

Cherokee Council House
Cherokee, (NC)

ORDINANCE NO. _____ (2019)

WHEREAS, the Division of Public Health and Human Services is at the forefront of tribal public health and is one of very few Tribes seeking Public Health Accreditation; and

WHEREAS, accreditation requires that our public health standards be established in law and policy; and

WHEREAS, the Division of Public Health and Human Services, the Division of Operations and the Division of Agriculture and Natural Resources currently carry out the majority of existing public health responsibilities and the proposed laws attached in Exhibit 1 reflect all existing public health responsibilities not codified; and

WHEREAS, the proposed laws in Exhibit 1 also reflect the Divisions' collaboration to create a more comprehensive array of protective health services by acknowledging services that have not been in place formally in this jurisdiction; and

WHEREAS, the work to draft public health laws in Chapter 130 of the Code necessitated that other Chapters corresponding to public health functions also be made in order to update the language in the laws and bring all references to public health activities and those responsible for them in line with current practices and for consistent language and cross-referencing purposes.

NOW THEREFORE BE IT ORDAINED in Tribal Council assembled, at which a quorum is present, that the Cherokee Code shall be amended according to Exhibit 1 attached entitled "PUBLIC HEALTH LAWS OF THE EASTERN BAND OF CHEROKEE INDIANS".

BE IT FURTHER ORDAINED that this ordinance shall be effective upon ratification by the Principal Chief and that all prior ordinances and resolutions that are inconsistent with this ordinance are rescinded.

Submitted by: Office of the Attorney General for the Division of Public Health and Human Services

EXHIBIT 1

PUBLIC HEALTH LAWS
OF THE
EASTERN BAND OF CHEROKEE INDIANS

1
2 Article IV. PUBLIC HEALTH LAWS

3 Part 1.
4 General Provisions.
5

6 § 130-100. Mission and essential services.

7 (a) The purpose of the tribal public health system is to ensure that all community members of
8 the Tribe have essential public health services available to them and that the public is aware of the
9 Tribe's population health status and able to participate in solutions to public health concerns. The
10 Tribal Council recognizes that a public health system is a partnership between multiple entities and
11 agencies and therefore collaboration, information sharing and cooperation are necessary in order to
12 achieve positive population health outcomes. The Division of Public Health and Human Services,
13 the Division of Operations and the Division of Agriculture and Natural Resources and other key
14 stakeholders within the Tribe's public health system shall promote and contribute to the highest level
15 of health by:

- 16 (1) Collecting and sharing information relevant to the public health of the Tribe;
17 (2) Identifying, reducing and preventing health risks in the community;
18 (3) Detecting, investigating, and preventing the spread of disease;
19 (4) Promoting healthy lifestyles;
20 (5) Promoting a safe and healthful environment; and
21 (6) Improving population health outcomes.

22 (b) The Department of Public Health, within the Division of Public Health and Human Services,
23 shall lead the collaboration between public health stakeholders to ensure that the following 10
24 essential public health services are available and accessible to the population on tribal trust lands:

- 25 (1) Monitoring the health status of the community through monitoring community
26 indicators of health;
27 (2) Identifying issues in the community that contribute to poor health outcomes for
28 the population;
29 (3) Conducting regular collaborative multi-agency reviews of community health
30 status in order to develop comprehensive strategies to improve outcomes;
31 (4) Educating and empowering the public about health issues;
32 (5) Mobilizing public and private community partnerships for service provision and
33 identifying strategies to measurably improve health outcomes and that support
34 individual and community health;
35 (6) Enforcing laws and regulations that protect health and ensure safety;
36 (7) Linking people to needed personal health care services;
37 (8) Ensuring a competent public health workforce;
38 (9) Evaluating effectiveness, accessibility, and quality of personal and
39 population-based health services; and
40 (10) Conducting research for the benefit of tribal population health.

41 (c) The Tribal Council recognizes that some health-related services may be provided by state
42 and county local governments that are important to maintaining a healthy social and ecological
43 environment. If the Tribe is not a direct service provider, then the Tribe's Division of Public Health
44 and Human Services shall document agreements that will ensure that essential public health services
45 are assured to the tribal public by non-tribal government agencies or private entities.

1 (d) The list of essential public health services required by this section shall not be construed
2 to limit or restrict the authority of the Eastern Band of Cherokee Indians as it concerns the welfare
3 of community members or scope of population health and services for the benefit of the community.
4

5 **§ 130-102. Definitions.**

6 (a) The following definitions shall apply throughout this Article unless otherwise specified
7 in individual parts:

- 8 (1) "Communicable condition" means the state of being infected with a
9 communicable agent but without symptoms.
10 (2) "Communicable disease" means an illness due to an infectious agent or its toxic
11 products which is transmitted directly or indirectly to a person from an infected
12 person or animal through the agency of an intermediate animal, host, or vector, or
13 through the inanimate environment.
14 (3) "Department" means the Department of Public Health within the Division of
15 Public Health and Human Services.
16 (4) "Director" is the Director of the Department of Public Health.
17 (5) "Imminent hazard" means a situation that is likely to cause an immediate threat to
18 human life, an immediate threat of serious physical injury, an immediate threat of
19 serious adverse health effects, or a serious risk of irreparable damage to the
20 environment if no immediate action is taken.
21 (6) "Isolation authority" means the authority to issue an order to limit the freedom of
22 movement or action of persons or animals that are infected or reasonably
23 suspected to be infected with a communicable disease or communicable condition
24 for the period of communicability to prevent the direct or indirect conveyance of
25 the infectious agent from the person or animal to other persons or animals who
26 are susceptible or who may spread the agent to others.
27 (7) "Outbreak" means an occurrence of a case or cases of a disease in a locale in
28 excess of the usual number of cases of the disease.
29 (8) "Person" means an individual, corporation, company, association, partnership,
30 unit of local government or other legal entity.
31 (9) "Public Health Nuisance" means whatever is unreasonably or unlawfully
32 dangerous to the health of the public or members of the public or to the
33 environment and includes obstruction or interference with the free use of public
34 roads, places or bodies of water.
35 (10) "Quarantine authority" means the authority to issue an order to limit the freedom
36 of movement or action of persons or animals which have been exposed to or are
37 reasonably suspected of having been exposed to a communicable disease or
38 communicable condition for a period of time as may be necessary to prevent the
39 spread of that disease. Quarantine authority also means the authority to issue an
40 order to limit access by any person or animal to an area or facility that may be
41 contaminated with an infectious agent. The term also means the authority to issue
42 an order to limit the freedom of movement or action of persons who have not
43 received immunizations against a communicable disease when the Department of
44 Public Health Director, the State Public Health Director or a local county Public
45 Health Director determines that the immunizations are required to control an
46 outbreak of that disease.

