

**EASTERN BAND OF CHEROKEE INDIANS**

**Division of Public Health and Human Services**

**Department of Human Services**



**CHEROKEE ADMINISTRATIVE RULES**

**“Attachment 3”**



October 2015

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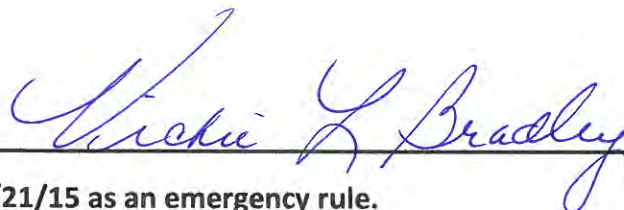
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**Approved by the head of PHHS:**



on 08/21/15 as an emergency rule.

**CHEROKEE ADMINISTRATIVE REGULATIONS**

**TITLE 10A – HEALTH AND HUMAN SERVICES**

**CHAPTER 69 – CONFIDENTIALITY AND ACCESS TO CLIENT RECORDS**

**SECTION .0100 – GENERAL PROVISIONS**

**10A CAR 69 .0101 DEFINITIONS**

As used in this Chapter, unless the context clearly requires otherwise, the following terms have the meanings specified:

- (1) "Agency" means the department of human services, unless separately identified.
- (2) "Child" means a person who has not reached their eighteenth birthday and is not married, emancipated, or a member of the Armed Forces of the United States, or for purposes of the title IV-E eligibility, child means:
  - (1) A person who has attained the age of 18 but has not attained 21 years of age who meets one of the following criteria:
    - (A) The child is completing secondary education or a program leading to an equivalent credential; or
    - (B) The child is enrolled in an institution which provides post-secondary or vocational education; or
    - (C) The child is participating in a program or activity designed to promote, or remove barriers to, employment; or
    - (D) The child is employed for at least 80 hours per month; or
    - (E) The child is incapable of doing any of the above described activities due to a medical condition.
- (3) "Client" means any applicant for, or recipient of, public assistance or services, or someone who makes inquiries, is interviewed, or is or has been otherwise served to some extent by the agency. For purposes of this Chapter, someone acting responsibly for the client in accordance with agency policy is subsumed under the definition of client.
- (4) "Client information" or "client record" means any information, whether recorded or not and including information stored in computer data banks or computer files, relating to a client which was received in connection with the performance of any function of the agency.
- (5) "Commission" and/or "Advisory Board" means the Public Health and Human Services Family Safety Advisory Board.



- (6) "Court order" means any oral order from a judge or a written document from a judicial official which directs explicitly the release of client information.
- (7) "Director" means the director of the tribe's Department of Human Services or agents of the Department of Human Services authorized to carry out the duties established under this Chapter.
- (8) "Delegated representative" means anyone designated by the director to carry out the responsibilities established by the rules in this Subchapter. Designation is implied when the assigned duties of an employee require access to confidential information.
- (9) "Department" means the tribe's Department of Human Services.
- (10) "Division" means the Cherokee Public Health and Human Services Division.
- (11) "Integrated Child Welfare Team" ("ICWT") - A collaborative group of professionals that coordinate and provide services available within the Department's Family Care Continuum ("FCC"), including staff from essential stakeholder agencies such as behavioral health, child protective, foster care and juvenile justice.
- (12) "Service provider" means any public or private agency or individual from whom the agency purchases services, or authorizes the provision of services provided or purchased by the Tribe.
- (13) "Tribe" means the Eastern Band of Cherokee Indians ("EBCI").

#### **10A CAR 69 .0102 INFORMATION FROM OTHER AGENCIES**

If the agency receives information from another agency or individual, then such information shall be treated as any other information generated by the Division or the department of human services, and disclosure thereof will be governed by any condition imposed by the furnishing agency or individual.

#### **SECTION .0200 – SAFEGUARDING CLIENT INFORMATION**

#### **10A CAR 69 .0202 OWNERSHIP OF RECORDS**

- (a) All client information contained in any records of the agency is the property of the agency, and employees of the agency shall protect and preserve such information from dissemination except as provided by the rules of this Chapter.
- (b) Original client records may not be removed from the premises by individuals other than authorized staff of the agency, except by an order of the court.
- (c) The agency shall be allowed to destroy records in accordance with tribal laws or rules of the Division and federal statutes and regulations.

