

# **Choctaw Nation Workers' Compensation Code of 2020**

## **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS**

### **Part 1. General Provisions**

#### **Section 1-101. Short Title**

This Code shall be known and may be cited as the "Choctaw Nation of Oklahoma Workers' Compensation Code."

#### **Section 1-102. Legislative Purpose**

The purposes of this Code are to:

1. Protect the sovereignty, economic security, health, and welfare of the Choctaw Nation of Oklahoma;
2. Promote the health and welfare of the Employees of the Nation; and
3. Provide limited medical, wage replacement, and permanent partial disability benefits authorized by this Code and approved by the Administrator for Employees who sustain a Compensable Injury or Illness.

#### **Section 1-103. Sovereign Immunity**

Nothing in this Code shall be construed as a waiver of the sovereign immunity of the Choctaw Nation of Oklahoma.

#### **Section 1-104. Employment "At Will" not affected**

Nothing in this Code shall be construed as giving any Employee the right to be retained in the service of an Employer for any period of time, and all Employees shall remain subject to discharge to the same extent as if this Code did not apply.

#### **Section 1-105. Effective Date**

This Code shall be effective sixty (60) days after adoption by the Tribal Council.

## **Section 1-106. Transition**

This Code shall apply to any Compensable Injury or Illness occurring on or after the effective date; however, an Employee, an Employer, and the Administrator may agree, in writing, to apply this Code to a Compensable Injury or Illness which occurred prior to the effective date.

## **Section 1-107. Repealer**

A. The Choctaw Nation of Oklahoma Worker's Injury Act, Council Bill No. 96-12, is hereby repealed.

B. All laws and parts of laws of the Choctaw Nation inconsistent with this Code are hereby repealed to the extent of any such inconsistency.

## **Section 1-108. Service of Notices, Communications, and Process**

Official notices, communications, and process regarding any subject of this Code or a claim pursuant to this Code shall be submitted as follows:

1. To the Administrator or the Administrator's designee by mail, by delivery in person, by electronic mail, or by any other method approved by the Administrator; and
2. To the Claimant at the address provided by the Claimant or the Claimant's representative.

### Part 2. Definitions

## **Section 1-201. Definitions**

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

1. "Administrator" means the person appointed by the Chief pursuant to Article 5 of this Code;
2. "Claimant" means an Employee who suffers a Compensable Injury or Illness and makes a claim for benefits under this Code;
3. "Code" means The Choctaw Nation of Oklahoma Workers' Compensation Code;
4. "Compensable Injury or Illness" means accidental damage or harm to the body of an Employee which happens while the Employee is actually working in the course and scope of his or her employment and either (i) on the Employer's premises, or (ii) elsewhere if the Employee's presence outside the Employer's premises is authorized by the Employer.

a. As used in this definition:

(1) “Compensable Injury or Illness” includes the following:

(A) Any injury or Occupational Disease, causing internal or external harm to the body, which arises out of and in the course and scope of actual employment if such employment was the major cause of the injury or illness. An injury, other than Cumulative Trauma, is a Compensable Injury or Illness only if it is caused by a specific occurrence and is identifiable by time and place, unless the injury is otherwise defined as compensable in this Code;

(B) A cardiovascular, coronary, pulmonary, respiratory, or cerebrovascular accident or myocardial infarction causing injury, illness, or death, only if, in relation to other factors contributing to the physical harm, a work-related activity is the major cause of the physical harm. Such injury shall not be deemed to be a Compensable Injury or Illness unless it is shown that the exertion of the work was extraordinary and unusual in comparison to the usual work of the Employee, or, alternately, that some unusual incident occurred which is found to have been the major cause of the physical harm;

(C) Damage to personal property which is established by objective medical evidence to be medically necessary and which replaces or improves a normal physical function of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other prostheses which are placed in or on the body and are damaged as a result of the injury

(2) “Compensable Injury or Illness” does not include the following:

(A) Accidental bodily harm occurring to an Employee (i) while commuting between the Employee’s home and place of work, or (ii) during an activity that is not directly related to an Employer’s business;

(B) The ordinary, gradual deterioration or progressive degeneration caused by the aging process, unless the employment is a major cause of the deterioration or degeneration as established through objective medical evidence;

(C) Injury incurred while engaging in or performing, or as a result of engaging in or performing, any recreational, social, or other activity outside the course and scope of the Employee’s employment;

(D) The exacerbation of any condition or disease of an Employee that arises on account of services performed by the Employee for the Employer;

(E) Mental injury that does not arise directly as a result of a compensable physical injury, except in the case of rape or other crime of violence which occurs in the course of employment; and

(F) An injury resulting directly from the willful failure of the injured Employee to use a guard or protection against accident which had been furnished for use by the Employee;

(G) Death due to natural causes occurring while the worker is at work.