(11) "Secretary" means the Secretary of the Division of Public Health and Human Services.

(12) "State" means the State of North Carolina and also referenced as NC.

(13) "Vital records" means enrollment, birth, death, and fetal death records registered under the provisions of Part 6 of this Article.

§ 130-103. Selection of the Public Health Director.

The Secretary of the Division of Public Health and Human Services shall select and recommend for employment the Public Health Director. The Department of Public Health Director shall be qualified in terms of education and experience and shall perform duties and exercise authority assigned by the Secretary and as provided for by law or regulation.

§ 130-104. Administration.

(a) Except as provided in subsection (b) of this section, the Secretary shall administer and enforce the provisions of this Chapter and the administrative rules adopted in accordance with Chapter 150 to administer and enforce the public health laws of the Tribe. The Public Health Director shall administer the programs of the public health department.

(b) The Secretary of the Division of Agriculture and Natural Resources and the Secretary of the Division of Operations shall administer and enforce the provisions of Parts 14 through 21 and Parts 25 through 27 of this Article and are authorized to adopt administrative rules in accordance with Chapter 150 of the Cherokee Code to administer and enforce the public health laws of the Tribe.

§ 130-105. Duties.

(a) The Secretaries of Divisions with identified public health responsibilities under tribal laws shall have the duty and authority:

- (1) To enforce the tribal public health laws that a particular division is responsible for administering;
- (2) To investigate the causes of infectious, communicable and other diseases and conditions affecting the public health.
- (3) To control and prevent diseases or conditions negatively affecting public health and to provide for the prevention, detection, reporting and control of population conditions and communicable, infectious or any other diseases or health hazards considered harmful to the public health;
- (4) To develop and carry out reasonable direct service or assure services are available that are necessary for the protection and promotion of minimal and basic individual and public health status and for the control of diseases or conditions that lead to poor health outcomes;
- (5) To assure there are sanitary and health investigations and inspections occurring for all public and private establishments where food and water are prepared, treated or provided for public consumption;
- (6) To assure that there are investigations of occupational health hazards and occupational diseases and to make recommendations for the elimination of the hazards and diseases;
- (7) To disseminate regularly information to the public on matters pertaining to the Tribe's population public health status by making public the results of population health indicators; to purchase, print, publish, and distribute free, or at cost, documents, reports, bulletins and health informational materials;

- (8) To be health advisors to the Tribe and to advise Tribal officials in regard to the location, sanitary construction and health management of all Tribal institutions and facilities; to direct the attention of the Tribe to health matters which affect the industries, property, health and lives of the tribal community; to assure testing and inspection at least annually of Tribal surface waters, ground waters, and treated waters as well as wastewater collection, treatment and distribution facilities and to provide an annual report to the Tribe as to the conditions of these public resources or facilities with suggestions and recommendations to the appropriate Tribal agencies when necessary to improve conditions. It shall be the duty of the persons in immediate charge of these institutions or facilities to furnish all assistance necessary for a thorough inspection;
- (9) Collect reports of all initial testing of private well-water samples sent to the NC State Laboratory of Public Health or other certified laboratories and review for purposes of identifying public health issues. A fee may be imposed for analyzing samples from newly constructed and existing wells minus any tribal appropriations that support this testing effort.

§ 130-105.1. Health standards and the Division of Public Health and Human Services.

(a) The Secretary shall adopt measurable standards and goals for community population health against which the Division's actions to improve the health status of its citizens will be measured. The Secretary will use a results-based accountability framework when planning, establishing, and reporting community population goals and outcomes. Population health indicators shall be adopted and published in order to provide transparency to the public for how population health is measured to show the impact of the public health strategies on the goals of public health. The Secretary shall report annually to the Principal Chief and Tribal Council on all of the following including but not limited to:

- (1) How the Tribe compares to national health measurements and the established goals for each standard. Comparisons shall be reported using data for health standards.
- (2) Steps taken by the Division and other tribal stakeholder entities to meet established goals.
- (3) Additional steps proposed or planned to be taken to achieve established tribal population health goals.

(b) The Secretary may coordinate and contract with other entities to assist in the establishment of standards and preparation of the report.

§ 130-106. Standards.

The Division of Public Health and Human Services is authorized to establish reasonable standards governing the nature and scope of public health services necessary to achieve positive outcomes for the Tribe's population health.

§ 130-107. Advisory Committees.

The Secretary is authorized to establish and appoint as many special advisory committees as may be necessary to advise and confer with the Division concerning the public health of the Tribe. Members of any special advisory committee shall serve without compensation but may be allowed

1 travel and subsistence expenses in accordance with any approved budget for such purpose. Advisory
2 Committees may include members of tribal agencies that are stakeholders in public health as well as
3 members of the community.

4
5 **§ 130-108. Education opportunities in public health.**

6 The Division shall provide opportunities to attract public health professionals to serve tribal
7 populations and to train them in tribal public health practice. The opportunities shall include practical
8 experience in public health principles and practices.

9
10 **§ 130-109. Confidentiality of records.**

11 All records containing privileged patient medical information, information protected under 45
12 CFR Parts 160 and 164, and information collected under the authority of including but not limited to
13 Part 6 of this Article shall be confidential and shall not be public records pursuant to Chapter 132 of
14 the Cherokee Code. Notwithstanding privacy laws in 45 CFR 160 and 164, the information contained
15 in the records may be disclosed for purposes of treatment, payment, research, or health care
16 operations to the extent that disclosure is permitted under 45 CFR §§ 164.506 and 164.512(i). For
17 purposes of this section, the terms "treatment," "payment," "research," and "health care operations"
18 have the meanings given those terms in 45 CFR § 164.501.

19
20 **§ 130-110. Access to information.**

21 (a) Tribal health care providers and persons in charge of tribal health care facilities or
22 laboratories shall, upon request and proper identification, permit the Secretary or the Public Health
23 Director to examine, review, and obtain a copy of records containing privileged medical information
24 or information protected under the Health Information Portability and Accountability Act (HIPAA)
25 medical privacy rule, 45 C.F.R. Parts 160 and 164, that the Secretary or the Public Health Director
26 deems are necessary to prevent, control, or investigate a condition or disease or health hazard that
27 may present a clear danger to the public's health or a deleterious impact on private or population
28 health.

