

**TITLE VII
WORKERS' COMPENSATION**

**CHAPTER 1
GENERAL PROVISIONS**

Section 7-1-1. Purpose. The purpose of this Title is:

1. To address injuries to employees arising out of and in the course of employment for all employers within the territory of the Tribe or doing business with the Tribe;

2. To establish the rights and benefits of employees of the Tribe and other employers subject to this Title for injuries, death, and occupational disease arising out of and in the course of employment;

3. To establish a systematic and uniform procedure for administration of compensation provided to employees of the Tribe and other employers subject to this Title injured in the course of employment;

4. To provide medical treatment for employees injured in the course of employment and fair compensation to employees injured in the course of employment and their dependents;

5. To create a process whereby disputes over compensation provided to injured employees can be resolved in a fair and unbiased manner; and

6. To restore employees injured in the course of employment physically and economically to a self-sufficient status in an expeditious manner and to the greatest extent practicable.

Section 7-1-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Administrator" means the insurance carrier providing coverage for employees of the Tribe, third party administrator, or agency, department, commission, or employee of the Tribe responsible for administering this Title and the Tribe's workers' compensation program or any designee of the foregoing.

2. "Child" means, unless the parental rights of the covered employee have been terminated or relinquished, an individual:

a. Who is a natural descendant of a covered employee in the first generation;

b. Who has been adopted by a covered employee pursuant to the laws of the Tribe or another jurisdiction;

c. Who has been adopted by a covered employee in accordance with the customs and traditions of the Tribe where a decree recognizing the adoption has been issued by the Tribal Court pursuant to the laws of the Tribe; and

d. With whom a covered employee otherwise has a legal parent-child relationship under the laws of the Tribe or another jurisdiction where the covered employee is the parent.

3. "Claimant" means a covered employee or, in event of death, his or her dependents who files a claim for compensation under this Chapter or would receive compensation from a claim filed under this Chapter.

4. "Course of employment" means activity engaged in by an employee that has to do with, and originates in, the activities of the employer, is directly related to the employee's employment by the employer, and is performed by the employee in the furtherance of the affairs or business of the employer, but does not include:

a. Preparing for work;

b. Transportation to or from the place of employment, unless the employee is directed by the employer, as part of the employee's employment, to proceed from one place of work to another and the employee does not deviate from a reasonably direct route of travel and is otherwise acting in the interest of the employer during such employer directed travel; or

c. Voluntary participation in any off-duty recreational, social, or athletic activity not constituting a part of the employee's work related duties, except where the employee is paid for his or her attendance at such activity by the employer or such activity is a reasonable expectancy of, or expressly or impliedly required by, the employee's employment or employer.

5. "Compensation" means the medical benefits, wage benefits, funeral benefits, and other compensation provided under this Title.

6. "Covered employee" means, regardless of whether work is performed in or outside the territory of the Tribe, every person who has entered into the employment of or performs work for an employer; works under a contract of hire, express or implied, oral or written, with an employer; enters into an apprenticeship with an employer; is an executive officer of an employer elected or appointed and empowered under and in accordance with the organic documents of an entity that is an employer, including a person holding an official position with an employer or standing in a representative capacity of an employer; elected and appointed officials of the Tribe compensated with wages or salary and not a stipend or reimbursable expenses; or is otherwise employed by an employer, but does not include:

a. A volunteer or other person performing work or services for an employer without receiving compensation;

b. A consultant or independent contractor working under an express or implied contract for an employer, unless a written agreement between the consultant or independent contractor and the employer expressly provides:

i. The employer shall provide coverage under this Title to the consultant or independent contractor;

ii. Specifically to whom, when, where, and why coverage will be provided by the employer; and

iii. All third parties and employees provided coverage agree to all terms, conditions, and provisions of this Title; or

c. Another person not considered an employee of the employer.

7. "Cumulative injury" means an injury from repetitive motion or activity which occurs over a period of time.

8. "Death" means the fatality of a person, but excludes any death resulting primarily from the natural aging process, an injury or normal daily activities not performed in the course of employment, or recreational or social activities.

9. "Dependent" means a person who, at the time of the occurrence of the injury, is:

a. A spouse or domestic partner of a covered employee recognized as such under the laws of the Tribe;

b. A minor child of a covered employee who is not emancipated;

c. A child of a covered employee who is over the age of majority, but under twenty-five (25) years of age, and enrolled as a full time student in a primary, secondary, or post-secondary school, including college or university;

d. A person who is over the age of majority, but under twenty-five (25) years of age, resides in the same household as a covered employee, and either:

i. Requires substantial care because of a mental or physical disability and is not capable of self-support; or

ii. Is otherwise economically dependent upon the earnings of the covered employee.

10. "Disability" means an incapacity resulting in the inability of a covered employee to obtain and/or retain wages equivalent to the pre-injury wage rate as a result of a direct loss of functional capacity compromising the covered employee's ability to perform the necessary duties of the job and may be temporary or permanent, partial or total.

11. "Employer" means any employer subject to the provisions of this Title and includes the Tribe and its Tribal Council, commissions, boards, agencies, departments, divisions, instrumentalities, and economic enterprises.

12. "Health care provider" means:

a. A doctor of medicine or osteopathy, chiropractor, podiatrist, physical therapist, occupational therapist, nurse practitioner, or physician assistant who is authorized to practice under the law of the jurisdiction where the health care is provided and performing within the scope of his or her practice as defined under such law; or

b. Any health care provider from whom an employer, insurance carrier, or the Administrator will accept certification of the existence of an injury to substantiate a claim for compensation under this Title.

13. "Injury" means physical harm or damage to a person's body which may be traumatic or cumulative and includes death and occupational disease, but excludes any injury resulting primarily from the natural aging process, normal daily activities not performed in the course of employment, or recreational or social activities.

14. "Insurance carrier" means an insurer, insurance company, self-insurance plan, or other person who issues, provides, or enters into a contract in the form of a policy of insurance to provide insurance coverage to an employer.

15. "Insurance coverage" means a policy of insurance or self-insurance plan which provides coverage and compensation for injuries sustained by an employee arising out of and in the course of employment.

16. "Intoxication" means:

a. Blood alcohol content in excess of two hundredths of one percent (0.02%);

b. Conviction of the offense of driving while intoxicated or its equivalent by any jurisdiction; or

c. Loss of the normal use of a person's mental and/or physical faculties resulting from the voluntary introduction into the body of an alcoholic beverage, controlled substance, mind-altering drug, hallucinogen, abusable glue or aerosol, or other similar substance.

17. "Occupational disease" means a disease that is due to causes and conditions characteristic of and peculiar to a particular trade, occupation, process, or employment, but not the ordinary diseases to which the general public is exposed.

