

HO-CHUNK NATION CODE (HCC)
TITLE 4 – CHILDREN, FAMILY AND
ELDER WELFARE
SECTION 13 – HO-CHUNK DISABILITY CODE

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TABLE OF CONTENTS

1. Authority	2
2. Purpose é é é é é é é é é é é é é é	3
3. Scope	3
4. Definitions é	3
5. Eligibility é é é é é é é é é é é é é é	4
6. Implementation é é é é é é é é é é é é	4
7. Training	4
8. Appropriations	4
9. Resources	4
10. Reports	4
11. Payment	5
12. Medigap	5
13. Severability	5
14. Coverage and Effective Date	5
15. Sovereign Immunity	5
16. Terminology	5

CHAPTER I

GENERAL PROVISIONS

1. Authority

- a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution (ñConstitutionò) grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.
- b. Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive Branch to be administered by such Departments in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power.
- c. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.
- d. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.
- e. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.
- f. Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation.
- g. Article V, Section 2(u) of the Constitution grants the Legislature the power to enact laws to regulate domestic relations of persons within the jurisdiction of the Nation.
- h. Article V, Section 2(x) of the Constitution grants the Legislature the power to enact any other laws, ordinances, resolutions, and statutes necessary to exercise its legislative powers delegated by the General Council pursuant to Article III including but not limited to the foregoing list of powers.

2. **Purpose.** The Ho-Chunk Nation recognizes that there are enrolled Ho-Chunk tribal members who have physical, cognitive and sensory impairments and may require assistance. This code will determine and define those who are considered to have a disability for program purposes.
3. **Scope.** This code shall cover enrolled Ho-Chunk tribal members who are defined within this code as having a disability.
4. **Definitions.** Throughout this Legislation the following words have the following definitions:
 - a. "Cognitive" refers to the mental process of knowing and including aspects such as, perception, awareness, reasoning, and judgment
 - b. "Disability" is a condition or function determined to significantly impair an individual's quality of life. The term is used to refer to individual functioning, including physical impairment, sensory impairment, cognitive impairment, intellectual impairment, mental illness, and various types of chronic disease.
 - c. "Medical Necessity" means health care services and supplies provided by a health care provider appropriate to the evaluation and treatment of disease, condition, illness or injury and consistent with the applicable standard of care, including the evaluation of experimental and/or investigational services, procedures, drugs or devices.
 - d. "Medicare" is a federally funded health insurance program for people age 65 or older, people under age 65 with certain disabilities, and people of all ages with end stage renal disease.
 - e. "Medigap Insurance Policy" refers to various private supplemental health insurance plans sold to Medicare beneficiaries in the United States that provide coverage for medical expenses not or only partially covered by Medicare. Based on state and Federal poverty guidelines.
 - f. "Physician" means a licensed medical doctor.
 - g. "Quality of Life" refers to the patient's ability to enjoy normal life activities
 - h. "SSD" or "SSDI" is an acronym for Social Security Disability Insurance.
 - i. "SSI" is an acronym for Supplemental Security Income.
 - j. "VA" is an acronym for Veteran's Assistance.

CHAPTER II ELIGIBILITY

5. **Eligibility.** In order to be considered as having a disability for purposes of this Code, individuals must meet all of the following criteria:
 - a. Enrolled Ho-Chunk tribal member; and
 - b. Provide necessary documentation from a physician stating a disability or proof of a disability determination under the SSDI, SSI, or the VA programs; and
 - c. Have a medical necessity, need assistive equipment or services and/or other items deemed necessary to provide a quality of life equal to that of a person with no limitations.

CHAPTER III ADVOCACY AND CASE MANAGEMENT

6. **Implementation.** The Social Services, Health and Education Departments of the Executive Branch of the Ho-Chunk Nation will develop procedures and program services to provide a comprehensive access point for any tribal members with a medical, financial, or functional need to advance towards self-sufficiency and full integration into all communities.
7. **Training.** The Social Services, Health and Education Departments will ensure that there are personnel with the training and knowledge of resources to assist any tribal member with such needs. Staff shall serve as advocates and assist tribal members with finding and successfully applying for services.
8. **Appropriations.** The Legislature shall appropriate sufficient funds to the Executive Branch in order to employ such persons at the level deemed both quantitatively and qualitatively competent by the Executive Directors of Social Services, Health and Education.
9. **Resources.** The Social Services, Health and Education Departments shall compile and maintain an updated, comprehensive list of local, county, state, federal, non-profit and private resources providing services, equipment, and or funding.
10. **Reports.** The Social Services, Health and Education Departments shall give written quarterly report[s] regarding programmatic updates to the Office of the President which in turn shall be provided to the Legislative Health, Social Services and Insurance Committee.

