

**PONCA TRIBE OF NEBRASKA
TITLE XVIII
HEALTH**

**CHAPTER 1
GENERAL PROVISIONS**

Section 18-1-1. Purpose. This Title shall be interpreted and construed to fulfill the following purposes:

1. To provide for holistic, culturally competent health services for members of the Tribe and others served by the Tribe's health services program that encourages wellness, is designed to improve health status, and assures quality health care services; and

2. To provide for the preservation of the public health of members of the Tribe and others within the territory of the Tribe, including during public health emergencies.

Section 18-1-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Department" means Ponca Health Services.

2. "Director" means the chief executive officer of the Department.

3. "Communicable disease" means an illness due to a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal, or reservoir to a susceptible host, either directly or indirectly through an intermediate plant or animal host, vector, or the inanimate environment.

4. "Epidemic disease" means cases of an illness or condition, communicable or noncommunicable, in excess of normal expectancy, compared to the usual frequency of the illness or condition in the same area, among the specified population, at the same season of the year.

5. "Health care provider" means:

a. A hospital, health clinic, health care facility, home health agency, hospice, doctors office, special care facility, nursing home, pharmacy, or clinical laboratory;

b. A physician, surgeon, physician assistant, acupuncturist, optometrist, chiropractic physician, naturopathic physician, or respiratory care practitioner;

c. A nurse, nurse practitioner, midwife, dietitian, or nursing home administrator;

d. A radiologist, polysomnographic technologist, or other medical imaging provider

e. A dentist, dental hygienist, or denturist;

f. A psychologist, occupational therapist, regulated social worker, professional counselor, marriage and family therapist, or other behavioral health provider;

g. A speech-language pathologist or audiologist;

h. A physical therapist or massage therapist;

i. A paramedic or emergency medical services provider;

j. A pharmacist;

k. A funeral service practitioner; or

l. Any other person or entity that furnishes, bills for, or is paid for health care in the normal course of business.

6. "Individually identifiable health information" means information, including genetic and demographic information, whether oral or recorded in any form or medium, that:

a. Relates to the past, present, or future physical or mental health or condition of an individual or the provision of health care to an individual; and

b. Either identifies the individual or could be used to identify the individual.

7. "Public health measure" means a test, medical examination, treatment, isolation, quarantine, or other measure imposed on an individual or group of individuals in order to prevent the spread of or exposure to a communicable disease, toxic substance, or transmissible agent.

8. "Toxic substance" means a substance that may cause illness, disability, or death to persons who are exposed to it.

Section 18-1-3. Non-Liability. There shall be no liability on the part of the Tribe, its agencies, departments, enterprises, agents, officers, officials, or employees for any damages which may occur as a result of reliance upon or conformity with the provisions of this Title.

Section 18-1-4. Severability. If any chapter, section or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 18-1-5. Sovereign Immunity. Nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees or as establishing or acknowledging any liability of the Tribe under any law.

CHAPTER 2 HEALTH SERVICES DEPARTMENT

Section 18-2-1. Establishment.

1. There is hereby established a health agency to be known as Ponca Health Services as an agency of the Tribe, under the authority of the Tribe, and delegated the powers, duties, and responsibilities set forth in this Title and as otherwise provided by the laws of the Tribe.

2. The Department shall be the public health agency of the Tribe.

3. The Department shall consist of a Director and such other personnel and employees as may be required.

4. The Department shall have such divisions and programs as necessary to achieve maximum efficiency, economy, and effectiveness in providing health services and administering the public health.

5. The Department may employ such personnel and employees as may be required for the proper discharge of its duties under this Title, provided that the Department may use personnel and employees of the Tribal administration as authorized in this Chapter.

Section 18-2-2. Director.

1. The day-to-day direction, operation, control, and supervision of the Department shall be the responsibility of the chief executive officer of the Department who shall be the Director of the Department and an employee of the Tribe.

2. The Director shall administer and exercise all managerial and supervisory authority over the Department in accordance with this Title, the regulations of the Department, and the policies and procedures of the Department. The Director may delegate any of his or her duties to staff or employees of the Department.

3. The Director shall be the public health officer of the Tribe.

4. The Director should have a degree of doctor of medicine or doctor of osteopathy and be licensed to practice medicine or have sufficient experience or a master's degree or above in public health or a related field. If the Director does not have such qualifications, the Director shall designate a chief medical officer in the Department with such qualifications. The chief medical officer shall provide independent medical judgment, guidance, and advice to the Director, the Department, and the Tribal Council regarding medical and public health issues.

Section 18-2-3. Powers and Duties of Department. The power, authority, and duties of the Department shall be as follows:

1. To administer, implement, and enforce this Title and enforce and assist in the enforcement of all laws of the Tribe relating to the protection and regulation of the public health;

2. To make recommendations to the Tribal Council concerning amendments to this Title and other laws of the Tribe protecting and regulating the public health;

3. To make reports to the Tribal Council regarding any matters within the authority of or under the jurisdiction of the Department as requested or required by the Tribal Council;

4. To advise and make recommendations to the Tribal Council regarding the needs of the Tribe with respect to the allocation of health resources, health priorities, program development and planning, training of personnel, the construction of new health facilities, and for the general coordination of all health programs in the territory of the Tribe;

5. To promote the delivery of maximum quality health care to members of the Tribe and others eligible to receive health services from or paid by the Department in a manner that accords with the needs of those receiving such services and the values of the Tribe, including ensuring such services are culturally appropriate;

6. To review and make recommendations to the Tribal Council regarding the budget of the Department as well as the provisions of any contract entered into between the Tribe and a United States federal agency for the provision or conducting of health services, public health activities, or administration of federal programs by the Department;

7. To establish services, including through health facilities operated by the Department, in accordance with funding agreements and Tribal budget appropriations for the Department to prevent illness, disease, and disability, promote effective coordination and use of community resources, and extend health services to members of the Tribe and others eligible to receive services from or paid by the Department, taking into consideration and applying the culture, history, and social and economic conditions of the Tribe, including medical services, public health nursing, disease prevention and control, public health education, behavioral health services, and environmental health services;

8. Subject to the approval of the Tribal Council and in accordance with funding agreements and Tribal budget appropriations for the Department, to establish and operate divisions and programs within the Department for the provision of health services to individuals and which are important in promoting, protecting, and maintaining the public health;

9. To employ traditional health care practices and practitioners in providing health services;

10. To obtain input and feedback from persons receiving services from or paid by the Department about their health care

needs and to provide information and guidance to the public on health care and public health issues that affect them;

11. To establish programs of community and professional education relevant to the detection, prevention, and control of disease;

12. To participate in quality improvement activities concerning the Department, the services it provides, and the public health;

13. To adopt policies and procedures of the Department, including for credentialing and competency of personnel and contractors of the Department;

14. To investigate and control the causes of epidemic and communicable diseases affecting the public health;

15. To investigate and monitor the spread of disease that is considered part of an emergency epidemic to determine the extent of environmental contamination resulting from the emergency epidemic and to rapidly provide epidemiological and environmental information to the Tribal Council;

16. To establish, maintain, and enforce isolation and quarantine as provided in this Title, and, in pursuance thereof and for this purpose only, to exercise such physical control over property and the persons of the people within the territory of the Tribe as the Department may find necessary for the protection of the public health;

17. In cases of emergency in which the health of persons within the territory of the Tribe is menaced by or exposed to any epidemic or communicable disease, adopt, promulgate, and enforce special epidemic and/or communicable disease control rules, regulations, and orders, subject to the approval of the Tribal Council, as may be required by the occasion and proper protection of the public health;

18. To abate nuisances when necessary for the purpose of eliminating sources of epidemic and communicable diseases affecting the public health;

19. To order the closure of offices, buildings, and other public places and to forbid gatherings of people when necessary to protect the public health, provided that the Tribal Council may override any such order;

20. To administer and enforce minimum general food safety and sanitary standards and regulations adopted pursuant this Title;

21. To conduct hearings and hear appeals authorized by this Title, provided the Department shall have no authority to declare any portion of this Title or other law of the Tribe invalid for any reason;

22. To collaborate and cooperate with such other agencies of the Tribe, other tribes, the United States, and the states of the United States as necessary to implement and enforce this Title or other laws of the Tribe protecting and regulating the public health;

23. To develop standard forms and to require by regulation the filing of any such forms or reports necessary for implementation of this Title;

24. To utilize or adopt forms, guidance, and other standards from other appropriate jurisdictions to use as its own so long as such forms, guidance, or other standards meet the requirements of the laws of the Tribe for which such forms, guidance, or other standards are utilized and do not abrogate or diminish the sovereignty or self-government of the Tribe;

25. To promulgate rules and regulations, subject to approval of the Tribal Council and consistent with the laws of the Tribe, which are necessary for carrying out this Title or any other laws administered by the Department;

26. To perform any other duties and responsibilities delegated to the Department by the Tribal Council or in furtherance of the duties and responsibilities otherwise granted to the Department;

27. To delegate any of the Department's duties and responsibilities to the staff of the Department to further achieve maximum efficiency, economy, and effectiveness; and

28. To perform all other duties delegated or assigned to the Department by this Title or other laws of the Tribe or the Tribal Council and otherwise implement this Title.

Section 18-2-4. Rules and Regulations. The Department may promulgate rules and regulations, not inconsistent with this Title

and subject to the approval of the Tribal Council, as it deems necessary or desirable in the public interest in carrying out the duties of the Department including, but not limited to:

1. Procedures for conducting investigations and inspections;
2. Procedures for all hearings conducted and decision made by the Department;
3. Minimum food safety and sanitation standards; and
4. Protection of the due process rights of all persons subject to the enforcement of this Title by the Department.

Section 18-2-5. Confidentiality.

1. Except where expressly provided otherwise in the laws of the Tribe, individually identifiable health information shall be held confidential and shall not be provided or open to inspection except for the following:

a. To the person to whom the information pertains or his or her legal representative or, in the case of a child, the child's parent, guardian, custodian, or guardian ad litem;

b. For treatment of the person to whom the information pertains, payment for such treatment, and operations of the Department, including to a person or entity that provides services to the Department with respect to individually identifiable health information and that requires access on a routine basis to such individually identifiable health information, provided such person or entity agrees to comply with this Title;

c. When provided to a person reasonably able to prevent or lessen it, including the target thereof, to prevent or lessen:

i. A crime;

ii. Abuse, neglect, or self-harm; or

iii. A serious threat to the health or safety of a person or the public;

d. To a medical examiner, coroner, or funeral director for the purpose of identifying a deceased person, determining a cause of death, or other duties of the medical examiner, coroner, or funeral director authorized by law;

e. When necessary for the public health activities of the Department, including to a person who may have been exposed to a communicable disease or toxic substance or may otherwise be at risk of contracting or spreading a disease or condition;

f. When expressly required under the laws of the Tribe or other applicable law, including reporting of communicable diseases, child abuse, domestic and family abuse, violent injuries, and other mandatory public health reports;

g. When expressly permitted under the laws of the Tribe or other applicable law, including reporting of communicable diseases, child abuse, domestic and family abuse, violent injuries, and other mandatory public health reports;

h. Pursuant to an order of a court or administrative tribunal with jurisdiction over the Department, but not a subpoena or discovery request, provided that:

i. The Department discloses only the protected health information expressly authorized by such order;

ii. The order contains or is subject to provisions prohibiting the parties from using or disclosing the information for any purpose other than the proceeding for which such information was requested and requires the return or destruction of the information and all copies of the information at the end of the proceeding; and

iii. The person to whom the information pertains has been notified and given a reasonable opportunity to object and prevent the providing of the information; or

i. When the person to whom the information pertains has authorized the release of information in writing.

