats;

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- (4) is in a condition of severe deterioration such that, without immediate intervention, there exists a substantial risk that severe impairment or injury will result to the person; or
    - (5) poses a substantial risk of immediate serious physical injury or death to self or another as manifested by evidence that the person is unable to provide for and is not providing for his or her basic physical needs;
  - b. The mental health or substance abuse history of the person may be used as part of the evidence to determine whether the person is a person requiring treatment or an assisted outpatient. The mental health or substance abuse history of the person shall not be the sole basis for this determination.
  - c. Unless a person also meets the criteria established in subparagraph a of this Section, a Person Requiring Treatment or an assisted outpatient shall not include:
    - (1) a person whose mental processes have been weakened or impaired by reason of advanced years, dementia, or Alzheimer's disease,
    - (2) a person with intellectual or developmental disability as defined in this Code,
    - (3) a person with a seizure disorder,
    - (4) a person with a traumatic brain injury, or
    - (5) a person who is homeless;
  - d. An eligible person who meets the criteria established in subsections a and b of this Section, and who is medically unstable beyond the ability of the Facility to treat the additional medical conditions of the person, may be discharged or transported in accordance with this Code.
- 25. "Petition" means a written application to the District Court for the involuntary commitment of the Respondent to a Facility for inpatient treatment;
- 26. "Prehearing Detention" means the court-ordered detention of a person who is alleged to be a Person Requiring Treatment in a Facility approved by the Choctaw Nation Health Services Authority as appropriate for such detention, pending a hearing on a Petition requesting involuntary commitment or treatment;
- 27. "Prehearing Detention Order" means a court order that authorizes detention of a person pending a hearing on a Petition to determine whether the person is a Person Requiring Treatment;
- 28. "Protective Custody" means the taking into protective custody and detention of a person pursuant to the provisions of Section 406 of this Code until such time as an emergency



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examination is completed and a determination is made as to whether or not emergency detention is warranted;

29. "Public Safety Officer" means any law enforcement officer of the Choctaw Nation including, but not limited to, the Department of Public Safety, created in Chapter 2 of the Choctaw Nation Traffic Code, or any officer of another law enforcement agency created under Choctaw law or that is authorized to enforce the laws of the Choctaw Nation pursuant to a duly executed cross-deputization agreement;
30. "Substance Abuse" means abuse or misuse of any mind-alerting substance including, but not limited to, opioids, illegal substances, or alcohol that negatively impacts a person's physical or Mental Health, social situation, or personal responsibility; and
31. "Tribal Council" means the Tribal Council of the Choctaw Nation.

### **Section 107. Venue**

- A. The Presiding Judge of the District Court may designate a Judge of the District Court to hear and decide cases for involuntary commitment for inpatient Mental Health or substance dependence or abuse Services.
- B.
  1. Hearings in actions for involuntary commitment may be held, in the discretion of the District Court at:
    - a. The courthouse; or
    - b. The Facility in which the Respondent is being detained or is to be admitted.
  2. A hearing may be in the Facility where the Respondent is detained whenever the judge finds it to be in the best interests of the Respondent on the record. Hearings shall be held in an area of the Facility which protects the health, safety, and confidentiality of all participants. The District Court may make appropriate orders to protect participants while preserving the due process rights of the Respondent.
  3. Hearings may be held in person or remotely by electronic means approved by the District Court. If a hearing is conducted remotely by video teleconferencing, the image of the Respondent shall be broadcast by secure video to the judge. A secure video system shall provide for two-way communications including image and sound between the Respondent and the judge.
- C. Hearings shall be recorded by appropriate means as determined by the District Court; however, a hearing conducted by remote video communications shall have at least a video recording. Hearings may only be held by remote telephone communications without video when the District Court finds on the record that remote video communications are not reasonably available. The District Court shall require an audio recording for such hearings. The District Court may require a stenographic record of any hearing in its discretion.

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- D. Unless otherwise provided by law, the rules of civil procedure shall apply to all judicial proceedings provided for in this title, including, but not limited to, the rules concerning vacation of orders and appellate review.

### **Section 108. Savings Clause**

Nothing in this Code shall affect the validity of an act done, an order, judgment, or status established, a claim or right accrued, an offense committed or penalty incurred, under applicable law in force prior to the effective date of this Code.

## **Chapter 2: Department of Behavioral Health**

### **Section 201. Reserved**

### **Section 202. The Department of Behavioral Health**

- A. The Department of Behavioral Health in the Choctaw Nation Health Services Authority shall be the tribal entity primarily responsible for implementing this Code.
- B. The Department Director shall be the administrative head of the Department.
- C. The Department Director shall report to and be subject to the control of the Choctaw Nation Health Services Authority.
- D. The Department shall provide quality care in a culturally respectful and compassionate manner.

### **Section 203. Powers of the Department**

The Department may:

1. Plan, establish, and maintain treatment programs as necessary or desirable;
2. Enter into contracts necessary or incidental to the performance of its duties and the execution of its powers, including contracts with public and private agencies, organizations, and individuals for goods or services;
3. Participate in programs funded with properly accepted gifts or grants of money, services, or property from the Federal government, any state government, any political subdivision of a state government, or any private entity or person;
4. Cooperate with the Federal Government or any of its agencies in applying for and using any grant;
5. Administer or supervise the administration of the provisions of this Code;

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6. Coordinate activities and cooperate with any agency, officer, or program of the Choctaw Nation, the Federal Government, any state government, any political subdivision of any state government, or any private entity or person;
7. Keep records in compliance with laws of the Choctaw Nation;
8. Conduct and participate in research; and
9. Do other acts and things necessary or convenient to execute the provisions of this Code or other authority.

### **Section 204. Duties of the Department**

The Department shall:

1. Develop, encourage, and foster plans and programs for the prevention and treatment of conditions which may benefit from Behavioral or Mental Health Services;
2. Coordinate efforts and enlist the assistance of public and private tribal, Federal, state, and local agencies, organizations, and individuals interested in the prevention and treatment of conditions which may benefit from Behavioral or Mental Health Services;
3. Cooperate with public and private tribal, federal, state, and local agencies, organizations, and individuals interested in the prevention and treatment of conditions which may benefit from Behavioral or Mental Health Services;
4. Cooperate with judicial, law enforcement, and correctional officers and authorities of the Choctaw Nation and of the federal, state, and local governments, to provide prevention and treatment of conditions which may benefit from by Behavioral or Mental Health Services;
5. Cooperate with public and private educational institutions and authorities of the Choctaw Nation and of the federal, state, and local governments, to provide prevention and treatment of conditions which may benefit from Behavioral or Mental Health Services;
6. Prepare, publish, evaluate, and disseminate educational and vocational information concerning the prevention and treatment of conditions which may benefit from Behavioral or Mental Health Services;
7. Organize and promote training programs for persons engaged in the prevention and treatment of conditions which may be benefit from Behavioral or Mental Health Services;
8. Sponsor and encourage research into the nature, causes, prevention, and treatment of conditions which may benefit from Behavioral or Mental Health Services;
9. Specify methods for keeping statistical information by tribal and other agencies, organizations, and individuals, and collect and make available relevant statistical information, including, but not limited to, number of persons treated or assisted, frequency

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of admission and readmission, frequency and duration of treatment, and other relevant information as required by the Department Director;

10. Advise the Chief and Tribal Council as requested in the preparation and implementation of plans for prevention and treatment of conditions which may benefit from Behavioral or Mental Health Services;
11. Assist in the development and submission of applications for grants or other assistance for the prevention and treatment of conditions which may benefit from Behavioral or Mental Health Services to public and private tribal, federal, state, and local entities;
12. Assist in the development of, and cooperate with, public and private programs for the prevention and treatment of conditions which may benefit from Behavioral or Mental Health Services;
13. Utilize the support and assistance of interested public and private entities and persons in providing programs for the prevention and treatment of conditions which may benefit from Behavioral or Mental Health Services;
14. Cooperate with public and private general and specialty hospitals, clinics, and other health care facilities in the prevention and treatment of conditions which may benefit from benefit from Behavioral or Mental Health Services;
15. Utilize all applicable health, disability, long-term care, and other insurance benefits, and programs in providing prevention and treatment of conditions which may be ameliorated by Behavioral or Mental Health Services; and
16. Upon request, submit an annual report to the Chief and Tribal Council concerning the activities of the Department.

### **Section 205. Comprehensive Program for Prevention and Treatment; Facilities**

- A. The Department may establish a comprehensive and coordinated program for the prevention and treatment of conditions which may benefit from Behavioral or Mental Health Services.
- B. The program authorized by this Section may include, but need not be limited to, the following:
  1. Emergency treatment provided by first responders;
  2. Emergency treatment provided by a general hospital or other health care facility;
  3. Inpatient treatment;
  4. Intermediate treatment;
  5. Outpatient treatment; and

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6. Follow-up treatment.
- C. The Department may provide treatment for conditions which may benefit from Behavioral and Mental Health Services. Such treatment may be provided to members of the Choctaw Nation who are inmates of jails or Correctional Institutions.
- D. The Choctaw Nation Health Services Authority may maintain, operate, supervise, and control all Facilities owned by the Choctaw Nation for the prevention and treatment of conditions which may benefit from Behavioral and Mental Health Services.
- E. The Choctaw Nation Health Services Authority may contract with public or private entities or persons for the use of Facilities for the prevention and treatment of conditions which may benefit from Behavioral and Mental Health Services.
- F. All appropriate public and private resources shall be coordinated with and utilized in the programs of the Department if possible.
- G. The Department may contract for the use of any public or private Facility if the Department Director determines such use to be the most effective and economical Facility for providing Behavioral and Mental Health Services to eligible persons.

### **Section 206. Standards for Treatment Facilities**

- A. The Choctaw Nation Health Services Authority may establish standards for approval of treatment Facilities that must be met for a treatment Facility to receive payments from the Choctaw Nation.
- B. The Choctaw Nation Health Services Authority may inspect treatment Facilities of the Choctaw Nation to determine if they meet the standards established by the Choctaw Nation Health Services Authority. Agreements with other treatment Facilities shall permit the Choctaw Nation Health Services Authority to inspect said Facilities to determine if they meet the standards established by the Choctaw Nation Health Services Authority or required by an agreement.
- C. The Choctaw Nation Health Services Authority may maintain and make available a list of approved treatment Facilities.
- D. Treatment Facilities shall provide information to the Choctaw Nation Health Services Authority upon request including, but not limited to, data, statistics, schedules, and information concerning Behavioral and Mental Health Services provided or planned.
- E. The Choctaw Nation Health Services Authority may revoke, suspend, or condition the granting or renewal of the approval of any treatment Facility which does not meet the Department's established standards.