#### **10A CAR 69 .0203 SECURITY OF RECORDS**

- (a) The agency shall provide a secure place with controlled access for the storage of records. Only employees, students, volunteers or other individuals who must access client information in order to carry out duties assigned or approved by the agency shall be authorized with access to the storage area.
- (b) Only authorized individuals may remove a record from the storage area and the authorizing individual shall be responsible for the security of the record until it is returned to the storage area.
- (c) The agency shall establish procedures to prevent accidental disclosure of client information from automated data processing systems.

#### **10A CAR 69 .0204 ASSURANCE OF CONFIDENTIALITY**

The director shall assure that all authorized individuals are informed of the confidential nature of client information and shall disseminate written policy to and provide training for all persons with access to client information.

#### **10A CAR 69 .0205 LIABILITY OF PERSONS WITH ACCESS TO CLIENT INFORMATION**

- (a) Individuals employed by the agency and governed by C.C. Chapter 96 are subject to suspension, dismissal or disciplinary action for failure to comply with the rules of this Subchapter and the Cherokee Indian Personnel Manual.
- (b) Individuals other than employees, including volunteers and students who are agents of the Department of Human Services who have access to client information and fail to comply with the rules in this Subchapter shall be denied access to confidential information and may be subject to dismissal or termination of relationship with the agency.
- (c) Individuals other than employees but including volunteers and students who are agents of the Division or the Department of Human Services and who have access to client information shall be liable in the same manner as employees.

#### **SECTION .0300 - DISCLOSURE OF CLIENT INFORMATION WITHOUT CLIENT CONSENT**

##### **10A CAR 69 .0301 DISCLOSURE WITHIN THE AGENCY**

- (a) Client information from the Division's record may be disclosed without the consent of the client under the following circumstances:
  - (1) To other employees of the Division for purposes of making referrals, supervision, consultation or determination of eligibility;

- (2) To other departments of the tribe or other counties when the client moves to that county and no longer requires services of the Division; and
- (3) Between the tribal entities and programs for purposes of supervision and reporting.

(b) Client information from the service record may be disclosed without the consent of the client under the following circumstances:

- (1) To other employees of the Division and other tribal entities for purposes of service delivery, making referrals, supervision, consultation or determination of eligibility;
- (2) To departments of social services when another jurisdiction's department of social services is providing services to a client who is currently in the custody of that jurisdiction's department of social services;
- (3) To a department of social services to the extent necessary to facilitate the provision of a services requested by a referring department of social services;
- (4) Between the departments and entities of the tribe and federal agencies for purposes of supervision and reporting.

#### **10A CAR 69 .0302 DISCLOSURE FOR THE PURPOSE OF RESEARCH**

(a) Client information may be disclosed without the consent of the client to individuals requesting approval to conduct studies of client records, provided such approval is requested in writing and the written request will specify and be approved on the basis of:

- (1) An explanation of how the findings of the study have potential for expanding knowledge and improving professional practices;
- (2) A description of how the study will be conducted and how the findings will be used;
- (3) A presentation of the individual's credentials in the area of investigation;
- (4) A description of how the individual will safeguard information;
- (5) An assurance that no report will contain the names of individuals or any other information that makes individuals identifiable.

#### **10A CAR 69 .0303 DISCLOSURE FOR PURPOSES OF ACCOUNTABILITY**

Client information may be disclosed without the consent of the client to federal or tribal employees for the purpose of monitoring, auditing, evaluating, or facilitating the administration of other tribal and federal programs, provided that the need for the disclosure of confidential

information is justifiable for the purpose and that adequate safeguards are maintained to protect the information from re-disclosure.

#### **10A CAR 69 .0304 DISCLOSURE PURSUANT TO OTHER LAWS**

(a) Client information may be disclosed without the consent of the client for purposes of complying with other tribal laws and federal statutes and regulations. Nothing in this Chapter shall conflict with C.C. 130A-6 or other tribal or federal laws regarding confidentiality of records and information.

(b) Pursuant to 42 USC 471(a)(9), client information may be disclosed without the consent of the client when such disclosure involves reporting to appropriate authorities known or suspected child maltreatment, including but not limited to suspected or known instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under title IV-E or IV-B of the SSA or under circumstances which indicate that the child's health or welfare is threatened thereby.

#### **10A CAR 69 .0305 DISCLOSURE PURSUANT TO A COURT ORDER**

Client information may be disclosed without the consent of the client in response to a court order.

