

TITLE 12. HEALTH AND SAFETY

ARTICLE IV.

MANDATORY ABUSE AND HEALTH REPORTING

[NOTE: Except as otherwise noted, the provisions of Article IV, Title 12 was enacted on December 5, 2007, by Res. No.35-2007.]

CHAPTER 1. GENERAL PROVISIONS

Sec. 12-4101. Definitions.

(a) "Health Care Provider" shall be defined as and includes the following:

(1) physicians, dentists, medical residents or interns, hospital personnel and administrators, psychologists, psychiatrists, mental health professionals, nurses, home health aides, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, undertakers, coroners, medical examiners, alcohol or drug treatment personnel, and other persons performing a healing role or practicing the healing arts;

(2) organizations, institutions, or other entities or individuals, whether public or private (including tribal, federal, state, or local departments, agencies, and instrumentalities) which furnish health-care services or resources; and

(3) administrative or professional supervisors to any person or entity described in subsections (1) or (2) above.

(b) "Mandatory Child Abuse Reporter" shall be defined as and includes the following:

(1) Health Care Providers, as defined by this Section;

(2) social workers, licensed or unlicensed marriage, family, and individual counselors;

(3) teachers, teacher's aides or assistants, school counselors and guidance personnel, school officials, and school administrators;

(4) child care workers and administrators;

(5) law enforcement personnel, probation officers, criminal prosecutors, and juvenile rehabilitation or detention facility employees;

(6) foster parents;

(7) commercial film and photo processors; and

- (8) administrative or professional supervisors to any person or entity described in subsections (1) through (7), above.
- (c) “Health Director” means the person or office designated by the Tribal Council to perform the duties of the Health Director under this Article IV.
- (d) “Reportable Disease, Condition, or Event” shall be defined as and includes the following:
- (1) any “Disease Raising a Potential Health Emergency,” which phrase means and includes the following: botulism; cholera; haemophilus influenza Type B (invasive disease); measles (rubeola); meningococcal (invasive disease); plague; poliomyelitis; rabies (in human); severe acute respiratory syndrome; smallpox, tuberculosis (infectious); vancomycin-resistant staphylococcus aureus; viral hemorrhagic fever; yellow fever; a disease or syndrome of any kind caused by a biological agent or toxin when the Health Care Provider reasonably believes or suspects that the agent or toxin (e.g., ricin, tularemia and smallpox) may be the result of a deliberate or terroristic act; any unusual syndrome; an uncommon disease; and any other disease which the Health Care Provider believes poses a potentially significant risk to public health;
 - (2) any “Sexually Transmitted Disease,” which term means and includes the following: acquired immune deficiency syndrome (AIDS) and AIDS-defining conditions; chlamydia; gonorrhea; herpes; syphilis; human immunodeficiency virus (HIV) infection (including HIV-exposure to a newborn infant whose mother is infected with HIV); and any other Sexually Transmitted Disease which is incurable or potentially fatal if not treated; and
 - (3) any other “Reportable Disease” which term means and includes the following: anthrax, brucellosis; campylobacteriosis; cyclospora; cryptosporidiosis; encephalitis; arboviral, enterococcus invasive disease; enterohemorrhagic escherichia coli; giardiasis; group A streptococcus invasive disease; Hansen’s disease (Leprosy); hantavirus syndromes, hepatitis, types A, B, C, D, and E; legionellosis; listeria monocytogenes invasive disease; lyme disease; malaria, methicillin-resistant staphylococcus aureus invasive disease; mumps; Norwalk-like virus; pertussis; psittacosis; Rocky Mountain spotted fever; rubella; salmonellosis (including typhoid fever); shigellosis; staphylococcus aureus invasive disease; streptococcus pneumoniae invasive disease; tetanus; toxic shock syndrome; trichinosis; tuberculosis (other than infectious); and yersinia;
 - (4) a “Reportable Vital Statistic,” which shall be defined as the birth or death of a person;
 - (5) a “Reportable Violent Injury,” which shall be defined as and includes the following:
 - (i) a bullet wound, gunshot wound, or gunpowder burn;
 - (ii) any injury which is likely to result in death or which does result in death where there is reasonable grounds to believe that the injury was not accidental or was caused by criminal activity; and
 - (6) a “Suspicion of Child Abuse,” which shall mean a reasonable cause to believe that a child under the age of eighteen years has been subject to Sexual Abuse; or has been subjected to physical or emotional injury resulting from abuse inflicted upon him/her which causes harm or substantial risk of harm to the child’s health or welfare; or who has been subjected

to neglect, including malnutrition; or who has been determined to be physically dependent upon an addictive drug at birth. In applying this definition, the following definitions shall apply:

- (i) “Physical Injury” means and includes (but is not limited to) lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm;
- (ii) “Emotional Injury” means and includes harm to a child’s psychological or intellectual functioning the effect of which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response, or cognition;
- (iii) “Sexual Abuse” means and includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct with a child or the rape, molestation, prostitution, or other form of sexual exploitation of a child, or incest with a child;
- (iv) “Sexually Explicit Conduct” means and includes actual or simulated: (1) sexual intercourse; (2) sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex (where sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person); (3) bestiality; (4) masturbation; (5) lascivious exhibition of the genitals or pubic area of a person or animal; or (6) sadistic or masochistic abuse;
- (v) “Negligent Treatment” means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child;
- (vi) The term “Child Abuse” shall not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty; and
- (vii) “Child” means any person under the age of eighteen.

CHAPTER 2. DUTY TO REPORT.

Sec. 12-4201. Duty to Report Disease Raising a Potential Health Emergency

A Health Care Provider shall provide a written report of each Disease Raising a Potential Health Emergency to the Health Director immediately upon becoming aware of facts indicating the existence of such circumstance. The report shall include the following:

- (a) the name of the disease;
- (b) the date and time the person with the disease is believed to have contracted the disease;

- (c) the name, address, place of employment or school, if applicable, of the person having the disease;
- (d) information regarding other persons identified as potentially having contracted the disease; and
- (e) all other information which could potentially be of use to the Tribe to prevent the spread of the disease.

Sec. 12-4202. Duty to Report Sexually Transmitted Diseases

A Health Care Provider shall provide a written report of each Sexually Transmitted Disease to the Health Director within two working days of becoming aware of such disease. The report shall include the following:

- (a) the name of the disease;
- (b) the approximate date the person with the disease is believed to have contracted the disease;
- (c) the name and address of the person having the disease; and
- (d) the name and address of each person with whom the person having the disease has had sexual contact (or other contact through which the disease is frequently spread) from the time the person is believed to have contracted the disease through the date of the report.

Sec. 12-4203. Duty to Report Other Diseases.

A Health Care Provider shall provide a written report the occurrence of any other Reportable Disease to the Health Director within seven days of becoming aware of such disease. The report shall include the following:

- (a) the name of the disease;
- (b) the approximate date the person with the disease is believed to have contracted the disease; and
- (c) all other information which would likely be of use to the Tribe to prevent the spread of the disease; provided that no client-identifiable information shall be disclosed.

Sec. 12-4204. Duty to Report Vital Statistics.

A Health Care Provider who attends or confirms the birth or death of a person shall provide a written report of each vital statistic to the Health Director within seven days of his/her becoming aware of the occurrence of such event. The report shall include:

- (a) the name of the person who was born or died
- (b) the location of the birth or death;
- (c) the date and time of the birth or death;
- (d) the name of the Health Care Provider who witnessed or confirmed the birth or death; and

- (e) in the case of a death, the cause of death, if known.

Sec. 12-4205. Duty to Report Violent Injury

A Health Care Provider shall provide a report of each Reportable Violent Injury to the Tribal Police as soon as possible, but in no event more than eight (8) hours after learning of the reportable violent injury. The report may be made orally or in writing. The report shall contain any information which the Health Care Provider or Tribal Police reasonably believes might assist in the protection of the public on or off the Settlement, or might be helpful to any tribal, state, or federal law enforcement officer for investigation or arrest related to the Reportable Violent Injury. The Health Care Provider has an on-going duty to supplement the report to provide any additional information which Tribal Police reasonably request, consistent with their duties and applicable law.

Sec. 12-4206. Duty to Report Suspicion of Child Abuse

Where a Mandatory Child Abuse Reporter has a Suspicion of Child Abuse, such mandatory reporter shall report the facts supporting such suspicion to the Meskwaki Family Services and to the Meskwaki Police Department within twenty-four (24) hours or such shorter time as may be required to ensure the safety and security of the subject child. The report may be made orally or in writing, and shall include all information which the Mandatory Child Abuse Reporter reasonably believes might assist in the protection of the child. The Mandatory Child Abuse Reporter has the duty to supplement the report to provide any additional information which the Tribal Police or Meskwaki Family Services reasonably requests consistent with their duties and applicable law.