(H) An injury resulting directly or indirectly from idiopathic causes, and;

(I) An injury caused by a contagious or infectious disease, unless the disease arises out of and occurs in the course and scope of employment;

5. “Compensation” means wage replacement benefits, permanent disability benefits, and any benefit payable to an Employee pursuant to this Code;

6. “Cumulative Trauma” means damage or harm to the physical structure of an Employee’s body occurring as a result of strenuous, repetitious, and physically traumatic activities;

7. “Dependent” definition is found in the Nation’s Employee Benefits.

8. “District Court” means a judge of the trial court division of the Choctaw Nation of Oklahoma established pursuant to Section 1.102 of the Council Bill entitled “An Act Establishing a Court of General Jurisdiction for the Choctaw Nation of Oklahoma;”

9. “Employee” means those persons employed by the Nation or a subsidiary of the Nation to perform work;

10. “Employer” shall mean the Nation, including any commercial entity owned or controlled by the Nation;

11. “Full Duty” shall mean all duties routinely associated with the performance of a given job;

13. “Light Duty” means a task or tasks which may be assigned to an Employee who has suffered a Compensable Injury or Illness, but who has not been released to return to Full Duty and who is capable of performing assigned tasks subject to weight or other restrictions prescribed by a Provider;

14. “Limited Duty” means a task or tasks which may be assigned to an Employee who has suffered a Compensable Injury or Illness, but who has not been released to return to Full Duty and who is capable of performing assigned tasks subject to one or more limitations prescribed by a Provider;

15. “Maximum Medical Improvement” means an Employee’s physical condition following a Compensable Injury or Illness when no further recovery from medical treatment or

from the passage of time can reasonably be anticipated;

16. “Nation” means the Choctaw Nation of Oklahoma, including subordinate corporations, agencies, departments, commissions, boards, or other entities or instrumentalities of the Choctaw Nation of Oklahoma;

17. “Occupational Disease” means only a disease or illness which is caused by a condition of, or peculiar to, the particular trade, occupation, process, or employment in which the Employee contracts such disease. Occupational Disease does not include a cardiovascular, coronary, pulmonary, respiratory, cerebrovascular accident, or myocardial infarction causing injury, illness, or death, unless a work-related activity is the major cause of the physical harm;

20. “Provider” means any health care Provider designated or approved by the Administrator to administer medical or dental treatment for which payment or reimbursement is authorized under this Code and to determine Permanent Partial Disability;

21. “Restricted Duty” means one or more conditions for returning to work prescribed by a Provider that allows an Employee (i) to resume some, but not all, of the duties routinely associated with the Employee’s job, (ii) to resume normal duties for a limited number of hours per day, or (iii) to resume specified duties for a specified number of hours per day;

23. “Surgery” means the branch of medicine concerned with treatment of injuries or disorders of the body by cutting open the body and removing or repairing a damaged part, but does not include an injection or the forcing of a fluid beneath the skin for treatment or diagnosis; and

24. “Third-Party Administrator” means a person or entity who or which adjusts or settles claims for an insurer or trust under this Code.

## ARTICLE 2. REQUIREMENTS FOR COMPENSABILITY

### **Section 2-101. Eligibility for Benefits**

A. To be eligible for benefits under this Code, an Employee must:

1. Have suffered a Compensable Injury or Illness on or after the effective date of this Code;

2. Submit all necessary claim forms provided by the Administrator and work status reports from an authorized Provider; and

3. Substantially comply with all requirements of this Code.

B. An Employee shall be eligible for payment of Compensation or benefits under this Code, only when the Employee sustains a Compensable Injury or Illness and submits a written

claim and work status report from an authorized Provider on a form provided by the Administrator. Payments made under this Code by or on behalf of an Employer shall not in any way constitute an admission of any kind by the Administrator or Employer concerning any claim or work status under this Code.

C. An Employee shall not be eligible for benefits for a Compensable Injury or Illness after an Employee voluntarily ends employment.