29 (b) Privileged medical information or protected health information received by the Secretary
30 or Public Health Director pursuant to this section shall be confidential and is not a public record
31 under Chapter 132 of the Cherokee Code. The information shall not be released, except when the
32 release is made pursuant to any other provision of law, to another tribal, federal, state, or local public
33 health agency and then only for the purpose of preventing or controlling a disease or condition or
34 public health hazard or to a court or law enforcement official or law enforcement officer for the
35 purpose of enforcing the provisions of this Chapter and other public health laws or for the purpose
36 of investigating a disease or condition or public health hazard.

37 (c) A person who permits examination, review, or copying of records or who provides copies
38 of the records pursuant to subsection (a) of this section is immune from any civil or criminal liability
39 that might otherwise be incurred or imposed.

40
41
42 **Part 2.**
43 **Remedies.**

44 **§ 130-200. Right of entry.**

45 (a) The Secretary and the Public Health Director shall have the right of entry upon the
46 premises of any place where entry is necessary to enforce the provisions of this Article and other
47 public health laws or rules adopted to administer tribal public health laws unless exclusive authority

1 has been granted to another Division. If consent for entry is not obtained, an administrative search
2 and inspection warrant shall be obtained pursuant to Ch. 15A of the Cherokee Code. However, if an
3 imminent hazard exists, no warrant is required for entry upon the premises. The Cherokee Police
4 Department shall accompany the Secretary or Department of Public Health Director upon request.

5 (b) The Secretary of Agriculture and Natural Resources and Secretary of Operations shall
6 have the same rights enumerated in subsection (a) of this part to enforce the provisions of Parts 8; 9-
7 9.11;10; 11; and 12 of this Article.

8
9 **§ 130-201. Injunction.**

10 (a) If a person shall violate any provision of this Article or the administrative rules adopted
11 or a condition or term of a permit or order issued under this Article, the Secretary may institute an
12 action for injunctive relief irrespective of all other remedies at law in the Cherokee Court.

13 (b) The Secretary of Agriculture and Natural Resources and the Secretary of Operations shall
14 have the same rights enumerated in subsection (a) of this part to enforce the provisions of Parts 14
15 through 21 and Parts 25 through 27 of this Article and other public health laws involving those
16 Division's responsibility for administration of those laws.

17
18 **§ 130-202. Abatement of public health nuisance.**

19 (a) If the Secretary determines that a public health nuisance exists, the Secretary or the Public
20 Health Director may issue an order of abatement directing the owner, lessee, operator or other person
21 in control of the property to take any action necessary to abate the public health nuisance. If the
22 person refuses to comply with the order, the Secretary or the Public Health Director may institute an
23 action in the Cherokee Court to enforce the order. The action shall be calendared for trial within 60
24 days after service of the complaint upon the defendant with no exceptions except when both parties
25 should agree to a trial date more than 60 days after service of the complaint. The court may order the
26 owner to abate the nuisance or direct the Secretary or the Public Health Director to abate the nuisance.
27 If the Secretary or Public Health Director is ordered to abate the nuisance, the cost of the abatement
28 shall be deemed a debt to the Tribe and collected.

29 (b) The Secretary of the Division of Operations and the Secretary of the Division of
30 Agriculture and Natural Resources shall have the same rights enumerated in subsection (a) of this
31 section to enforce the provisions of Parts 14 through 21 and Parts 25 through 27 of this Article.

32
33 **§ 130-203. Abatement of an imminent public health hazard.**

34 (a) If the Secretary or Public Health Director, the Secretary of the Division of Agriculture
35 and Natural Resources, or the Secretary of Operations determines that an imminent hazard exists, the
36 Secretary or Public Health Director may order the owner, lessee, operator, or other person in control
37 of the property to abate the imminent hazard or may, after notice to or reasonable attempt to notify
38 the owner, lessee, operator, or other person in control of the property enter upon any property and
39 take any action necessary to abate the imminent hazard. If the Secretary or Public Health Director
40 abates the imminent hazard, the cost of the abatement shall be deemed a debt to the Tribe and
41 collected.

42 (b) The Secretary of the Division of Agriculture and Natural Resources and the Secretary of
43 the Division of Operations shall have the same rights enumerated in subsection (a) of this section to
44 enforce the provisions of Parts 14 through 21 and Parts 25 through 27 of this Article.

1 § 130-204. Action for the recovery of costs of hazardous materials emergency medical
2 response.

3 A person who causes the release of a hazardous material that results in the activation of one or
4 more State Medical Assistance Teams (SMATs) or the State Epidemiology Section of the State's
5 Division of Public Health or any Tribal response teams shall be liable for all reasonable costs incurred
6 for such response to or mitigation of the incident. The Tribe's Secretary of the Division of Public
7 Health and Human Services shall invoice the person liable for the hazardous materials release and,
8 in the event of nonpayment, may institute an action to recover those costs in the Cherokee Court or
9 any other court of competent jurisdiction.
10

11 § 130-205. Administrative penalties.

12 (a) The Secretary of the Division of Operations may impose an administrative penalty on a
13 person who violates Parts 15 through 21 and Parts 25 through 27 of this Article, under rules adopted
14 by the Division, or any term or condition of a permit or order issued under the same. If a person fails
15 to pay a civil penalty within 60 days after the final agency decision or court order has been served
16 on the violator, the Secretary of the Division of Operations shall request the Attorney General to
17 institute a civil action in the Cherokee Court to recover the amount of the assessment and if such
18 assessment is against an enrolled member of the tribe then such unpaid assessment shall be deemed
19 a debt owed to the Tribe and is collectable under Chapter 16C of the Cherokee Code. Such civil
20 actions must be filed within three years of the date the final agency decision or court order was served
21 on the violator.
22

23 (b) The Secretary of the Division of Agriculture and Natural Resources and the Secretary of
24 Operations may adopt administrative rules and impose an administrative penalty on a person who
25 violates Chapters 113G, 131, 143 and 145 of the Cherokee Code should those laws lack defined
26 penalties for violations. Each day of a continuing violation of such laws shall constitute a separate
27 violation. The penalty shall not exceed twenty-five thousand dollars (\$25,000) for each day the
28 violation continues, and all penalties shall be promulgated under administrative rules adopted by the
29 Divisions pursuant to Chapter 150 of the Cherokee Code.