CHAPTER IV PAYER OF LAST RESORT

11. **Payment.** If a person is determined to have a disability as defined within this code and there is a need for a medical necessity, assistive equipment or services and/or other items deemed necessary to provide a quality of life equal to that of a person with no limitations, then that person shall be eligible for financial assistance from the Nation provided the following has been complied with.
- a. The Legislature has allocated funds to the Executive Branch designated for such needs.
 - b. The Ho-Chunk Nation shall be the Payer of Last Resort. It is in the Nation's best interest to ensure that all enrolled Ho-Chunk Tribal members first exhaust all available resources including Tribal/State/Federal and charitable benefit assistance programs that exist which may provide assistance to the Tribal member and provide proof of such before financial assistance is provided by the Nation.
12. **Medigap.** Tribal members on Medicare may request assistance in obtaining Medigap Coverage (Medicare supplemental insurance) if they are on a limited income. Medigap premiums may be paid through the Ho-Chunk Nation Health Management Program.
13. **Severability.** Should any provisions of this Code be determined invalid by a court of competent jurisdiction, the invalidated provision shall be severed and the remainder of this Code shall not be affected.
14. **Coverage and Effective Date.** This Code shall be in full force and effect as of the date of the formal approval and enactment by the Ho-Chunk Legislature.
15. **Sovereign Immunity.** Nothing in this Act shall be deemed to waive the sovereign immunity of the Ho-Chunk Nation or any of its enterprises, officers, agents, or employees.

CHAPTER V TERMINOLOGY

16. **Terminology.** The following is a list of terms that are commonly used in serving persons with disabilities and provided for here as a reference.
- a. "Accessibility" means a general term used to describe the degree to which a product, device, service, or environment is available to as many people as possible. Accessibility can be viewed as the "ability to access" and possible benefit of some system or entity. Accessibility is often used to focus on people with disabilities or special needs and their right of access to entities, often through use of assistive technology.

- b. "Accommodations" means changes in the way tests or evaluations are designed or administered to respond to the special needs of individuals with disabilities.
- c. "ADA" means the US Americans with Disabilities Act of 1990.
- d. "Addiction" means a primary, chronic disease of brain reward, motivation, memory and related circuitry. Dysfunction in these circuits leads to characteristic biological, psychological, social and spiritual manifestations. This is reflected in the individual pursuing reward and/or relief by substance use and other behaviors. The addiction is characterized by impairment in behavioral control, craving, inability to consistently abstain, and diminished recognition of significant problems with one's behaviors and interpersonal relationships. Like other chronic diseases, addiction can involve cycles of relapse and remission. Without treatment or engagement in recovery activities, addiction is progressive and can result in disability or premature death.
- e. "Adult Care" means caring for adults needing assistance in functioning during everyday activities.
- f. "Adult Education" means the practice of teaching and educating adults. This is often done in the workplace through "extension" or "continuing education" coursework. The practice is also referred to as "Training and Development" or "Andragogy."
- g. "AODA" is an acronym for Alcohol and Other Drug Abuse.
- h. "Application Date" means the date an application is completed.
- i. "Assistive Technology" means assistive, adaptive, and rehabilitative devices for people with disabilities and also includes the process used in selecting, locating, and using them.
- j. "Benefit Analysis" means the process for determining qualification for benefits and assistance through various programs of federal, state, county & tribal governments and other profit or non-profit service organizations municipalities.
- k. "Benefit Specialist" means a person employed by an agency to research, determine and assist clients with application for assistance and further data on program services.
- l. "Categorical Aid" means funds from state or federal government granted to qualifying schools or districts for specific children with special needs, certain programs such as class size reduction, or special purposes such as transportation. This aid is in addition to the funding school received for their general education programming. (Ed Source)
- m. "Contract Health Referred Services" is when a patient is referred by an authorizing official of the Indian Health Service (IHS) when the medical care required cannot be provided at the IHS facility. The referral is not an implication that the IHS will authorize payment for the cost of the care to be provided. The IHS will assume

financial responsibility for referrals if the patient is eligible within a Contract Health Service Delivery Area under the Contract Health Service (CHS) regulations and is not eligible for or does not have an alternate resource. Patients who are ineligible under the CHS regulations will be financially responsible for the medical costs incurred for a referral made by the IHS.