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### **Section 207. Fees for Services; Audits**

- A. The Choctaw Nation Health Services Authority may establish a schedule of the fees for services eligible for payment by the Choctaw Nation.
- B. The Choctaw Nation Health Services Authority may audit records of services provided and fees charged for services.

### **Section 208. Behavioral or Mental Health Services Providers**

- A. In order to provide a Behavioral or Mental Health Service pursuant to this Code or pursuant to a contract with the Choctaw Nation Health Services Authority, the Licensed Mental Health Professional must:
  - 1. Be properly licensed and accredited by a state prior to providing the service;
  - 2. Comply with all laws, rules, and requirements of the Department and of the Choctaw Nation Health Services Authority relating to the service prior to providing and during the service; and
  - 3. Comply with all laws, rules, and requirements of the Department and of the Choctaw Nation Health Services Authority in providing the service.
- B. A Licensed Mental Health Professional employed by the Department or the Choctaw Nation Health Services Authority must meet the professional and employment requirements of the Department and of the Choctaw Nation Health Services Authority.

## **Chapter 3: Patient Services, Records, Fees, and Charges**

### **Section 301. Reserved**

### **Section 302. Eligibility for Services**

Services governed by this Code shall be provided in the following order of priority:

- 1. To members of the Choctaw Nation;
- 2. To members of any other federally recognized Indian tribe; and
- 3. To any other person who is eligible for services governed by this Code pursuant to the law of the Choctaw Nation or federal law.

### **Section 303. Provision of Services**

- A. Except as otherwise provided in this Code, to the extent practicable, services governed by this Code shall be provided by the Department or the Choctaw Nation Health Services Authority.

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- B. Whenever practicable within the Director's discretion, services governed by this Code shall be provided at a Facility owned or operated by the Choctaw Nation or pursuant to a contract with the Choctaw Nation Health Services Authority.
- C. Any person who (i) is eligible for Behavioral or Mental Health services which warrants inpatient treatment or care, (ii) is not in confinement in a Correctional Institution, and (iii) has no criminal charge pending against him or her, may be admitted to and confined in an approved Facility by compliance with procedures for the following:
  - 1. Emergency admission; or
  - 2. Involuntary commitment by court order.
- D. Any person who has a mental illness or is alcohol- or drug-dependent to a degree which warrants inpatient treatment or care and who has criminal charges pending against him or her but is not confined in any jail or correctional facility may be admitted to a facility within the Department or a licensed private institution pursuant to the provisions of subsection A of this section; provided, the facility or hospital shall be authorized to take such reasonable steps as necessary to assure the protection of the public, the residents of the facility or hospital and the person including, but not limited to, segregation and private facilities. Provided further, treatment received pursuant to this subsection shall not constitute a defense in any criminal proceeding except as otherwise provided by the Choctaw Nation Criminal Procedure Code.
- E. C. 1. Any person confined pursuant to a criminal charge shall only be admitted to and confined pursuant to a court order issued in compliance with the provisions of Section 1175.6 of the Choctaw Nation Criminal Procedure Code.
  - 2. No person shall be deprived of his or her liberty on the grounds that such person is, or is supposed to have, a mental illness or is in need of mental health treatment, except in accordance with the provisions of this code.

### **Section 304. Emergency Services**

Emergency Behavioral or Mental Health Services may be provided to any person who presents at a Facility with an apparent need including, but not limited to, a present risk of harm to himself, herself, or another person in accordance with this Code.

### **Section 305. Conspiracy to Have Person Admitted Unlawfully or Maliciously a Misdemeanor - Punishment**

Any person who shall knowingly contrive or conspire to have ordered or admitted any person to an institution for the mentally ill or a facility for the treatment of alcohol-dependent or drug-dependent persons, unlawfully or maliciously shall be guilty of a misdemeanor, and upon conviction, shall be confined for not more than one (1) year, fined not to exceed One Thousand Dollars (\$1,000.00) or both such fine and imprisonment.

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### **Section 306. False Certification as to Mental Illness a Misdemeanor – Punishment**

Any person who intentionally falsely attests to the mental illness, alcohol dependency, or drug dependency of any person, or whose false attestations as to mental illness, alcohol dependency, or drug dependency of any person is proved to be the result of negligence or deficient professional skill, or who signs such an evaluation or petition for pecuniary reward, or promise thereof, or other consideration of value or operating to his or her advantage, other than the professional fee usually paid for such service, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined for not more than one (1) year, fined not to exceed One Thousand Dollars (\$1,000.00) or both such fine and imprisonment.

### **Section 307. Confidentiality of Patient Records**

- A. All records maintained in connection with the performance of services and treatments included in this Code are confidential, may also be privileged, and may be disclosed only to facilitate treatment or for the purposes and under the circumstances authorized in this Code or otherwise when consistent with the laws of the Choctaw Nation governing access to, and release of, such records.
- B. Any employee of the Choctaw Nation who discloses confidential or privileged information without authorization shall be subject disciplinary action, including termination of employment, as well as other legal action.
- C. The contract of any vendor of the Choctaw Nation who discloses confidential or privileged information without authorization may be terminated by the Choctaw Nation.

## **Chapter 4: Rights of Persons Receiving Services**

### **Section 401. Reserved**

### **Section 402. Rights of Detained Persons Upon Entering Facility**

All Facilities, owned or operated by the Choctaw Nation or providing services under this Code by contract, wherein persons are detained for any purpose pursuant to this Code shall allow such detained person the right to contact a relative, close friend, or attorney immediately upon entry into such place of detention.

### **Section 403. Conveyance of Patients**

- A. The Public Safety Department shall establish procedures for the transportation of Persons Requiring Treatment and other mentally ill, alcohol dependent, or drug dependent persons to a Facility.
- B. When required to transport an individual that is a member of the opposite sex, the Public Safety Officer will ensure another individual accompanies the officer. Appropriate procedures should be adopted to preserve the safety and security of persons in custody and Public Safety Officers.



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### **Section 404. Treatment and Medication During Detention, Liability, Seclusion or Restraint**

- A. Appropriate treatment and medication, including psychotropic medication, may be administered to a consenting person during detention periods authorized by this Code.
- B. Treatment and medication, including psychotropic medication, may be administered to a nonconsenting person upon the written order of a physician who:
  - 1. Has personally examined the person needing medication or treatment;
  - 2. Finds the medication or treatment is necessary to protect the person, property, or others from serious harm; and
  - 3. Notes in the person's medical record, with an explanation of the basis for the decision to administer treatment and medication without consent.
- C. Seclusion or restraint may be administered to a nonconsenting individual upon the written order of a physician who:
  - 1. Has personally examined the person; and
  - 2. Finds that seclusion or restraint is necessary to protect the person, property, or other persons. The physician shall note in the person's medical record the basis for the decision to administer seclusion or restraint. This shall not prohibit emergency seclusion or restraint, including mechanical restraint, pending examination by a physician.
- D. Any physician who orders medications in good faith and any health care professional employed or acting on behalf of the Choctaw Nation Health Services Authority who administers medication in good faith pursuant to a written order of a physician, under the provision of this section, shall be immune from civil actions for damages caused by the administration of such medication.
- E. If the person is under the influence of psychotropic medication during any court hearing under this Code, the person's attorney, court, and jury, if any, shall be advised by the Tribal Prosecutor at the beginning of the hearing that the person is under the influence of psychotropic medication, the purpose of the medication, and the effect which such medication may have on the actions, demeanor and participation of the person at the hearing.

### **Section 405. Emergency Detention and Protective Custody**

- A. Any person who appears to be or states that such person is mentally ill, alcohol-dependent, or drug-dependent to a degree that emergency action is necessary to protect the person, property, or others may be taken into Protective Custody and detained as provided pursuant to the provisions of this Code. Nothing in this Chapter shall be construed as being in lieu of prosecution under applicable statutes or ordinances, including those related to public intoxication offenses.

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- B. 1. Any Public Safety Officer who reasonably believes that a person is a Person Requiring Treatment shall take the person into Protective Custody. The officer shall make every reasonable effort to take the person into custody in the least conspicuous manner.  
  
2. Upon taking a person into Protective Custody, a Public Safety Officer may relinquish custody of the person to another Public Safety Officer to fulfill the officer's duties required by this Code.
- C. A Public Safety Officer shall prepare a written statement indicating the basis for the officer's belief that the person is a Person Requiring Treatment and the circumstances under which the officer took the person into Protective Custody. The officer shall give a copy of the statement to the person or the person's attorney upon the request. If the officer does not make the determination to take an individual into Protective Custody on the basis of the officer's personal observations, the officer shall not be required to prepare a written statement; however, the person stating he or she is mentally ill, alcohol-dependent, or drug dependent or the person upon whose statement the officer relies upon shall sign a written statement indicating the basis for such person's belief that the person is a Person Requiring Treatment. Any false statement given to an officer by a person upon whose statement the officer relies shall be guilty of a misdemeanor and subject to punishment as provided by the Choctaw Nation Criminal Code.
- D. If the person is medically stable, the Public Safety Officer shall immediately transport the person to the nearest Facility designated by the Choctaw Nation Health Services Authority for an Initial Assessment. If, subsequent to an Initial Assessment, it is determined that Emergency Detention is warranted, a Public Safety Officer shall transport the person to the nearest appropriate Facility having bed space available. If it is determined by the Facility Director or a designee that the person is not medically stable, a Public Safety Officer shall transport the person to the nearest hospital or other appropriate treatment facility.
- E. If the person is medically unstable, the person may be transported to an appropriate medical Facility for medical treatment. A treating physician may authorize detention of the person until the person becomes medically stable. When the person becomes medically stable, if it is the opinion of the treating or discharging physician, that the patient is a Person Requiring Treatment, the physician shall authorize detention of the patient for transportation as provided in subsection D of this Section by a Public Safety Officer.
- F. If the nearest Facility designated by Choctaw Nation Health Services Authority as an appropriate Facility for an initial assessment or detention is in another state, the person may be transported by a Public Safety Officer to that Facility.

### **Section 406. Examination of Person in Protective Custody**

- A. A person in protective custody as provided in this Code shall be subject to an Initial Assessment at an appropriate Facility by a Licensed Mental Health Professional within twelve (12) hours of being placed in Protective Custody for the purpose of determining whether Emergency Detention of the person is warranted. The Initial Assessment of the person shall include an

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appropriate screening and assessment process as determined by the Choctaw Nation Health Services Authority designed to identify if the person is a Person Requiring Treatment.