30 (c) The Secretary of the Division of Agriculture and Natural Resources may impose an
31 administrative penalty on a person who violates Part 27 of this Article or a rule adopted pursuant to
32 that Part. Except as provided in subsection (d) of this section, the penalty shall not exceed one
33 thousand dollars (\$1,000) per day per violation. Until the Division has notified the person of the
34 violation, a continuing violation shall be treated as one violation. Each day thereafter of a continuing
35 violation shall be treated as a separate violation.

36 In determining the amount of a penalty under this subsection or subsection (d) of this section, the
37 Secretary shall consider all of the following factors:

- 38 (1) The degree and extent of harm to the natural resources of the Tribe, to the public
39 health, or to private property resulting from the violation.
- 40 (2) The duration and gravity of the violation.
- 41 (3) The effect on air quality.
- 42 (4) The cost of rectifying the damage.
- 43 (5) The amount of money the violator saved by noncompliance.
- 44 (6) The prior record of the violator in complying or failing to comply with a part of
45 this Chapter or a rule adopted pursuant to that Part.
- 46 (7) The cost to the Tribe of the enforcement procedures.
- 47 (8) If applicable, the size of the renovation and demolition involved in the violation.

1 (d) The penalty for violations of the asbestos NESHAP for demolition and renovation, as
2 may be defined in rules or policy for administration of Part 19 of this Article shall not exceed ten
3 thousand dollars (\$10,000) per day per violation. Until the Division has provided the person with
4 written notification of the violation of the asbestos NESHAP for demolition and renovation that
5 describes the violation, recommends a general course of action, and establishes a time frame in which
6 to correct the violations, a continuing violation shall be treated as one violation. Each day thereafter
7 of a continuing violation shall be treated as a separate violation. A violation of the asbestos NESHAP
8 for demolition and renovation is not considered to continue during the period a person who has
9 received the notice of violation is following the general course of action and complying with the time
10 frame set forth in the notice of violation.

11 (e) The Secretary of the Division of Agriculture and Natural Resources may impose an
12 administrative penalty on a person who violates Part 27 of this Chapter or any rules adopted pursuant
13 to those parts and this Article. Each day of a continuing violation is a separate violation. The penalty
14 shall not exceed five thousand dollars (\$5,000) for each day the violation continues. The penalty
15 shall not exceed five thousand dollars (\$5,000) for each day the violation continues.

16 (f) A person contesting a penalty shall be entitled to an administrative hearing and judicial
17 review in accordance with Chapter 150.

18 (g) The Secretary of the Division of Agriculture and Natural Resources may bring a civil
19 action in the Cherokee Court to recover the amount of an administrative penalty authorized under
20 this section whenever a person:

- 21 (1) Who has not requested an administrative hearing in accordance with subsection
22 (f) of this section fails to pay the penalty within 60 days after being notified of the
23 penalty; or
24 (2) Who has requested an administrative hearing fails to pay the penalty within 60
25 days after service of a written copy of the final agency decision.

26 (e) The Secretary of Operations may impose an administrative penalty on any person who
27 willfully violates the wastewater collection, treatment, and disposal rules pursuant to Part 1 or who
28 willfully violates a condition imposed upon a permit issued under the approved administrative rules.
29 An administrative penalty may not be imposed upon a person who establishes that neither the site
30 nor the system may be improved, or a new system installed so as to comply with Part 4 and Parts 15
31 through 23; and Part 26 of this Article. The Secretary of Operations shall establish and recover the
32 amount of the administrative penalty in accordance with subsection (g). Each day of a continuing
33 violation shall constitute a separate violation. The penalty shall not exceed fifty dollars (\$50.00) per
34 day in the case of a wastewater collection, treatment and disposal system with a design daily flow of
35 no more than 480 gallons or in the case of any system serving a single one-family dwelling. The
36 penalty shall not exceed three hundred dollars (\$300.00) per day in the case of a wastewater
37 collection, treatment and disposal system with a design daily flow of more than 480 gallons which
38 does not serve a single one-family dwelling. A person contesting a penalty imposed under this
39 subsection shall be entitled to an administrative hearing and judicial review in accordance with
40 Chapter 150 of the Cherokee Code.

41
42 **§ 130-206. Suspension and revocation of permit, license and program participation.**

43 (a) The Secretary of the Division responsible for the direct administration of public health
44 laws contained in this and any other Chapter may suspend or revoke a permit issued under the
45 authority of tribal law or administrative rules, upon a finding that a violation of the applicable
46 provisions of this Chapter and other Chapters, the administrative rules or a condition imposed upon
47 the permit or order has occurred. A permit may also be suspended or revoked upon a finding that its

1 issuance was based upon incorrect or inadequate information that materially affected the decision to
2 issue the permit.

3 (b) A person shall be given notice that there has been a tentative decision to suspend or revoke
4 the permit and that an administrative hearing will be held in accordance with Chapter 150 of the
5 Cherokee Code of the Cherokee Code, at which time the person may challenge the tentative decision.

6 (c) A permit issued by the State or county shall be suspended or revoked immediately by the
7 Secretary if a violation of the law, the rules or a condition imposed upon the permit presents an
8 imminent hazard. An operation permit issued for a public pool shall be immediately suspended for
9 failure of a public swimming pool to maintain minimum water quality or safety standards or design
10 and construction standards pertaining to the abatement of suction hazards which result in an unsafe
11 condition. A permit issued for food handling, preparation or service shall be revoked immediately
12 for failure of an establishment to maintain a minimum grade of C. The Secretary of the Division of
13 Public Health and Human Services or the Public Health Director shall immediately give notice of
14 the suspension or revocation and the right of the permit holder or program participant to appeal the
15 suspension or revocation under rules adopted consistent with Chapter 150 of the Cherokee Code.

16 (e) The Secretary of the Division of Agriculture and Natural Resources and the Secretary of
17 the Division of Operations shall have all of the applicable rights enumerated in this section to enforce
18 the provisions of the Parts of this Article the Division is responsible for, as they may apply.