2. Nothing in this Section shall prevent the Department from releasing information:

a. To the Tribal Attorney for purposes of assisting or representing the Department; or

b. When necessary in a proceeding in a court to which the Department is a party, participating, or representing the Tribe.

3. Any person who receives information from the Department pursuant to this Section shall not further disclose such information except when authorized by the Department or as otherwise required or permitted by applicable law. Whenever the Department discloses information pursuant to this Section, the disclosure shall be accompanied by the following written statement:

This information has been disclosed to you from records protected by confidentiality laws. Those laws prohibit you from making any further disclosure of information in this record unless further disclosure is expressly authorized by Ponca Health Services or otherwise required or permitted by applicable law.

Section 18-2-6. Use of Other Resources. In carrying out its duties and responsibilities:

1. The Department may, subject to any laws or rules governing confidentiality of information, use the services, information, or records of other departments and agencies of the Tribe or otherwise available to the Tribe, both from within and without the Tribe, and such departments, agencies, and others shall furnish such services, information or records upon request of the Department;

2. The Department may refer matters for investigation to state or federal authorities or other appropriate professionals or authorities and the Department may adopt and treat the results of any such referred investigation or any portion thereof, including any determinations therein, as its own, which shall then be treated as though conducted directly by the Department; and

3. The Department may rely upon and adopt an investigation or any portion thereof, including any determinations therein, made by another investigating agency or authority as its own and such investigation or portion thereof so adopted shall be treated as though conducted directly by the Department; and

4. The Department may use personnel and employees of the Tribal administration, provided the Department coordinates with and obtains approval from the Tribal administration.

Section 18-2-7. Decisions and Orders of Department. In addition to any other requirements in this Title or other laws of the Tribe, all decisions and orders of the Department issued under this Title or other law administered by the Department, including with respect to services provided by the Department, shall:

1. Be in writing;

2. If the decision is subject to further appeal within the Department, include a statement that the decision may be appealed pursuant to this Chapter, identify the official to whom it may be appealed, and indicate the appeal procedures, including the time limit for filing the appeal; and

3. If the decision is the final decision of the Department and subject to judicial review under this Title, include a statement that the decision is subject to judicial review in accordance with this Chapter and the time limit for filing a request for judicial review.

Section 18-2-8. Appeal to Director.

1. Any person subject to and aggrieved by a decision or order of the Department may file an appeal with the Director within thirty (30) days of issuance of such decision or order or such other time as may be provided in the laws of the Tribe for a particular decision or order of the Department.

2. A request for appeal shall:

a. Be made in writing to the Director;

b. Identify the decision or order;

c. Declare the redetermination or action sought; and

d. Include a complete statement of the facts relied on.

3. The Director shall take testimony and examine documentary evidence as necessary to determine the appeal.

4. After hearing an appeal, the Director shall issue a decision.

5. The decision of the Director on an appeal under this Section shall be the final decision of the Department and shall only be subject to judicial review if expressly permitted under this Title or other law of the Tribe governing the decision. The Director shall be considered to have issued a final decision denying the appeal if the Director:

a. Fails to schedule and hold a hearing on the merits of an otherwise valid appeal within sixty (60) days after receipt of a notice of appeal or such other longer period of time with the consent or request of the person filing the appeal; or

b. Fails to issue a written decision within thirty (30) days of the hearing on the merits of the appeal.

6. The failure to file an appeal pursuant to this Section shall not prevent the person from defending any action of the Department in Tribal Court.

7. The Department may establish an appeal board within the Department to conduct hearings and appeals pursuant to this Section. If the Department establishes such an appeal board, hearings and appeals pursuant to this Section shall be conducted by such appeal board instead of the Director. The appeal board may be authorized to make final decisions for the Department, make recommendations for final decisions to be issued by the Director, or make decisions for the Department which are subject to appeal or review of the Director, as designated in the establishment of the appeal board. If the appeal board is authorized to issue the final decision of the Department, the appeal board's decision shall be deemed the final decision of the Director under this Section and any provision of this Title or other law of the Tribe governing final decisions of the Director.

Section 18-2-9. Intermediate Appeals.

1. The Department may, pursuant to written policies or rules and regulations of the Department, establish an appeal board within the Department to conduct hearings and hear appeals of decisions and orders of the Department prior to review by the Director, subject to the following:

a. The authority of the appeal board with respect to hearings and appeals shall be set forth in the policies or rules and regulations, which authority shall be either to:

i. Make a recommendation for a final decision to be issued by the Director; or

ii. Make a decision for the Department which is subject to appeal and review by the Director on the record established before the appeal board;

b. The decisions and orders which are subject to hearing by and appeal to the appeal board shall be set forth in the policies or rules and regulations, which may be either:

i. Specified decisions and orders or classes and types of decisions and orders; or

ii. All decision and orders of the Department;

c. The number, length of terms, and manner of selection of the members of the appeal board shall be set forth in the policies or rules and regulations, but the members shall be employees and staff of the Department with appropriate knowledge and expertise related to matters to be heard by the appeal board;

d. An appeal to the appeal board shall be considered an appeal to the Director under this Chapter and the provisions governing an appeal to the Director under this Chapter shall apply to appeals to the appeal board;

e. Failure to appeal any decision or order to the appeal board within its authority shall constitute a waiver of any further appeal or judicial review; and

f. Final action of the Director shall be required prior to seeking any judicial review, provided that if the Director fails to issue a written decision within thirty (30) days of proper presentation to the Director for a final action, the decision of the appeal board shall be deemed the final action of the Department for purposes of judicial review.

2. In addition to the establishment of an appeal board as provided in this Section, the Department may permit or require, pursuant to written policies or rules and regulations of the

Department, one or more levels of review by its employees or delegates with a final review by or decision of the Director, provided that the failure to proceed to a next required level of review shall constitute a waiver of any further appeal or judicial review.

Section 18-2-10. Judicial Review.

1. If a final decision or order of the Director is subject to judicial review under this Title or other law of the Tribe, a person aggrieved by such final decision of the Director on appeal may challenge the decision by filing a petition requesting judicial review of the final decision in the Tribal Court. The petition for judicial review shall specifically identify the provision of this Title or other law of the Tribe which authorizes judicial review of the final decision of the Director.

2. Except where a different standard is set forth in this Title to review a particular decision of the Director, judicial review of the Director's final decision shall proceed in accordance with the following:

a. The petition for judicial review shall be filed within thirty (30) days of the issuance of the Director's final decision;

b. No new or additional evidence may be introduced, but the matter shall be heard on the record established before the Director and the Department;

c. No new or additional issues may be raised and only issues raised before the Director may be heard regardless of the Director's authority to hear the issue;

d. The Tribal Court shall uphold all factual findings of the Director unless the Tribal Court concludes that such findings are not supported by the substantive evidence in the record established before the Director and the Department;

e. In reviewing legal conclusions reached by the Director, the Tribal Court shall give proper weight to the Director's interpretation of this Title or other law administered by the Department and any rules and regulations of the Department;

f. The Tribal Court may affirm, reverse, modify, or vacate and remand the Department's final decision, but shall

affirm the final decision unless the Tribal Court concludes that the final decision of the Department is:

- i. Not supported by the evidence;
- ii. Arbitrary or capricious;
- iii. An abuse of discretion;
- iv. Beyond the Department's authority; or
- v. Otherwise contrary to the laws of the Tribe.

3. The Tribal Court shall dismiss any action brought against the Department or the Director if:

a. The decision is not expressly subject to judicial review pursuant to this Title or other law of the Tribe governing the decision; or

b. The person has not exhausted all administrative remedies before the Department.

4. Nothing in this Section shall be read or construed to permit judicial review of any action, decision, or order of the Department except where judicial review of such action, decision, or order of the Department is expressly permitted in this Title or other law of the Tribe governing such action, decision, or order.

5. Notwithstanding anything to the contrary in this Title, the Tribal Court shall not have jurisdiction or authority to award or order the payment of damages or other monies or provide any remedy to a person except for enjoining the collection, or ordering the return, of civil fines or other payments collected by the Department, or ordering the payment for health services provided to a person to which a provider of such health services is entitled.

CHAPTER 3 PROTECTION OF PUBLIC HEALTH

Section 18-3-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Condition of public health importance" means a disease, syndrome, symptom, injury, contagion, infection, filth, toxic substance, transmissible agent, or other threat to public health that is identifiable on an individual or community level.

2. "Disease outbreak" means a significant or notable increase in the number of cases of a disease or other condition of public health importance.

3. "Public health emergency" means an occurrence or imminent threat of an illness or health condition that:

a. Is believed to be caused by any of the following:

i. The intentional use of any microorganism, virus, infectious substance, or biological product to cause death, disease, or other biological harm to a human, animal, plant, or another living organism;

ii. The appearance of a novel or previously controlled or eradicated infectious agent or biological toxin that may be highly contagious;

iii. An epidemic of communicable disease; or

iv. A natural disaster, chemical release, or nuclear or radioactive release; and

b. Poses a high probability of any of the following harms:

i. A large number of deaths in the affected population;

ii. A large number of serious or long-term disabilities in the affected population; or

iii. Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of persons in the affected population.

4. "Reportable disease" means a disease or condition, the reporting of which enables the Department to take action to protect or to benefit the public health.

Section 18-3-2. Reportable Diseases.

1. The Department shall by rule and regulation:

a. Specify reportable diseases and when the diseases must be reported under this Section;

b. Identify those categories of persons who must report reportable diseases and the circumstances under which the reports must be made;

c. Prescribe the procedures and forms for making such reports and transmitting the reports to the Department;

d. Provide for the furnishing of copies of such reports to other health care providers, public health authorities, and government agencies;

e. Prescribe the amount of time such reports shall be maintained; and

f. Specify such other matters the Department deems necessary or desirable for the handling of reportable diseases, including measures and methods for investigating the source and controlling reportable diseases.

2. Persons required under the rules and regulations of the Department to report reportable diseases shall report to the Department as specified by the rules and regulations.

3. In addition to the reportable diseases designated by the Department pursuant to this Section, any health care provider who learns of the existence of a communicable disease, disease outbreak, or condition which the health care provider believes or reasonably should believe to be of public health importance shall report such disease or condition to the Department in the same manner as other reportable diseases.

4. In addition to the reportable diseases designated by the Department pursuant to this Section, the Department may issue a temporary order requiring the reporting of a particular communicable disease or condition of public health importance when necessary to conduct a public health investigation or surveillance of such disease or condition. An order issued pursuant to this subsection shall specify who is required to report, what information is required to be reported, and the duration for which reporting is required which shall not exceed ninety (90) days unless such order is extended by the Department.

5. Any person making a report or providing information pursuant to this Section, including individually identifiable health information, shall be immune from any civil or criminal liability by reason of such action. Any person involved in an investigation under this Section or who in good faith cooperates with the Department or other agency or official in such investigation shall also be immune from any civil or criminal liability by reason of such action.

Section 18-3-3. Receiving Public Health Reports.