### **Section 2-102. Exclusive Remedy**

This Code provides the sole and exclusive remedy for obtaining Compensation from the Nation for any Compensable Injury or Illness. Unless liability of the Nation is established pursuant to this Code, the Nation is immune from every claim or cause of action. The remedies provided by this Code shall not alter the Employee's rights with regard to any third-party; however, by accepting any benefit under this Code, the Nation shall be subrogated to the extent of the amount actually paid by the Employer; provided, the Administrator may negotiate the right to and amount of such subrogation with the Employee, Providers, tortfeasors, and others.

## **ARTICLE 3. WORKERS' COMPENSATION BENEFITS**

### **Section 3-101. Limitation on Benefits**

Benefits provided under this Code shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) for all Compensable Injuries or Illnesses sustained by a single Employee arising out of a single occurrence unless approved by a majority vote of the Review Panel established in Section 5-105 of this Code. No benefits greater than applicable insurance coverage may ever be awarded.

### **Section 3-102. Medical and Dental Benefits and Physical Rehabilitation**

In the event of a Compensable Injury or Illness, the Employer, insurer, or Third-Party Administrator shall pay Compensation and benefits including, but not limited to, medically necessary, usual, customary, and reasonable charges for the following:

1. Providers, hospitals, durable medical equipment, and prescription drugs;
2. Physical rehabilitation or therapy, as recommended by a Provider;
3. Other charges and expenses related to the Compensable Injury or Illness;

and

4. a. The Employee's actual mileage in excess of twenty (20) miles per round-trip from the Employee's home to the location of the following:

(1) A Provider, for all medically necessary, usual, customary, and reasonable treatment; or

(2) An evaluation by an independent medical examiner, or other evaluation requested by the Administrator, an Employer, a Third-Party Administrator, or an insurance carrier; and

b. The rate per mile shall be equal to the United States Internal Revenue Service standard mileage rate for medical purposes at the time.

### **Section 3-103. Providers**

A. The Administrator shall designate Providers of medical or dental treatment for Employees who incur a Compensable Injury or Illness. The Administrator may change designated Providers at any time.

B. The Administrator may approve any medically necessary treatment for a Compensable Injury or Illness received by an Employee in an Emergency Situation. The Administrator may require subsequent treatments to be at the direction of a Provider. If an Employee is referred to a specialist who is not a Provider, the Administrator may deny payment. If billing is submitted to the Administrator without accompanying medical records, the Administrator may require such records prior to making a determination or payment.

C. The Administrator can withhold approval of a Provider at any time, before or after a Compensable Injury or Illness occurs, in the Administrator's sole and absolute discretion.

D. 1. In the event that an Employee disagrees with the diagnosis or treatment of a Provider, the Employee may, at the Employee's expense, be examined by a second Provider selected by the Employee with the consent of the Administrator.

2. In the event that diagnosis or recommended treatment of the second Provider differs from that of the initial Provider, the Employee or the Administrator may demand the Employee be examined by a third Provider who shall be selected by the Administrator.

3. The diagnosis and recommended treatment of a majority of the Providers shall be controlling. The Administrator shall resolve any conflicts between the opinions and treatment options of the majority Providers.

4. The fees of the third Provider shall be shared equally by the Employer and the Employee. The fees of a fourth or subsequent Provider shall be the responsibility of the party requesting said Provider.

E. Nothing in this Section shall allow an Employee to disagree with the Administrator's chosen Provider regarding the determination of Permanent Partial Disability and be examined by another Provider.

### **Section 3-104. Death Benefits**

When a Compensable Injury or Illness results in death, the deceased Employee's assigned beneficiary as defined in the Human Resources Employee Benefits portfolio will receive the death benefits.

### **Section 3-105. Release to Return to Work**

A. At any time during the course of the Employee's authorized treatment under this Code, a Provider may release the Employee to return to work under one of the following options:

1. Full Duty;
2. Restricted Duty;
3. Limited Duty; or
4. Light Duty.

B. The Employer shall make Limited or Light Duty available until the Employee is released to return to Full Duty. If the Employer cannot accommodate the Employee, due to operational constraints, the Employer must communicate this to the Administrator. The Administrator will then review and make a decision on Return to Work placement for the Employee. If unable to perform duties routinely associated with his or her job, the Employee may be allowed to perform some other duty for which the Employee has been, or may be, trained. Any Restricted, Limited, or Light Duty must be approved by the Employee's Provider. Wage replacement benefits under Section 3-106 of this Code will cease on the day the Provider verifies the Employee can return to Restricted, Limited, or Light Duty, if available. If Restricted Duty work is not available, wage replacement benefits shall cease on the day the Provider verifies that the Employee is able to return to Full Duty.