19 20 **§ 130-207. Misdemeanor.**

21 (a) Except as otherwise provided, a person who violates a provision of this Chapter or the
22 rules adopted by the Divisions responsible for the administration of the public health laws in this
23 Chapter shall be guilty of a misdemeanor if such person is within the criminal jurisdiction of the
24 Cherokee Court and if not, then C.C. 14-1.2 shall apply.

25 (b) A person who has been quarantined or isolated pursuant to tribal law and violates the
26 conditions of an administrative order for quarantine or isolation shall not be sentenced under criminal
27 laws and procedure but shall instead be sentenced to a term of imprisonment of no more than two
28 years and shall serve any sentence in a confinement facility designated for this public health purpose
29 by the Secretary of the Division of Public Health and Human Services or the NC Secretary of Public
30 Safety after consultation with the NC State Health Director. The Tribe's Secretary of Public Health
31 and Human Services shall consult with the NC Secretary of Public Safety and the NC State Health
32 Director concerning the medical management of these persons should such consultation be necessary
33 in order to obtain proper confinement.

34 (c) A person imprisoned for violations of tribal laws concerning quarantine or isolation of
35 those posing a public health risk shall not be released prior to the completion of the person's term of
36 imprisonment unless and until a determination has been made by the Cherokee Court that release of
37 the person would not create a danger to the public health of the Tribe. This determination shall be
38 made only after the medical consultant of the confinement facility and the Secretary or the Public
39 Health Director have made recommendations to the Court.

40 41 **§ 130-208. Limitations period for certain groundwater contamination actions.**

42 No statute of limitations contained anywhere in the Cherokee Code except for suits brought
43 against the Tribe shall be construed to bar an action for personal injury or property damages caused
44 or contributed to by groundwater contaminated by a hazardous substance, pollutant, or contaminant,
45 including personal injury or property damages resulting from the consumption, exposure, or use of
46 water supplied from groundwater contaminated by a hazardous substance, pollutant, or contaminant.
47 For purposes of this section, "contaminated by a hazardous substance, pollutant, or contaminant"

means the concentration of the hazardous substance, pollutant, or contaminant exceeds a groundwater quality standard set forth in administrative rules adopted by the Division of Agriculture and Natural Resources.

Part 3.

Rules for the Administration of Public Health.

§ 130-300. Departments within Divisions of Public Health Human Services; Agriculture and Natural Resources; and Operations – Creation, powers and duties.

- (a) The Department of Public Health is created within the Division of Public Health and Human Services. The Department of Natural Resources is created within the Division of Agriculture and Natural Resources. The Department of Public Infrastructure and Facilities is created within the Division of Operations. The Secretaries with authority for these Divisions shall have the authority and duty to adopt rules in accordance with Chapter 150 of the Cherokee Code to protect and promote the public health.
- (b) When describing public health programs that operate within the Divisions named above, they may be referred to elsewhere in the Cherokee Code. The words "office", "program" or "department" are commonly used and interchanged to describe the entity responsible for the services. In this Article, when referencing specific programs under the authority of and under the structure of a Department in (a) above, the words used to identify such programs elsewhere in the Cherokee Code, may include "office", "program" or "department" and shall not alter the official administrative structure under which administrative authority and responsibility is established under this Article and Chapter.
- (c) The Division with the authority and responsibility for specific offices, programs, departments or subject matter area shall adopt rules:
- (1) Establishing standards for approving sewage-treatment devices.
 - (2) That prohibit sanitary privies for schools where water-carried sewage facilities are unavailable.
 - (3) Establishing requirements for sanitation of all tribal public facilities and the enforcement thereof.
 - (4) Establishing tribal-wide public health outcome objectives and strategies.
 - (5) Implementing immunization requirements for public schools, childcare facilities and nursing homes.
 - (6) Pertaining to the biological agents' registry in accordance with N.C.G.S. 130A-479.

Part 4.

Sanitary Jurisdiction.

§ 130-400. Wastewater Treatment Program.

(a) For the purpose of preserving and promoting the public health and welfare there is established a Wastewater Treatment program within the Division of Operations.

(b) For the purposes of this Part, the term "Department" means the Department of Public Infrastructure and Facilities and the term "Secretary" means the Secretary of the Division of Operations.

§130-401. Powers of the Division of Operations.

- (a) The Division shall have the following powers:

1 (1) To acquire, construct, maintain and operate sewage collection, treatment and disposal
2 systems of all types, including septic tank systems or other on-site collection, treatment or disposal
3 facilities or systems; water supply systems; water purification or treatment plants and other utilities
4 necessary for the preservation and promotion of the public health and sanitary welfare within the
5 tribal trust lands and other service areas outside of trust lands. The utilities shall be constructed,
6 operated and maintained in accordance with applicable laws and rules.

7 (2) The authority granted to the Division and the Department by the provisions of this
8 subsection is supplemental to the authority granted by other provisions of law.

9 (3) To acquire either by purchase, condemnation or otherwise and hold real and personal
10 property, easements, rights-of-way and water rights in the name of the Department or program
11 necessary or convenient for the construction or maintenance of the works of the Division,
12 Department and program.

13 (4) To employ and compensate engineers and other persons as may be necessary to carry
14 out projects.

15 (5) To negotiate and enter into agreements with the owners of existing water supplies,
16 sewage systems or other utilities as may be necessary to carry out the intent of this Part.

17 (6) To adopt rules necessary for the proper functioning of the administration of the law.

18 (8) To contract with any person or entity to supply raw or filtered water and sewer service
19 to the person where the service is available or for the treatment of the Tribe's sewage in a facility
20 authorized by the laws of the jurisdiction where the facility is located.

21
22 **§ 130-402. Engineers to provide plans.**

23 (a) The Division shall retain engineers licensed by the State of North Carolina to provide detailed
24 plans and specifications for any wastewater treatment facility and to supervise the work undertaken
25 by the Wastewater Treatment Program.

26
27 **Part 5.**

28 **Vital Statistics.**

29 **§ 130-500. Vital statistics program.**

30 The Department of Public Health shall maintain a uniquely tribal vital statistics program without
31 replacing the required use of the North Carolina Vital Statistics program. The tribal vital statistics
32 program may require tribal programs and entities to report and register information to the
33 Department.

34
35 **§ 130- 501. Purpose.**

36 The purpose of the vital statistics program shall be consistent with the duties of Secretary of
37 Public Health and Human Services and Director of Public Health to monitor and report on the status
38 of tribal population health.