18. "Traumatic injury" means an injury from a sudden, specific incident.

Section 7-1-3. Requirement of Coverage.

1. Any employer, other than the Tribe, located within the territory of the Tribe, employing any employee within the territory of the Tribe, conducting business or engaging in a business transaction in the territory of the Tribe or with the Tribe, or entering into a consensual relationship with Tribe shall purchase

and maintain insurance coverage which complies with the laws of the jurisdiction where such employer is located or primarily employs employees or, in the absence thereof, provides coverage and compensation at least equal to the coverage and compensation provided under this Title.

2. The Tribe shall provide compensation to its employees in accordance with the provisions of this Title, including maintaining insurance coverage which provides coverage and compensation at least equal to the coverage and compensation required under this Title.

3. Any employer subject to this Section who fails or refuses to purchase and maintain insurance coverage in accordance with this Section shall forfeit such employer's right to conduct business in the territory of the Tribe or with the Tribe.

Section 7-1-4. Terms of Insurance Policy Void. Any term, clause, provision, or endorsement of insurance coverage which conflicts with or purports to alter any of the provisions of this Title, other than to provide additional or greater benefits than required under this Title, shall be void and unenforceable and severed from the policy of insurance.

Section 7-1-5. Exclusive Jurisdiction. No agency, court, or tribunal or workers' compensation program of any jurisdiction, other than the Administrator and Tribal Court as provided in this Title, shall have any jurisdiction or authority to hear any claim or cause of action against the Tribe, its insurance carrier, or the Administrator arising out of injuries sustained by an employee of the Tribe in the course of employment for the Tribe.

Section 7-1-6. Severability. If any chapter, section or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 7-1-7. Sovereign Immunity. Nothing in this Title shall be construed as limiting, waiving or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees.

CHAPTER 2
COVERAGE AND LIABILITY

Section 7-2-1. Exclusiveness of Remedy.

1. The right to recover compensation under this Title for injuries sustained by an employee in the course of employment is the exclusive remedy against the employer and its representatives, insurers, guarantors, and sureties.

2. There shall be no civil cause of action against an employer or its officers, agents, or employees arising out of injuries sustained by an employee in the course of employment and no court shall have subject matter jurisdiction over any such cause of action.

3. Any employee or dependent or representative of an employee who accepts compensation under this Title for an injury arising out of and in the course of employment waives the right to exercise any other legal remedy for such injury.

4. Any employee or dependent or representative of an employee who exercises any other legal remedy against an employee, agent, or official of his or her employer waives any right to compensation under this Title.

Section 7-2-2. Agreement to Coverage.

1. All employees shall be conclusively presumed to have elected to receive compensation in accordance with the provisions of this Title, including the schedule of benefits, exclusive of any other claims the employee may have with regards to the injury by virtue of employment with the employer.

2. All employees acknowledge that the Tribe is a federally recognized Indian tribe and is exercising its inherent sovereign authority by mandating and providing compensation pursuant to this Title.

Section 7-2-3. Posting Notice.

1. All employers shall post a notice of the coverage provided by and compensation available pursuant to this Title in a conspicuous location which substantially conforms to the following:

YOUR EMPLOYER PROVIDES WORKERS COMPENSATION IN ACCORDANCE WITH THE TITLE VII OF THE PONCA TRIBE OF NEBRASKA CODE.

If you have an injury or occupational disease arising out of and in the course of your employment with your employer, you may be entitled to compensation as provided by Title VII of the Ponca Tribe of Nebraska Code.

NOTIFY YOUR SUPERVISOR IMMEDIATELY OF ANY INJURIES, NO MATTER HOW SLIGHT. If you fail to do so, you may lose your benefits under Title VII of the Ponca Tribe of Nebraska Code. In no event shall compensation be paid to an employee who fails to notify their employer within thirty (30) calendar days after sustaining such work related injury and, in the case of a traumatic injury, forty-eight (48) hours.

Your exclusive remedy for any work related injury or disease is through Title VII of the Ponca Tribe of Nebraska Code. No state workers compensation program can accept a claim from you as you are employed by or within the territory of a sovereign Indian nation which has exclusive jurisdiction over workers' compensation within the territory of the Ponca Tribe of Nebraska or provided to employees of the Ponca Tribe of Nebraska.

2. Any employer, other than the Tribe, who violates this Section shall be subject to a civil fine not to exceed \$5,000.00 and shall not be entitled to any of the protections against liability in this Title.

Section 7-2-4. Liability of Third Parties.

1. If a covered employee who is entitled to compensation under this Title is injured or further aggravates a previous injury by the negligence or wrong of another person not in the same employ, the covered employee or, in event of death, his or her dependents may pursue the covered employee's remedy against the other person.

2. If a covered employee who is entitled to compensation under this Title or his or her dependents do not pursue a remedy pursuant to this Section against the other person by instituting an action within one (1) year after the cause of action accrues or, if after instituting the action, the covered employee or his

or dependents fail to fully prosecute the claim and the action is dismissed, the claim against the other person is deemed assigned to the employer and its insurance carrier and all of the following apply:

a. The employer or insurance carrier may institute an action against the other person;

b. Any dismissal that is entered for lack of prosecution of an action instituted by the covered employee or his or her dependents shall not prejudice the right of the employer or insurance carrier to recover the amount of compensation paid;

c. Any statute of limitations of the claim shall be tolled for the one (1) year in which the covered employee or his or her dependents did not pursue the claim or, if such claim was dismissed for lack of prosecution, during such time from when the cause of action accrued until the date of such dismissal; and

d. The claim may be prosecuted or compromised by the employer or insurance carrier or may be reassigned in its entirety to the covered employee or his or her dependents and the covered employee or his or her dependents shall have the same rights to pursue the claim as if it had been filed within the first year.

3. A covered employee or his or her dependents shall provide the employer or insurance carrier written notice of the intention to bring an action against a third party and shall provide to the employer or insurance carrier timely and periodic notice of all pleadings and rulings concerning the status of the pending action. In any action instituted by the covered employee or his or her dependents, the employer or insurance carrier shall have the right to intervene at any time to protect the employer's or insurance carrier's interests.

4. If a covered employee proceeds against the other person under this Section, compensation shall be paid as provided in this Title and the insurance carrier shall have a lien on the amount actually collectable from the other person to the extent of such compensation paid. Acceptance of compensation under this Title constitutes an assignment of the covered employee's recovery from the other person to the extent of compensation paid or payable. Compromise of any claim by the covered employee or his or her dependents at an amount less than the compensation provided under

this Title shall be made only with written approval of the insurance carrier liable to pay the claim.