#### **10A CAR 69 .0306 PERSONS DESIGNATED TO DISCLOSE INFORMATION**

Directors and their delegated representatives, as defined, may disclose client information in accordance with Section .0300 of this Chapter.

### **CHAPTER 70 – CHILDREN'S SERVICES**

#### **SUBCHAPTER 70A – PROTECTIVE SERVICES**

##### **SECTION .0100 - GENERAL**

#### **10A CAR 70A .0101 PURPOSE**

Rules in this Subchapter govern the provision of protective services for children with funds administered by the Division. Included are requirements for the central registry of child maltreatment cases, and requirements which must be met by the department of human services in carrying out their responsibilities for the protection of children under Chapters 7B and 108 of the Cherokee Code. Rules in this Subchapter are also intended to enable the building of protective

factors founding the approach of strengthening families which include but are not limited to parental resilience, social connections, concrete support in times of need, knowledge of parenting and child development, and the social and emotional competence of children.

**10A CAR 70A .0102 CONFIDENTIALITY: CENTRAL REGISTRY: RESPONSIBLE INDIVIDUALS LIST: ABUSE AND NEGLECT CASES**

(a) Information submitted by the department of human services to the central registry of abuse, neglect and dependency cases is confidential except as otherwise required by law. Non-identifying statistical information and general information about the scope, nature and extent of the child maltreatment problem in the Tribe is not subject to this Rule of confidentiality.

(b) The Tribe's access to North Carolina's central registry of child abuse, neglect and dependency cases is restricted to:

- (1) Staff of the Tribe, Tribal agencies and entities who require access in the course of performing duties pertinent to management, maintenance and evaluation of and research into maltreatment cases reported to the department. This is to include the provision of information on a case by the tribe's department of human services to a North Carolina county department of social services or to an out-of-state social services agency to assure that protective services will be made available to such child and the child's family as quickly as possible to the end that such child will be protected and that further maltreatment will be prevented.
- (2) The director and ICWT, in order to identify whether a child who is the subject of a child maltreatment investigation has been previously reported as abused or neglected, or whether a child is a member of a family in which a child fatality due to suspected abuse or neglect has occurred in any county in NC. Information from the central registry shall be shared with law enforcement or licensed physicians when needed to assist the director in facilitating the provision of child protective services to assure that the child and the child's family shall receive protective services as quickly as possible so that such child can be protected and further maltreatment prevented. Information shared from the central registry for child abuse and neglect shall be limited to the:
  - (A) Child's name, date of birth, sex, race;
  - (B) Jurisdiction that investigated the report;
  - (C) Type of maltreatment that was reported;
  - (D) Case decision;
  - (E) Date of the case decision;
  - (F) Type of maltreatment found; and

(G) Relationship of the perpetrator to the victim child.

(3) The tribal prosecutor and Cherokee Police Department in the event of a child fatality where there is a need to determine if their investigation or evaluation should consider child maltreatment as a factor in the death. Information shall be limited to that outlined in Subparagraphs (b)(2)(A) through (G) of this Rule.

(c) Information submitted by the tribe to North Carolina's Responsible Individuals List of abuse and serious neglect cases is confidential except as otherwise required by law. The Responsible Individuals List shall identify parents, guardians, caretakers or custodians who have been identified as responsible individuals in substantiated cases of abuse or serious neglect. Information from this list shall be used exclusively for the purpose of determining current or prospective employability or fitness to care for or adopt children.

(1) For purposes of submission to NC's Responsible Individuals List, serious neglect is defined in 10A CAR 70A .0104(b)(3).

(d) Requests for information from the Responsible Individuals List shall be in a manner mutually agreed to by the state and Tribe.

(e) Authorized persons, as defined in 10A CAR 70A .0104(b)(1), must inform responsible individuals if the reason they are being denied is due to information obtained from the Responsible Individuals List.

### **10A CAR 70A .0103 REPORTS OF MALTREATMENT**

(a) When reports of child maltreatment arise and the alleged perpetrator is an employee of the Division, a foster parent supervised by the department, a member of the Division's Advisory Board, or an agency-operated day care facility, the director of the department and deputy of the Division shall be informed of the report and results of any investigations conducted by the tribe.

(b) Identifying information regarding any individual making a report of maltreatment shall be held confidential and will be subject to the rules set out in 10A CAR Chapter 69.