- B. If, upon examination, the licensed mental health professional determines that the consumer is not a person requiring treatment or that the condition of the person is such that emergency detention is not warranted, the person shall either be returned by a Public Safety Officer immediately to the point where the consumer was taken into protective custody and released or taken to the home or residence of such person or to an alternative facility. If the home or residence of the person is a nursing home or group home, such home shall not refuse the return of the person to his or her residence.
- C. If, upon examination, the Licensed Mental Health Professional determines that the person is a Person Requiring Treatment to a degree that Emergency Detention is warranted, the Licensed Mental Health Professional shall immediately prepare a statement describing the findings of the examination and stating the basis for the determination, and the person shall be detained in Emergency Detention for a period not to exceed one hundred twenty (120) hours or five (5) days, excluding weekends and holidays, except upon a court order authorizing detention pending a hearing on a Petition requesting involuntary commitment or treatment.
- D. During Emergency Detention, a Mental Health Evaluation of the person shall be conducted by two Licensed Mental Health Professionals. If the evaluation finds that the person is a Person Requiring Treatment to a degree that emergency action is necessary, such person may be subject to Emergency Detention for a period not to exceed one hundred twenty (120) hours or five (5) days.
- E. If a licensed mental health professional, designated to have the responsibility by the executive director or person in charge of a hospital, or the executive director or person in charge of a facility designated by the Choctaw Nation Health Services Authority as appropriate for emergency detention believes a voluntary consumer to be a person requiring treatment to a degree that emergency action is necessary, the hospital or facility may detain such consumer in emergency detention for a period not to exceed one hundred twenty (120) hours or five (5) days, excluding weekends and holidays, only on the following conditions:
  - 1. The person has refused to consent or has withdrawn consent to voluntary treatment;
  - 2. The person has been examined by a licensed mental health professional who has determined that the person is a person requiring treatment, the condition of the person is such that emergency detention is warranted, and a statement has been prepared as provided in subsection A of this section; and
  - 3. The executive director or person in charge or the designee shall provide for a mental health evaluation of the person by two licensed mental health professionals.

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- F. Whenever it appears that a consumer detained pursuant to the provisions of this section is no longer a person requiring treatment and will not require treatment beyond the period of detention, the consumer shall be discharged and returned by an officer to the point where he or she was taken into protective custody, or if the consumer had not been in protective custody, the consumer shall be taken to the home or residence of the consumer or to an alternative facility. If the home or residence of the consumer is a nursing home or group home, it shall not refuse the return of the consumer to his or her residence.
- G. Whenever it appears that a person detained as provided by this section will require treatment beyond the period of Emergency Detention and the person has refused to consent to voluntary treatment, a Licensed Mental Health Professional conducting an evaluation of the person being detained or the Director of the Department or the Executive Director of the Choctaw Nation Health Services Authority, or their designee, shall immediately file a Petition or request the Tribal Prosecutor to file a Petition with the District Court as provided in this Code, and may request a court order directing Prehearing Detention when such detention is necessary for the protection of the person or others. If the Tribal Prosecutor refuses to file a Petition, the Tribal Prosecutor must immediately notify the requesting Facility, in writing, of the refusal to file.

### **Section 407. Additional Period of Detention – Notification of Interested Parties of Detention**

- A. A person may be detained more than one hundred (120) hours or five (5) days, excluding weekends and holidays, only if the Facility in which the person being detained is presented with a copy of an order of the District Court authorizing further detention. Such order may be entered by the District Court only after a Petition has been filed seeking involuntary commitment or treatment pursuant to the provisions of this Code.
- B. If a copy of the order for further detention is not delivered to the Facility by the end of the period of Emergency Detention, the person alleged to be a Person Requiring Treatment or mentally ill, alcohol dependent, or drug-dependent shall be discharged from the Facility in which detained unless said person has applied for voluntary treatment.
- C. The person being held in Protective Custody or Emergency Detention shall be asked to designate any person whom such person wishes informed regarding the detention. If the person being held in Protective Custody is incapable of making such designation, within twenty-four (24) hours of taking the person into Protective Custody, a Public Safety Officer shall notify (other than the person initiating the request for Protective Custody) the attorney, parent, spouse, guardian, brother, sister or child who is at least eighteen (18) years of age of the person. Failure of the Public Safety Officer to find such person shall within a reasonable time be reported to the Choctaw Nation Health Services Authority. Such fact shall be made a part of the records of the person being detained.

## **Chapter 5. Reserved**

## **Chapter 6. Involuntary Commitment**

### **Section 601. Definitions**

As used in this Chapter, unless the context otherwise requires:

1. “Least Restrictive Alternative” means the treatment and conditions of treatment which, separately and in combination, are not more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit to the person, or to protect the person or others from physical injuries;
2. “Petitioner” means a person filing a Petition under this Chapter; and
3. “Respondent” means a person who is believed to be a Person Requiring Treatment and who is named in a Petition for Involuntary Commitment under this Chapter.

### **Section 602. Petition to the District Court**

- A. The following persons may file or request the Tribal Prosecutor to file a petition with the District Court, upon which is hereby conferred jurisdiction, to determine whether an individual is a person requiring treatment, and to order the least restrictive appropriate treatment for the person:
  1. A Tribal Prosecutor;
  2. The father, mother, husband, wife, grandparent, brother, sister, guardian or child, over the age of eighteen (18) years, of an individual alleged to be a person requiring treatment;
  3. A Licensed Mental Health Professional;
  4. A person in charge of any correctional institution operated by or under contract with the Choctaw Nation;
  5. Any Public Safety Officer.
- B. The petition shall contain a statement of the facts upon which the allegation is based and, if known, the names and addresses of any witnesses to the alleged facts.
  1. The petition shall be verified and made under penalty of perjury.
  2. A request for the prehearing detention of the individual alleged to be a person requiring treatment may be attached to the petition.
  3. If the individual alleged to be a person requiring treatment is being held in emergency detention, a copy of the mental health evaluation shall be attached to the petition.
- C. The inpatient mental health treatment of minors shall be pursuant to the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

### **Section 604. Rights of Respondents**

- A. An individual alleged to be a person requiring treatment shall have the following rights:

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1. The right to notice, as provided by this Chapter;
  2. The right to counsel, including court-appointed counsel, and if the person has no counsel, that the court shall appoint an attorney to represent the person at no cost if the person is an indigent person and cannot afford an attorney;
  3. The right to a hearing and the right to a closed hearing, unless the person requests otherwise;
  4. Upon request, right to a jury trial. The jury shall be composed of six persons subject to the Choctaw Nation Juror Code;
  5. The right to be present at the hearing on the petition or jury trial. The person shall be present at the hearing or jury trial unless the District Court finds that the presence of the person alleged to be a person requiring treatment makes it impossible to conduct the hearing or trial in a reasonable manner or that the presence of the person would be injurious to the health or well-being of such person.
    - a. The court shall not decide in advance of the hearing, solely on the basis of the mental health evaluation, that the person alleged to be a person requiring treatment should not be allowed nor required to appear.
    - b. Prior to issuing an order excluding the person from the hearing or jury trial, the court shall find, based upon clear and convincing evidence, that alternatives to exclusion of the person were attempted;
  6. The right to present and to cross-examine witnesses. The petitioner and witnesses identified in the petition shall offer testimony under oath at the hearing on the petition. When the hearing is conducted as a jury trial, the petitioner and any witness in behalf of the petitioner shall be subject to cross-examination by the attorney for the person alleged to be a person requiring treatment. The person alleged to be a person requiring treatment may also be called as a witness and cross-examined.
- B. An individual alleged to be or found by a court to be a person requiring treatment shall be afforded such other rights as are guaranteed by state and federal law.
- C. No statement, admission or confession made by the person alleged to be a person requiring treatment shall be used for any purpose except for proceedings under this act. No such statement, admission or confession may be used against such person in any criminal action whether pending at the time the hearing is held or filed against such person at any later time directly or in any manner or form.
- D. An attorney appointed by the court to represent a person alleged to be a person requiring treatment shall be a licensed and actively practicing attorney who shall represent the person until final disposition of the case. The court may appoint a public defender where available.
1. The attorney appointed by the court shall meet and consult with the person within one (1) day of notification of the appointment. The attorney shall immediately, upon meeting with the person alleged to be a person requiring treatment, present to such person a statement of the rights,

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including all rights afforded to persons alleged to be a person requiring treatment by the Oklahoma and the United States Constitutions.

2. The court-appointed attorney shall be replaced by another attorney if:

- a. the person alleged to be a person requiring treatment prefers the services of an attorney other than the one initially appointed for the person,
- b. the preferred attorney agrees to accept the responsibility, and
- c. the person alleged to be a person requiring treatment or the preferred attorney notifies the court of the preference and the attorney's acceptance of employment.

The preferred attorney shall meet and consult with the person within one (1) day of employment or appointment. Any request for additional days shall be subject to the discretion of the court, considering the facts and circumstances of each particular case, including cost.

3. The attorney fees for all services shall be paid by the person alleged to be a person requiring treatment. However, if the person alleged to be a person requiring treatment, or a person empowered pursuant to law to act on behalf of such person, submits an affidavit that such person is indigent and unable to pay attorney fees, the attorney fees shall be paid from the court fund, after a determination by the court that such person is indigent. The amount of such fee shall be set by the court.

4. The attorney representing the person alleged to be a person requiring treatment shall notify the court of any current and unrevoked advance directive that has been executed by such person pursuant to the Advance Directives for Mental Health Treatment Act and provide a written copy of the advance directive, if available, to the court and a representative of the Tribal Prosecutor's office.