5. Upon resolution of an action or completion of a settlement of an action brought by a covered employee or his or her dependents under this Section, the insurance carrier shall have the right of subrogation for any amount of compensation paid under this Title.

Section 7-2-5. Right to Compensation. Except as otherwise provided in this Title, every covered employee who is injured or, in event of death, his or her dependents in the course of his or her employment, wherever the injury occurred, shall be entitled to receive and shall be provided or paid such compensation as provided by this Title.

Section 7-2-6. Exclusions.

1. Notwithstanding anything to the contrary in this Title and even when occurring in the course of employment, no employee shall receive compensation under this Title:

a. For any injury lasting less than three (3) consecutive calendar days;

b. For any injury or aggravation thereof:

i. That does not arise out of and in the course of employment;

ii. Which is purposely self-inflicted;

iii. Which follows repeated documented violations of work rules or results from a documented violation of safety policies;

iv. Caused by or arising out of the gross negligence of the employee;

v. Caused by or arising out of the willful act of a third person, including another employee, intended to injure the employee;

vi. Caused by or contributed to by the employee's intoxication, voluntary poisoning, or abuse of prescription medication;

vii. Caused by or arising out of an altercation in which the employee is the initial physical aggressor;

viii. Caused by or arising out of the commission of an act which would constitute a crime under federal, state, or Tribal law punishable by imprisonment of a year or more or any crime against the Tribe, provided that, in the absence of conviction of such a crime, proof of the commission of such act by a preponderance of the evidence shall be sufficient to deny compensation pursuant to this subsection;

ix. Unless the injury otherwise occurred in the course of employment, which occurred outside the employees' hours of work in which he or she received or is suppose to receive wages, even if the employee was on the employer's premises;

x. Cause by tobacco use or second-hand smoke in the workplace;

xi. Caused by mold in the workplace;

xii. Caused by natural causes, such as a heart attack, stroke, or other natural body function failure which does not arise in the course of employment; or

xiii. Caused by agents to which the general public at the employer's premises are exposed.

c. To the extent the injury is caused by, aggravated, or continued by:

i. Failure or refusal to obey written or verbal instructions of the employer which, if followed, would have reasonably prevented or significantly reduced the likelihood of the injury;

ii. Failure or refusal to use a safety device or appliance furnished by the employer;

iii. Horseplay engaged in by the employee;

iv. An unreasonable refusal or neglect to submit to or follow any competent or reasonable surgical treatment, medical aid, or advice of a qualified health care provider; or

v. The employee's actions which interfere with or prolong the employee's recovery, including, but not limited to, failure to timely seek appropriate medical care, reporting ongoing treatment which is in fact not occurring, or failing or refusing to seek treatment from a health care provider approved by the Administrator.

d. If the injury occurred while the employee was intoxicated, regardless of whether the intoxication was the proximate cause of the injury;

e. For any mental, emotional, psychotic, or neurotic injury, even if manifested in physical symptoms or related to stress;

f. For a preexisting degenerative condition established by objective medical evidence, whether pre-injury or post-injury, which causes, aggravates, or otherwise contributes to the injury;

g. If, after request, the employee failed, prior to performing the work which resulted in the injury, to disclose a physical condition which prevented the employee from safely performing the work or which was a substantial contributing factor to the injury;

h. Where the employee willfully makes a false statement or representation in order to obtain compensation under this Title;

i. For a traumatic injury, where:

i. There is no specific incident which caused the injury; or

ii. The employee is not performing employment related duties;

j. If the injury is not reported to the employer within the time required under this Title; or

k. For any medical expenses where the employee seeks treatment for the injury from a different health care provider, except when:

i. The treatment was provided by a different health care provider due to an emergency; or

ii. The Administrator approved the employee seeking treatment from the different health care provider.

2. Any employee who leaves the employment of an employer and who later seeks employment with the same employer shall declare in writing whether the employee is claiming any injury from the prior employment. If the employee fails to declare such prior injury, any compensation for a subsequent injury shall be determined as though such prior injury did not occur.

Section 7-2-7. Medical Information.

1. Notwithstanding any other provision of law, there shall be no restrictions concerning a physician or other health practitioner or provider testifying about his or her patient or any privilege of confidentiality between a physician or other health practitioner or provider in any claim or proceeding under this Title.

2. Every employee, employer, and insurance carrier making or defending a claim for compensation under this Title shall release to the other parties or their representatives all information to which the employee, employer, or insurance carrier has access concerning the employee's condition reasonably related to the claim.

3. An employee seeking compensation under this Title shall execute any necessary consents, authorizations, and waivers to permit access to, use of, and disclosure of any health information of the employee necessary to process, determine, and adjudicate any claim for compensation under this Title. An employee who fails or refuses to execute any such consent, authorization, or waiver shall forfeit any claim to compensation under this Title and be automatically denied any compensation.

4. Any health care provider releasing information to a party or his or her representative pursuant to this Section shall be immune from any civil or criminal liability by reason of such action.

Section 7-2-8. Medical Examination.

1. Upon request of the Administrator, an employee seeking compensation under this Title shall submit to such independent medical examinations as designated by the Administrator.

2. A request to submit to an independent medical examination shall state the time and place for such examination, having due regard to the convenience, physical condition, and ability of the employee to attend.

3. An employee submitting to an independent medical examination pursuant to this Section shall be permitted to have, at the sole expense of the employee, a health care provider selected by the employee present at the examination.

**CHAPTER 3
BENEFITS**

Section 7-3-1. Definitions. Unless the context requires otherwise, in this Chapter:

1. "Average weekly wage" means, exclusive of tips, bonuses, and overtime:

a. Where the covered employee has worked at least twenty-six (26) weeks for an employer, the covered employee's total wages or salary received in the twenty-six (26) weeks preceding the date of injury divided by twenty-six (26); or

b. Where the covered employee has not worked at least twenty-six (26) weeks for an employer, the covered employee's total wages or salary received in the number of full weeks the covered employee worked for the employer preceding the date of injury divided by the number of such full weeks.

2. "Funeral benefits" means reasonable incurred expenses for the normal cost of a funeral and burial.

3. "Maximum medical improvement" means the date after which no further material recovery from or lasting improvement to an injury can reasonably be anticipated based upon reasonable medical probability.

4. "Medical benefits" means expenses, costs, and fees for medical treatment reasonably related to an injury.

5. "Modified work" means work that an employee can perform within restrictions imposed by a health care provider, but is different than the employee's regular work or the employee's regular work performed at a reduced level.

6. "Partial disability" means a disability that reflects an injury where the employee is precluded, temporarily or permanently, from performing a certain set or type of job functions but can still perform modified work.

7. "Regular work" means work equal to or substantially similar to the work an employee performed for his or her employer immediately prior to or at the time an injury occurred.