Sec. 12-4207. Exceptions to Duty to Report or Notify.

Notwithstanding any other provision of this Article, a person or entity may report, but does not have a duty to report if:

- (a) any other mandatory reporter has previously filed a report regarding the same matter or has unequivocally stated that he or she will report the matter; or
- (b) there has been such delay in the disclosure, recognition, or diagnosis of the reportable matter that reporting would serve no health or safety purpose.

Sec. 12-4208. Immunity for Good Faith Reporting

All persons who, acting in good faith, make a report pursuant to this Article, or otherwise provide information or assistance in connection with a report, investigation, or legal intervention pursuant to a report, shall be immune from civil and criminal liability arising out of such actions. There shall be a presumption that any such persons acted in good faith. Immunity shall not be accorded to persons acting in bad faith.

CHAPTER 3. DUTIES TRIBAL HEALTH DIRECTOR UNDER THIS ARTICLE

Sec. 12-4301. Duty of Tribal Health Director to Maintain Reports

- (a) For reports submitted to the Health Director under 12-4201, 12-4202, and 12-4203, the Health Director shall store and maintain the reports as confidential information, in a secure, access-

controlled location for a period of seven years. Following the expiration of such seven-year term, the records shall be destroyed. No reports or records made under this Title 12 shall be released to any person except as follows:

- (1) to the person about whom the record relates;
- (2) as permitted by other Sections of this Article IV;
- (3) to a supervisor solely to the extent required for administrative supervision and performance review;
- (4) to a person who has duties comparable to that of the Health Director in any other governmental body where such disclosures would provide a public health benefit in such other jurisdictions or on the Settlement;
- (5) to an attorney for the Health Director solely to the extent required to obtain legal advice; and
- (6) to a Health Care Provider solely to the extent required for consultation related to duties of the Health Director.

(b) For reports submitted to the Health Director under Section 12-4204, the Health Director shall permanently maintain the reports and may make the reports available to the Tribe, its members, and relatives of the person to whom the report relates.

Sec. 12-4302. Notification of Outbreaks of Diseases

The Health Director shall have discretionary authority to publish notice on the Settlement, within any tribal publication, or to Health Care Providers on or near the Settlement, and to officers in other jurisdictions who perform duties similar to those of the Health Director, regarding reports received by the Health Director under this Article IV; provided that notices issued under this Section shall not contain personally identifiable medical information.

Sec. 12-4303. Notification of Outbreaks of Reportable Disease Raising a Potential Health Emergency.

(a) Upon receipt of a report under Section 12-4201, the Health Director shall notify in writing those persons who could be at risk of contracting or having contracted the disease. This may include but is not limited to: (i) the infected person's school or employer as applicable; (ii) any health care or emergency services provider who may have been in contact with the infected person since the date or estimated date of contraction of the disease; (iii) any other individual, group, entity, association, organization, or other relevant body or person identified by the infected person in consultation with a Health Care Provider who could be at risk of contracting the Disease Raising a Potential Health Emergency.

(b) Notification provided hereunder shall include: (i) the name of the disease in question; (ii) the date or estimated date of potential infection; (iii) information regarding the symptoms, risks, treatments, and other relevant aspects of the disease; (iv) appropriate direction, treatment information, and/or contact information sufficient to provide the notified person with the ability to take appropriate actions to prevent the further outbreak or spread of the disease. The notification shall reveal only that

confidential infected person-identifiable information that is necessary to prevent the further spread or outbreak of the disease.

Sec. 12-4304. Notification of Exposure to Sexually Transmitted Disease.

(a) Upon receipt of a report under section 12-4202, the Health Director shall notify in writing, those persons whom the infected person has identified as bearing potential risk of infection with the disease through sexual contact or other contact which has been identified as frequently spreading the disease.

(b) Notification provided hereunder shall include information relating to the particular disease, the date or estimated date of possible exposure, the name of the person who may have been the source of the exposure, and any other information necessary to prevent the further spread or outbreak of the disease. The notification shall reveal only that confidential infected person-identifiable information that is necessary to prevent the further spread or outbreak of the disease.

(c) The Health Director may petition to the Tribal Court in a sealed case to delay any notification under this section for good cause shown based upon extraordinary facts, as for example where delay is warranted for police investigation or arrest purposes.