C. If an Employee reaches Maximum Medical Improvement, but has permanent restrictions, the Employer must review available jobs with the Employee to determine proper placement options and reasonably accommodate placement given those restrictions.

D. Nothing in this Code shall be construed as affecting an Employee's "at will" employment.



E. Upon the Employee's return to work after being released as provided in this Section, the Employee shall be paid at least his or her wage rate which was in effect on the day of the Compensable Injury or Illness.

### **Section 3-106. Wage Replacement**

A. If an Employee is temporarily unable to perform his or her job or any Limited, or Light Duty work offered by the Employer as a result of a Compensable Injury or Illness, the Employee shall be eligible for wage replacement for each regularly scheduled work-day after a written work status report from the treating Provider is submitted to the Employer.

B. Until the Employee is released to return to work after a Compensable Injury or Illness, the Employee shall not participate in any work-related duties or activities.

C. Without the approval of the Employer, an Employee must report to work the next scheduled work-day after being released by a Provider to return to work at Full, Restricted, Limited, or Light Duty.

D. An Employee shall be eligible for wage replacement only until released to return to work by the Provider. Wage replacement shall be paid at seventy percent (70%) of the Employee's guaranteed wage rate, excluding tips, for the average number of hours per pay period since the Employee's last change in hourly wage rate. For any partial week, wage replacement under this Section shall be paid on a pro rata basis according to each Employee's work schedule. The wage replacement will stop immediately if the Employee is (i) terminated, (ii) resigns, or (iii) is incarcerated.

E. Wage replacement shall be paid to an Employee by the Employer in accordance with the Employer's regular pay schedule. Wage replacement cannot be supplemented by use of the Employee's Annual or Sick Leave benefits.

F. No benefits, savings, or insurance of the injured Employee shall be considered in determining the wage replacement.

### **Section 3-107. Secondhand Smoke**

No Benefits under this Code shall be payable to or on behalf of any Employee injured or killed as a result of exposure to secondhand smoke.

### **Section 3-108. Cumulative Trauma and Occupational Disease**

A. An Employee may only receive benefits under this Code for Cumulative Trauma or Occupational Disease after being employed more than six (6) months.

B. An Employee who has not filed for a claim in writing may not do so after being terminated.

### **Section 3-109. Active Medical Treatment**

A. Medical care is presumed to be completed when the Employee has (i) reached Maximum Medical Improvement, or (ii) two (2) years after a Compensable Injury or Illness; however, active medical care may continue with written approval of the Review Panel established in Section 5-105 of this Code until the Review Panel determines the Employee has reached Maximum Medical Improvement. Continuing medical care must be approved by the Review Panel annually thereafter or as otherwise determined by the Review Panel until the Review Panel determines the Employee has reached Maximum Medical Improvement.

B. The Employee shall not be entitled to any palliative or curative medical care after the Employee reaches Maximum Medical Improvement.

### **Section 3-110. Assignment of Benefits and Discharge for Payment**

A. The Administrator shall require authorization from the Employee, in writing, for any individual other than the Employee to receive delivery of any payment or benefit.

B. The delivery of any payment or benefit in good faith to a personal representative, agent, family member, Provider, or other person for the use or benefit of the Employee or other recipient entitled thereto, shall be deemed a discharge of the obligation to the Employee of the Employer or Administrator.

### **Section 3-111. Termination of Benefits**

A. The Employee's eligibility for benefits under this Code shall cease upon a determination by the Administrator of any of the following:

1. The alleged injury, illness, or condition is not a Compensable Injury or Illness;
2. The Employee fails to comply with any of the requirements or provisions of this Code;
3. The alleged Compensable Injury or Illness was not reported in accordance with this Code;
4. The Employee fails to follow the directions of a Provider or the Administrator;
5. The Employee refuses to submit to drug or alcohol testing as required by this Code;

6. The alleged Compensable Injury or Illness resulted in whole or in part from the loss of normal use of the Employee's mental or physical faculties from voluntary introduction into the body of alcohol or a prohibited or controlled substance, substance analogue, or dangerous drug, including, without limitation, gradual or prolonged usage, with or without intoxication at the time of the alleged Compensable Injury or Illness;

7. The alleged Compensable Injury or Illness was caused by horseplay, scuffling, fighting, altercation, or other inappropriate behavior by the Employee, unless the Employee was an innocent bystander;

8. The alleged Compensable Injury or Illness results from an act of terrorism or from a declared or undeclared act of war;

9. The alleged Compensable Injury or Illness arose from voluntary participation in an off-duty recreational, social, or athletic activity; or

10. The alleged Compensable Injury or Illness arose out of an act of a third party intended to injure the Employee for reasons unrelated to the employment with the Employer.