8. "Total disability" means a disability that reflects an injury which has rendered the employee, temporarily or permanently, completely unable to perform work or any job functions, including modified work.

9. "Wage benefit" means compensation paid to a covered employee for lost wages due to the covered employee's inability to work as a result of an injury arising out of and in the course of his or her employment.

Section 7-3-2. Medical Benefits.

1. Every employer or its insurance carrier shall furnish such reasonable and necessary medical, surgical, dental, nursing, and hospital treatment, medical, hospital, and surgical supplies, crutches, and apparatus as may reasonably be needed at the time of an injury covered by this Title and thereafter to cure and relieve the covered employee from the effects of the injury or for the covered employee to reach maximum medical improvement.

2. In all cases where an injury covered by this Title results in the loss of a member or part of a covered employee's body, loss of teeth, loss of vision or hearing, or damage to an existing prosthetic device, the employer or its insurance carrier shall furnish artificial members, glasses, hearing aids, braces, and other external prosthetic devices, including dentures, which are reasonably required to replace or improve the function of each member or part of the body or prosthetic device so affected or to improve the covered employee's vision or hearing.

3. Except in the case of a medical emergency, the employer or its insurance carrier has the right to select a covered

employee's health care provider for treating an injury covered by this Title. If an employee desires a second opinion on the necessity of any recommended health care, the employer's insurance carrier shall pay the cost of obtaining no more than one (1) such second opinion. Any additional opinions shall be at the employee's expense. An employer or its insurance carrier or the Administrator may also require an employee to obtain such a second opinion and the costs of any such second opinion shall be paid as medical expenses under this Title.

4. An employee shall have only one health care provider at a time treating an injury covered under this Title. Except in the case of an emergency, any change in an employee's health care provider treating an injury covered under this Title shall be approved by the Administrator. An employer, its insurance carrier, or the Administrator may require an employee to complete and obtain a written authorization for treatment for any or all medical appointments.

5. Medical expenses payable under this Section shall not be due and no employer or insurance carrier shall be liable for such expenses until the health care provider furnishes the Administrator with:

a. Copies of medical records or reports substantiating the nature of the charges for services and the relationship of the services to the injury; and

b. An itemized statement of the charges in sufficient detail for the Administrator to properly evaluate the reasonableness of such charges.

6. Medical expenses payable under this Title shall be limited to those usually and customarily charged in the community for similar services. The Administrator may deny charges determined to be excessive or unnecessary.

7. Subject to reductions, deductions, limitations, or exclusions expressly provided in this Title, if an employer or its insurance carrier, after notice of an injury covered by this Title, fails to furnish reasonable and necessary medical treatment to a covered employee as required by this Section, the employer or insurance carrier shall reimburse the covered employee or any insurer or governmental program that pays for related medical treatment for the costs of reasonable and necessary treatment that was provided.

8. Once it has been determined that an injury is covered by this Title or otherwise that an employer or insurance carrier is liable for the payment of a covered employee's medical expenses under this Title, a medical provider shall under no circumstances seek to recover such medical expenses from the covered employee except where such medical expenses are expressly excluded from payment under this Title or conclusively determined to not be payable under this Title, provided that medical expenses determined to be excessive or unnecessary pursuant to this Section shall not be recoverable.

Section 7-3-3. Wage Benefits.

1. Subject to the maximum wage benefit provided under this Section and any reductions or deductions allowed under this Chapter, a covered employee entitled to compensation for lost wages resulting from a disability covered by this Title shall receive wage benefits in the following amounts:

a. If the covered employee has a temporary total disability of more than three (3) regular working days' duration, two-thirds (2/3) of the covered employee's average weekly wage until the first occurrence of any one of the following:

i. The covered employee reaches maximum medical improvement;

ii. The covered employee returns to regular work or modified work;

iii. The health care provider treating the covered employee's injury issues a written release for the covered employee to return to regular work; or

iv. The health care provider treating the covered employee's injury issues a written release for the covered employee to return to modified work, such employment is offered to the covered employee in writing, and the covered employee fails to begin such employment;

b. If the covered employee has a temporary partial disability, two-thirds (2/3) of the difference between the covered employee's average weekly wage at the time of the injury and the covered employee's average weekly wage until the first occurrence of either of the following:

i. The covered employee reaches maximum medical improvement; or

ii. The health care provider treating the covered employee's injury issues a written release for the covered employee to return to modified work, such employment is offered to the covered employee in writing, and the covered employee fails to begin such employment;

c. If the covered employee has a permanent total disability, two-thirds (2/3) of the covered employee's average weekly wage until the death of the covered employee or the covered employee becomes eligible to collect available retirement benefits or payments, whichever occurs first;

d. If the covered employee has a permanent partial disability, the wage benefits calculated in accordance with the schedule of benefits set forth in this Chapter; and

e. If the covered employee dies as a result of an injury covered by this Title within two (2) years of the injury and there are dependents of the covered employee at the time of death, two-thirds (2/3) of the covered employee's average weekly wage payable from the date of death of the covered employee as follows:

i. To a surviving spouse or domestic partner of the covered employee until remarriage or the spouse or domestic partner becomes eligible to collect available retirement benefits or payments, whichever occurs first;

ii. If there is a surviving spouse or domestic partner and dependents who do not reside with the surviving spouse or domestic partner:

(1) Fifty percent (50%) of the wage benefits to the surviving spouse or domestic partner until remarriage or the spouse or domestic partner becomes eligible to collect available retirement benefits or payments, whichever occurs first; and

(2) Fifty percent (50%) of the wage benefits divided equally amongst the other dependents until each dependent is no longer a dependent as defined

in this Title with wage benefits surviving to the remaining dependents; and

iii. If there is no surviving spouse or domestic partner of the deceased or there remains other dependents upon termination of wage benefits to a surviving spouse or domestic partner, to the other dependents divided equally until each dependent is no longer a dependent as defined in this Title with wage benefits surviving to the remaining dependents.

2. If death occurs to a covered employee which is not the result of an injury covered by this Title or is more than two (2) years after the occurrence of the injury covered by this Title while the covered employee is receiving wage benefits under this Section, the payment of all wage benefits shall cease as of the date of death of the covered employee and the employer and its insurance carrier shall have no further liability toward such covered employee or his or her dependents except to the extent of any other compensation which may be due under this Title and remains unpaid for medical benefits incurred prior to the covered employee's death.

3. In the event an employer cannot accommodate modified work for a covered employee with a temporary partial disability, the covered employee shall receive wage benefits as though the covered employee has a temporary total disability unless and until the employer can provide the covered employee with modified work or until the covered employee would no longer otherwise be eligible for wage benefits due to the temporary partial disability, whichever time period is shorter.