### **Section 606. Notice of Hearing or Trial**

- A. Notice of the date, time and place of the hearing on a petition alleging a person to be a person requiring treatment shall be delivered to such person at least one (1) day prior to the hearing. Notice shall be personally delivered to the person together with a copy of the petition and copies of the mental health evaluation and any order of the court directing prehearing detention.
- B. The notice shall contain the following information:
  1. The definitions provided by Section 106 of this code of a "mental illness" and a "person requiring treatment";
  2. If applicable, that the court has ordered the mental health evaluation of the person by two licensed Mental Health Professionals, at least one of whom has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions, for the purpose of conducting an evaluation of the person alleged to be a person requiring treatment stating their findings, and the time and place of the evaluation;
  3. That, upon request, the hearing on the petition may be conducted as a jury trial and the jury shall be composed of six persons having the qualifications required of jurors in courts of record;

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4. That the petitioner and witnesses identified in the petition may offer testimony under oath at the hearing on the petition;
  5. If applicable, that the court has appointed an attorney for the person alleged to be a person requiring treatment who shall represent the person until final disposition of the case and that if the person is indigent, the court shall pay the attorney fees;
  6. That, if the person is found at the hearing or at a jury trial to be a person requiring treatment under as described in this Code, the court will take evidence and make findings of fact concerning the person's competency to consent or to refuse the treatment that is ordered, including, but not limited to, the right of the person to refuse psychotropic medications; and
  7. That the person alleged to be a person requiring treatment shall be afforded such other rights as are guaranteed by state and federal law.
- C. The person delivering the copy of the notice and petition to the person alleged to be a person requiring treatment shall, at the time of delivery, explain the content, purpose and effect of the notice and the legal right to judicial review by habeas corpus.
- D. 1. A copy of the notice, the petition, and the attachments to the petition shall also be delivered at least one (1) day prior to the hearing to:
- a. the individual initiating the request for protective custody, emergency detention, involuntary commitment or prehearing detention,
  - b. the attorney or court-appointed counsel of the person, to the Tribal Prosecutor, and to the public defender, if any,
  - c. the facility, if any, in which the person is detained in emergency detention, and
  - d. if possible, a parent, spouse, guardian, brother, sister or child who is at least eighteen (18) years of age of the person alleged to be a person requiring treatment and who is not the individual initiating the petition or a request for protective custody, emergency detention, involuntary commitment or prehearing detention. The documents shall not identify the alleged person requiring treatment directly or indirectly as a person with a substance abuse disorder. Notice shall also be delivered to any other person as may be ordered by the court.
2. The notice required by this subsection may be served personally or by certified mail. When notice is served personally, the person making such service shall make affidavit of the same and file such notice, with proof of service, with the district court. This notice may be served in any part of the state when so ordered by the court.
- E. Notice of orders of a court directing a mental health evaluation or prehearing detention of a person alleged to be a person requiring treatment shall be delivered in substantially the same manner as provided by subsection A of this section. Notice of a court order directing a mental health evaluation of the person shall be delivered at least one (1) day before the evaluation, and as many additional days as are requested by the person alleged to be a person requiring treatment or the attorney of such person as are reasonable without prejudice to the person. Any request for additional days shall be subject to the discretion of the court, considering the facts and circumstances of each particular case.



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### **Section 607. Request for Prehearing Detention Order**

- A. When a request for an order of prehearing detention is attached to a Petition alleging a person to have a mental illness and to be a person requiring treatment, the District Court shall determine whether there is probable cause to detain the person who is the subject of the petition prior to a hearing on the Petition.
    - 1. If the court issues an order for detention, it shall immediately set a date, time, and place for a hearing on the petition, and shall issue notice to each individual required to receive notice pursuant to Section 606 of this Code.
    - 2. The period of prehearing detention shall not exceed seventy-two (72) hours, excluding the weekends and holidays, except upon a court order authorizing detention beyond a seventy-two-hour period or pending the hearing on a petition requesting involuntary commitment or treatment. Prehearing detention may be extended to coincide with any order of continuance entered by the court.
  - B. If the court finds that probable cause to detain the person alleged to have a mental illness and to be a person requiring treatment does not exist, the court shall dismiss the request and, if the person is being held in protective custody or emergency detention, order the person released and returned to the point where such person was taken into protective custody.
  - C. If the court finds that probable cause to detain the person alleged to have a mental illness and to be a person requiring treatment does exist:
    - 1. An order may be entered authorizing any Public Safety Officer to take that person into custody and to detain such person in a suitable facility prior to the hearing on the petition; or
    - 2. If the person is being held in emergency detention, the court may issue an order authorizing the facility to detain the person prior to a hearing on the petition.
- A certified copy of an order of prehearing detention shall constitute authority for a facility to detain or to continue to detain the person who is the subject of the order.

### **Section 609. Order for Mental Health Evaluation**

- A. If a Mental Health Evaluation is not attached to a Petition alleging a person to be a Person Requiring Treatment at the time the Petition is filed, the District Court shall order the person who is the subject of the Petition to undergo a Mental Health Evaluation pursuant to this Code.
  - 1. The mental health evaluation shall be conducted on an outpatient basis unless the court has issued an order for prehearing detention.
  - 2. A copy of all petitions, orders, affidavits, powers of attorney, advance health care directives, treatment advocate designations, mental health advance directives, guardianships, police reports and other relevant documents shall accompany the person to the place where the mental health evaluation is to be conducted.
  - 3. Upon completion of the mental health evaluation, the facility shall transmit a copy of the evaluation prepared by the licensed mental health professionals to the court and to the attorney of record for the person evaluated.
- B. The report of the licensed mental health professionals conducting the mental health evaluation pursuant to this section shall include written findings as to whether:

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1. The person being evaluated appears to be a person requiring treatment as defined in this title, and is reasonably likely to benefit from mental health or substance abuse treatment; and
2. Based on the following, inpatient treatment is the least restrictive alternative that meets the needs of the person:
  - a. reasonable efforts have been made to provide for the mental health or substance abuse treatment needs of the person through the provision of less restrictive alternatives and the alternatives have failed to meet the treatment needs of the person, or
  - b. after a thorough consideration of less restrictive alternatives to inpatient treatment, the condition of the person is such that less restrictive alternatives are unlikely to meet the treatment needs of the person.

### **Section 610. Hearing – Records**

- A. Upon receiving a petition alleging a person to be a person requiring treatment, the court shall set a day and time for the hearing.
  1. If the person alleged to be a person requiring treatment does not have an attorney, the court shall immediately appoint an attorney for the person.
  2. If a copy of a mental health evaluation is not attached to the petition at the time it is filed, the court shall immediately order a mental health evaluation of the person as provided by Section 609 of this Code.
- B. If the court deems it necessary, or if the person alleged to be a person requiring treatment demands, the court shall schedule the hearing on the petition as a jury trial to be held within one hundred twenty (120) hours or five (5) days of the demand, excluding weekends and holidays, or within as much additional time as is requested by the attorney of such person upon good cause shown.
- C. The court, at the hearing on the petition, shall determine by clear and convincing evidence whether the person is a person requiring treatment.
  1. The court shall take evidence and make findings of fact concerning the person's competency to consent to or refuse the treatment that may be ordered, including, but not limited to, the consumer's right to refuse medication.
  2. If a jury trial is not demanded, the court may receive as evidence and act upon the affidavits of the licensed mental health professionals who evaluated the person and the mental health evaluation.
  3. When the hearing is conducted as a jury trial, the petitioner and any witness in behalf of the petitioner shall be subject to cross-examination by the attorney for the person alleged to be a person requiring treatment. The person alleged to be a person requiring treatment may also be called as a witness and cross-examined.
- D. After the hearing, when the court determines that the person is not a person requiring treatment, the court shall dismiss the petition and, if the person is being detained, order the person to be discharged from detention.

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- E. After the hearing, when the court determines the person to be a person requiring treatment, the court shall order the person to receive the least restrictive treatment consistent with the treatment needs of the person and the safety of the person and others.
1. The court shall not order hospitalization without a thorough consideration of available treatment alternatives to hospitalization and may direct the submission of evidence as to the least restrictive treatment alternative or may order a mental health examination.
  2. If the court finds that a program other than hospitalization is appropriate to meet the treatment needs of the individual and is sufficient to prevent injury to the individual or to others, the court may order the individual to receive whatever treatment other than hospitalization that is appropriate for a period set by the court, during which time the court shall continue its jurisdiction over the individual as a person requiring treatment.
  3. If the court orders the person to be committed for involuntary inpatient treatment, the court shall commit the person to the custody of the Choctaw Nation Health Services Authority, or the Department for a placement that is suitable to the person's needs or to a private facility willing to accept the person for treatment.
  4. The person shall be delivered to the custody of the Choctaw Nation Health Services Authority, or the Department for a placement that is suitable to the person's needs or to a private facility willing to accept the person for treatment.
  5. If the person is placed in the custody of the Department, the Department may designate two or more facilities to provide treatment and if the person to be treated or a parent, spouse, guardian, brother, sister or child, who is at least eighteen (18) years of age, of the person, expresses a preference for one such facility, the Department shall attempt, if administratively possible, to comply with the preference.
  6. The person shall be discharged from inpatient treatment at such time as the person no longer requires treatment as determined by the executive director of the facility or the designee of the executive director, or as otherwise required by law.
- F. The court shall make and keep records of all cases brought before it.
1. Except as provided in Section 3 of this act, no records of proceedings pursuant to this section shall be open to public inspection except by order of the court or to employees of the Choctaw Nation Health Services Authority, or the Department, the person's attorney of record, a person having a valid power of attorney with health care decision-making authority, a person having valid guardianship with health care decision-making authority, a person having an advance health care directive, a person having an attorney-in-fact as designated in a valid mental health advance directive or persons having a legitimate treatment interest, unless specifically indicated otherwise by the instrument or court order. The documents shall not identify the alleged person requiring treatment directly or indirectly as a person with a substance abuse disorder.

### **Section 611. Precommitment Examination - Matters Included**

A precommitment examination ordered by the court shall include, but is not limited to:

1. A physical evaluation;
2. A mental evaluation;

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3. A social history;
4. A study of the individual's family and community situation;
5. A list of available forms of care and treatment which may serve as an alternative to admission to a hospital;
6. Powers of attorney or advance health care directives, if any; and
7. A recommendation as to the least restrictive placement suitable to the person's needs, as identified by this section, should the individual be ordered to undergo treatment by the court.

Programs other than hospitalization to be considered shall include, but not be limited to, outpatient clinics, assisted outpatient treatment where available, extended care facilities, nursing homes, sheltered care arrangements, home care and homemaker services, and other treatment programs or suitable arrangements.

### **Section 612. Precommitment Screening Examination - Copy of Order to be Provided Examinee - Explanation of Examination**

In addition to the notice requirements contained in this Code, each person ordered to undergo a precommitment screening examination shall receive:

1. A copy of the order requiring the person to undergo the examination; and
2. A written statement explaining what the examination will cover.

If the individual is unable to read or understand the written materials, every effort will be made to explain them in a language such person understands, and a copy of the examination findings shall be provided to the court, to the person's attorney of record, if known, upon completion.