- n. "Contract Health Services" are provided to enrolled tribal members by non-IHS public or private providers (e.g., dentists, physicians, hospitals) when services required are not offered by the Ho-Chunk Health Care Center / House of Wellness Clinic.
- o. "Co-occurring Disorders (COD)" means having one or more substance use disorders as well as one or more mental disorders.
- p. "Counseling" means an interaction between a professional or trained individual and a patient, intended to help the latter solve difficulties in psychosocial adjustment; counselors may also advise, opine, and instruct, in order to direct another's judgment or conduct.
- q. "Degenerative Brain Disorder" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological condition closely related to an intellectual disability or requiring treatment similar to that required for individuals with an intellectual disability, which has continued or can be expected to continue indefinitely, substantially impairs an individual from adequately providing for his or her own care or custody, and constitutes a substantial handicap to the afflicted individual. The term does not include dementia that is primarily caused by degenerative brain disorder.
- r. "Degenerative Disease" is a disease in which the function or structure of the affected tissues or organs changes for the worse over time. Osteoarthritis, osteoporosis, and Alzheimer disease are examples.
- s. "Developmental Disability" means a disability attributable to mental retardation, autism, seizures disorders with primary onset before age of 22 or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody and constitutes a substantial handicap to the afflicted individual. The term does not include a person affected by senility which is primarily caused by the process of aging or the infirmities of aging.
- t. "Diagnosis Date" means the date that an individual was diagnosed with a disability by a physician or mental health professional. This date does not reflect the length of time an individual has had a disability.

- u. "DSM" means the Diagnostic and Statistical Manual of Mental Disorders, also known as the DSM-V, DSM V, or DSM-5, a detailed listing of classifications of mental disorders scheduled for publication in 2013.
- v. "Dual Diagnosis" means the presence of both mental health disorders and substance abuse disorders.
- w. "Guardian" means a person appointed by the Trial Court to manage the income and assets and provide for the essential requirements for health and safety and the personal needs of an individual found to be incompetent or a spendthrift.
- x. "Guardianship" is where a guardian acting on behalf of a ward may exercise only those powers that the guardian is authorized to exercise by statute or property management of the ward in a manner that is appropriate to the ward and that constitutes the least restrictive form of intervention. A ward retains all his or her rights that are not assigned to the guardian or otherwise limited by statute.
- y. "HIPAA" is an acronym that stands for the Health Insurance Portability and Accountability Act, a US law designed to provide privacy standards to protect patients; medical records and other health information provided to health plans, doctors, hospitals and other health care providers. Developed by the Department of Health and Human Services, these new standards provide patients with access to their medical records and more control over how their personal health information is used and disclosed. They represent a uniform, federal floor of privacy protections for consumers across the country. State laws providing additional protections to consumers are not affected by this new rule. HIPAA took effect on April 14, 2003.
- z. "Home Health Care" is defined as rendering predominantly medically related services to patients in a home setting rather than in a medical facility. The home care will help patients increase their ability to tend to their everyday needs at home. Home health care may include skilled nursing in addition to speech, occupational and physical therapy.
- aa. "Hospice" means care designed to give supportive care to people in the final phase of a terminal illness and focus on comfort and quality of life, rather than cure.
- bb. "IDEA 2004" means a United States law which aims to help ensure equity, accountability and excellence in education for children with disabilities.
- cc. "Impairment" means a developmental disability, serious and persistent mental illness, degenerative brain disorder, or other like incapacities. "Incapacity" means the inability of an individual effectively to receive and evaluate information or to make or communicate a decision with respect to the exercise of a right or power.
- dd. "Individualized Education Plan or Program (IEP)" is a written plan created for a student with learning disabilities by the student's teachers, parents or guardians, the school

administrator, and other interested parties. The plan is tailored to the student's specific needs and abilities, and outlines goals for the student to reach. The IEP should be reviewed at least once a year. Note: This includes 504 plans.

- ee. "Inpatient/Outpatient Treatment Therapy": Inpatient treatment is a type of treatment in which a patient is provided with 24 hour care at a live-in facility. Both psychiatric and physical health assistance are included in this treatment. Outpatient treatment is a type of care used to treat those in need of eating disorder treatment, drug rehab, or pain treatment, to name a few. These types of programs can be very useful to those who must continue to work or attend school. Programs for outpatient treatment vary depending on the patient's needs and the facility but they typically meet a couple of times every week for a few hours at a time.
- ff. "Irrevocable Trust" means a trust that cannot be modified or terminated without the permission of the beneficiary. The grantor, having transferred assets into the trust, effectively removes all of his or her rights of ownership to the assets and the trust. This is the opposite of a "revocable trust", which allows the grantor to modify the trust.
- gg. "Long-term Disability Insurance (LTD)" is an insurance policy that protects an employee from loss of income in the event that he or she is unable to work due to illness, injury, or accident for a long period of time.
- hh. "Mainstreaming" is the practice of placing students with disabilities in regular classrooms; also known as "inclusion."
- ii. "Medical Assistance (MA) (Medicaid)" is a means-tested, needs-based health insurance program jointly funded by the state and federal government.
- jj. "Medication" means a chemical substance intended for use in the medical diagnosis, cure, treatment or prevention of disease or illness.
- kk. "Occupational Therapy" is based on engagement in meaningful activities of daily life (such as self-care skills, education, work, or social interaction), especially to enable or encourage participation in such activities in spite of impairments or limitations in physical or mental functioning.
- ll. "Other Like Incapacities" means those conditions incurred at any age which are the result of accident, organic brain damage, mental or physical disability or continued consumption or absorption of substances, producing a condition which substantially impairs an individual from adequately providing for his or her own care or custody.
- mm. "Palliative Care" is to relieve suffering and provide the best possible quality of life for people facing the pain, symptoms and stresses of serious illness. It is appropriate at any age and at any stage of an illness, and it can be provided along with treatments that are meant to cure.