1. In addition to information related to reportable diseases required to be reported to the Department pursuant to this Chapter, the Department may collect and receive reports, including identifiable health and other information relating to individuals, for any public health measure or activity, including, but not limited to:

- a. Reports of disease, injury, or disability for the purpose of preventing or controlling such disease, injury, or disability;
- b. Vital events such as birth or death; and
- c. The conduct of public health surveillance, public health investigations, and public health interventions.

Section 18-3-4. Investigations.

1. The Department may investigate a case of a reportable or communicable disease, disease outbreak, epidemic, or other condition of public health importance. The investigation may include, but is not limited to:

- a. Examinations, or orders for examinations, of persons with the disease subject to investigation and, for comparison purposes, persons without such disease;
- b. Interviews of persons with the disease subject to investigation, persons without such disease for purposes of comparison to persons with the disease, health care providers, and others with knowledge or information;
- c. Requiring a health care provider, any public or private entity, or an individual who has information necessary for the investigation to permit inspection of the

information by, and release the information to, the Department; and

d. Inspection, sampling, and testing of real or personal property with consent of the owner or custodian of the property or with an order of the Tribal Court.

2. Upon request of the Department for information pursuant to this Section, a person shall provide the information requested. The Department may issue a subpoena or request the Tribal Court to issue a subpoena or other order, including ex parte without a hearing, to obtain information required to be provided under this Section.

3. Upon request or order of the Department for an examination of a person pursuant to this Section, a person shall submit to such examination as requested. The Department may issue a subpoena or other order or request the Tribal Court to issue a subpoena or other order, including ex parte without a hearing, to obtain an examination required to be provided under this Section.

4. Information requested by, and required to be disclosed to, the Department in an investigation pursuant to this Section may include, but is not limited to, individually identifiable health information related to:

a. The case;

b. An individual who may be the potential source of exposure or infection;

c. An individual who has been or may have been exposed to or affected by the disease;

d. Policies, practices, systems, or structures that may have affected the likelihood of disease transmission; and

e. Factors that may influence an individual's susceptibility to the disease or likelihood of being diagnosed with the disease.

Section 18-3-5. Inspections. To enforce this Title or any other public health law of the Tribe, the Department may enter a building, conveyance, or place where a reportable or communicable disease, disease outbreak, epidemic disease, contagion, infection, filth, other source or cause of preventable disease, or other

condition of public health importance exists or is reasonably suspected.

Section 18-3-6. Abatement of Nuisances.

1. If a threat to the public health, including communicable disease, disease outbreak, epidemic disease, contagion, infection, source of filth, or other source or cause of sickness, is found on any property within the territory of the Tribe, the Department shall order the owner or occupant of the property to remove or abate the threat within a time specified in notice to the owner or occupant but no longer than ten (10) days.

2. Notice for abatement or removal shall be served on the owner, occupant, or agent of the property by a method permitted under the Tribal Rules of Civil Procedure other than publication, provided that if the owner of the property is unknown or absent and has no known representative upon whom notice can be served, the Department shall post notice in a conspicuous place on the property stating that, unless the threat to the public health is abated or removed within a period not longer than ten (10) days, the Department will have the threat abated or removed at the expense of the owner.

3. If the owner, occupant, or agent fails or neglects to comply with the requirement of the notice provided under this Section, the Department or its designated agent shall remove or abate the nuisance, source of filth, or cause of sickness described in the notice from the property. The Department may issue an order assessing the costs of such removal or abatement against the owner, occupant, or agent to recover and, if necessary, bring an action in the Tribal Court against such owner, occupant, or agent to enforce such order of assessment and collect such costs.

4. In addition to any other remedy provided by law, the Department may bring an action in the Tribal Court to enjoin a violation of a law of the Tribe enforceable by the Department or to enjoin as a public health nuisance any activity or failure to act that adversely affects the public health.

5. A final decision of the Director regarding an order issued under this Section shall be subject to judicial review in accordance with this Title.

Section 18-3-7. Contaminated Property. The Department may remediate, disinfect, decontaminate, destroy, or order the remediation, disinfection, decontamination, or destruction of

bedding, carpets, household goods, furnishings, materials, clothing, animals, or other property which is determined by the Department to constitute a threat to the public health, provided that the treatment of any such property shall be the least restrictive means necessary to eliminate the threat to the public health posed by such property.

Section 18-3-8. Initiation of Legal Proceedings. The Department may bring an action in the Tribal Court to enforce any provision of this Chapter.

Section 18-3-9. Spreading of Disease.

1. No person shall knowingly, willfully, or intentionally cause the spread of any communicable disease within the territory of the Tribe. Any person who violates this subsection shall be subject to a civil fine not to exceed one thousand dollars (\$1,000.00) per occurrence.

2. No person shall, knowing they are infected with a communicable disease, negligently cause the spread of such communicable disease within the territory of the Tribe. Any person who violates this subsection shall be subject to a civil fine not to exceed five hundred dollars (\$500.00) per occurrence.

3. The Department may order public health measures appropriate to rectify and prevent the spread of any communicable disease. Any person who knowingly, willfully, or intentionally violates any such order shall be subject to a civil fine not to exceed one thousand dollars (\$1,000.00) per occurrence.

4. Every health care provider attending a person affected with any communicable disease shall:

a. Comply with any ordered public health measures of the Department with respect to the disease; and

b. Otherwise use all precautionary measures to prevent the spread of the disease.

Section 18-3-10. Declaration of Public Health Emergency.

1. Upon the occurrence of a public health emergency, the Tribal Council may declare a state of public health emergency to protect the public health.

2. A declaration of a state of public health emergency must specify:

- a. The nature of the public health emergency;
- b. The geographic area subject to the proclamation;
- c. The conditions that have brought about the public health emergency; and
- d. The duration of the state of public health emergency, if the duration is more than fourteen (14) days.

3. During a public health emergency, the Tribal Council may directly or authorize the Department to:

- a. Close, order the evacuation of, or the decontamination of any facility reasonably believed to endanger the public health;
- b. Regulate or restrict by any means necessary the use, sale, or distribution of food, fuel, medical supplies, medicines, or other goods and services;
- c. Prescribe modes of transportation, routes, and destinations required for the evacuation of individuals or the provision of emergency services;
- d. Control or limit entry into, exit from, movement within, and the occupancy of premises in any public area subject to or threatened by a public health emergency if such actions are reasonable and necessary to respond to the public health emergency; or
- e. Take any other action that may be necessary for the management of resources or to protect the public during a public health emergency.

4. A proclamation of a state of public health emergency, and any extension thereof, expires on the earliest of:

- a. The date provided in the declaration of the state of emergency, unless expressly extended by the Tribal Council;
- b. When terminated by a declaration of the Tribal Council; or

c. If no date is provided in the declaration of the state of public health emergency, fourteen (14) days after the date the public health emergency is declared, unless expressly extended by the Tribal Council.

5. Any extension of a state of public health emergency shall be for the duration provided by the Tribal Council in providing for the extension, provided that if no duration is provided, the extension shall be for fourteen (14) days.

6. Nothing in this Section limits the authority of the Tribal Council to declare a state of emergency under the general powers of the Tribal Council or other applicable law.

Section 18-3-11. Authority of Department During Emergency.

1. During a public health emergency declared by the Tribal Council, the Department may, as necessary to appropriately respond to the public health emergency:

a. Adopt reporting requirements for and provide notice of those requirements to health care providers, institutions, and facilities for the purpose of obtaining information directly related to the public health emergency;

b. After consultation with appropriate medical experts, create and require the use of diagnostic and treatment protocols to respond to the public health emergency and provide notice of those protocols to health care providers, institutions, and facilities;

c. Order public health measures appropriate to the public health threat presented;

d. Authorize pharmacists in the Department to administer vaccines to persons who are three (3) years of age or older;

e. After consultation with appropriate medical experts, provide information to the public regarding their protection and actions being taken by the Department;

f. Upon approval or authorization by the Tribal Council, take other actions necessary to address the public health emergency and provide notice of those actions to health care providers, institutions, and facilities; and

g. Take any enforcement action authorized by the laws of the Tribe, including the imposition of civil penalties as provided in this Chapter.

2. The authority of the Department to take administrative action, and the effectiveness of any action taken, under this Section terminates upon the expiration of the declared public health emergency, unless the actions are continued under other applicable law.

Section 18-3-12. Access to Information During Emergency.

1. During a declared public health emergency, the Department shall be given immediate access to individually identifiable health information necessary to:

- a. Determine the causes of an illness related to the public health emergency;
- b. Identify persons at risk;
- c. Identify patterns of transmission;
- d. Provide treatment; and
- e. Take steps to control the disease.

2. Individually identifiable health information accessed pursuant to this Section may not be used for any other purpose except the purposes listed in this Section.

3. Individually identifiable health information obtained by the Department pursuant to this Section shall be confidential and shall not be disclosed, provided, or open to inspection except:

- a. To the person who is the subject of the information or his or her legal counsel or, in the case of a child, the child's parent, guardian, custodian, guardian ad litem, or legal counsel;
- b. To other Tribal departments and agencies, the Tribal Attorney, and agencies of other governments authorized to receive the information under applicable law;
- c. To identify or to determine the cause or manner of death of a deceased individual;

d. To a health care provider for the evaluation or treatment of a condition that is the subject of a declaration of the public health emergency; or

e. To others when the person who is the subject of the information has authorized the release of information or otherwise waived confidentiality expressly in writing.

4. Upon expiration of the public health emergency, the Department may not use or disclose any individually identifiable health information that has been obtained under this Section.

Section 18-3-13. Confidentiality.

1. All records, files, and information relating to reports made to the Department pursuant to this Chapter, including investigations thereof, shall be confidential and shall not be disclosed, provided, or open to inspection to any by the following:

a. The person who is the subject of the information or his or her health care provider or legal counsel or, in the case of a child, the child's parent, guardian, custodian, or guardian ad litem;

b. Other Tribal departments and agencies, the Tribal Attorney, and agencies of other governments directly involved in the investigation or otherwise authorized to receive the information under applicable law;

c. Health care providers if necessary for the evaluation or treatment of a reportable, communicable, or epidemic disease;

d. Law enforcement officials to the extent necessary to carry out the authority granted to the Department related to isolation or quarantine in this Title;

e. A person who may have been exposed to a reportable, communicable, or epidemic disease, provided that the Department may release individually identifiable information to such person only if there is clear and convincing evidence that the release is necessary to avoid an immediate danger to the person or to the public;

f. A person with information necessary to assist the Department in identifying an individual who may have been

exposed to a reportable, communicable, or epidemic disease, provided that the Department may release individually identifiable information to such person only if there is clear and convincing evidence that the release is necessary to avoid an immediate danger to other persons or to the public;

g. To a person when necessary to protect the public health; or

h. To others when the person who is the subject of the information has authorized the release of information or otherwise waived confidentiality expressly in writing.

2. The Department may release only the minimum amount of information necessary to carry out the purpose of the release pursuant to this Section.

3. Nothing in this Section shall prevent or limit the Department from releasing information:

a. To the Tribal Attorney for purposes of assisting or representing the Department; or

b. In a proceeding in a court to which the Department is a party or participating; or

c. When a person subject of the information authorizes the release of information or otherwise waives confidentiality expressly in writing.