39
40 **§ 130-502. Access to vital records; copies.**

41 (a) Only the Director of Public Health shall have access to vital records under the authority of
42 this Part and shall promulgate administrative rules for how vital record statistics are used to further
43 the purpose of the Division.

44 (b) The following birth data, in any form and on any medium, in the possession of the Tribe shall
45 not be public records pursuant to Chapter 132 of the Cherokee Code: the names of children and

1 parents, the addresses of parents (other than county of residence and postal code), and the social
2 security numbers of anyone.

3
4 **§ 130-503. Birth registration.**

5 (a) A record of each live birth, regardless of the gestation period, which occurs under the
6 healthcare coordination, payment or referral of or by the Cherokee Indian Health Authority shall be
7 recorded with the program within 30 days after the birth in accordance with this Part and the rules
8 adopted by the Secretary of Public Health and Human Services to administer this law.

9 (b) Marital status of the mother and number of previous births by the mother shall be
10 documented by the Department of Public Health in addition to birth registrations.

11
12 **§ 130-504. Notification of death.**

13 Any and all tribal programs or entities that cause a report of a death of a person found upon tribal
14 trust land to a local funeral director or persons acting as such under the laws of the State of North
15 Carolina or who first assume custody of a dead body or fetus reasonably believed to be 20 completed
16 weeks of gestation or more shall submit a notification of death to the Vital Statistics Program within
17 24 hours of taking custody of or notifying the person authorized to take custody of the body or fetus.
18 The report of death shall identify the name, sex, age and circumstances and location of the body or
19 fetus when found, to the degree this information is known.

20
21 **§ 130-505. Permits for disinterment-reinterment.**

22 A permit for disinterment-reinterment shall be required prior to disinterment of a dead body or
23 fetus except as otherwise authorized by law or rule. The permit shall be issued by the Public Health
24 Director to a funeral director, embalmer or other person acting as such upon proper application.

25
26 **§ 130-506. Fetal death notice; certificate of birth resulting in stillbirth.**

27 Each stillbirth or spontaneous fetal death occurring while the mother was in the care of tribal
28 health services and when the fetus had 20 completed weeks of gestation or more, as calculated from
29 the first day of the last normal menstrual period until the day of delivery, shall be reported to the
30 program within 10 days after delivery by the tribal health entity providing care to the mother. The
31 report shall be made on a form prescribed and furnished by the Department of Public Health.

32
33 **§ 130-507. Persons required to keep records and provide information.**

34 (a) All persons in charge of hospitals or other tribal private or public health institutions, to
35 which persons resort for confinement or treatment of diseases or to which persons are committed by
36 process of law, shall make a record of personal data concerning each person admitted or confined to
37 the institution. The record shall include information required for the certificates of birth and death
38 and the reports of spontaneous fetal death required by this Part. The record shall be made at the time
39 of admission from the information provided by the person being admitted or confined. When this
40 information cannot be obtained from this person, it shall be obtained from relatives or other
41 knowledgeable persons.

42 (b) When a dead body or dead fetus of 20 weeks gestation or more is released by or disposed
43 of by an institution, the person in charge of the institution shall keep a record showing the name of
44 the decedent, date of death, name and address of the person or entity to whom the body or fetus is
45 released to and the date of removal from the institution. If final disposition is made by the institution,
46 the date, place, and manner of disposition shall also be recorded.

1 (c) Records maintained under this section shall be retained for a period of not less than three
2 years and shall be made available for inspection by the Secretary upon request.
3

4 **Part 6.**

5 **Maternal, Child and Women's Health.**

6 **§ 130-600. Division to establish or assure maternal and child health programs.**

7 (a) The Division shall cause the Public Health Department to provide for maternal and child
8 health services for the delivery of preventive, diagnostic, therapeutic and habilitative health services
9 to women of childbearing years, children and other persons who require these services. The program
10 may include, but shall not be limited to, providing professional education and consultation, direct
11 care, and coordinated care and counseling. When the Department does not provide direct care, it shall
12 document the agreements or other basis for the assurance that the same or similar services are
13 available to tribal community members from other stakeholder entities.

14 (b) The Division shall adopt rules necessary to administer this Article.
15

16 **§ 130-601. Screening of newborns for metabolic and other hereditary and congenital disorders.**

17 (a) The Department of Public Health shall provide or assure the provision of services that
18 screen newborns for metabolic, hereditary and congenital disorders. The program shall include, but
19 shall not be limited to:

- 20 (1) Development and distribution of educational materials regarding the availability
21 and benefits of newborn screening.
- 22 (2) Provision of laboratory testing.
- 23 (3) Development of follow-up protocols to assure early treatment for identified
24 children, and the provision of genetic counseling and support services for the
25 families of identified children.
- 26 (4) Provision of necessary dietary treatment products or medications for identified
27 children as medically indicated and when not otherwise available.
- 28 (5) For each newborn, provision of physiological screening in each ear for the
29 presence of permanent hearing loss.
- 30 (6) For each newborn, provision of pulse oximetry screening to detect congenital
31 heart defects.

32 (b) Screening shall not be required when the parents or the guardian of the infant object to such
33 screening. If the parents or guardian object to the screening, the objection shall be presented in
34 writing to the physician or other person responsible for administering the test, who shall place the
35 written objection in the infant's medical record.

36 (c) The pulse oximetry screening shall address at least all of the following:

- 37 (1) Follow-up protocols to ensure early treatment for newborn infants diagnosed with
38 a congenital heart defect, including by means of telemedicine. As used in this
39 subsection, "telemedicine" is the use of audio and video between places of lesser
40 and greater medical capability or expertise to provide and support health care
41 when distance separates participants who are in different geographical locations.
- 42 (2) A system for tracking both the process and outcomes of newborn screening
43 utilizing pulse oximetry, with linkage to the Birth Defects Monitoring Program
44 established pursuant to N.C.G.S. 130A-131.16.

45 **§ 130-602. Birth to three-year-old early intervention program.**
46

1 A program shall provide or assure the provision of services for the intervention and treatment for
2 the birth – three-year-old early intervention program as described in federal law, Part C of the
3 Individuals with Disabilities Act (IDEA), providing professional education and consultation, direct
4 care, and coordinated care and counseling. When the Department does not provide direct care, it shall
5 document the agreements or other basis for the assurance that the same or similar services are
6 available to tribal community members from other stakeholder entities.