4. For purposes of this Chapter, a covered employee shall be deemed to have a permanent total disability if, as a result of the disability, the covered employee is unable to secure employment at a weekly rate greater than or equal to ninety percent (90%) of the covered employee's average weekly wage.

5. The maximum wage benefit payable to a covered employee shall be as follows:

a. In the case of an employer that is not the Tribe, the maximum wage benefit set by the state within whose geographical boundaries the covered employee worked for the employer; and

b. In the case of the Tribe, an amount equal to the total wages paid by the employer to all of its employees during the calendar year preceding the year in which the covered employee's injury occurred divided by the number of employees the employer paid during that calendar year further divided by fifty-two (52).

Section 7-3-4. Schedule of Benefits.

1. In case an injury results in a loss set forth in the following schedule, the covered employee, in addition to compensation to be paid for temporary disability, shall receive two-thirds (2/3) of the covered employee's average weekly wage for the period as specified:

Loss of an arm at the shoulder	208 weeks
Loss of an arm above the hand including the wrist	208 weeks
Loss of a hand below the wrist	104 weeks
Loss of a thumb and the metacarpal bone thereof	50 weeks
Loss of a thumb at the proximal joint	35 weeks
Loss of a thumb at the second or distal joint	18 weeks
Loss of an index finger and the metacarpal bone thereof	26 weeks
Loss of an index finger at the proximal joint	18 weeks
Loss of an index finger at the second joint	13 weeks
Loss of an index finger at the distal joint	9 weeks
Loss of a second finger and the metacarpal bone thereof	18 weeks
Loss of a middle finger at the proximal joint	13 weeks
Loss of a middle finger at the second joint	9 weeks
Loss of a middle finger at the distal joint	5 weeks
Loss of a third or ring finger and the metacarpal bone thereof	11 weeks
Loss of a ring finger at the proximal joint	7 weeks
Loss of a ring finger at the second joint	7 weeks
Loss of a ring finger at the distal joint	4 weeks
Loss of a little finger and the metacarpal bone thereof	13 weeks
Loss of a little finger at the proximal joint	9 weeks
Loss of a little finger at the second joint	9 weeks
Loss of a little finger at the distal joint	4 weeks
Loss of a leg at the hip joint or so near thereto as to preclude the use of an artificial limb	208 weeks
Loss of a leg above the foot including the ankle	208 weeks
Loss of a foot below the ankle	104 weeks
Loss of a great toe with the metatarsal bone thereof	26 weeks
Loss of a great toe at the proximal joint	18 weeks

Loss of a great toe at the second or distal joint	9 weeks
Loss of any other toe with the metatarsal bone thereof	11 weeks
Loss of any other toe at the proximal joint	4 weeks
Loss of any other toe at the second or distal joint	4 weeks
Loss of a tooth	6 weeks
Total blindness of one eye	104 weeks
Total deafness of both ears	139 weeks
Total deafness of one ear	35 weeks
Where employee prior to injury has suffered a total loss of hearing in one ear, and as a result of the accident loses total hearing in remaining ear	139 weeks

2. In case an injury results in a permanent partial disability not set forth in the schedule in this Section, the covered employee, in addition to compensation to be paid for temporary disability, shall receive compensation for a period of weeks equal to four hundred (400) multiplied by the following age factor determined based on the age of the covered employee on the date of the injury:

AGE	FACTOR	AGE	FACTOR
20 or younger	1.80	40	1.40
21	1.78	41	1.38
22	1.76	42	1.36
23	1.74	43	1.34
24	1.72	44	1.32
25	1.70	45	1.30
26	1.68	46	1.28
27	1.66	47	1.26
28	1.64	48	1.24
29	1.62	49	1.22
30	1.60	50	1.20
31	1.58	51	1.18
32	1.56	52	1.16
33	1.54	53	1.14
34	1.52	54	1.12
35	1.50	55	1.10
36	1.48	56	1.08
37	1.46	57	1.06
38	1.44	58	1.04
39	1.42	59	1.02
		60 or older	1.00

3. Wage benefits available to a covered employee not set forth in the schedule in this Section shall be based on a permanent partial disability rating determined as follows:

a. An authorized treating health care provider shall make a determination as to when the covered employee reaches maximum medical improvement;

b. If the authorized treating health care provider determines that the covered employee has reached maximum medical improvement, the health care provider shall assign a permanent partial disability rating as a result of the injury;

c. If the covered employee or Administrator disputes a determination by an authorized treating health care provider on the question of whether the covered employee has reached maximum medical improvement or the permanent partial disability rating, the covered employee and Administrator shall agree on an independent medical examiner to make a determination whether the covered employee has reached maximum medical improvement and, if so, assign a permanent partial disability rating, which shall be the permanent partial disability rating utilized for determining wage benefits; and

d. If the covered employee and Administrator cannot agree on an independent medical examiner under this subsection within thirty (30) calendar days of the raising of the dispute, each party shall select a qualified health care provider to make a determination whether the covered employee has reached maximum medical improvement and, if so, assign a permanent partial disability rating and the permanent partial disability rating utilized for determining wage benefits shall be the average between the two ratings received.

4. Determinations of maximum medical improvement and assignments of permanent partial disability ratings shall be made only in accordance with a method generally recognized and accepted throughout the United States and based upon objective evidence which includes reproducible and consistent clinical findings. Any determination or rating not made in accordance with such generally recognized method and objective evidence shall not be considered in determining maximum medical improvement or a permanent partial disability rating.

5. For a permanent partial disability not set forth in the schedule in this Section, the covered employee shall receive two-thirds (2/3) of the covered employee's average weekly wage multiplied by the permanent partial disability rating determined

pursuant to this Section for the period of weeks determined pursuant to this Section. The Administrator shall pay such wage benefits, or the first payment of such wage benefits if they are to be made in periodic payments, no later than thirty (30) calendar days after the permanent partial disability rating is determined pursuant to this Section.

6. Payment of wage benefits under this Section shall terminate any other wage benefits the covered employee may be receiving pursuant to this Chapter.

Section 7-3-5. Funeral Benefits. In addition to any wage benefits and medical benefits due under this Title and subject to any reductions or deductions allowed under this Chapter, in case death of a covered employee results from an injury covered by this Title within two (2) years of the injury, compensation shall be paid for funeral expenses of the deceased actually incurred up to the normal cost of a funeral and burial in the area where the funeral and burial occurs or the maximum amount allowed under the insurance coverage of the employer for funeral expenses, whichever is less.

Section 7-3-6. Reductions in Compensation.