4. Any person who receives information from the Department pursuant to this Section shall not further disclose such information except when authorized by the Department or as otherwise required or permitted by applicable law. Whenever the Department discloses information pursuant to this Section, the disclosure shall be accompanied by the following written statement:

This information has been disclosed to you from records protected by confidentiality laws. Those laws prohibit you from making any further disclosure of information in this record unless further disclosure is expressly authorized by Ponca Health Services or otherwise required or permitted by applicable law.

5. Nothing in this Section affects the confidentiality or admissibility into evidence of information not otherwise

confidential or privileged that is obtained from sources other than the Department.

Section 18-3-14. Violations.

1. It shall be a violation of this Title for any person:

a. Who is mandated to report a reportable disease under the rules and regulations established by the Department pursuant to this Chapter or order of the Department authorized under this Chapter to knowingly fail to do so or willfully prevent someone else from doing so;

b. To refuse to provide any information which is required to be furnished to the Department under this Chapter;

c. To refuse to submit to an examination ordered by the Department pursuant to this Chapter;

d. To hinder an employee or agent of the Department from entering a building, conveyance, or place where a reportable or communicable disease, disease outbreak, epidemic, contagion, infection, filth, other source or cause of preventable disease, or other condition of public health importance exists or is reasonably suspected;

e. To interfere with the performance of the duties of the Department pursuant to this Chapter;

f. To fail or refuse to comply with any public health measure ordered by the Department pursuant to this Chapter;

g. To knowingly expose any person to or infect any person with any communicable disease;

h. To violate or refuse to comply with any order of the Department issued pursuant to this Chapter;

i. To violate or fail to comply with any requirements imposed by the Tribal Council pursuant to a declaration of public health emergency or resulting from actions taken in accordance with the powers granted to the Department during a state of public health emergency; or

j. To disclose confidential information protected under this Chapter other than as expressly authorized in this Chapter.

2. In addition to any other consequences for a violation of this Title or other remedies provided under the laws of the Tribe, a person who commits a violation of this Title as defined in this Section shall be subject to a civil fine of up to five thousand dollars (\$5,000) per day or occurrence of such violation, which may be imposed by the Department pursuant to an order and thereafter enforced and collected through a civil cause of action brought by the Department on behalf of the Tribe in the Tribal Court.

CHAPTER 4 ISOLATION AND QUARANTINE

Section 18-4-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Isolation" means the physical separation and confinement of a person or group of persons who are infected or reasonably believed to be infected with a communicable disease or possibly communicable disease from non-isolated persons to prevent or limit the transmission of the disease to non-isolated persons.

2. "Quarantine" means the physical separation and confinement of a person or group of persons who have been or may have been exposed to a communicable disease or possibly communicable disease and who do not show signs or symptoms of a communicable disease, from persons who have not been exposed to a communicable disease or possibly communicable disease, to prevent or limit the transmission of the disease to other persons.

Section 18-4-2. Conditions for Isolation or Quarantine. When isolating or quarantining a person or group of persons under this Chapter, the Department shall adhere to the following conditions and principles:

1. Isolation or quarantine must be by the least restrictive means necessary to prevent the spread of a communicable disease or possibly communicable disease to others or to limit exposure to or contamination with a toxic substance by others, and may include, but is not limited to, confinement to private homes or other public or private premises;

2. Confinement may not be in a prison, jail, or other facility where those charged with a crime are incarcerated unless:

a. The person or group of persons represents an immediate and serious physical threat to the staff or physical facilities of a hospital or other facility in which the person or group of persons has been confined; or

b. A person has been found in contempt of court because of failure to obey a court order.

3. Isolated persons must be confined separately from quarantined persons and if a facility is not capable of separating isolated persons from quarantined persons, either the isolated persons or the quarantined persons must be moved to a separate facility;

4. The health status of an isolated or quarantined person must be monitored regularly to determine if the person requires continued isolation or quarantine;

5. A quarantined person who subsequently becomes infected or is reasonably believed to have become infected with a communicable disease or possibly communicable disease that the Department believes poses a significant threat to the health and safety of other quarantined persons must be promptly placed in isolation;

6. An isolated or quarantined person must be released as soon as practicable when the Department determines that the person has been successfully decontaminated or that the person no longer poses a substantial risk of transmitting a communicable disease or possibly communicable disease that would constitute a serious or imminent threat to the health and safety of others;

7. The needs of a person who is isolated or quarantined must be addressed to the greatest extent practicable in a systematic and competent fashion, including, but not limited to, providing adequate food, medication, competent medical care, clothing, shelter, and means of communication with other persons who are in isolation or quarantine and persons who are not under isolation or quarantine;

8. Premises used for isolation or quarantine must, to the extent practicable, be maintained in a safe and hygienic manner to lessen the likelihood of further transmission of a communicable disease or possibly communicable disease or of further harm to persons who are isolated and quarantined;

9. Cultural and religious beliefs should be considered to the extent practicable in addressing the needs of persons who are isolated or quarantined and in establishing and maintaining premises used for isolation or quarantine;

10. Isolation or quarantine shall not abridge the right of any person to rely exclusively on spiritual means to treat a communicable disease or possibly communicable disease in accordance with religious or other spiritual tenets and practices, provided that nothing in this Chapter prohibits a person who relies exclusively on spiritual means to treat a communicable disease or possibly communicable disease and who is infected with a communicable disease or has been exposed to a toxic substance from being isolated or quarantined;

11. Prior to placing a person or group of persons subject to isolation or quarantine in a health care facility, the Department must consult with the managers of the health care facility regarding how to best meet the requirements of this Section; and

12. The Department shall provide adequate means of communication between a person or a group of persons who is isolated or quarantined and legal counsel for the person or group of persons.

Section 18-4-3. Duration of Isolation or Quarantine. The maximum duration of time a person or group of persons may be isolated or quarantined pursuant to an order under this Chapter, including an administrative order of the Department, may not exceed:

1. One hundred eighty (180) days if there is substantial medical evidence indicating that the condition that is the basis of the public health threat is spread by airborne transmission and cannot be rendered noninfectious within sixty (60) days or may recur after sixty (60) days; or

2. In all other cases, sixty (60) days.

Section 18-4-4. Authority of Department.

1. The Department may issue an administrative order causing a person or group of persons who would be subject to the jurisdiction of the Tribal Court under this Chapter to be placed in isolation or quarantine if the Department has probable cause to believe that a person or group of persons requires isolation or quarantine in order to avoid a clear danger to others.

2. An administrative order issued under this Section shall:
 - a. Identify the person or group of persons subject to isolation or quarantine by name or shared or similar characteristics or circumstances;
 - b. Identify the premises where isolation or quarantine will take place, if known;
 - c. Either:
 - i. Describe the reasonable efforts made to obtain voluntary compliance with requests for testing or medical examination, treatment, counseling, vaccination, decontamination of persons or animals, isolation, quarantine, or inspection and closure of facilities; or
 - ii. Explain why reasonable efforts to obtain voluntary compliance are not possible and why the pursuit of these efforts creates a risk of serious harm to others;
 - d. Describe the suspected communicable disease or toxic substance, if known, that is the basis for the issuance of the administrative order and the anticipated duration of isolation or quarantine based on the suspected communicable disease or toxic substance;
 - e. Provide information supporting the reasonable belief of the Department that the person or group of persons is, or is suspected to be, infected with, exposed to, or contaminated with a communicable disease or toxic substance that could spread to or contaminate others if remedial action is not taken;
 - f. Provide information supporting the reasonable belief of the Department that the person or group of persons would pose a serious and imminent risk to the health and safety of others if not isolated or quarantined;
 - g. Describe the medical basis for which isolation or quarantine is justified and explain why isolation or quarantine is the least restrictive means available to prevent a risk to the health and safety of others;

h. Establish the time and date at which the isolation or quarantine commences;

i. Specify the duration for the isolation or quarantine, subject to the maximum duration allowed in this Chapter;

j. Contain a statement of compliance with the conditions for isolation and quarantine specified in this Chapter; and

k. Be served on all affected persons or groups in accordance with Chapter.

3. A final decision of the Director regarding an administrative order issued under this Section shall be subject to judicial review in accordance with this Title.

Section 18-4-5. Authority of Tribal Court.

1. The Tribal Court has jurisdiction to issue orders for isolation and quarantine when:

a. The person or group of persons to be isolated or quarantined resides or is domiciled in the territory of the Tribe;

b. The person or group of persons to be isolated or quarantined receives services from or through the Department;

c. The person or group of persons to be isolated or quarantined is employed by the Department;

d. The person or group of persons has otherwise consented to the jurisdiction of the Tribal Court; or

e. The Tribal Court otherwise has jurisdiction over the person or group of persons.

2. The Tribal Court has jurisdiction to issue orders releasing any person or group of persons from isolation or quarantine or providing a remedy regarding a breach of the conditions of isolation or quarantine specified in this Chapter if the person or group of persons is subject to an order for isolation or quarantine issued under this Chapter, including an administrative order issued by the Department.

3. The Tribal Court's lack of jurisdiction over a single person to subject to an order for isolation or quarantine shall not deprive the Tribal Court of jurisdiction to issue an order for isolation or quarantine, confirm or enforce an administrative order of the Department issued under this Chapter, or order any release or remedy related to an order for isolation or quarantine with respect to any other person over whom the Tribal Court may exercise jurisdiction.

4. The Tribal Court may issue orders under this Chapter regardless of whether a prior action on the same or similar matter has been commenced in the court of another jurisdiction involving the same individual.

Section 18-4-6. Procedure.

1. The procedures in the Tribal Court under this Chapter shall be governed by the rules of procedure for the Tribal Court which are not in conflict with this Chapter.

2. The Tribal Court may issue orders under this Chapter by telephone, facsimile, or other electronic means and such orders shall have the same force and effect as original written orders. Orders issued by telephone shall be followed by a written order as soon thereafter as possible.

Section 18-4-7. Conduct of Hearings. All hearings involving proceedings under this Chapter shall be conducted in accordance with the following:

1. Hearings shall be informal in nature, but orderly;

2. Concerned parties shall be provided an opportunity to introduce evidence, be heard in their own behalf, and examine witnesses;

3. Any matter or information relevant and material to the subject matter of the hearing is admissible and may be received in evidence;

4. Hearsay evidence will not be excluded as long as it is reasonably reliable;

5. Notwithstanding any other provision of law, there shall be no restrictions concerning a physician or other health care provider testifying about his or her patient or any privilege of confidentiality between a physician or other health care provider

in any proceeding under this Chapter, provided that any evidence presented at a hearing that would be privileged and not subject to disclosure except as required by this subsection shall be disclosed only to the Tribal Court, the parties and their legal counsel, or persons authorized by the Tribal Court and may not be disclosed to the public.

6. A verbatim record shall be taken of all hearings; and

7. The Department may request that the respondent not personally appear before the Tribal Court because personal appearance would pose a risk of serious harm to others and, if the Tribal Court grants the Department's request or otherwise determines personal appearance by the respondent poses a risk of serious harm to others, the hearing shall either be conducted by legal counsel for the respondent or at a location or by a means, including simultaneous electronic transmission, that allows all parties to fully participate without risk of harm to others.

Section 18-4-8. Proceedings of a Civil Nature. Proceedings in cases under this Chapter shall be regarded as civil proceedings, with the Tribal Court exercising both legal and equitable powers.