- nn. "Physical Impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following systems; neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine.
- oo. "Physical Therapy" for the preservation, enhancement, or restoration of movement and physical function impaired or threatened by disability, injury, or disease that utilizes therapeutic exercise, physical modalities (as massage and electrotherapy), assistive devices, and patient education.
- pp. "Power of Attorney" means an original written document signed by an adult and notarized giving another person the power to act in conducting a person's business in the name of the person. There are three main types of powers of attorney:
 - (1) A Power of Attorney for Finances and Property covers all the person's business activities, for example signing papers, title documents, contracts, or bank accounts;
 - (2) A Limited Power of Attorney grants powers limited to specific matters, for example selling a particular piece of real estate or handling specific bank accounts;
 - (3) A Power of Attorney for Health Care grants powers to individuals to make health care decisions on an a person's behalf should they become incapacitated
- qq. "Protective Payee" is an individual assigned to manage public assistance payments on behalf of a recipient who is unable to manage the assistance money without help. Protective payees are appointed by the Department of Social Services. Establishing a protective payee does not require court action. Consent of the client is desirable but not required.
- rr. "Psychiatrist" means a licensed doctor trained in the treatment of people with psychiatric disorders.
- ss. "Psychologist" is a licensed professional who studies behavior and experience and provides therapeutic services.
- tt. "Prescribed Need" means a licensed physician; psychiatrist or psychologist has determined a patient needs a specified device, plan or medication for treatment.
- uu. "Rehabilitation Agency" is an agency which provides an integrated multidisciplinary program designed to upgrade the physical functioning of handicapped, disabled individuals by bringing together as a team specialized in rehabilitation personnel. At a minimum, a rehabilitation agency must provide physical therapy or speech pathology services, and a rehabilitation program which, in addition to physical therapy or speech pathology services, includes social or vocational adjustment services.

- vv. ñRepresentative Payeeò is an individual or organization appointed by SSA to receive Social Security and/or SSI benefits for someone who cannot manage or direct someone else to manage his or her money.
- ww. ñRepresentative Payee Volunteerò is a person that works one-on-one with a disabled adult or an elderly person who is incapable of managing their finances.
- xx. ñSerious and Persistent Mental Illnessò means a mental illness that is severe in degree and persistent in duration, that causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, that may lead to an inability to maintain stable adjustment and independent functioning without long term treatment and support, and that may be of lifelong duration which includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include degenerative brain disorder or a primary diagnosis of a developmental disability or of alcohol or drug dependence.
- yy. ñShort Term Disability Insuranceò is an insurance policy that pays a percentage of your salary if you become temporarily disabled, which means that you are not able to work for a short period of time due to sickness or injury not related to your job. Typically, a short term disability policy provides you with 40 to 70 percent of your pre-disability base salary.
- zz. ñSSAò is an acronym for Social Security Administration.
- aaa. ñSpecial Educationò means special instruction provided for students with educational or physical disabilities, tailored to each student's needs and learning style.
- bbb. ñSubstance Abuseò means the excessive consumption or misuse of substance: the excessive consumption or misuse of a substance for the sake of its non-therapeutic effects on the mind or body, especially drugs or alcohol.
- ccc. ñTherapyò means the treatment of disease or disorders, as by some remedial, rehabilitating, or curative process.
- ddd. ñTransportationò means medical emergencies and non-emergencies for physical or health crisis.

Legislative History:

- 3/6/13 Legislature places draft Ho-Chunk Disability Code (4 HCC § 13) out for 45-Day Public Review by Legislative Resolution 03-06-13N.
- 6/18/13 Enacted Ho-Chunk Disability Code (4 HCC § 13) by Legislative Resolution 06-18-13B.