1. The amount of compensation a covered employee receives under this Title may be reduced for any preexisting injury or disability of the covered employee, whether or not work related. Where compensation is reduced due to the existence of any such preexisting injury or disability, the compensation payable to the covered employee shall be that compensation due only for the portion of the injury or disability attributable to the injury sustained in the course of employment.

2. Wage benefits for a disability resulting from a cumulative injury, including carpal tunnel syndrome, shall be reduced based on the amount of time the covered employee has worked for the employer in accordance with the following:

a. Covered employees employed by the employer for less than four (4) months at the time of the claim for compensation under this Title shall receive no wage benefits;

b. Covered employees employed by the employer for four (4) to eight (8) months at the time of the claim for compensation under this Title shall receive twenty-five percent (25%) of the wage benefits due under this Chapter;

c. Covered employees employed by the employer for eight (8) to twelve (12) months at the time of the claim for compensation under this Title shall receive fifty percent (50%) of the wage benefits due under this Chapter;

d. Covered employees employed by the employer for twelve (12) to eighteen (18) months at the time of the claim for compensation under this Title shall receive seventy-five percent (75%) of the wage benefits due under this Chapter;

e. Covered employees employed by the employer for more than eighteen (18) months at the time of the claim for compensation under this Title shall receive one hundred percent (100%) of the wage benefits due under this Chapter.

3. A covered employee shall not receive wage benefits for any time in which the covered employee receives compensation from:

a. Work time the employer permits the covered employee to make up for work time missed for medical appointments not otherwise covered by paid leave;

b. Vacation, sick, or other paid leave received from the employer;

c. Short term or long term disability benefits or payments provided by the employer or a plan provided by the employer; or

d. A short term or long term disability program provided by a government entity, including Social Security Disability Insurance.

Section 7-3-7. Suspension of Compensation.

1. Payment of compensation under this Title shall be suspended during the period of time that the covered employee:

a. Has been adjudicated delinquent or convicted of a crime and is incarcerated in any tribal, state, federal, or local jail or correctional facility, provided such incarceration shall not begin the running of any limitations period during which the covered employee is eligible for compensation;

b. Does not have authorization from the covered employee's health care provider to be off work;

c. Is terminated for misconduct;

d. Declines or quits work offered by the employer within the covered employee's physical restrictions;

e. Fails or refuses to cooperate with reasonable medical or vocational rehabilitation;

f. Fails or refuses to follow restrictions imposed by a health care provider;

g. Fails or refuses to make a diligent effort to find employment within the covered employee's physical restrictions; or

h. Fails or refuses to report any other employment or wages received.

2. Payment of wage benefits under this Title shall be suspended and no wage benefits shall be payable during or for such period of suspension:

a. If an employee receiving wage benefits under this Title misses two (2) consecutive scheduled medical appointments without good cause, until the employee attends a scheduled medical appointment; and

b. If an employee fails or refuses to submit to an independent medical examination requested under this Title or obstructs such an examination, until the examination has been conducted.

3. If the Administrator determines that an employee has not cooperated with reasonable medical or vocational rehabilitation, prior to suspending compensation under this Section, the Administrator shall provide written notice to the employee that he or she must contact the Administrator within seven (7) business days to resolve the non-cooperation or compensation will be suspended.

4. In the event a covered employee fails or refuses to follow restrictions imposed by a health care provider on two or more occasions, while either at work or outside the work place,

all future wage benefits under this Title shall be forfeited and denied.

5. Nothing in this section shall be construed to require:

a. An employee to undergo unreasonably invasive medical procedures; or

b. An employer or insurance carrier to provide vocational rehabilitation to an employee.

Section 7-3-8. Recouping Compensation.

1. A person shall repay any compensation paid to or on behalf of such person that the person is or was not entitled to receive or have paid under this Title, including compensation paid due to clerical error, mistaken identity, misrepresentation, or any other circumstance of a similar nature. In the event the payment of compensation the person is or was not entitled to receive or have paid is or was the result of fraud, the person shall be subject to, in addition to the compensation paid due to such fraud, a civil fine in the amount of fifty percent (50%) of the compensation paid as a result of such fraud.

2. Recoupment of compensation may be made from any future compensation paid to a covered employee or his or her dependents. If no future compensation is due a person, a payment plan may be arranged with the person which may include deduction from wages received from any employer.

3. An employer or its insurance carrier must make a claim for any repayment or recoupment of compensation within one (1) year of when the compensation was paid or the claim for repayment or recoupment shall be barred.

4. The Administrator may, in its discretion, waive the repayment of any amount under this Section in whole or in part where repayment would be against equity and good conscience.

Section 7-3-9. Additional Compensation.

1. An employer or insurance carrier may provide compensation in addition to the compensation required under this Title.

2. In the event an employer's insurance coverage provides greater or additional compensation than provided in this Title, such greater or additional compensation shall be available and awarded to an employee in accordance with the terms and provisions of such insurance coverage and nothing in this Chapter shall be read or construed to preclude such greater or additional compensation.

Section 7-3-10. Assignment of Benefits. Compensation received by a covered employee or his or her dependents under this Title shall not be subject to execution, garnishment, attachment, or other process, except:

1. To satisfy a child support obligation ordered by a court of competent jurisdiction;

2. To satisfy a claim for subrogation under this Title;
or

3. For debts or other obligations, including taxes, owed to the Tribe.

Section 7-3-11. Minors and Incapacitated Persons. In the case of any compensation payable under this Title to any minor, incompetent, or other person legally determined incapable of managing his or her own affairs, the Administrator shall require that any compensation payable to such person be paid either:

1. Into a trust account established for the benefit of such person; or

2. To a person appointed as a guardian or conservator for such dependent by the Tribal Court or other court of competent jurisdiction.

CHAPTER 4 PROCEDURE

Section 7-4-1. Administrator. The Administrator shall have the following powers, duties, and responsibilities:

1. To administer this Title in accordance with its terms and conditions;

2. To receive and process all claims for compensation under this Title;

3. To investigate all claims for compensation under this Title;

4. To determine the reasonableness and necessity of medical care and charges and the amounts payable for medical benefits under this Title;

5. To approve or disapprove of any change of health care provider, any referral to a health care provider, and any surgical procedure;

6. To pay or order an insurance carrier to pay all compensation determined to be due under this Title;

7. To request medical reports, police reports, autopsy reports, and special investigations, engage the services of adjusters and consultants, and perform other activities as required to process any claim for compensation under this Title;

8. To request the Tribal Court to issue a subpoena or other order, including ex parte without a hearing, to obtain information the Administrator may request under this Title;

9. To retain a consulting health care provider for purposes of assisting the Administrator in carrying out its duties and powers under this Title, subject to the approval of the Tribal Council if the cost of such consulting health care provider would be incurred by the Tribe;

10. Subject to the right to bring an action in Tribal Court under this Chapter, to make all determinations and decisions regarding coverage, employer responsibility, entitlement to compensation, and amount and duration of compensation due a claimant under this Title;

11. To maintain complete and accurate records and files on all activities relating to claims made under this Title for no less than seven (7) years after the date a claim is resolved and closed; and

12. To exercise all other powers, perform all other duties, and have all other responsibilities delegated or assigned to the Administrator by this Title.