Section 18-4-9. Initiation of Proceedings by Department.

1. The Department may petition the Tribal Court for an order authorizing:

a. The isolation or quarantine of a person or group of persons; or

b. The confirmation and enforcement of an administrative order issued by the Department under this Chapter.

2. Petitions brought by the Department for an order for isolation or quarantine shall be captioned: "Ponca Tribe of Nebraska, by and through Ponca Health Services, Petitioner vs. (name(s) of respondent(s)), Respondent(s)".

3. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The name, last known address, employer, employer address, and tribal affiliation of the person or group of persons to be subject to isolation or quarantine, who shall

be the named respondent, or the reasons that such information is unavailable;

b. The basis for the Tribal Court's jurisdiction;

c. The information required for an administrative order of the Department under this Chapter;

d. If the Department requests confirmation and enforcement of an administrative order issued by it, a copy of the administrative order; and

e. A request that the Tribal Court enter an order for isolation or quarantine or confirm and enforce an administrative order of the Department, as the case may be.

4. In addition to the information required herein, a petition under this Section may also include such supporting documents the Department desires to include which, unless objected to by the respondent, shall be received and accepted as evidence by the Tribal Court by virtue of such attachment the same as any evidence formally presented and admitted.

5. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 18-4-10. Initiation of Proceedings for Relief from Administrative Order.

1. A person or group of persons isolated or quarantined pursuant to an administrative order for isolation or quarantine may petition the Tribal Court at any time during the duration of isolation or quarantine for an order:

a. Releasing the person or group of persons from isolation or quarantine or otherwise vacating the administrative order; or

b. Providing a remedy regarding a breach of the conditions of isolation or quarantine specified in this Chapter.

2. Petitions brought by persons subject to an administrative order for isolation or quarantine shall be captioned: "(name(s) of person(s) or group of persons), Petitioner(s) vs. Ponca Health Services, Respondent".

3. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The name, last known address, employer, employer address, and tribal affiliation of the person or group of persons subject to the administrative order for isolation or quarantine;

b. The basis for the Tribal Court's jurisdiction;

c. A copy of the administrative order for isolation or quarantine issued by the Department under this Chapter; and

d. A request that the Tribal Court enter an order releasing the petitioner from isolation or quarantine or providing a remedy for breach of conditions of isolation or quarantine specified in this Chapter, as the case may be.

4. In addition to the information required herein, a petition under this Section may also include such supporting documents the petitioner desires to include.

5. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 18-4-11. Emergency Orders.

1. The Tribal Court may issue an emergency order for isolation or quarantine ex parte without a hearing if, and only if, it appears from the face of a verified petition and any supporting affidavits or sworn oral testimony communicated by telephone or other appropriate means that:

a. Probable cause exists to believe that the respondent requires immediate isolation or quarantine in order to avoid a clear and immediate danger to others; and

b. Considerations of safety do not allow time for notice to the respondent and a hearing.

2. If the Tribal Court issues an emergency order for isolation or quarantine ex parte without a hearing, the Tribal Court shall:

a. Issue a summons to the respondent in accordance with this Chapter;

b. Schedule a hearing to be held within seventy-two (72) hours of issuing the emergency order for isolation or quarantine; and

c. Cause the petition, the emergency order for isolation or quarantine, and summons to be served on the respondent in accordance with this Chapter.

Section 18-4-12. Hearing on Petition.

1. Upon the filing of a petition under this Chapter, the Tribal Court shall schedule and conduct a hearing on the petition as expeditiously as possible, but in the case of a petition seeking release from isolation or quarantine pursuant to an administrative order issued by the Department, no later than seventy-two (72) hours from the date the petition was filed.

2. In extraordinary circumstances and for good cause shown, or with consent of the respondent, the Tribal Court may continue the hearing date for up to ten (10) days, giving due regard to the rights of the respondent, the protection of the public health, the severity of the public health threat, and the availability of necessary witnesses and evidence.

3. The Tribal Court shall consider any and all relevant testimony or evidence presented at hearing.

4. The hearing required under this Section may be waived by consent of the respondent.

5. The Tribal Court shall issue an order under this Chapter if it finds by clear and convincing evidence that:

a. In the case of an order for isolation or quarantine or confirming an administrative order of the Department, isolation or quarantine is necessary to prevent a serious risk to the health and safety of others;

b. In the case of an order seeking release from isolation or quarantine pursuant to an administrative order of the Department:

i. The administrative order is contrary to the provision of this Chapter or beyond the Department's authority; or

ii. Isolation or quarantine is not necessary or no longer necessary to prevent a serious risk to the health and safety of others; and

c. In the case of an order seeking a remedy for breach of conditions of isolation or quarantine specified in this Chapter, such conditions have been breached and the petitioner is otherwise entitled to a remedy for such breach.

6. In lieu of or in addition to any relief requested in a proceeding under this Chapter, the Tribal Court may order the imposition of other public health measures appropriate to the public health threat presented.

Section 18-4-13. Order for Isolation or Quarantine. In addition to any other matters necessary for an order of the Tribal Court, an order for isolation or quarantine, including an emergency order, shall:

1. Specify the maximum duration for the isolation or quarantine as set forth in this Chapter;

2. Identify the person or group of persons subject to the order by name or shared or similar characteristics or circumstances;

3. Specify the factual findings warranting imposition of isolation, quarantine, or another public health measure;

4. Include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of this Chapter; and

5. Be served on all affected persons or groups in accordance with Chapter.

Section 18-4-14. Notice and Service of Order.

1. The Tribal Court or, in the case of an administrative order, the Department shall provide the person or group of persons subject to an order for isolation or quarantine with a written notice informing the person or group of persons of:

a. The right to legal counsel, including how to request and communicate with counsel;

b. The right to petition the Tribal Court for release from isolation or quarantine and the procedures for filing a petition;

c. The conditions of isolation and quarantine specified in this Chapter;

d. The right to petition the Tribal Court for a remedy regarding a breach of the conditions of isolation or quarantine specified in this Chapter and the procedures for filing a petition; and

e. The sanctions that may be imposed under this Chapter for violating an order for isolation or quarantine.

2. Except as provided in this Section, any person or group of persons isolated or quarantined or sought for isolation or quarantine shall be personally served in accordance with the Tribal Rules of Civil Procedure.

3. Service of any documents may be made by posting the documents to be served in a conspicuous place where the documents can be viewed by the person or group of persons to be served or by another means which will meaningfully communicate the information in the documents to the person or group of persons to be served if personal service:

a. Cannot be accomplished in a timely manner to a group of persons isolated or quarantined because the number of persons in the group makes personal service impracticable; or

b. Personal service would endanger the health or safety of a person conducting personal service.

4. Any person requested or required to transport or receive a person or group of persons subject to quarantine or isolation shall be informed of the infectious or contagious status of the person or group of persons and the protections advised for transporting or receiving such person or group of persons prior to transporting or receiving the person or group of persons.

Section 18-4-15. Modification of Order.

1. Any party to an order for isolation or quarantine issued by the Tribal Court under this Chapter may, by motion in the same action in which the order for isolation or quarantine was issued, request the Tribal Court to:

- a. Modify, terminate, vacate, or enforce the order;
- b. Extend the order;
- c. Order a party's release from isolation or quarantine pursuant to the order; or
- d. Order a remedy for a breach of the conditions of isolation or quarantine specified in this Chapter.

2. A motion made under this Section shall identify the person making the motion and shall set forth in clear and concise terms the reasons for the relief requested.

3. The Tribal Court shall hold a hearing on all motions filed under this Section upon notice given to the parties to the original proceeding.

4. The Tribal Court may grant a motion made under this Section if the movant proves by clear and convincing evidence that there are grounds for the relief sought, provided that if the relief seeks to extend an order for isolation or quarantine for a duration which would result in a person or group of persons being held in quarantine or isolation for longer than one hundred eighty (180) days, the Tribal Court shall grant such extension only if it finds that extraordinary circumstances exist and the person or group of persons subject to isolation or quarantine continue to pose a serious threat to the health and safety of others if isolation or quarantine is not continued.

Section 18-4-16. Violation of Order.

1. Any person who knowingly, willfully, or purposely violates, or attempts or intends to knowingly, willfully, or purposely violate, an order for isolation or quarantine issued under this Chapter, including an administrative order issued by the Department, shall be subject to a civil fine not to exceed one thousand dollars (\$1,000) per day or occurrence of such violation.

2. In addition to the civil fines provided herein, the Tribal Court may enforce an order for protection issued under this

Chapter using any and all other enforcement remedies available to enforce an order of the Tribal Court, including contempt.

Section 18-4-17. Entry Into Isolation or Quarantine.

1. Entry into premises used for isolation or quarantine shall be allowed under the following conditions:

a. The Department may authorize health care providers or other persons access to persons or groups of persons who are in isolation or quarantine as necessary to meet the needs of isolated or quarantined persons;

b. Only persons authorized by the Department may enter premises used for isolation or quarantine;

c. An authorized person entering premises used for isolation or quarantine shall be provided with infection control training and may be required to wear personal protective equipment or to receive vaccinations as determined by the Department; and

d. A person entering premises used for isolation or quarantine with or without authorization of the Department may become subject to isolation or quarantine.

2. Persons subject to isolation or quarantine and other persons entering premises used for isolation or quarantine are subject to rules and orders adopted by the Department. Failure to comply with rules and orders adopted by the Department is a violation of this Title.

**CHAPTER 5
MEDICAL TREATMENT**

Section 18-5-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Counseling" means the provision of counseling or mental health services by a health care provider or domestic violence advocate or counselor.

2. "Dependent adult" means a person over the age of majority who has mental limitations that restrict his or her ability to manage his or her own affairs, care for himself or herself, or

protect his or her rights, including, but not limited to, persons who have developmental disabilities, or whose mental abilities have diminished because of age, mental illness, mental deficiency, chronic use of drugs, chronic intoxication, or other like incapacity which results in a lacking of sufficient understanding or capacity to communicate informed decisions.

3. "Domestic or family abuse" means domestic or family abuse as defined in Title IV of this Code.

4. "Emergency" means:

a. Immediate medical care is required for the alleviation of severe pain; or

b. Immediate diagnosis and treatment of unforeseeable medical conditions are required, if such conditions would lead to serious disability or death if not immediately diagnosed and treated.

5. "Medical care" means medical care and dental care.

6. "Mental health treatment" means the provision of mental health treatment or counseling on an outpatient basis.

7. "Residential shelter services" means the provision of residential and other support services to minors on a temporary or emergency basis in a facility that services only minors.

8. "Sexual assault" means causing a person to engage in sexual activity:

a. Involuntarily;

b. Without consent;

c. When the person is incapable of consenting due to alcohol or drug impairment, being unconscious or asleep, or incapacity; or

d. When the person is under the age of fourteen (14) years;

e. When the person is under the age of majority but at least fourteen (14) years of age if the perpetrator is more than three (3) years older; or

f. With consent obtained by force, threat of force, intimidation, fraud, or duress.

Section 18-5-2. Informed Consent. Where a patient's informed consent is required prior to medical care, the patient or his or her legal representative shall be informed of:

1. The nature of the procedure;
2. The risks, complications, and expected benefits or effects of the procedure;
3. Any alternatives to the treatment which may be legally provided and their risks and benefits; and
4. Any potentially conflicting interest the health care provider may have, including research or financial interests.