### **Section 613. Modification Order - Notice - Contents of Notice**

A. The court may modify an order for involuntary inpatient commitment pursuant to the provisions of this section upon request of the person committed or the administrator of a facility to which a person has been involuntarily committed for inpatient treatment. The court shall give notice to the person affected thereby and to each individual required to receive notice pursuant to Section 606 of this Code, to appear within five (5) regular court days, or as many other days as the court may grant, and show cause why the modification shall not be made. The notice shall contain the following information:

1. The person committed for inpatient care and treatment is eligible for discharge, that an evaluation conducted prior to discharge determined that an order for a modification of treatment is necessary in order to prevent impairment or injury to the person;
2. A statement of the facts upon which the alleged change of condition is based and a copy of any written findings entered by the court;
3. Notice of the time and place of the show cause hearing;
4. Notice of the types of modifications that the court can make pursuant to this hearing;
5. The witnesses who shall testify or offer evidence for the modification which are known to the court;

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6. That the individual has the right to an attorney, and that if the individual cannot afford an attorney, one will be provided; and
7. That the individual has the right to cross-examine witnesses, and to call witnesses in such person's own defense.

### **Section 614. Review of Status of Persons Involuntarily Detained**

- A. The Choctaw Nation Health Services Authority shall adopt rules and procedures to ensure that persons involuntarily committed for treatment by a court receive review of their involuntary status at least once every three (3) months, and the Department of Behavioral Health shall take appropriate action based upon this review.
- B. Any person receiving involuntary inpatient treatment, or such person's attorney, may at any time file a written request that the treatment order be reviewed by the committing court, or a court in the county where the person is located. If a review is requested, the court shall hear the matter within thirty (30) days after the request, and the court shall give notice to the person and such person's attorney and the person in charge of the facility of the time and place of the hearing. The hearing shall be to determine if the person can be treated on a less restrictive basis. At the conclusion of the hearing, the court may confirm the order of treatment, modify the order of treatment, discharge the respondent, or enter any appropriate order.

### **Section 615. Transportation Costs**

A Public Safety Officer shall transport persons to Facilities, hearings, and other proceedings as ordered by the court and shall be responsible for these transportation costs.

## **CHAPTER 7: Inpatient Mental Health and Substance Abuse Treatment of Minors Act**

### **Section 701 – Short Title - Public Policy - Legislative Intent**

- A. Sections 701 through 713 of this title shall be known and may be cited as the "Inpatient Mental Health and Substance Abuse Treatment of Minors Act".
- B. The Tribal Council hereby declares that the public policy of the Choctaw Nation is to:
  1. Assure adequate treatment of minors needing mental health treatment or treatment for drug or alcohol abuse;
  2. Establish behavioral standards for determination of dangerousness of persons in need of such treatment;
  3. Require the use of the least restrictive alternative in the determination of the method of treatment;

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4. Provide orderly and reliable procedures for admission or commitment of minors alleged to be in need of inpatient mental health treatment or treatment for drug or alcohol abuse consistent with due process of law; and
  5. Protect the rights of consumers hospitalized pursuant to law.
- C. It is the intent of the Tribal Council that:
1. Mental health and substance abuse treatment services shall be provided in the manner most likely to preserve, support and strengthen the family of the minor and to assist the minor and the family of the minor;
  2. Minors needing mental health services or substance abuse treatment shall, to the maximum extent possible, receive those services on an outpatient basis; and
  3. Inpatient evaluation and treatment services shall be utilized only as necessary to preserve the health or safety of the minor or for the protection of others in the case of a minor who, as a result of a demonstrable mental illness or drug or alcohol dependence, can be expected to intentionally or unintentionally seriously and physically injure another person.
- D. A minor may be admitted for inpatient mental health or substance abuse treatment only pursuant to the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

### **Section 702 – Definitions**

- B. As used in the Inpatient Mental Health and Substance Abuse Treatment of Minors Act:
1. "Minor" means any person under eighteen (18) years of age;
  2. "Minor in need of treatment" means a minor who because of his or her mental illness or drug or alcohol dependency:
    - (1) poses a substantial risk of physical harm to self in the near future as manifested by evidence of serious threats of or attempts at suicide or other significant self-inflicted bodily harm,
    - (2) poses a substantial risk of physical harm to another person or persons in the near future as manifested by evidence of violent behavior directed toward another person or persons,
    - (3) has placed another person or persons in a reasonable fear of violent behavior or serious physical harm directed toward such person or persons as manifested by serious and immediate threats,
    - (4) is in a condition of severe deterioration such that, without intervention, there exists a substantial risk that severe impairment or injury to the minor will result in the near future, or

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- (5) poses a substantial risk of serious physical injury to self or death in the near future as manifested by evidence that the minor is unable to provide for and is not providing for his or her basic physical needs.
  - b. The mental health or substance abuse history of the minor may be used as part of the evidence to determine whether the minor is a minor in need of treatment as defined in this section. The mental health or substance abuse history of the minor shall not be the sole basis for this determination.
  - c. The term "minor in need of treatment" shall not mean a minor afflicted with epilepsy, a developmental disability, organic brain syndrome, physical handicaps, brief periods of intoxication caused by such substances as alcohol or drugs or who is truant or sexually active unless the minor also meets the criteria for a minor in need of treatment pursuant to subparagraph a or b of this paragraph;
3. "Consent" means the voluntary, express, and informed agreement to treatment in a mental health facility by a minor sixteen (16) years of age or older or by a parent of the minor;
4. "Hospitals and Related Institutions" means:
- a. "Hospital" means any Choctaw Nation Health Service facility, institution, place, building or agency, public or private, whether organized for profit or not, devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care of patients admitted for overnight stay or longer in order to obtain medical care, surgical care, obstetrical care, or nursing care for illness, disease, injury, infirmity, or deformity. The term "hospital" includes general medical surgical hospitals, specialized hospitals, critical access and emergency hospitals, and birthing centers;
  - b. "General medical surgical hospital" means a hospital maintained for the purpose of providing hospital care in a broad category of illness and injury;
  - c. "Specialized hospital" means a hospital maintained for the purpose of providing hospital care in a certain category, or categories, of illness and injury;
  - d. "Critical access hospital" means a hospital determined to be a necessary provider of health care services to residents of a rural community;
  - e. "Emergency hospital" means a hospital that provides emergency treatment and stabilization services on a 24-hour basis that has the ability to admit and treat patients for short periods of time;
  - f. "Birthing center" means any facility, place or institution, which is maintained or established primarily for the purpose of providing services of a certified midwife or licensed medical doctor to assist or attend a woman in delivery and birth, and where a woman is scheduled in advance to give birth following a normal, uncomplicated, low-risk pregnancy. Provided, however, licensure for a birthing center shall not be compulsory; and

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- g. "Day treatment program" means nonresidential, partial hospitalization programs, day treatment programs, and day hospital programs in which children and adolescents are placed for psychiatric or psychological treatment. Day treatment programs shall serve children and adolescents who are experiencing severe psychiatric symptoms, disturbances of conduct, decompensating conditions affecting mental health, or severe developmental delays that seriously impair their capacity to function age-appropriately in their daily lives and that place them at risk of inpatient hospital, residential or other institutional care. Day treatment programs shall provide mental health ambulatory, active treatment programs that shall include therapeutic, coordinated and structured clinical services in a stable, therapeutic milieu, with the goal of preventing the need for or reducing the length of inpatient or institutional care, and reintegrating of the child into the school and the community. A day treatment program shall not mean an alternative school or alternative education program.
- 5. "Individualized treatment plan" means a specific plan for the care and treatment of an individual minor who requires inpatient mental health treatment. The plan shall be developed with maximum involvement of the family of the minor, consistent with the desire of the minor for confidentiality and with the treatment needs of the minor, and shall clearly include the following:
  - a. a statement of the presenting problems of the minor, short- and long-term treatment goals and the estimated date of discharge. The short- and long-term goals shall be based upon a clinical evaluation and shall include specific behavioral and emotional goals against which the success of treatment can be measured,
  - b. treatment methods and procedures to be used to achieve these goals, which methods and procedures are related to each of these goals and which include, but are not limited to, specific prognosis for achieving each of these goals,
  - c. identification of the types of professional personnel who will carry out the treatment procedures including, but not limited to, appropriate licensed mental health professionals, education professionals, and other health or social service professionals, and
  - d. documentation of the involvement of the minor or the parent of the minor or legal custodian in the development of the treatment plan and whether all persons have consented to such plan;
- 6. "Inpatient treatment" means treatment services offered or provided for a continuous period of more than twenty-four (24) hours in residence after admission to a mental health or substance abuse treatment facility for the purpose of observation, evaluation or treatment;
- 7. "Least restrictive alternative" means the treatment and conditions of treatment which, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit to the minor, or to protect the minor or others from physical injury;



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8. "Less restrictive alternative to inpatient treatment" means and includes, but is not limited to, outpatient counseling services, including services provided in the home of the minor and which may be referred to as "home-based services", day treatment or day hospitalization services, respite care, or foster care or group home care, as defined by Section 1-1-105 of the Choctaw Nation Children's Code , through a program established and specifically designed to meet the needs of minors in need of mental health treatment, or a combination thereof;
9. "Licensed mental health professional" means a person who is not related by blood or marriage to the person being examined or does not have any interest in the estate of the person being examined, and who is:
  - a. a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology or American Osteopathic Board of Neurology and Psychiatry,
  - b. a physician licensed to practice medicine by the governing body in their state of residence or place of practice.
  - c. a clinical psychologist who is duly licensed by the governing body in their respective place of practice.
  - d. a professional counselor licensed pursuant to the governing board in their respective place of practice,
  - e. a person licensed as a clinical social worker pursuant to the governing board in their place of practice,
  - f. a marital and family therapist licensed by the governing board in their place of practice,
  - g. a behavioral practitioner licensed by the governing board in their place of practice,
  - h. an advanced practice nurse licensed by the governing board in their place of practice, a physician assistant, who is licensed in good standing in their place of practice, or
  - i. a licensed alcohol and drug counselor/mental health (LADC/MH) licensed by the governing board in their place of practice, For the purposes of this paragraph, "licensed" means that the person holds a current, valid license issued in accordance with the laws of their place of practice;
10. "Mental health evaluation" means an examination or evaluation of a minor for the purpose of making a determination whether, in the opinion of the licensed mental health professional making the evaluation, the minor is a minor in need of treatment and, if so, is in need of inpatient treatment and for the purpose of preparing reports or making recommendations for the most appropriate and least restrictive treatment for the minor;
11. "Mental health facility" means a public or private hospital or related institution offering or providing inpatient mental health services, a public or private facility accredited as an inpatient or residential psychiatric facility deemed appropriate for the inpatient evaluation or treatment of minors;