Section 7-4-2. Confidentiality.

1. Except where expressly provided otherwise in the laws of the Tribe, names, records, and other information concerning a claim under this Title shall be held confidential and shall not be provided or open to inspection to any but the following:

a. The claimant, employer, and insurance carrier involved in the claim and their legal counsel;

b. The Administrator;

c. Persons directly connected with the administration of this Title;

d. To others when the person whose information will be released has authorized the release of the information or otherwise waived confidentiality expressly in writing.

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

a. To the Tribe or Tribal Attorney for purposes of assisting the Administrator; or

b. In a proceeding in a court to which the Administrator, employer, or insurance carrier is a party or otherwise participating.

3. Any person who knowingly violates this Section shall be subject to a civil fine not to exceed \$500.00.

Section 7-4-3. Report of Injury.

1. Any employee who seeks compensation under this Title shall notify his or her employer of any injury as soon as reasonably practical but, in no event:

a. For a traumatic injury, forty-eight (48) hours from the time the injury occurred or, where the employee is incapable of reporting the injury due to the nature of the injury, forty-eight (48) hours after the employee is reasonably capable of reporting it; and

b. For a cumulative injury, thirty (30) calendar days from the date when the injury causes the employee to be unable

to work or seek medical treatment for the injury, whichever occurs first.

2. An employer may designate an employee or agent of the employer, including an insurance carrier, to whom employees shall report injuries pursuant to this Section and failure of an employee to report an injury to such designated employee or agent shall be deemed a failure to report the injury in accordance with this Section, provided the employer provides notice of the designated employee or agent by conspicuously posting notice of the identity of such designated employee or agent on its premises or stating the identify in the employer's employment policies provided to all employees.

Section 7-4-4. Time Limit for Claims.

1. The following limitations on the filing of a claim for compensation under this Title shall apply:

a. Any claim for compensation resulting from a traumatic injury must be commenced within thirty (30) calendar days from the date of the injury; and

b. Any claim for compensation resulting from a cumulative injury must be commenced within sixty (60) calendar days from the date when the injury causes the employee to be unable to work or seek medical treatment for the injury, whichever occurs first.

2. A claim for compensation under this Title shall be barred and no compensation payable if:

a. The employee fails to seek medical treatment for an injury within thirty (30) calendar days of:

i. In the case of a traumatic injury, the date of the injury;

ii. In the case of a cumulative injury, the date when the injury causes the employee to be unable to work or seek medical treatment for the injury, whichever occurs first'

b. The employee fails to prosecute a claim for compensation under this Title after more than one (1) year has elapsed since the date of last medical treatment or the date the employee reached maximum medical improvement

determined under Chapter 3 of this Title, whichever occurs first.

Section 7-4-5. Burden of Proof.

1. The claimant shall have the burden of proving by a preponderance of the evidence:

- a. That the employee is a covered employee;
- b. That any disability was the result of an injury covered by this Title;
- c. That the injury arose out of and in the course of the employee's employment; and
- d. That the claimant is entitled to any compensation provided under this Title.

2. The Administrator, employer, or insurance carrier shall have the burden of proving by a preponderance of the evidence that compensation claimed by the claimant is excluded, limited, subject to reduction, or otherwise subject to denial under this Title.

Section 7-4-6. Initiation of Claim.

1. A claim for compensation under this Title shall be made by filing a written claim with an employee or agent of the employer, including its insurance carrier, designated to receive such claims. Such employee or agent shall forward all claims for compensation under this Title to the Administrator. In the absence of an employer designating an employee or agent to receive claims, a claim for compensation under this Title shall be filed directly with the Administrator.

2. Claims for compensation under this Title may be filed by:

- a. An employer or its insurance carrier on behalf of an employee;
- b. An employee; or
- c. In the event of death of an employee, a dependent of the employee.

3. Claims for compensation under this Title shall be filed on such forms as may be designated by the Administrator.

Section 7-4-7. Determination of Claim.

1. Upon receipt of a claim for compensation filed under this Chapter, the Administrator shall promptly investigate the claim.

2. No later than twenty-one (21) calendar days after the filing of a claim for compensation under this Title, the Administrator shall:

a. If the Administrator determines the claim is valid, begin payment of compensation;

b. If the Administrator determines further investigation is necessary, send the claimant written notice of the need for and reasons for further investigation, including any items or information required from the claimant; or

c. If the Administrator determines that the claimant is not due any compensation under this Title, send the claimant written notice denying the claim and the reasons for denial.

3. If the Administrator determines further investigation is necessary, the Administrator shall complete its investigation within forty-five (45) calendar days of filing of the claim, unless items or information required from the claimant have not been received, and either begin payment of compensation or notify the claimant in writing that the claim is denied.

Section 7-4-8. Reconsideration.

1. Within thirty (30) calendar days of receipt of written notice of any decision or determination of the Administrator, the claimant may file a request for reconsideration with the Administrator.

2. A request for reconsideration shall:

a. Be made in writing to the Administrator;

b. Specifying what decision or determination the claimant disputes;

c. State the grounds for disputing the decision or determination;

d. Declare the result desired;

e. Include a complete statement of the facts relied on; and

f. Either include any additional documentation or evidence supporting the claimant's position or request an extension of time to submit such documentation or evidence.

3. The Administrator shall issue a written decision on any request for reconsideration and serve the written decision on the claimant personally, by certified mail, return receipt requested, or by another means agreed to by the claimant and Administrator.

4. The decision of the Administrator on a request for reconsideration under this Section shall be the final decision of the Administrator, provided that the Administrator shall be considered to have issued a final decision denying the request for reconsideration if the Administrator fails to issue a written decision within sixty (60) calendar days of filing of the request for reconsideration or expiration of any extension of time to submit additional documentation or evidence, whichever is later.

5. If no request for reconsideration is made within the time allowed, the decision or determination of the Administrator is final and is not subject to any challenge or appeal in any court.

Section 7-4-9. Action in Tribal Court.

1. If a claimant is aggrieved by a final decision of the Administrator on reconsideration, the claimant may file a complaint in the Tribal Court seeking review of the Administrator's decision.