Section 18-5-3. Surrogate Consent.

1. If an adult patient is unable to consent to medical care or counseling, including a dependent adult, and the patient does not have a health care directive which applies to the treatment required, the following individual or individuals in the indicated order of priority, who are available and willing to serve as a surrogate, shall have the authority to consent on behalf of the patient:

a. A guardian appointed by a court with the authority to make health care decisions on behalf of the patient;

b. A person designated in a health care power of attorney;

c. The patient's spouse or domestic partner, unless they are legally separated;

d. An adult child of the patient, provided that if the patient has more than one adult child, the health care provider shall seek the consent of a majority of the adult children who are reasonably available for consultation;

e. A parent of the patient;

f. The patient's child over sixteen (16) years of age, provided that if the patient has more than one child over sixteen (16) years of age, the health care provider shall

seek the consent of a majority of the children over sixteen (16) years of age who are reasonably available for consultation;

g. The patient's adult sibling, provided that if the patient has more than one adult sibling, the health care provider shall seek the consent of a majority of the adult siblings who are reasonably available for consultation;

h. Another member of the patient's immediate family;

i. A member of the patient's extended family; or

j. An adult who has exhibited special care and concern for the patient, who is familiar with the patient's medical care views and desires, and who is willing and able to become involved in the patient's medical care and to act in the patient's best interest.

2. If the health care provider cannot locate any of the people listed in subsection 1 of this Section, the patient's attending physician may make medical care treatment decisions for the patient after the physician consults with and obtains the recommendations of an institutional ethics committee. If this is not possible, the physician may make these decisions after consulting with a second physician who concurs with the physician's decision.

3. A surrogate may make decisions about mental health treatment on behalf of a patient if the patient is found incapable. However, a surrogate who is not the patient's agent or guardian shall not have the authority to admit the patient to an inpatient psychiatric facility.

4. A person who makes a good faith medical decision pursuant to this Section is immune from criminal and civil liability and is not subject to professional discipline for that decision.

Section 18-5-4. Consent in Emergency.

1. In cases of emergency where the attending health care provider reasonably believes that a medical procedure should be undertaken immediately and there is insufficient time to obtain the consent of the patient or a person authorized to consent for the patient, the medical procedure may be provided without consent.

2. In cases where a minor or dependent adult is in need of immediate medical care and, after reasonable efforts made under the circumstances, the parents, guardian, or custodian of such minor cannot be located or contacted for the purpose of consenting thereto, consent for said emergency attention may be given by any person standing in loco parentis to said minor or dependent adult.

3. A minor who is twelve (12) years of age or older or a dependent adult who is found to be under the influence of a dangerous drug or narcotic which includes withdrawal symptoms, may be considered an emergency case and the minor or dependent adult considered as having consented to medical care needed for treatment of that condition.

4. Nothing in this Section authorizes the undertaking of a medical procedure where the patient or the patient's legal representative has validly exercised his or her right to refuse that particular medical procedure.

Section 18-5-5. Consent by Person Having Care of Minor or Court.

1. The parent, guardian, or custodian of a minor or dependent adult may authorize in writing an adult to consent to medical care, counseling, or both for the minor or dependent adult.

2. Upon application by a minor, the Tribal Court may summarily grant consent for medical care, counseling, or both, for the minor if the Tribal Court determines:

a. The minor is sixteen (16) years of age or older and resides in the territory of the Tribe; and

b. The consent of a parent, guardian, or custodian is necessary to permit the medical care, counseling, or both, and the minor has no parent, guardian, or custodian available to give the consent.

Section 18-5-6. Consent by Minor Generally.

1. A minor living apart from his or her parents, guardian, or custodian and who lacks a fixed and regular nighttime residence or whose primary residence is either a supervised shelter designed to provide temporary accommodations, a halfway house, or a place not designed for or ordinarily used for sleeping by humans may consent to any medical care.

2. Notwithstanding any other provision of law, a minor may consent to:

a. Medical care and counseling related to the prevention or treatment of pregnancy, provided that no minor may be sterilized without the consent of the minor's parent or guardian; and

b. If the minor is alleged to be the victim of sexual assault, medical care and counseling related to the diagnosis and treatment of the condition and the collection of medical evidence with regard to the alleged sexual assault, provided that, unless the minor is twelve (12) years of age or older or the health care provider reasonably believes that the minor's parent, guardian, or custodian committed the sexual assault, the health care provider providing medical treatment shall attempt to contact the minor's parent, guardian, or custodian and shall note in the minor's treatment record the date and time of the attempted contact and whether the attempt was successful.

3. Notwithstanding any other provision of law, a minor who is twelve (12) years of age or older may consent to any of the following:

a. Medical care related to the prevention, diagnosis, or treatment of any disease which is required to be reported to the Department under this Title;

b. Medical care and counseling related to the prevention, diagnosis, or treatment of any sexually transmitted disease or the general sexual activity of the minor; and

c. If the minor states that he or she is a victim of or injured as a result of domestic or family abuse, medical care and counseling related to the diagnosis or treatment of the domestic or family abuse and the collection of medical evidence with regard to the alleged domestic or family abuse.

4. Notwithstanding any other provision of law, a minor who is sixteen (16) years of age or older and is otherwise competent may consent to the donation of blood and be subject to the penetration of tissue necessary to accomplish the donation at a blood bank if the minor has the written consent of the minor's parent or legal guardian.

5. If the health care provider providing treatment to a minor for any medical care pursuant to this Section believes that the condition requires a report pursuant to the laws of the Tribe, the health care provider shall:

a. Inform the minor that the report will be made; and

b. Unless the health care provider reasonably believes that the minor's parent, guardian, or custodian committed the act which caused the condition, attempt to contact the minor's parent, guardian, or custodian, inform them of the report, and note in the minor's treatment record the date and time of the attempted contact and whether the attempt was successful.

6. Subject to any limitations provided in this Section, the consent of the parent, guardian, or custodian of a minor for any medical care or counseling provided to a minor pursuant to this Section is not necessary in order to authorize such medical care or counseling and a consent given by a minor under this Section is not subject to disaffirmance because of minority.

Section 18-5-7. Minor Consent to Substance Use Treatment.

1. Notwithstanding any other provision of law, a minor who is twelve (12) years of age or older may consent to medical care and counseling relating to the diagnosis and treatment of a substance use problem.

2. The treatment plan of a minor authorized by this Section shall include the involvement of the minor's parent, guardian, or custodian, if appropriate, as determined by the health care provider treating the minor. The health care provider providing medical care or counseling to a minor shall state in the minor's treatment record whether and when the health care provider attempted to contact the minor's parent, guardian, or custodian and whether the attempt was successful, or the reason why, in the opinion of the health care provider, it would not be appropriate to contact the minor's parent, guardian, or custodian.

3. This Section does not authorize a minor to receive replacement narcotic abuse treatment without the consent of the minor's parent, guardian, or custodian.

4. Nothing in this Section shall be construed to restrict or eliminate the right of a parent, guardian, or custodian to seek medical care and counseling for a substance use problem of a minor when the minor does not consent to the medical care and counseling.

5. Notwithstanding any other provision of law, when a parent, guardian, or custodian has sought the medical care and counseling for a substance use problem of a minor, the health care provider shall disclose medical information concerning the care to the minor's parent, guardian, or custodian upon the parent's, guardian's, or custodian's request even if the minor does not consent to disclosure.

6. Subject to any limitations provided in this Section, the consent of the parent, guardian, or custodian of a minor for any medical care or counseling provided to a minor pursuant to this Section is not necessary in order to authorize such medical care or counseling and a consent given by a minor under this Section is not subject to disaffirmance because of minority.

Section 18-5-8. Minor Consent to Counseling.

1. Notwithstanding any other provision of law, a minor who is twelve (12) years of age or older may consent to mental health treatment or counseling on an outpatient basis or to residential shelter services if both of the following requirements are satisfied:

a. The minor, in the opinion of the attending health care provider or domestic violence advocate or counselor, is mature enough to participate intelligently in the outpatient services or residential shelter services; and

b. The minor either:

i. Would present a danger of serious physical or mental harm to self or others without the mental health treatment, counseling, or residential shelter services; or

ii. Is the alleged victim of incest, child neglect or abuse, or domestic or family abuse.

2. A health care provider offering residential shelter services shall make his or her best efforts to notify the parent, guardian, or custodian of the minor of the provision of services.

3. The mental health treatment or counseling of a minor authorized by this Section shall include involvement of the minor's parent, guardian, or custodian unless, in the opinion of the health care provider or domestic violence advocate or counselor who is

treating or counseling the minor, the involvement would be inappropriate. The health care provider or domestic violence advocate or counselor who is treating or counseling the minor shall state in the minor's treatment record whether and when the health care provider or domestic violence advocate or counselor attempted to contact the minor's parent, guardian, or custodian and whether the attempt was successful, or the reason why, in the opinion of the health care provider or domestic violence advocate or counselor, it would not be appropriate to contact the minor's parent, guardian, or custodian.

4. This Section does not authorize a minor to receive convulsive therapy, psychosurgery, or psychotropic drugs without the consent of the minor's parent, guardian, or custodian.

5. Subject to any limitations provided in this Section, the consent of the parent, guardian, or custodian of a minor for any medical care or counseling provided to a minor pursuant to this Section is not necessary in order to authorize such medical care or counseling and a consent given by a minor under this Section is not subject to disaffirmance because of minority.

Section 18-5-9. Access to Minor Information.

1. Except where notice to or contact of a parent, guardian, or custodian is required under this Chapter, the parent, guardian, custodian, or other representative of a minor shall not be entitled to inspect or obtain copies of the minor's patient records or receive information about a minor's medical care or counseling in either of the following circumstances:

a. With respect to medical care or counseling which the minor consented to as authorized by this Chapter; or

b. Where the health care provider or domestic violence advocate or counselor determines that access to the patient records requested by the parent, guardian, custodian, or other representative would have a detrimental effect on the provider's, advocate's, or counselor's professional relationship with the minor patient or the minor's physical safety or psychological well-being.

2. The decision of a health care provider or domestic violence advocate or counselor as to whether or not a minor's records are available for inspection or copying under this Section shall not attach any liability to the provider unless the decision is found to be in bad faith.

Section 18-5-10. Liability of Provider.

1. A health care provider or domestic violence advocate or counselor acting in reliance on the consent of a minor who has authority or apparent authority pursuant to this Chapter to consent to medical care or counseling is not subject to criminal or civil liability or professional disciplinary action on the ground that he or she failed to obtain consent of the minor's parent, guardian, or custodian.

2. A health care provider shall not be subject to criminal or civil liability or professional disciplinary action on account of a failure to obtain consent or inform a patient of the possible consequences of a medical procedure where the failure to inform is caused by any of the following:

a. The health care provider reasonably believed that consent was not required pursuant to a provision of this Chapter;

b. The patient was unconscious;

c. The medical procedure was undertaken without the consent of the patient because the health care provider reasonably believed that a medical procedure should be undertaken immediately and that there was insufficient time to fully inform the patient; or

d. A medical procedure was performed on a person legally incapable of giving consent and the health care provider reasonably believed that a medical procedure should be undertaken immediately and that there was insufficient time to obtain the informed consent of a person authorized to give such consent for the patient.

Section 18-5-11. Liability During Emergency.