7
8 **§ 130-603. Department to establish perinatal health program.**

9 (a) The Department shall provide or assure access to a perinatal health care program. The
10 program may include, but shall not be limited to:

- 11 (1) Prenatal health care services including health education and identification of
12 high-risk pregnancies;
- 13 (2) Prenatal, delivery and newborn health care services provided at hospitals
14 participating at graduated levels of complexity; and
- 15 (3) Regionalized perinatal health care services including a plan for effective
16 communication, consultation, referral and transportation links among hospitals,
17 health departments, physicians, schools and other relevant community resources
18 for mothers and infants at high risk for mortality and morbidity.

19
20 **§ 130-604. Department of Public Health to provide free educational information about**
21 **umbilical cord stem cells and umbilical cord blood banking.**

22 (a) As used in this section:

- 23 (1) “Health care professional” means a person who is licensed pursuant to Chapter 90
24 of the North Carolina General Statutes to practice as a physician, physician
25 assistant, or registered nurse or who is approved pursuant to Chapter 90 of the
26 North Carolina General Statutes to practice midwifery.
- 27 (2) “Umbilical cord blood” means the blood that remains in the umbilical cord and
28 placenta after the birth of a newborn child.

29 (b) The Public Health Director shall make available free of charge to the general public on
30 its Internet Web site printable publications, in a format that can be downloaded, containing medically
31 accurate information regarding umbilical cord stem cells and umbilical cord blood banking that is
32 sufficient to allow a pregnant woman to make an informed decision about whether to participate in
33 a public or private umbilical cord blood banking program. The publications shall include at least all
34 of the following information:

- 35 (1) An explanation of the medical processes involved in the collection of umbilical
36 cord blood.
- 37 (2) An explanation of any risks associated with umbilical cord blood collection to the
38 mother and the newborn child.
- 39 (3) The options available to a mother regarding stem cells contained in the umbilical
40 cord blood after delivery of the mother's newborn child, including:
 - 41 (A) Having the stem cells discarded.
 - 42 (B) Donating the stem cells to a public umbilical cord blood bank.
 - 43 (C) Storing the stem cells in a private umbilical cord blood bank for use by
44 immediate and extended family members.
 - 45 (D) Storing the stem cells for use by the family through a family or sibling
46 donor banking program that provides free collection, processing, and
47 storage of the stem cells where there is a medical need.

(4) The current and potential future medical uses, risks, and benefits of umbilical cord blood collection to the mother, newborn child, and biological family and individuals who are not biologically related to the mother or newborn child.

(5) An explanation of the differences between public and private umbilical cord blood banking.

(6) Options for ownership and future use of the donated umbilical cord blood.

(c) The Department may satisfy the requirements of subsection (b) of this section by including on its Internet Web site a link to a federally sponsored Internet Web site that community members may access so long as the federally sponsored Internet Web site contains all of the information specified in subdivisions (1) through (6) of subsection (b) of this section.

(d) The Department shall encourage health care professionals who provide health care services that are directly related to a woman's pregnancy to provide each woman with the publications described in subsection (b) of this section prior to the woman's third trimester of pregnancy.

(e) A health care professional or health care institution shall not be liable for damages in a civil action or be subject to prosecution in a criminal proceeding in this jurisdiction. The Department shall inform a health care professional or health care institution that under North Carolina law, N.C.G.S. § 130A-128.1(c), that such professionals shall also not be subject to disciplinary action by the North Carolina Medical Board or the North Carolina Board of Nursing for acting in good faith with respect to informing a pregnant woman prior to her third trimester of pregnancy about the publications described in subsection (b) of this section.

§ 130-605. Birth defects monitoring program established; definitions.

(a) The Public Health Department shall assure that community members have access to a Birth Defects Monitoring Program. The Birth Defects Monitoring Program shall compile, tabulate, and publish information related to the incidence and prevention of birth defects.

(b) As used in this Part, unless the context clearly requires otherwise, the term:

(1) "Birth defect" means any physical, functional, or chemical abnormality present or at risk of being present at birth that is of possible genetic or prenatal origin.

(c) Physicians and persons in charge of licensed medical facilities shall, upon request, permit the Public Health Director to examine, review, and obtain a copy of any medical record in their possession or under their control that pertains to a diagnosed or suspected birth defect, including the records of the mother.

(d) A physician or person in charge of a licensed medical facility who permits examination, review, or copying of medical records pursuant to this section shall be immune from civil or criminal liability that might otherwise be incurred or imposed for providing access to these medical records based upon invasion of privacy or breach of physician-patient confidentiality.

§ 130-606. Confidentiality of information; research.

(a) All information collected and analyzed by the Department pursuant to this §130-606 shall be confidential insofar as the identity of the individual patient is concerned. This information shall not be considered public record under Chapter 132 or open to inspection. Access to the information shall be limited to Department staff authorized by the Director of the Department. The Director may also authorize access to this information to persons engaged in demographic, epidemiological, or other similar scientific studies related to health. The Department shall adopt rules that establish strict criteria for the use of monitoring information. All persons given authorized access to Program information shall agree, in writing, to maintain confidentiality.

(b) All scientific research proposed to be conducted by persons other than authorized Department staff using the information from the Program, shall first be reviewed and approved by the Director of the Department of Public Health and the tribe's Medical Institutional Review Board for the protection of human subjects. The Public Health Director shall maintain a record of all persons who are given access to the information in the system. The record shall include the following:

- (1) The name of the person authorizing access;
- (2) The name, title, and organizational affiliation of persons given access;
- (3) The dates of access; and
- (4) The specific purposes for which information is to be used.

The record required under this subsection shall be open to public inspection during normal operating hours.

(c) Nothing in this section prohibits the Department from publishing statistical compilations relating to birth defects that do not in any way identify individual patients.

§ 130-607. Public Health Department to establish program to prevent teen pregnancy.

(a) The Department shall establish and administer a Teen Pregnancy Prevention program. The Department shall establish annual initiatives for primary prevention, secondary prevention, and may administer special projects when the tribal population health status indicates unplanned and teen pregnancy contributes to poor overall child population outcomes, as part of the tribe's overall population health status.

(b) The Department shall collect and maintain information from tribal health systems serving the populations within its service area on teen pregnancies, high risk pregnancies regardless of age, and shall use this information to increase prevention services and initiatives including but not limited to pre-pregnancy education, coordination of services and parenting programs. The Department shall seek grants annually for this purpose but shall not rely solely on grants to fund this program.