B. Upon involuntary termination of employment, the Administrator shall manage the claim until Maximum Medical Improvement is reached or until the former employee has obtained employment outside of the Nation. No benefits other than medical payments shall be provided after involuntary termination of employment.

### **Section 3-112. Permanent Partial Disability**

A. To be eligible for Permanent Partial Disability there must be a Surgery as a result of the Compensable Injury or Illness, and the authorized Provider must determine the percentage of impairment pursuant to the Sixth (6<sup>th</sup>) Edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment." The Provider shall not deviate from the Guides except as provided for in the Guides.

B. The rating of PPD determined by the Provider selected by the Administrator shall be final and binding and not subject to Appeal pursuant to Article 9 of this Act.

C. A permanent partial disability award or combination of awards made to an Employee may not exceed a permanent partial disability rating of one hundred percent (100%) to any body part or to the body as a whole.

D. The determination of permanent partial disability shall be the responsibility of the Provider selected by the Administrator. The Provider's determination of permanent partial disability must:

1. Be supported by competent medical evidence reasonably described;
2. Include the Employee's percentage of permanent partial disability; and
3. State that the disability is the result of a Compensable Injury or Illness.

E. Permanent partial disability shall not be allowed to a part of the body for which no medical treatment has been received from a Provider.

F. In cases of permanent partial disability, the Compensation shall be seventy percent (70%) of the Employee's average weekly wage, not to exceed Three Hundred Sixty Dollars (\$360.00) per week.

G. An Employee's previous disability or previously received Compensation shall not preclude the Employee from Compensation for a later Compensable Injury or Illness. If a previous permanent partial disability, including a previous non-work-related injury, illness, or condition, which produced permanent partial disability, and if the same is aggravated or accelerated by a Compensable Injury or Illness, Compensation for permanent partial disability shall be awarded only to the extent caused by such Compensable Injury or Illness. Any such reduction shall not apply to temporary total disability, nor shall it apply to Compensation for medical treatment.

H. Compensation for permanent partial disability due to amputation or permanent total loss of use of a Scheduled Member specified in the Permanent Partial Disability Estimated Benefit Computation shall be seventy percent (70%) of the Employee's average weekly wage, not to exceed Three Hundred Sixty Dollars (\$360.00), multiplied by the number of weeks for the Member, regardless of whether the injured Employee is able to return to his or her pre-injury or equivalent job.

### **Section 3-113. Permanent Partial Schedule**

A. Compensation for permanent partial disability shall be paid for each part of the body at seventy percent (70%) of the Employee's average weekly wage not to exceed Three Hundred Sixty Dollars (\$360.00), multiplied by the number of weeks for the scheduled loss set forth below. See Appendix A to this Code for rating of permanent partial disability. Permanent partial disability shall include the following:

1. An Employee who suffers a Hernia which requires Surgery, six (6) weeks;
2. Loss of one testicle, fifty-three (53) weeks; and

3. Loss of both testicles, one hundred fifty-eight (158) weeks.

B. 1. Compensation for amputation of the first phalange of a digit shall be one-half (1/2) of the Compensation for the amputation of the entire digit.

2. Compensation for amputation of more than one phalange of a digit shall be the same as for amputation of the entire digit.

3. Compensation for amputation or loss of use of two or more digits or one or more phalanges of two or more digits of a hand or a foot shall be proportional to the total loss of use of the hand or the foot occasioned thereby, but shall not exceed the Compensation for total loss of a hand or a foot.

C. Compensation for the permanent loss of eighty percent (80%) or more of the vision of an eye shall be the same as for the loss of an eye. In all cases of permanent loss of vision, the use of corrective lenses may be taken into consideration in evaluating the extent of loss of vision.