1. A health care provider who renders services during any state of emergency at the express or implied request of any official or agency of the Tribe shall have no liability for any injury sustained by any person by reason of those services, regardless of how or under what circumstances or by what cause those injuries are sustained.

2. A health care provider who in good faith renders emergency care at the scene of an emergency which occurs outside

both the place and the course of that person's employment shall not be liable for any civil damages as the result of acts or omissions by that person in rendering the emergency care.

3. The immunity granted in this Section shall not apply:

a. When the person receiving services or care has been seen regularly by or under the direction of the health care provider providing services or care; or

b. To any willful act or omission.

CHAPTER 6 FOOD SERVICES

Section 18-6-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Food" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form and whether raw, cooked, or processed, that are sold or intended in whole or in part for ingestion or chewing by humans and includes ingredients used or intended for use in food and chewing gum.

2. "Food establishment" means, regardless of whether conducted in a mobile, stationary, temporary, or permanent facility or location, whether conducted on a temporary, seasonal, or permanent basis, whether consumption is on or off the premises, or whether there is a charge for the food:

a. An operation that stores, prepares, packages, serves, or vends food directly to members of the public or otherwise provides food for human consumption, such as restaurants, satellite or catered feeding locations, catering operations, retail food establishments and outlets, grocery stores and markets, vending locations, conveyances used to transport food, and food banks, but excluding:

i. A produce stand that only offers whole, uncut fresh fruits and vegetables; and

ii. An individual preparing and selling food out of his or her own home;

b. An operation that relinquishes possession of food to members of the public directly or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders; and

c. An element, part, or subdivision of a food establishment, such as transportation vehicles or a central preparation facility that supplies a vending location or satellite feeding location, unless such element is licensed as part of the food establishment.

3. "Health inspector" means the health inspector of the Department designated pursuant to this Chapter.

4. "Temporary food establishment" means a food establishment which operates for a period of no more than ten (10) consecutive days in conjunction with a single event or celebration.

Section 18-6-2. Consent to Jurisdiction. Any person who operates a food establishment in the territory of the Tribe, conducts business or engages in a business transaction in the territory of the Tribe or with the Tribe or any of its members, enters into a consensual relationship with Tribe or any of its members, acts under Tribal authority, or enters the territory of the Tribe shall be deemed to have consented to the following:

1. To be bound by the terms of this Title; and

2. To the exercise of jurisdiction by the Tribal Court over it, him, or her in an action arising under this Title.

Section 18-6-3. Health Inspector.

1. The Department may designate an employee of the Department as the health inspector of the Tribe. The health inspector should have the knowledge, skills, and abilities to adequately perform the required duties under this Chapter. In the absence of the Department designating a health inspector, the Director shall be the health inspector of the Tribe.

2. The power, authority, and duties of the health inspector shall be as follows:

a. To administer, implement, and enforce this Chapter and enforce and assist in the enforcement of all laws of the Tribe relating to food safety and food establishments, subject to the supervision of the Department;

b. To make recommendations to the Department concerning the promulgation of and amendment to rules and regulations to implement this Chapter;

c. To investigate, inspect, and monitor food establishments as provided in this Chapter;

d. To receive applications for and issue to and suspend, cancel, and revoke licenses of food establishments in accordance with this Chapter and the rules and regulations of the Department;

e. To bring legal action in the name of the Tribe to enforce this Chapter;

f. To inspect any premises where food is manufactured, distributed, or sold as provided in this Chapter;

g. To conduct an audit to inspect any licensee's records and books as provided in this Chapter;

h. To examine, under oath, either orally or in writing, any person with respect to any matter subject of this Chapter;

i. To collaborate and cooperate with such other agencies of the Tribe, other tribes, the United States, and the states of the United States in carrying out the duties of the health inspector; and

j. To perform all other duties delegated or assigned to the health inspector by this Chapter or other laws of the Tribe or the Tribal Council and otherwise implement this Chapter.

Section 18-6-4. Rules and Regulations.

1. The Department may promulgate rules and regulations, not inconsistent with this Chapter and subject to the approval of Tribal Council, as it deems necessary or desirable in the public interest in carrying out the duties of the Department under this Chapter.

2. In the absence of the Department promulgating such rules and regulations, the most recent model Food Code developed and approved by the Food and Drug Administration of the Public Health

Service of the United States Department of Health and Human Services shall constitute the rules and regulations of the Department governing food safety and food establishments to the extent not inconsistent with this Title, provided that terms particular to the United States, a state of the United States, or either of their agencies, courts, or tribunals in such model Food Code or any law incorporated therein by reference shall be read as referring to their counterparts under the laws of the Tribe unless the context requires otherwise, including, but not limited to the following:

a. "Regulatory authority" shall refer to the Department and, when appropriate, the health inspector; and

b. "Local," "state," and "federal" shall refer to the Tribe.

Section 18-6-5. License Required.

1. No person may commence, practice, transact, or carry on any food establishment in the territory of the Tribe except with a license issued in accordance with this Chapter and compliance with all other applicable laws governing the same.

2. Except for licenses issued for temporary food establishments, a license issued by the Department shall be in force and effect for one (1) year following the date it is issued, unless sooner revoked.

Section 18-6-6. Exemptions. Any school, club, athletic organization, or charitable or religious entity operating a temporary food establishment for the sole purpose of raising funds for charitable or religious purposes where no part of the income accrues to the personal benefit of any person shall be exempt from the requirement of a license under this Chapter.

Section 18-6-7. Application for License.

1. Any person desiring a license pursuant to this Chapter shall complete and file an application for the appropriate license with the Department and pay such application fee as may be set by the Department to defray the costs of processing the application.

2. In addition to any other items required by the Department, all applications for a license pursuant to this Chapter shall include the following:

a. The name, address, telephone number, and signature of the applicant and the name, mailing address, and location of the food establishment;

b. Any other names used by the applicant, including trade names;

c. Whether the applicant is a partnership, corporation, limited liability company, sole proprietorship, or other entity and the jurisdiction where the applicant is organized or registered to conduct business;

d. A statement specifying whether the food establishment is mobile or stationary and temporary or permanent;

e. The name, title, address, and telephone number of the person directly responsible for the food establishment;

f. Information on each license for a food establishment which the applicant has held in any jurisdiction;

g. Whether the applicant or any of its principals have had a license for a food establishment revoked or suspended in any jurisdiction;

h. Agreement by the applicant to comply with the laws of the Tribe and all conditions of the license issued by the Department; and

i. A statement that the applicant attests to the accuracy of all information provided in the application.

Section 18-6-8. Processing of Application.

1. To qualify for a license, an applicant shall:

a. Be an owner or officer of the food establishment;

b. Comply with the requirements of this Chapter, the rules and regulations of the Department under this Chapter, and all applicable laws of the Tribe; and

c. Agree to permit access by the Department and health inspector to the food establishment and provide required information to the same.

2. The Department shall issue a license only after, at a minimum:

a. A properly completed application is submitted;

b. The required fee is submitted;

c. Plans, specifications, and information required by the health inspector are reviewed and approved by the health inspector; and

d. A pre-operational inspection shows that the food establishment is built in accordance with any approved plans and specifications and that the food establishment is in compliance with this Chapter and the rules and regulations of the Department under this Chapter.

3. The Department may establish additional requirements for the issuance of a license that are not inconsistent with this Chapter, including inspections, ensuring the suitability of the physical premises and plan of operation of the applicant, and any other relevant considerations.

Section 18-6-9. Form of License.

1. Each license issued pursuant to this Chapter shall specify:

a. The name and address of the licensee;

b. The premises to which the license applies; and

c. Such other information as the Department may require.

2. The licensee must keep the license posted at all times in a conspicuous place on the premises for which it has been issued.

3. A licensee must pay all taxes assessed against it under the laws of the Tribe.

4. Notwithstanding anything else in the laws of the Tribe, a license issued pursuant to this Chapter constitutes only a permit to the licensee to conduct the activities permitted by the license for the duration of the license and shall not be construed or

deemed to constitute a property or other vested right of any kind or give rise to a legal entitlement to a license for any future period of time.

Section 18-6-10. Renewal of License.

1. A licensee may renew its license by filing an application for renewal with the Department and paying such renewal application fee as may be set by the Department to defray the costs of processing the application.

2. The renewal application shall identify any changes in information required on the licensee's application for a license since the issuance of the license or previous renewal, whichever is later, or the applicant shall certify that no such information has changed.

3. The Department shall renew a license upon submission of a renewal application, payment of the applicable annual license fee, and compliance with any other additional requirements of the Department for the issuance of a renewal that are not inconsistent with this Chapter.

Section 18-6-11. Transfer and Modification of License.

1. No license issued pursuant to this Chapter may be assigned or transferred to any other person or entity or to any other location.

2. A licensee may request a change in the name and/or address of the licensee by applying with the Department for a modification of the license in accordance with this Section and paying such fee as may be set by the Department to defray the costs of processing the modification.

3. The Department shall approve a change in the address of the licensee upon request, provided the change in address is not a change in location. The Department shall approve a change in the name of the licensee provided that the name is not the name of an individual and the change is not the result of any change in more than fifty percent (50%) of the ownership interest in the licensee.

4. If the Department approves a modification of a license pursuant to this Section, the Department shall issue a modified license to the licensee reflecting the modified information. The

modified license shall expire on the same date as the original license.

5. A new license shall be required for any of the following changes:

a. Any change in ownership of the licensee that constitutes more than fifty percent (50%) of the ownership interest;

b. A change in location of the premises to which a license applies; or

c. Any modification of a license not provided for in this Section.

Section 18-6-12. License Suspension or Revocation.

1. The health inspector may summarily suspend for up to fifteen (15) days the license of any person upon a finding of imminent danger to the public health or welfare caused by the licensee or any act or omission of the licensee. If the health inspector determines it is necessary to protect the public or health or welfare, the health inspector may make such suspension effective immediately upon notification to the licensee.

2. The Department, after at least ten (10) days notice and a full hearing, may revoke the license of any person for any of the following:

a. Violation or permitting the violation of any provision of this Chapter or any other law of the Tribe or other applicable law governing the licensee;

b. Failure or refusal to pay all taxes imposed on the licensee under the laws of the Tribe;

c. Misrepresentation of a material fact in the licensee's application for a license or any renewal thereof;

d. The occurrence of any event which would have made the licensee ineligible for a license if the event had occurred prior to the issuance of the license;

e. Imminent danger to the public health or welfare caused by the licensee;

f. Any act or omission of the licensee which has not been corrected within a reasonable time after notice from the health inspector; or

g. Failure of the licensee to correct an unhealthy or unsafe condition on the licensed premises within a reasonable time after notice from the health inspector.

3. The Department may suspend the license of any licensee for a period not exceeding one-hundred eighty (180) days as an alternative to revoking the license if the Department is satisfied that the grounds giving rise to the revocation or the circumstances thereof are such that a suspension of the license would be adequate.

4. Any suspension of a license pursuant to this Section shall be effective twenty-four (24) hours after service of notice thereof upon the licensee. During any period of suspension of a license, the licensee shall have and exercise no rights or privileges whatsoever under the license.

5. After revocation of a license, the licensee's rights and privileges under such license shall terminate twenty-four (24) hours after service of notice thereof upon the licensee. Any licensee whose license is revoked shall not be granted any license under the provisions of this Title for a period of two (2) years from the date of revocation.