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12. "Mental illness" means a substantial disorder of the child's thought, mood, perception, psychological orientation or memory that demonstrably and significantly impairs judgment, behavior or capacity to recognize reality or to meet the ordinary demands of life. "Mental illness" may include substance abuse, which is the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional, or physical impairment and cause socially dysfunctional or socially disordering behavior;
13. "Parent" means:
  - a. a biological or adoptive parent who has legal custody of the minor or has visitation rights,
  - b. a person judicially appointed as a legal guardian or custodian of the minor, or
  - c. a relative within the third degree of consanguinity who exercises the rights and responsibilities of legal custody by delegation from a parent, as provided by law;
14. "Person responsible for the supervision of the case" means:
  - a. when the minor is in the legal custody of n the Choctaw Nation, the caseworker or other person designated by the Choctaw Nation to supervise the case, or
  - b. when the minor is a ward of the court and under the court-ordered supervision of the Choctaw Nation of Oklahoma Children and Family Services, the person designated by the Choctaw Nation Children and Family Services to supervise the case;
15. "Initial assessment (medical necessity review)" means the examination of current and recent behaviors and symptoms of a minor who appears to be mentally ill, alcohol-dependent, or drug-dependent and a minor requiring treatment, whose condition is such that it appears that emergency detention may be warranted by a licensed mental health professional at a facility , deemed appropriate for such examination to determine if emergency detention of the minor is warranted, and whether admission for inpatient mental illness or drug- or alcohol-dependence treatment or evaluation constitutes the least restrictive level of care necessary;
16. "Ward of the court" means a minor adjudicated to be a deprived child, a child in need of supervision, or a delinquent child;
17. "Treatment" means any planned intervention intended to improve the functioning of a minor in those areas which show impairment as a result of mental illness or drug or alcohol dependence; and
18. "Prehearing detention order" means a court order that authorizes a facility to detain a minor pending a hearing on a petition to determine whether the minor is a minor in need of treatment.

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### **Section 703 – Admission for Inpatient Mental Health or Substance Abuse Treatment**

- A. A parent of a minor or a minor sixteen (16) years of age or older may consent to the voluntary admission of the minor for inpatient mental health or substance abuse treatment.
- B. Upon the application of a minor sixteen (16) years of age or older or a parent of a minor, a mental health or substance abuse facility may admit the minor for inpatient evaluation or treatment if the person in charge of the facility, or a designee, determines the minor to be clinically eligible for such admission, and:
  - 1. After an initial assessment, a licensed mental health professional determines and states in writing that there is reasonable cause to believe that the minor may be a minor in need of treatment and that an evaluation is necessary to properly determine the condition and treatment needs of the minor, if any; and
  - 2. After an outpatient or inpatient mental health evaluation, a licensed mental health professional determines and states in writing that in the opinion of the professional, the minor is a minor in need of treatment and:
    - a. the minor appears to have a mental illness or drug or alcohol dependence serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment, and
    - b. based upon the following, inpatient treatment is determined to be the least restrictive alternative that meets the needs of the minor:
      - (1) reasonable efforts have been made to provide for the treatment needs of the minor through the provision of less restrictive alternatives and such alternatives have failed to meet the treatment needs of the minor, or
      - (2) after a thorough consideration of less restrictive alternatives to inpatient treatment, the condition of the minor is such that less restrictive alternatives are unlikely to meet the treatment needs of the minor, and
    - c. the minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment.

The consenting parent shall have the opportunity to discuss the findings with a person involved in the treatment of the minor.

- C. The determinations and written statements of a licensed mental health professional made pursuant to this section shall, upon the admission of the minor for inpatient evaluation or treatment, be made a part of the medical record of the minor.
- D. Inpatient treatment of a minor admitted under this section may not continue unless continued inpatient treatment has been authorized by appropriate hospital medical personnel, based upon their written findings that the criteria set forth in subsection B of this section continue to be met, after such persons have examined the minor and interviewed the consenting parent and

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reviewed reports submitted by members of the facility staff familiar with the condition of the minor. This finding is subject to the review provisions contained in Section 712 of this title.

- E. A mental health or substance abuse treatment facility may request that the Tribal Prosecutor file a petition alleging a minor to be a minor in need of treatment and require inpatient treatment when the parent consenting to the admission of a minor or when the minor age sixteen (16) years or older who had previously consented to admission revokes such consent and the person in charge of the facility, or a designee, determines that the condition of the minor is such that the minor should remain in the facility. If the Tribal Prosecutor refuses to file a petition, the Tribal Prosecutor must immediately notify the requesting facility, in writing, of the refusal to file.
- F. A minor who is in the legal custody of the Choctaw Nation and who is a ward of a court may be admitted to a hospital or other facility for inpatient mental health or substance abuse treatment only pursuant to the provisions of Section 707 of this title.
  - 1. A public or private child care agency having legal custody of a minor may request the Tribal Prosecutor to file a petition alleging the minor to be a minor in need of treatment and to require inpatient treatment.
  - 2. Nothing in the Inpatient Mental Health and Substance Abuse Treatment of Minors Act shall be interpreted to prohibit or preclude the provision of outpatient treatment or services including, but not limited to, outpatient evaluation, counseling, educational, rehabilitative or other mental health and substance abuse services to the minor, as necessary and appropriate, in the absence of a specific court order for such services.
- G. An order of a court committing a minor to a facility for inpatient mental health or substance abuse evaluation or treatment shall not, by itself, relieve a parent of the obligation to provide for the support of the minor nor of liability for the cost of treatment provided to the minor.
  - 1. Nothing in the Inpatient Mental Health and Substance Abuse Treatment of Minors Act shall be interpreted to:
    - a. limit the authority of the court to order a parent to make support payments or to make payments or reimbursements for medical care or treatment, including mental health care or treatment, to the person, institution, or agency having custody of the minor or providing the treatment, or
    - b. abrogate the right of the minor to any benefits provided through public funds for which the minor is otherwise eligible.
  - 2. An order committing a minor to a facility for inpatient mental health or substance abuse treatment shall not by itself serve to preclude a subsequent adjudication which finds the minor to be delinquent, in need of supervision or deprived nor shall it cause the vacation of any such order of adjudication previously entered.
- H. If the parent who consented to the admission of a minor under this section revokes such consent at any time, the minor shall be discharged within forty-eight (48) hours, excluding weekends

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and holidays, unless the Tribal Prosecutor is requested to file a petition alleging the minor to be a minor in need of treatment and to require inpatient treatment in accordance with the provisions of this title. If the Tribal Prosecutor refuses to file a petition, the Tribal Prosecutor must immediately notify the requesting facility, in writing, of the refusal to file.

- I. If a minor sixteen (16) years of age or older who consented to treatment subsequently revokes their consent at any time, the minor shall be discharged within forty-eight (48) hours, excluding weekends and holidays, unless the Tribal Prosecutor is requested to file a petition alleging the minor to be a minor in need of treatment and to require inpatient treatment in accordance with the provisions of this title or the parent of the minor subsequently consents to the treatment of the minor. If the Tribal Prosecutor refuses to file a petition, the Tribal Prosecutor must immediately notify the requesting facility, in writing, of the refusal to file.

### **Section 704 – Responsibility and Jurisdiction Over Child Allegedly in Need of Mental Health Treatment**

- A. Upon the filing of a petition alleging that a minor is a minor in need of treatment and requires inpatient mental health or substance abuse treatment, or upon the assumption of custody of an alleged deprived child pursuant to the provisions of Section 1-4-201 of the Choctaw Nation Children's Code, or when a minor is the ward of the court, the judge of the district court having juvenile docket responsibility shall have jurisdiction of any minor who is or is alleged to be a minor in need of treatment and of the parent or legal custodian of the minor, regardless of where the parent or legal custodian is found. When jurisdiction has been obtained over a minor who is or is alleged to be in need of treatment, such jurisdiction may be retained until the minor is discharged from treatment ordered by the court.

1. The Choctaw Nation shall have exclusive jurisdiction over any the following:
  - a. any Choctaw Child or other Indian Child who resides or is Domiciled in Indian Country within the Territorial Boundaries of the Choctaw Nation; or,
  - b. any Choctaw Child or other Indian Child in the legal custody of the Choctaw Nation, regardless of the child's residence, Domicile, or physical placement.
2. The Choctaw Nation shall have concurrent jurisdiction over the following:
  - a. any Choctaw Child, regardless of residence or domicile; or,
  - b. any Indian Child who resides or is Domiciled within the Territorial Boundaries of the Choctaw Nation.
3. As used in this section:
  - a. "Choctaw Child" means an unmarried child who is a member of, or eligible for membership in the Choctaw Nation pursuant to Article II of the Constitution of the Choctaw Nation.
  - b. "Indian Child" means an unmarried child who is either a) a member of a federally

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recognized Indian tribe or b) is eligible for membership in a federally recognized Indian tribe *and* is the biological child of a citizen of an Indian tribe.

- B. The venue for legal proceedings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act shall be the District Court of the Choctaw Nation, anywhere within the territorial jurisdiction of the Choctaw Nation of Oklahoma, or any other place allowed by law.
- C. Unless otherwise specifically provided by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, the rules of the Choctaw Nation Code of Civil Procedure shall apply to all legal proceedings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

### **Section 705.1 – Protective Custody and Detention - Mentally Ill, Alcohol-dependent, or Drug-dependent Minor**

- A. Any minor who appears to be mentally ill, alcohol-dependent, or drug-dependent to a degree that immediate emergency action is necessary may be taken into protective custody and detained pursuant to the provisions of this section.
- B. Any peace officer who reasonably believes that a minor is a minor in need of treatment as defined in Section 702 of this title shall take the minor into protective custody and shall transport the minor to an appropriate mental health or substance abuse treatment facility, designated by the Choctaw Nation Health Services Authority, for evaluation.
- C. The officer shall prepare a written statement indicating the basis for the belief of the officer that the minor is a minor in need of treatment and the circumstances under which the officer took the person into protective custody. The officer shall give a copy of the statement to the parent of the minor or the attorney of the minor upon the request of either. If the officer does not make the determination to take an individual into protective custody on the basis of the personal observation of the officer, the officer shall not be required to prepare a written statement. However, the person upon whose statement the officer relies shall sign a third-party statement indicating the basis for such belief of the person that the minor is a minor in need of treatment. Any false statement given to the officer by the person upon whose statement the officer relies shall be a misdemeanor and subject to the sanctions of the Choctaw Nation Criminal Code.
- D. A minor in protective custody shall be subject to an initial assessment at the appropriate facility by a licensed mental health professional for the purpose of determining whether emergency detention is warranted.
  - 1. If the licensed mental health professional determines that the minor is not a minor in need of treatment or that the condition of the minor is such that emergency detention is not warranted, the minor shall be returned immediately to the point where the minor was taken into protective custody and released or the minor may be taken to the home or residence of the minor or to an alternative facility.