D. Compensation for permanent total loss of use of a member shall be the same as for amputation of the member.

E. Disfigurement benefits will follow according to the Choctaw Nation of Oklahoma Disfigurement Chart, which is Appendix B to this Code.

#### ARTICLE 4. ELIGIBILITY FOR INJURED WORKERS' SYSTEM BENEFITS

##### **Section 4-101. Reporting of an Incident**

A. An Employee must immediately report to his or her supervisor any injury, illness, or condition which the Employee reasonably believes to be related to a Compensable Injury or Illness and complete an Associate Incident Report form provided by the Administrator.

B. If an Employee is unable to make a report due to a condition caused by the Compensable Injury or Illness, another person may report the injury on the Employee's behalf. a report must be made as soon as practicable but must be made no later than twenty-one (21) calendar days after the injury unless approved by a majority vote of the Review Panel established in Section 5-105 of this Code.

##### **Section 4-102. Medical Treatment Compliance**

The Employee must (i) substantially follow the advice of, and the course of treatment prescribed by, an authorized Provider, and (ii) keep all scheduled appointments to fulfill the prescribed treatment plan unless excused by the Provider or Administrator.

### **Section 4-103. Post Injury Drug Screen**

A post injury drug screen shall be required for every Compensable Injury or Illness pursuant to Section 3-105 of this Code.

### **Section 4-104. Subrogation**

A. If the Employee's Compensable Injury or Illness is caused by a third party's wrongful act or negligence, the following provisions shall apply:

1. To receive any benefits under this Code for such Compensable Injury or Illness, the Employee must agree in writing:

a. That the Administrator, on behalf of the Nation, will receive subrogation from any recovery from the third-party for the full amount of any benefits paid under this Code before the Employee obtains any recovery from the third-party and without regard to whether the Employee has been fully compensated for any injuries suffered or damages incurred;

b. Not to take any action which would prejudice the Employer's subrogation rights;

c. To cooperate in doing what is reasonably necessary to assist the Nation, Administrator, or Employer in any recovery including, but not limited to, signing and delivering documents to evidence or secure the right of recovery; and

d. To include in any claim against any third-party any benefits payable to or on behalf of the injured party under this Code.

2. The Employer will be subrogated only to the extent of the benefits paid or payable under this Code because of a Compensable Injury or Illness.

B. The payment of any benefit under this Code shall not waive any right of the Nation, Administrator, or Employer.

C. In no event shall the Employer be entitled to recover any Benefits paid which result from the Employee's death or as a result of a claim for uninsured or under-insured motorist coverage or benefits.

### **Section 4-105. Compensable Injury, Generally**

A. A Compensable Injury or Illness must be established by objective medical evidence.

B. The Employee has the burden of proof to establish by a preponderance of the evidence that an alleged injury was in fact caused by the employment.

C. There is no presumption from the mere occurrence of an injury that the injury was in fact caused by the employment.

D. All Compensable Injuries or Illnesses suffered by an Employee in one accident or related series of accidents shall be considered a single Compensable Injury or Illness.

E. Only those injuries which fall within the definition of Compensable Injury or Illness set forth herein shall result in an Employee receiving benefits under this Code; and

F. A Hernia is not a Compensable Injury or Illness unless the injured Employee can show by a preponderance of the evidence that it meets the definition of Compensable Injury under this Code, and the following apply:

1. The occurrence of the Hernia followed as a direct result of a sudden effort, severe strain, or the application of force to the affected area of the body;
2. There was severe pain in the Hernial region at the time of the occurrence;
3. The pain caused by the occurrence had substantial impact on the Employee's work;
4. Notice of the occurrence was given to the Employer within twenty-one (21) days; and
5. The physical distress caused by the occurrence required the attendance of a Provider.

## ARTICLE 5. ADMINISTRATION

### **Section 5-101. Designation of Administrator**

The Administrator shall be an Employee of the Nation selected by the Chief of the Nation.

### **Section 5-102. Recusal**

A. At any time after the filing of a claim under this Code, the Administrator may determine that a conflict of interest exists which could affect the integrity of administration of the claim.

B. Any person found by the Administrator to have a conflict of interest shall have no further involvement with the claim. The Administrator shall take reasonable steps to prevent prejudice as the result of a conflict of interest.

C. In the event of recusal of the Administrator, the Chief or a designee may appoint an interim or successor Administrator.