2. A hearing on the decision of the Administrator shall proceed in accordance with the following:

a. The complaint shall be filed within fourteen (14) business days of the issuance of the Administrator's decision;

b. The complaint shall be brought only against the Administrator and/or the employer's insurance carrier, provided that if either the Administrator or insurance carrier is not named in the complaint, the Administrator or insurance carrier shall have a right to intervene in the proceeding at any time;

c. The complaint shall be captioned: "(name(s) of claimant(s)), Plaintiff(s) vs. (name of insurance carrier(s) and/or Workers' Compensation Administrator), Defendant(s)";

d. No new or additional issues may be raised and only issues raised before the Administrator on the request for reconsideration may be heard regardless of the Administrator's authority to hear the issue;

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

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

g. In reviewing legal conclusions reached by the Administrator, the Tribal Court shall give proper weight to the Administrator's interpretation of this Title.

3. The Tribal Court shall dismiss any action brought against the Administrator if the claimant did not file a request for reconsideration with the Administrator.

4. Every party to a proceeding under this Section has the following rights:

a. To be represented by legal counsel at his or her own expense in all proceedings in the matter;

b. To introduce evidence;

c. To be heard on his or her own behalf;

d. To have the Court compel the attendance of a witness on his or her behalf as permitted in the laws of the Tribe; and

e. To examine witnesses.

5. The claimant shall have the burden of proving by a preponderance of the evidence that the Administrator's decision or determination disputed was not in accordance with or was in violation of this Title.

6. Notwithstanding anything to the contrary in this Title, in a proceeding brought pursuant to this Title, the Tribal Court:

a. Shall not have jurisdiction over the Tribe or any cause of action brought against the Tribe, except the Administrator; and

b. May grant judgment, award damages, or grant relief only against or in favor of the insurance carrier or the claimant;

c. Shall not have any jurisdiction or authority to issue any award, benefits, compensation, damages, or other monies in excess of the amounts of coverage in the employer's insurance coverage;

d. Shall not have jurisdiction to enter judgment, award damages, or grant other relief against the employer;

e. Shall not have jurisdiction to enter judgment, award damages, or grant other relief not permitted under the applicable policy of the employer's insurance coverage or this Title, whichever provides greater coverage or compensation;

7. Any judgment, award, or other relief granted a claimant in an action brought pursuant to this Section shall be enforceable only against the insurance carrier.

8. The Tribal Court shall issue a decision and judgment in a proceeding under this Title within ninety (90) calendar days of the conclusion of any trial or other proceeding on the merits of the complaint.

9. A judgment issued in a proceeding under this Section is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

10. Except as modified by this Chapter, proceedings brought under this Section shall be governed by the Tribal Rules of Civil Procedure.

11. If no complaint is filed within the time allowed, the decision or determination of the Administrator is final and is not subject to any challenge or appeal in any court.

Section 7-4-10. Defenses of Insurance Carrier.

1. In any action or proceeding under this Chapter, an insurance carrier may assert any defense that would be available to the employer if the employer were a party to the action or proceeding, except that an insurance carrier of the Tribe shall not be permitted to assert:

a. The Tribe's sovereign immunity as a defense to any claim, judgment, damages, or other relief within the terms or limits of the insurance coverage;

b. Any lack of personal jurisdiction of the Administrator or Tribal Court over the Tribe; or

c. Any lack of subject matter jurisdiction of the Administrator or Tribal Court over an action or proceeding involving the Tribe.

2. Notwithstanding anything to the contrary in this Title, an insurance carrier shall have the right and authority to waive any and all defenses available to it under this Title.

Section 7-4-11. Medical Experts.

1. The Administrator or insurance carrier shall have the right to request that a claimant who is an employee be examined by a health care provider designated by the Administrator during an action before the Tribal Court under this Chapter and the claimant shall submit to an examination by such designated health care provider. If a claimant who is an employee fails or refuses to allow such designated health care provider to conduct an examination without good cause, the Tribal Court shall dismiss the complaint with prejudice and the Administrator's decision on reconsideration shall be final and not subject to any further challenge or appeal in any court.

2. A claimant may utilize the services of health care providers or vocational experts for purposes of disputing a decision or determination of the Administrator, including in a proceeding before the Tribal Court, and the opinion of such health care providers or vocational experts shall be duly considered even if such health care providers or vocational experts are not

approved by the Administrator under this Title. The cost of any such health care providers or vocational experts shall be solely borne by the claimant and shall not be subject to payment or reimbursement under any circumstances.

Section 7-4-12. Legal Counsel Fees. The Tribal Court may award reasonable legal counsel fees in an action brought under this Chapter if:

1. The claimant is represented by legal counsel admitted to practice in the jurisdiction of the Tribe;

2. The claimant obtains a final judgment which results in the claimant receiving compensation in an amount greater than the compensation provided in the Administrator's decision or determination after reconsideration; and

3. The amount of legal counsel fees awarded does not exceed:

a. Twenty-five percent (25%) of the first \$2,000.00 of compensation obtained in a final judgment that is greater than the amount provided in the Administrator's decision or determination after reconsideration;

b. Twenty percent (20%) of the compensation obtained in a final judgment that is greater than the amount provided in the Administrator's decision or determination after reconsideration in excess of \$2,000.00; and

c. A total of \$4,500.00.

Section 7-4-13. Settlement Agreements.

1. At any time, including after a claimant disputes a decision or determination of the Administrator, the Administrator may enter into a written settlement agreement with the claimant on any issue or matter disputed, including future medical benefits.

2. If a settlement agreement is entered into after the Tribal Court acquires jurisdiction over a complaint filed pursuant to this Chapter, the settlement agreement shall be made part of a stipulated order or judgment disposing of the case.

3. A settlement agreement is conclusive as to the liability or non-liability for payment of compensation for the matters therein, except upon a showing of fraud, malfeasance, or misrepresentation or concealment of a material fact.

Section 7-4-14. Continuation of Compensation.

1. A claimant shall continue to receive all compensation approved by the Administrator in its original written decision or any decision on reconsideration during the pendency of any reconsideration, hearing before the Tribal Court, and subsequent appeal, but no claimant shall receive any new or additional compensation claimed in a request for reconsideration or complaint filed with the Tribal Court until the decision or judgment is final and awards new or additional compensation.

2. Neither the Administrator, an employer, nor an insurance carrier shall recoup or recover, or attempt to recoup or recover, any payments made to claimant during the pendency of any reconsideration, hearing before the Tribal Court, or subsequent appeal except for compensation expressly permitted to be recouped or recovered under this Title.

Section 7-4-15. Claim Closure. A claim under this Title shall be closed when all compensation available or allowable to a covered employee or his or her dependents has been paid.

Approved 8/23/09
Resolution 09-44

Revised 11/16/20
Resolution 20-81