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2. If the licensed mental health professional determines that the minor is a minor in need of treatment to a degree that emergency detention is warranted, the minor shall be detained in emergency detention for a period not to exceed five (5) days, excluding weekends and holidays. The detention may exceed five (5) days, excluding weekends and holidays, upon a court order authorizing detention pending a hearing on a petition requesting involuntary commitment or treatment.
- E. If a licensed mental health professional designated to have such responsibility by the executive director of a hospital, or the administrator of a facility deemed appropriate for emergency detention believes a minor to be a minor requiring treatment to a degree that emergency action is necessary, the administrator may detain such minor in emergency detention for a period not to exceed five (5) days, excluding weekends and holidays, only on the following conditions:
1. The minor sixteen (16) years of age or older or parent of the minor has refused to consent or has withdrawn consent to voluntary treatment;
  2. The minor has been examined by a licensed mental health professional who has determined that the minor is a minor in need of treatment, the condition of the minor is such that emergency detention is warranted, and a mental health evaluation has been prepared as provided in Section 708 of this title; and
  3. The administrator or the designee of the administrator shall provide for an initial assessment of the minor by a licensed mental health professional.
- F. Whenever it appears that a person detained as provided by this section will require treatment beyond the period of emergency detention and the minor sixteen (16) years of age or older or parent of the minor has refused to consent to voluntary treatment, a licensed mental health professional conducting an initial assessment of the minor or the administrator of the facility in which the minor is being detained, or the designee of the administrator, shall immediately file a petition or request the Tribal Prosecutor to file a petition with the Choctaw Nation District Court as provided by Section 709 of this title, and may request a court order directing prehearing detention when detention is necessary for the protection of the person or others. If the Tribal Prosecutor refuses to file a petition, the Tribal Prosecutor must immediately notify the requesting facility, in writing, of the refusal to file.

### **Section 705.2 – Transporting Minor in Need of Mental Health and Substance Abuse Treatment.**

- A. The Department of Public Safety shall be responsible for transporting individuals to and from designated sites or facilities for the purpose of examination, emergency detention, protective custody and inpatient services.
- B. The Public Safety Officer transporting an individual to and from designated sites or facilities pursuant to the provisions of this section shall maintain responsibility for the transportation of such individual pending completion of the examination, emergency detention, protective custody and inpatient services.

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### **Section 706 – Admission of Minor 16 Years or Older who Objects to Admission**

- A. Any parent, guardian, or law enforcement officer may request the administrator of a facility or designee to conduct an initial assessment of a minor to determine whether the minor is a minor requiring treatment.
- B. Following an initial assessment, a minor may be admitted or detained on an emergency basis in a mental health or substance abuse treatment facility that is willing to admit or detain the minor for a period not to exceed five (5) days from the time of admission or detention, excluding weekends and legal holidays. The admission or detention for an emergency basis may only exceed five (5) days, excluding weekends or holidays, if the facility receives a prehearing detention order authorizing detention pending a hearing on a petition to determine whether the minor is a minor in need of treatment and to require inpatient treatment.
- C.
  - 1. A minor admitted or detained pursuant to this section shall be evaluated by a licensed mental health professional to determine whether the minor is a minor in need of treatment.
    - a. If the licensed mental health professional determines that the minor is a minor in need of treatment, the licensed mental health professional shall submit the mental health evaluation to the Tribal Prosecutor within forty-eight (48) hours, excluding weekends or holidays, of admission, detention, or revocation of the consent of the minor sixteen (16) years of age or older or to the parent.
    - b. If the licensed mental health professional determines that the minor is not a minor in need of treatment, the minor shall immediately be discharged.
  - 2. Upon admission or detention of a minor pursuant to this section, the person requesting the petition shall immediately notify the Tribal Prosecutor. The Tribal Prosecutor shall file a petition as provided in Section 709 of this title within three (3) days of receipt of the report and shall request a prehearing detention order from the court authorizing further detention of the child in the facility pending a hearing on a petition alleging the minor to be a minor in need of treatment and to require inpatient treatment and further order of the court. If the Tribal Prosecutor refuses to file a petition, the Tribal Prosecutor must immediately notify the requesting facility, in writing, of the refusal to file.
    - a. If the court finds probable cause exists that the minor is a minor in need of treatment, the court shall issue a prehearing detention order authorizing the facility to detain the minor until the hearing on the petition and to immediately set a date and time for a hearing on the petition. A certified copy of the prehearing detention order shall constitute authority for a facility to detain or continue to detain the minor who is the subject of the order.
    - b. If the court does not find probable cause exists that the minor is a minor in need of treatment, the court shall dismiss the petition and request for a prehearing detention order and order the release of the minor to the minor's parent.



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### **Section 707 – Admission of Minor Who is Ward of Court or Alleged Deprived Child - Emergency Psychiatric Admission - Mental Health Evaluation**

- A. No minor who is placed into emergency, temporary or permanent custody of a Choctaw Nation agency pursuant to the Choctaw Nation Children's Code shall be admitted to a hospital or mental health or substance abuse treatment facility:
  - 1. On an emergency basis except as provided by this section;
  - 2. For inpatient treatment except upon a commitment order of the court pursuant to the provisions of subsection D of this section and after a finding that the minor requires such services as provided by Section 712 of this title.
- B. After an initial assessment and a determination that a minor is a minor in need of treatment, the minor may be admitted to a hospital or mental health or substance abuse treatment facility on an emergency basis for a period not to exceed five (5) days from the time of admission, excluding weekends and holidays. On the next business day following admission, notice of such admission shall be given by the person responsible for the supervision of the case, as applicable, to the minor's attorney, guardian ad litem, the court and Tribal Prosecutor.
- C. A minor admitted on an emergency basis pursuant to this section shall be evaluated and the mental health evaluation submitted to the Tribal Prosecutor within forty-eight (48) hours of admission, excluding weekends and holidays. The mental health evaluation shall be performed by a licensed mental health professional at the facility.
- D. If after an inpatient or outpatient mental health evaluation it appears that the minor may require inpatient treatment, the Tribal Prosecutor shall file a petition as provided by Section 709 of this title within three (3) days after receiving the mental health evaluation requesting an order committing the minor to a facility for inpatient treatment. After the filing of a petition and upon issuance of a prehearing detention order, the minor may be detained in the facility for no longer than necessary for a hearing on the petition as provided by Section 710 of this title or further order of the court.
- E. Nothing in this section shall be interpreted to preclude or prohibit a parent having physical custody of a minor who is a ward of the court from arranging for an emergency admission of the minor. In such cases, the parent shall immediately notify the person responsible for the supervision of the case of the admission.

### **Section 708 – Mental Health Evaluation Report**

- A. The mental health evaluation of a licensed mental health professional prepared pursuant to Section 706 or 707 of this title shall include written findings as to whether:
  - 1. The minor appears to be a minor in need of treatment and is reasonably likely to benefit from treatment;

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2. Based upon the following, inpatient treatment is the least restrictive alternative that meets the needs of the minor:
    - a. reasonable efforts have been made to provide for the treatment needs of the minor through the provision of less restrictive alternatives and such alternatives have failed to meet the treatment needs of the minor, or
    - b. after a thorough consideration of less restrictive alternatives to inpatient treatment, the condition of the minor is such that less restrictive alternatives are unlikely to meet the treatment needs of the minor; and
  3. The minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment.
- B. Any mental health evaluation of a minor alleged to be a minor in need of treatment that recommends that the minor be found to be eligible for inpatient mental health or substance abuse treatment shall be signed by the licensed mental health professional examining the minor.
- C. The parents, all public agencies, and all providers or programs which have treated or are treating the minor shall cooperate with the person conducting a mental health evaluation for the purpose of providing the mental health evaluation to a Tribal Prosecutor or to a district court and shall promptly deliver, as otherwise provided by law, all records related to the treatment or education of the minor.

### **Section 709 – Filing of Petition**

- A. A petition alleging a minor to be a minor in need of treatment shall be filed by the Tribal Prosecutor and may be filed by the Tribal Prosecutor only after receipt and review of the mental health evaluation conducted by a licensed mental health professional stating that in the opinion of the professional the minor has a demonstrable mental illness or is drug or alcohol dependent and as a result of that mental illness or drug or alcohol dependence can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person if services are not provided, and upon the request of:
1. A parent, a public or private child care agency having legal custody of the minor, or a mental health or substance abuse treatment facility; or
  2. When the minor is a ward of the court, the Choctaw Nation of Oklahoma, or Choctaw Nation agency having supervision of the case or by the parent of the minor with the consent of the applicable agency having supervision of the case.
- B. If after receipt and review of the mental health evaluation conducted by a licensed mental health professional:
1. The Tribal Prosecutor declines to file a petition, the Tribal Prosecutor must immediately notify the requesting facility, in writing, of the refusal to file. Then the minor shall be

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discharged to the custody of the consenting parent or public or private agency having custody of the minor; or

2. The petition is filed, a copy of the mental health evaluation conducted by the licensed mental health professional shall be attached to the petition and notice shall be given as provided by Section 710 of this title.

C. The form and content of the Petition shall include the following:

1. The proceeding shall be entitled "In the matter of \_\_\_\_\_, a minor alleged to be in need of inpatient mental health or substance abuse treatment".
2. The petition shall allege that the minor has a demonstrable mental illness or is drug or alcohol dependent and as a result of that mental illness or drug or alcohol dependence can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself, or another person if services are not provided and has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation and shall be verified and may be based upon information and belief. The petition shall set forth:
  - a. with particularity the facts which bring the minor within the purview of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act,
  - b. the name, age and residence of the minor,
  - c. the names and residences of the parents of the minor,
  - d. the name and residence of the legal guardian of the minor, if one,
  - e. the name and residence of the person or persons having custody or control of the minor,
  - f. the name and residence of the nearest known relative, if no parent or guardian can be found,
  - g. the relief requested, and
  - h. an endorsement of witnesses intended to be called by the petitioner.

D. Upon the filing of a petition pursuant to this section, if the minor has been admitted to a facility, the facility shall ensure that a proposed individual treatment plan for the minor is prepared and submitted to the court at least twenty-four (24) hours prior to the time set for the hearing.