### **Section 5-103. Rights and Duties of the Administrator**

A. The Administrator shall have all necessary and proper powers to implement this Code including, but not limited to, the following:

1. Adopt policies and procedures for the administration of this Code which are consistent with the provisions of this Code and which do not require approval of the Tribal Council;
2. Construe and interpret this Code; and
3. Determine all questions with respect to the individual rights of any Employee or Employer under this Code.

B. The Administrator shall:

1. Maintain complete and accurate records of all transactions and distributions under this Code. The Administrator shall maintain books and accounts, records, and other data in the manner necessary for proper administration of this Code;
2. Enforce the terms of this Code and rules and regulations adopted pursuant to this Code, a copy of which shall be made available to any Employer, Employee, or Citizen upon written request to the Administrator;
3. Review benefit claims and render decisions on benefit claims under this Code;
4. Furnish any Employer or Employee, upon written request, with information which such Employer or Employee may require for tax purposes;
5. Engage accountants, attorneys, or other persons (who also may be employed by or represent the Nation); and
6. Ensure the Nation does not pay more than Two Hundred Fifty Thousand Dollars (\$250,000.00) for any single claim unless otherwise allowed by this Code.



#### **Section 5-104. Non-Discriminatory Exercise of Authority**

All action taken by the Administrator shall be exercised in a non-discriminatory manner, so that all persons similarly situated receive substantially similar treatment under this Code.

#### **Section 5-105. Review Panel**

The Review Panel shall be comprised of the following officials of the Choctaw Nation of Oklahoma:

1. The Workers' Compensation Manager, or the holder of a successor position;
2. The Senior Director of Workers' Compensation, or the holder of a successor position; and
3. The Executive Director of Workers' Compensation, or the holder of a successor position.

#### **Section 5-106. Duties of Third-Party Administrator**

If a Third-Party Administrator is designated by the Employer or Nation, such Third-Party Administrator shall provide such services and assistance to the Administrator or the Employer as are provided for in an agreement between the Third-Party Administrator and the Employer or Nation. In the event of any conflict between this Code and the agreement, the Code shall control. Such services and assistance may include, but need not be limited to:

1. Receipt, administration, and payment, of claims as provided in this Code;
2. Maintenance of records of claims and payments; and
3. Preparation of an annual report of the activities under this Code for each Employer, as of the last day of each calendar year, in such form as may be required by the Employer or Nation.

#### **Section 5-107. Denial of Claims Notification**

If any claim under this Code is wholly or partially denied, the Administrator shall notify the Employee. The notice shall be in writing in a manner calculated to be understood by the Employee, and shall contain (i) each specific reason for the denial, (ii) specific references to pertinent provisions of this Code, (iii) a description of any additional information necessary for further investigation or consideration of the claim, and (iv) information concerning the steps to be taken if the Employee wishes to appeal the denial of the claim in accordance with this Code. The notice shall be sent within thirty (30) days after the claim is received by the Administrator, or within

sixty (60) days, if special circumstances require an extension of time for processing the claim, and if written notice of such extension and circumstances are given to the Employee within the initial thirty (30) day period.

### **Section 5-108. Fraudulent Claims**

Any Employee who makes a fraudulent claim or provides fraudulent information in order to obtain any benefit under this Code commits workers' compensation fraud, and shall be subject to punishment for insurance fraud under the Choctaw Nation Criminal Code.

## ARTICLE 6. FUNDING THIS CODE

### **Section 6-101. Non-Insured, Non-Funded Benefits**

A. Every Employer shall be responsible for payment of benefits as required in this Code. The Administrator may be the Employer's agent for administering and paying or denying claims for benefits.

B. Benefits payable under this Code shall not be entitled to any priority over other claims against any Employer.

C. No Employer shall have any obligation to establish any fund or trust for the payment of benefits under this Code.

D. No benefits under this Code shall be assignable by any Employee to any creditor.

E. Benefits under this Code are not transferable to any person or entity.

F. Benefits under this Code shall not constitute a trust for the benefit of any Employee or other person or entity.

## ARTICLE 7.

[RESERVED]

## ARTICLE 8. MISCELLANEOUS PROVISIONS

### **Section 8-101. Non-Alienation of Benefits**

A. Payments, benefits, or rights of any Employee under this Code shall not be subject to any claim of any creditor, and shall not be subject to attachment, garnishment, trustee's process, or any other legal or equitable process.