(c) The Department shall use the results-based accountability framework to regularly evaluate the effectiveness of teen pregnancy prevention strategies used by the Department and other stakeholder programs as required in C.C. 7B-1301.

(d) The Department's program shall include provision of family planning services, pregnancy prevention activities, and adolescent parenting programs and may contract or otherwise coordinate to ensure these services are available and active in the community.

Part 7. **Sickle Cell.**

§ 130-700. Department to establish program.

The Department shall assure access of community members to a Sickle Cell Program. The Department shall, after consultation with the North Carolina Council on Sickle Cell Syndrome. When the Department does not provide direct care, it shall document the agreements or other basis for the assurance that the same or similar services are available to tribal community members from other stakeholder entities.

Part 8. **Lead Poisoning in Children.**

§ 130-800. Lead Poisoning Program.

For the protection of the public health, the Public Health Department shall establish a program and adopt rules for the prevention and control of lead poisoning in children in accordance with this Part. When the Department does not provide direct care, it shall document the agreements or other

1 basis for the assurance that the same or similar services are available to tribal community members
2 from other stakeholder entities.

3
4 **§ 130-801. Definitions.**

5 (a) The following definitions apply in this Part:

6 (1) "Abatement" means undertaking any of the following measures to eliminate a
7 lead-based paint hazard:

8 (A) Removing lead-based paint from a surface and repainting the surface.

9 (B) Removing a component, such as a windowsill, painted with lead-based
10 paint and replacing the component.

11 (C) Enclosing a surface painted with lead-based paint with paneling, vinyl
12 siding, or another approved material.

13 (D) Encapsulating a surface painted with lead-based paint with a sealant.

14 (E) Any other measure approved by the Commission.

15 (2) "Child-occupied facility" means a building, or portion of a building, constructed
16 before 1978, regularly visited by a child who is less than six years of age.
17 Child-occupied facilities may include, but are not limited to, child care facilities,
18 preschools, nurseries, kindergarten classrooms, schools, clinics, or treatment
19 centers including the common areas, the grounds, any outbuildings, or other
20 structures appurtenant to the facility.

21 (3) "Confirmed lead poisoning" means a blood lead concentration of 20 micrograms
22 per deciliter or greater determined by the lower of two consecutive blood tests
23 within a six-month period.

24 (4) "Department" means the Department of Natural Resources within the Division of
25 Agriculture and Natural Resources or its authorized agent.

26 (5) "Elevated blood lead level" means a blood lead concentration of 10 micrograms
27 per deciliter or greater determined by the lower of two consecutive blood tests
28 within a six-month period.

29 (6) "Lead-based paint hazard" means a condition that is likely to result in exposure to
30 lead-based paint or to soil or dust that contains lead at a concentration that
31 constitutes a lead poisoning hazard.

32 (7) "Lead poisoning hazard" means any of the following:

33 (A) Any lead-based paint or other substance that contains lead in an amount
34 equal to or greater than 1.0 milligrams lead per square centimeter as
35 determined by X-ray fluorescence or five-tenths of a percent (0.5%) lead
36 by weight as determined by chemical analysis: (i) on any readily
37 accessible substance or chewable surface on which there is evidence of
38 teeth marks or mouthing; or (ii) on any other deteriorated or otherwise
39 damaged interior or exterior surface.

40 (B) Any substance that contains lead intended for use by children less than six
41 years of age in an amount equal to or greater than 0.06 percent (0.06%)
42 lead by weight as determined by chemical analysis.

43 (C) Any concentration of lead dust that is equal to or greater than 40
44 micrograms per square foot on floors or 250 micrograms per square foot
45 on interior windowsills, vinyl miniblinds, bathtubs, kitchen sinks, or
46 lavatories.

- (D) Any lead-based paint or other substance that contains lead on a friction or impact surface that is subject to abrasion, rubbing, binding, or damage by repeated contact and where the lead dust concentrations on the nearest horizontal surface underneath the friction or impact surface are equal to or greater than 40 micrograms per square foot on floors or 250 micrograms per square foot on interior windowsills.
- (E) Any concentration of lead in bare soil in play areas, gardens, pet sleeping areas, and areas within three feet of a residential housing unit or child-occupied facility equal to or greater than 400 parts per million. Any concentration of lead in bare soil in other locations of the yard equal to or greater than 1,200 parts per million.
- (F) Any ceramic ware generating equal to or greater than three micrograms of lead per milliliter of leaching solution for flatware or 0.5 micrograms of lead per milliliter for cups, mugs, and pitchers as determined by Method 973.32 of the Association of Official Analytical Chemists.
- (G) Any concentration of lead in drinking water equal to or greater than 15 parts per billion.
- (8) "Lead-safe housing" is housing that was built since 1978 or has been tested by a person that has been certified to perform risk assessments and found to have no lead-based paint hazard within the meaning of the Residential Lead-Based Paint Reduction Act of 1992, 42 U.S.C. § 4851b(15).
- (9) "Maintenance standard" means the following:
- (A) Using safe work practices, repairing and repainting areas of deteriorated paint inside a residential housing unit and for single-family and duplex residential dwelling built before 1950, repairing and repainting areas of deteriorated paint on interior and exterior surfaces;
- (B) Cleaning the interior of the unit to remove dust that constitutes a lead poisoning hazard;
- (C) Adjusting doors and windows to minimize friction or impact on surfaces;
- (D) Subject to the occupant's approval, appropriately cleaning any carpets;
- (E) Taking such steps as are necessary to ensure that all interior surfaces on which dust might collect are readily cleanable; and
- (F) Providing the occupant or occupants all information required to be provided under the Residential Lead-Based Paint Hazard Reduction Act of 1992, and amendments thereto.
- (10) "Managing agent" means any person who has charge, care, or control of a building or part thereof in which dwelling units or rooming units are leased.
- (11) "Readily accessible substance" means any substance that can be ingested or inhaled by a child less than six years of age. Readily accessible substances include deteriorated paint that is peeling, chipping, cracking, flaking, or blistering to the extent that the paint has separated from the substrate. Readily accessible substances also include soil, water, toys, vinyl miniblinds, bathtubs, lavatories, doors, door jambs, stairs, stair rails, windows, interior windowsills, baseboards, and paint that is chalking.
- (12) "Regularly visits" means the presence at a residential housing unit or child-occupied facility on at least two different days within any week, provided