### **Section 710 – Notice of Hearing on Petition - Appointment of Attorney - Independent Mental Health Evaluation**

A. Upon the filing of a petition alleging a minor to be a minor in need of treatment, the court shall:

1. Appoint an attorney to represent the minor if the minor is not represented by counsel. An attorney so appointed shall consult with the minor at least twenty-four (24) hours prior to the date set for hearing the petition. In addition, the court may appoint a guardian ad litem as provided by Section 1-4-306 of The Choctaw Nation Children's Code;
2. Enter any prehearing detention orders as may be necessary;

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3. Set a date for a hearing on the petition. The date shall not be less than one (1) day, or more than three (3) days, excluding weekends and legal holidays, from the date of the filing of the petition. Upon the request of the attorney for the minor, the date of the hearing may be extended once for up to an additional three (3) days, excluding weekends and holidays; and
4. Cause notice of the date, time, place and purpose of the hearing to be given to the petitioner, the minor, the parent(s) or legal custodian of the minor and the person in charge of the mental health or substance abuse treatment facility. If the minor is a ward of the court, or is in the custody of the Choctaw Nation or a Choctaw Nation agency, notice shall also be given to a public or private child care agency having legal custody of the minor, if any, or to the person at the Choctaw Nation or the applicable Choctaw Nation agency responsible for the supervision of the case. The notice shall be given at least twenty-four (24) hours prior to the date set for the hearing and shall be given in such manner as directed by the court.

### **Section 711 – Hearings - Privacy - Transcript - Right to Silence - Decisions - Stipulation of Facts - Teleconference**

- A. Hearings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act shall be private, persons having a direct interest in the case shall be admitted. Stenographic notes or other transcript of the hearings shall be kept as in other cases, but they shall not be open to inspection except by order of the court or as otherwise provided by The Choctaw Nation Children's Code for court records relating to children.
- B. The minor may remain silent as a matter of right in hearings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act and shall be so advised. No statement, admission or confession made by the minor alleged to be a minor in need of treatment shall be used against the minor for any purpose except for proceedings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.
- C. A decision determining a minor to be a minor in need of treatment shall be made by the judge; provided, however, the judge on his or her own motion may call a jury to try any such case. Such decision must be based on sworn testimony and the minor must have the opportunity for cross-examination unless the facts are stipulated. Where the facts are stipulated, the judge must ascertain from the minor if the minor agrees with the stipulation and understands the consequences of stipulating the facts.
- D. The court may receive as evidence and act upon the evaluation or report of the licensed mental health professional who evaluated the minor.
- E. If authorized by the court, any proceeding held pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act may be conducted via teleconference communication; provided, that when a parent or child appears for a proceeding via teleconference, the attorney representing that parent or child shall personally appear at the hearing. For purposes of this paragraph, "teleconference communication" means participation in the hearing by interactive telecommunication, including telephonic communication, by the

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absent party, those parties present in court, the attorneys, and others deemed to be necessary participants to the proceeding including, but not limited to, foster parents and facility staff where a child may be receiving care or treatment.

### **Section 712 – Determinations at Hearing - Commitment**

- A. At the hearing the court shall determine whether by clear and convincing evidence:
  - 1. The minor has a demonstrable mental illness or is drug or alcohol dependent and as a result of that mental illness or drug or alcohol dependence can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself, or another person if services are not provided, and has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation; and
  - 2. The minor is a minor in need of treatment proposed in the individualized treatment plan and is likely to benefit from such treatment.
- B. After a hearing, the court shall order the minor to receive the least restrictive care and treatment appropriate for the treatment needs of the minor until such time as the care and treatment are no longer necessary.
- C. The court shall not commit a minor to a facility for inpatient treatment unless the court determines:
  - 1. The minor has a demonstrable mental illness or is drug or alcohol dependent and as a result of that mental illness or drug or alcohol dependence can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself, or another person if services are not provided, and has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation; or
  - 2. That all reasonable efforts have been made to provide for the treatment needs of the minor through the provision of less restrictive alternatives to inpatient treatment and that such alternatives have failed to meet the treatment needs of the minor; or
  - 3. After a thorough consideration of less restrictive alternatives to inpatient treatment, that the condition of the minor is such that less restrictive alternatives are unlikely to meet the treatment needs of the minor; and
  - 4. There are no comparably effective services available to the minor that are less physically intrusive or restrictive.
- D. Whenever, after a hearing, the court finds that the minor:
  - 1. Is not a minor in need of treatment the court shall dismiss the case; or
  - 2. Is a minor in need of treatment but does not require inpatient treatment, the court may order treatment or services through a less restrictive alternative to inpatient mental health or substance abuse treatment, which may include ordering the minor to take medication as prescribed by a physician and, upon a finding that it is in the best interests of the minor,

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the court may order the parents or other adult persons living in the home of the minor to comply with reasonable conditions relating to the treatment of the minor.

- E. Whenever, after a hearing, the court finds that the minor is a minor in need of treatment and requires inpatient treatment in a mental health or substance abuse treatment facility, the court shall order the commitment of the minor to a mental health or substance abuse treatment facility until the minor is no longer a "minor in need of treatment" as determined by medical staff, subject to the review provisions contained in this section, and:
  - 1. When the minor is in the custody of a parent or legal guardian, order the parent or legal guardian to make arrangements for the admission of the minor to a public or private mental health or substance abuse treatment facility appropriate for the inpatient care and treatment of minors which is willing to admit the minor for treatment; and
  - 2. When the minor is in the custody of the Choctaw Nation, order the applicable Choctaw Nation agency to make arrangements for the placement of the minor, in a public or private mental health or substance abuse treatment facility appropriate for the inpatient treatment needs of the minor.
- F. Whenever the court commits a minor to a mental health or substance abuse treatment facility for inpatient treatment pursuant to this section, the court shall set the matter for review and shall review the matter not more than thirty (30) days from the date of commitment and shall continue to review the matter at intervals of not more than thirty (30) days until the minor is discharged from inpatient treatment. Not less than three (3) days prior to the review hearing, the mental health or substance abuse treatment facility shall submit a report regarding the minor's progress and treatment and make a recommendation as to whether the minor needs inpatient care and the reasons therefor.

### **Section 713 – Discharge Plan**

- A. Within ten (10) days after the admission of a minor for inpatient treatment, the person in charge of the facility in which the minor is being treated shall ensure that an individualized treatment plan has been prepared by the person responsible for the treatment of the minor. The minor shall be involved in the preparation of the treatment plan to the maximum extent consistent with the ability of the minor to understand and participate. The parent or legal custodian of the minor or, if the minor is in the custody of the Choctaw Nation, the designated representative of the applicable agency, shall be involved to the maximum extent consistent with the treatment needs of the minor.
- B. The facility shall discharge the minor when appropriate facility medical staff determine the minor no longer meets the admission or commitment criteria. If not previously discharged, a minor committed by a court for inpatient treatment shall be discharged upon the expiration of a court order committing the minor for inpatient treatment or an order of the court directing the discharge of the minor.

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- C. Prior to the discharge of the minor from inpatient treatment, a discharge plan for the minor shall be prepared and explained to the minor and the parent or the person responsible for the supervision of the case. The plan shall include, but not be limited to:
  - 1. The services required by the minor in the community to meet the needs of the minor for treatment, education, housing and physical care and safety;
  - 2. Identification of the public or private agencies that will be involved in providing treatment and support to the minor;
  - 3. Information regarding medication which should be prescribed to the minor; and
  - 4. An appointment for follow-up outpatient treatment and medication management.

## **Chapter 8. Treatment of Persons in Custody**

### **Section 801. Definitions**

- A. As used in the Chapter, unless the context otherwise requires:
  - 1. “Inmate” means a person who is confined in a Correctional Institution either before or after judgment.

### **Section 802. Evaluation and Treatment**

- A. A Public Safety Officer, or person in charge of a jail or Correctional Institution the Tribal Prosecutor shall request evaluation or treatment of an inmate by the Department.
- B. An evaluation may be made in person or remotely by telemedicine.
- C. If an Inmate is determined to be a Person Requiring Treatment, the Department shall arrange for the Inmate to be admitted to a Facility.
- D. A Public Safety Officer will transport the Inmate to the assessment.
- E. The cost of evaluation performed by the Department shall be paid by Choctaw Nation Health Services Authority.

### **Section 803. Transfer of Inmates**

- A. An inmate may be transferred pursuant to a District Court order to an appropriate facility for evaluation or treatment. Unless the District Court order provides otherwise, the Department shall determine the conditions for the inmate’s security during evaluation and treatment.
- B. An inmate transferred pursuant to this Section for evaluation or treatment shall be transported by a Public Safety Officer to an appropriate Facility.

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- C. While in the custody of the Department, an Inmate shall be transported to any required District Court proceedings by a Public Safety Officer.
- D. The cost of evaluation and treatment shall be paid by Choctaw Nation Health Services Authority.
- E. Transportation costs shall be paid by Public Safety.

## **Chapter 9: Substance Dependence and Abuse Prevention and Assistance**

### **Section 901. Reserved**

### **Section 902. Dependence and Abuse Programs**

- A. The Department shall design and implement evidence-based substance dependence and abuse intervention, assistance, and treatment programs as provided in this Chapter.
- B. The Department shall design and implement educational programs for the prevention of substance dependence and abuse including community, family, and individual education-based services. These may include, but need not be limited to, the following:
  - 1. Make available current educational resources to participants in programs of the Department, members of their families, and persons having significant involvement with a participant;
  - 2. Make available current educational resources to schools, clinics, hospitals, churches, and substance dependence and support groups and organizations; and
  - 3. Make available speakers for presentations to public and private groups concerning substance dependence and abuse.

### **Section 903. Acceptance to programs**

Programs provided pursuant to this Chapter may include the following standards:

- 1. If possible, participants shall be treated on a voluntary basis;
- 2. Participants shall be assigned by the Department to appropriate Providers and facilities which may be changed by the Department as needed;
- 3. Prospective participants shall not be denied access to any program because he or she has participated in the past, has withdrawn from participation in the past, has relapsed, or has been unable to complete the same or other programs; and



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4. Each participant shall have an individualized plan for receiving services which may be modified by the Department, as needed.

### **Section 904. Voluntary participation and treatment**

- A. A prospective program participant may apply to the Department for voluntary treatment for substance dependence or abuse.
- B. The Director, or a designee may determine who shall be admitted for voluntary participation or treatment. Any person denied participation or treatment in a program under this Chapter may be recommended to an appropriate Licensed Mental Health Professional or Facility or to any other available program.
- C. When appropriate, after completion of a program, the Department shall provide additional treatment, service, or supportive assistance to participants.
- D. When a participant withdraws or is discharged from a program, the Department may provide for transportation to another Facility or to the participant's home or place of shelter.
- E. When the participant is an incompetent person, withdrawal from a program may be made by a parent, spouse, legal guardian, adult child, or other legal representative.