Section 18-6-13. Enjoining Food Establishment. In addition to any other remedies available to it, the Department may bring, in the name of the Tribe, an action in any appropriate court to enjoin the operation of any unlicensed business, activity, or function when this Chapter requires a license for the conduct of such business, activity, or function. The enjoining of a business pursuant to this Section shall be deemed an exclusion of the business pursuant to the Tribe's power to exclude and other inherent powers and authority of the Tribe.

Section 18-6-14. Operation of Licensed Premises.

1. All food establishments shall have a person in charge responsible for the operation of the food establishment and to supervise persons handling food.

2. All food establishments shall only distribute food to the public which is safe, unadulterated, and truthfully presented.

3. All licensees shall operate food establishments in accordance with this Chapter and the rules and regulations of the Department under this Chapter.

4. No licensee may lock or permit the locking of the entrances to the licensed premises until all persons other than the licensee and its employees have left.

5. No licensee may change the name of its licensed premises without first obtaining a modification of its license as provided in this Chapter.

6. No licensee shall make any significant structural alteration or addition to a food establishment without first submitting a copy of the plans and specifications to the health inspector for review and obtaining approval of such alteration or addition from the health inspector.

Section 18-6-15. Inspections.

1. The health inspector may enter a food establishment at any time food is being prepared or served or food workers are present to examine the premises, equipment, and procedures, obtain samples of food or other substances for laboratory analysis, or otherwise determine compliance with this Chapter and the rules and regulations of the Department under this Chapter.

2. After an inspection, the health inspector shall provide a copy of his or her completed inspection report to the licensee, owner or operator of the food establishment, or person in charge. The inspection report shall:

a. Document specific factual observations of conditions which violate this Chapter or other deviations from this Chapter that require correction; and

b. Provide a specified time that is reasonable under the circumstances to make required corrections documented in the inspection report.

3. Unless a food establishment files an appeal in accordance with this Title and requests and obtains a stay of enforcement pending such appeal, a food establishment shall comply with and make all corrections mandated in an inspection report.

4. Inspection reports shall be considered public information and the Department shall make inspection reports

available to a person upon request in accordance with procedures established by the Department.

5. The health inspector shall inspect food establishments as often as the health inspector and Department deem advisable for the protection of public health and safety.

Section 18-6-16. Violations.

1. It shall be a violation of this Chapter:

a. To operate a food establishment in the territory of the Tribe without a license issued pursuant to this Chapter, during any time a license issued pursuant to this Chapter is suspended, or after a license issued pursuant to this Chapter has been revoked;

b. To prevent, obstruct, or restrict or attempt to prevent, obstruct, or restrict an inspection of a food establishment or other action of the health inspector authorized under this Chapter or the rules and regulations of the Department;

c. Unless such failure or refusal is excused by a stay obtained pending an appeal in accordance with this Title, to fail or refuse to make a correction mandated in an inspection report issued by the health inspector within the time specified in the inspection report;

d. To knowingly operate a food establishment in which contaminated food is served or sold or in which workers in such food establishment suffer from or are carriers of a communicable disease;

e. To knowingly label food in a manner which is illegible, deceptive, misleading, or omits a material fact as to the condition, nature, components, or quantity of the food or to knowingly sell or serve food in a food establishment which is labeled, described, or advertised in a manner which is illegible, deceptive, misleading, or omits a material fact as to the condition, nature, components, or quantity of the food; or

f. To violate any other provision of this Chapter or the rules and regulations of the Department.

2. If an act is a violation of this Chapter when committed by a licensee or food establishment, the licensee or food establishment is also liable if the act is committed by one of its employees or agents.

3. In addition to any other consequences for a violation of this Chapter, including suspension or revocation of a license, a person who commits a violation under this Section shall be subject to a civil fine of up to five hundred dollars (\$500) per occurrence.

4. Any person who engages in a pattern or practice of violations under this Section shall be subject to a civil fine of up to one thousand dollars (\$1,000) per occurrence.

5. Each day during which a violation under this Section continues shall constitute a separate occurrence.

6. The health inspector shall impose civil fines under this Section by issuing a notice of violation under this Title and the Department may enforce and collect such civil fines through a civil cause of action brought by the Department on behalf of the Tribe in the Tribal Court.

Section 18-6-17. Review of Actions. Any notice of violation, inspection report, decision, or order of the health inspector or Department under this Chapter shall be subject to appeal and judicial review in accordance with this Title.

Section 18-6-18. Sovereign Immunity in Enforcement.

1. Except for valid judicial review of a final decision of the Director regarding a notice of violation, inspection report, decision, or order of the health inspector or Department in accordance with this Title as authorized under this Chapter, nothing in this Chapter shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe, the Department, or any of their agents, officers, officials, personnel, or employees.

2. An action brought or taken by the health inspector or the Department, including without limitation the bringing of suit for the collection of fines or enjoining a business, activity, or function, shall not constitute a waiver of sovereign immunity as to any counterclaim, regardless of whether the asserted counterclaim arises out of the same transaction or occurrence or in any other respect.

3. No economic enterprise of the Tribe may claim sovereign immunity as a defense to any action brought or taken by the health inspector or the Department, including a suit for the collection of fines or the enjoining of a business, activity, or function of such economic enterprise and, to the extent necessary, the Tribe waives the sovereign immunity of its economic enterprises in any action brought or taken by the health inspector or the Department against such economic enterprise.

CHAPTER 7
ENFORCEMENT AND VIOLATIONS

Section 18-7-1. Violations Generally.

1. It shall be a violation of this Title:

a. To disclose confidential information protected under this Title other than as expressly authorized in this Title;

b. To knowingly or willfully embezzle, steal, misapply, or otherwise without authority convert to the use of any person other than the rightful owner any of the moneys, funds, securities, premiums, credits, property, or other assets of the Department;

c. To receive, conceal, or retain moneys, funds, securities, premiums, credits, property, or other assets of the Department knowing the same have been embezzled, stolen, misapplied, or converted;

d. To knowingly or willfully make or cause to be made or submit or cause to be submitted any false statement, claim, or representation of material fact to obtain a payment or other benefit from the Department for which no entitlement would otherwise exist;

e. To knowingly solicit, receive, offer, or pay remuneration or provide anything of value, including any kickback, bribe, or rebate, to induce or reward referrals for items or services provided, paid, or reimbursed by the Department or in return for purchasing, leasing, ordering, arranging for, or recommending any good, facility, service, or item for which payment may be made in whole or in part by the Department;

f. To make any materially false, fictitious, or fraudulent statement or representation, or make or use any materially false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the receipt or delivery of or payment for health care benefits, items, or services from the Department;

g. With the intent to defraud, to sign the name of another or of a fictitious person on, counterfeit, forge, corrupt, or falsify any record, document, or other instrument of the Department or to pass or attempt to pass the same as genuine;

h. To violate any provision of this Title where a remedy for such violation is not otherwise provided; or

i. To violate any other law applicable to the Department or the benefits, services, or payments provided by the Department which is punishable by any fine, imprisonment, or other sanction.

2. In addition to any other consequences for a violation of this Title, a person who commits a violation of this Title as defined in this Section shall be subject to a civil fine for each occurrence of up to the greater of:

a. Four (4) times the amount or value of anything received, attempted to be received, or expected to be received as a result of the violation; or

b. One thousand dollars (\$1,000).

3. Any civil fine permitted under this Section may be imposed by the Department pursuant to a notice of violation and thereafter enforced and collected through a civil cause of action brought by the Department on behalf of the Tribe in the Tribal Court.

Section 18-7-2. Disorderly Conduct Violations.

1. It shall be a violation of this Title for any person, while present in facilities operated by the Department or otherwise while receiving services from the Department, to:

a. Engage in fighting or otherwise threatening or violent behavior;

b. Use language, an utterance, or gesture or engage in a display or act that is physically threatening or menacing or done in a manner that is likely to inflict injury or incite an immediate breach of the peace; or

c. If a patient of the Department, to refuse or knowingly or willfully fail to comply with any rules of the Department governing the conduct of patients.

2. In addition to any other consequences for a violation of this Title, a person who commits a violation of this Title as defined in this Section shall be subject to a civil fine of up to five hundred dollars (\$500) per occurrence, which may be imposed by the Department pursuant to a notice of violation and thereafter enforced and collected through a civil cause of action brought by the Department on behalf of the Tribe in the Tribal Court.

Section 18-7-3. Denial of Access. The Department may, through order or decision issued in accordance with this Title, limit, restrict, or deny access to any facilities or services of the Department by any person who violates the provisions of this Title, provided that, in the case of a patient of the Department, any such limitation, restriction, or denial of access shall not prevent such patient from receiving medically necessary treatment and shall otherwise be narrowly tailored to prevent the conduct subject of the violation while protecting the patient's right to health care. The limitation, restriction, or denial of access to any facilities or services of the Department pursuant to this Section shall be deemed an exclusion of the person pursuant to the Tribe's power to exclude and other inherent powers and authority of the Tribe.

Section 18-7-4. Notice of Violation.

1. If the Department has reason to believe that a violation of this Title has occurred or otherwise intends to impose a civil fine on any person pursuant to any provision of this Title or other law of the Tribe administered by the Department, the Department shall issue a notice of violation to all persons accused of the violation.

2. A notice of violation shall state:

a. The specific provisions of this Title or other law administered by the Department alleged to have been violated;

b. The Department will consider any written response to the notice of violation from the accused before determining whether to proceed with the notice of violation; and

c. The accused may respond in writing to the notice of violation within fourteen (14) calendar days of service of the notice.

3. If a notice of violation is not delivered to a person accused of the violation personally at the time of issuance, it shall be served on such person in the manner provided for service of a summons in the Tribal Rules of Civil Procedure.

4. The accused shall have the right to respond to a notice of violation within the time stated in the notice of violation. The accused may include copies of any documents which the accused believes support his or her position.

5. After the time has expired for the accused to respond to a notice of violation, the Department shall consider any written response to the notice of violation and determine how to proceed with the notice of violation. Based on its review, the Department may:

a. Close the notice of violation if satisfied by the accused's response;

b. Issue an order imposing an appropriate sanction for the matters in the notice of violation; or

c. Conduct or cause to be conducted a thorough investigation of the notice of violation.

6. If an investigation is conducted and such investigation reveals that there is evidence to support that a violation of this Title occurred, the Department shall determine an appropriate sanction for such violation, and impose such sanction by order of the Department.

7. Written notice shall be provided of the Department's decision under this Section.

8. A decision of the Department under this Section shall be subject to appeal and a final decision of the Director subject to judicial review in accordance with this Title.

Section 18-7-5. Exclusion from Contracting. In addition to any other remedies available to it, the Department may, by order, designate any person who violates any provision of this Title as ineligible or excluded, temporarily or permanently, from entering into, receiving, or engaging in any contracts or business with the Department. Any action of the Department pursuant to this Section shall be deemed an exclusion of the person pursuant to the Tribe's power to exclude and other inherent powers and authority of the Tribe.

Section 18-7-6. Reporting of Violations. The Department may report any violation of this Title or another applicable law to the appropriate officials of other jurisdictions and request an investigation and, if appropriate, prosecution of such violation as a violation of the laws of that jurisdiction, including the criminal laws of that jurisdiction.