B. No Employee shall have the right to alienate, anticipate, pledge, encumber, hypothecate, or assign any benefit, or payment, contingent or otherwise, which he or she may expect to receive under this Code.

### **Section 8-102. No Contract of Employment**

Nothing in this Code, nor the creation of any fund, trust, or account, nor any other provision for payment of any benefit hereunder, shall be construed as giving any Employee, or any other person, any contract of or right to employment to the same extent as if this Code had never been adopted.

### **Section 8-103. Title to Assets**

No Employee shall have any right to, or interest in, any asset of the Employer or the Nation under this Code.

### **Section 8-104. Expenses**

All expenses for management and administration of this Code shall be paid by the Nation.

### **Section 8-105. No Admission of Liability**

Any payment made under this Code on behalf of an Employer shall not in any way constitute an admission of liability or responsibility on behalf of an Employer, the Administrator, or the Nation, for a Compensable Injury or Illness.

[Reserved]

## **ARTICLE 9. APPEALS**

### **Section 9-101. Jurisdiction of the District Court; Appellate Procedure**

A. The District Court of the Choctaw Nation of Oklahoma shall have jurisdiction of appeals of claims and other controversies arising under this Code, once all administrative remedies have been exhausted.

B. Within thirty (30) days after the date on which an Employee or Employer receives a written notice of a decision by the Administrator on a claim, or within thirty (30) days of a

claim being considered denied under Section 5-107 of this Code, the Employee or Employer may appeal the decision of the Administrator to the District Court of the Nation.

### **Section 9-102. District Court Proceeding**

- A. Appeals shall be subject to the Rules of the District Court of the Nation.
- B. The District Court shall review the claim on the record before the Administrator and the decision of the Administrator.
- C. The District Court shall notify the Employee, Employer, and Administrator of its decision in writing. The notification shall be written in a manner calculated to be understood by the Employee. The District Court's decision on review shall be made within one hundred twenty (120) days after receipt of the record from the Administrator.

### **Section 9-103. Notice of Appeal**

A. An appeal may be commenced by filing a notice of appeal with the Clerk of the District Court of the Nation either at the office of the Court Clerk or by certified mail, return receipt requested. The party filing the notice of appeal shall contemporaneously send a copy to the Employee or Employer, as appropriate, and to the Administrator.

- B. 1. The notice of appeal must include:
  - a. A copy of the decision being appealed;
  - b. A brief summary of the relevant facts;
  - c. A brief statement of the disputed issues;
  - d. A brief statement of the relief sought; and
  - e. A signed declaration that the information submitted is true and correct to the best of the Appellant's knowledge.

2. The notice of appeal shall not include any medical records not included in the Administrator's record.

C. Upon receipt of the notice of appeal, the Administrator shall provide Employee, Employer, and District Court a copy of the record for the claim within ten (10) working days of receipt of the notice of the appeal.

### **Section 9-104. Hearing**

The District Court, in its discretion, may hold a hearing or hearings and the Employee, Employer, and Administrator shall have the right to be represented by an attorney in all matters presented to the District Court at the party's expense.

#### **Section 9-105. Disposition of Administrator Decisions; Remand**

In any proceeding for the review of the Administrator's decision, the District Court may affirm, modify, or reverse the Administrator's decision. The District Court may also remand the matter to the Administrator with directions for such further proceedings as may be appropriate.

#### **Section 9-106. Failure to Comply with Time Limits**

In the event an Employee fails to file a written notice of appeal of the Administrator's decision within the time required by Section 9-101 of this Code, the Administrator's decision shall be deemed final and Employee's right to appeal that decision shall be deemed forever barred.

#### **Section 9-107. Authority of the District Court**

The decision of the District Court shall be final; however, any party may ask for rehearing or rehearing *en banc*. There shall be no further appeal.

#### **Section 9-108. Costs and Attorney's Fees**

A. Costs – The party appealing shall pay, with the filing of the notice of appeal, a filing fee of Fifty Dollars (\$50.00) to the District Court of the Nation; provided, that said fee shall be refunded to the Employee if he or she prevails in the District Court. A party "prevails" in the District Court if the decision appealed is modified in favor of the party appealing, reversed, or remanded to the Administrator for further proceedings.

B. Attorney Fees – If, upon appeal, additional relief is granted to the Claimant, a reasonable fee for the services of the Claimant's attorney may be fixed by the Tribal Court. Attorney fees granted by the court shall not exceed ten (10%) of the amount of the award.