### **10A CAR 70A .0104 DEFINITIONS**

(a) Definitions found in C.C. 7B-101 and 10A CAR 69 .0101 shall be applied to this Chapter. As used in this Chapter, unless the context clearly requires otherwise, the following terms have the meanings specified:

(b) Unless otherwise noted as used in this Chapter the following definitions have the following meaning:

(1) "Authorized persons" means persons authorized to receive data from the Responsible Individuals List. Individuals authorized to receive information from the Responsible Individuals List are:

(A) Individuals whose job functions include administration of the Responsible Individuals List and provision of information from the List to other authorized persons, as identified by the Director of the North Carolina Division of Social Services;

(B) Individuals as identified by the Department of Human Services;

(C) Any Executive Director or program administrator of a child placing agency licensed by the tribe, the State of North Carolina or another state or that state's agency;

(D) Any Executive Director or program administrator of other providers of foster care, child care and adoption services determined by the Department of Human Services;

(E) The Guardian Ad Litem; and

(F) Any Executive Director or program administrator of other private or non-profit agencies that care for children.

(2) "Personal written notice" means delivery in person of the case decision to the responsible individual by the social worker.

(3) "Serious neglect" means conduct, behavior, or inaction that evidences a disregard of consequences of such magnitude as to constitute an unequivocal danger to a child's health, welfare or safety.

(4) "Severe Forms of trafficking in persons" means:

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(5) "Sex Trafficking" means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

(6) "Sex trafficking victim" means a victim of sex trafficking as defined in subsection (b)(5) or severe forms of trafficking in persons as defined in subsection (b)(4) of this section.

## **10A CAR 70A .0105 RECEIVING INFORMATION: INITIATING PROMPT INVESTIGATIONS OF REPORTS**

- (a) The department shall receive and initiate an investigative assessment on all reports of suspected child maltreatment, including anonymous reports;
- (b) The department shall to the extent possible obtain the following information from the person making the report:

- (1) The name, address, and actual or approximate age of the child;
- (2) The names and ages of other children residing in the home;
- (3) The name and address of the child's parent, guardian, caretaker, or other adults who likely reside in the home;
- (4) The name and address of the alleged perpetrator;
- (5) The present whereabouts of the child if not at the home address;
- (6) The nature and extent of any injury or condition resulting from maltreatment;
- (7) Other information that the reporter has which might be helpful in establishing the need for protective services, including the names, addresses, and telephone numbers of other individuals who may have information about the condition of the child; and
- (8) The name, address, and telephone number of the person making the report.

(c) When the department receives a report of suspected maltreatment of a child, the director shall notify the appropriate law enforcement agency in accordance with C.C. Chapter 7B, Article 3. The department shall provide the law enforcement agency with any information obtained from the person making the report as outlined in Subparagraphs (b)(1) through (b)(7) of this Rule. The name, address, and telephone number of the individual making the report, included as Subparagraph (b)(8) of this Rule, if available, may be shared with law enforcement when this information is necessary for law enforcement to perform their duties as related to the report.

(d) The department shall initiate an investigative assessment of suspected maltreatment, within 24 hours after receiving a report. The director shall initiate an investigation of all accepted reports of child abandonment and sexual abuse or other aggravating circumstances immediately.

- (1) Initiation of an investigation is defined as having face-to-face contact with the alleged victim child or children. If there is not such face-to-face contact within the prescribed time period, the case record shall contain documentation to explain why such contact was not made and what other steps were taken to assess the risk of harm to the child or children.

(e) When the director is unable to initiate the investigation within the prescribed time period, as indicated in Paragraph (d) of this Rule, because the alleged victim child or children cannot be located, the department and the Cherokee Police Department shall make diligent efforts to locate the alleged victim child or children until such efforts are successful or until the director concludes that the child or children cannot be located.



- (1) Diligent efforts shall include, but not be limited to, visits to the child's or children's address at different times of the day and on different days. All efforts to locate the child or children shall be documented in the case record.

(f) When maltreatment is alleged to have occurred in an institution, in addition to the procedures described in this Subsection, the director shall notify the individual who is responsible for on-site operation of the institution in order to solicit the cooperation of the administration of the institution. Notification shall occur immediately but in no case later than 24 hours from receipt of report, and prior to contact with the alleged victim child if the director determines that such notice would not place the alleged victim(s) at risk of further harm.

(g) The director must have an internal two level review, including at a minimum the worker and the worker's supervisor, prior to making a decision that information received does not constitute a report of maltreatment.

#### **10A CAR 70A .0106 CONDUCTING AN INVESTIGATIVE ASSESSMENT**

(a) The family safety social worker shall conduct a home study assessment which shall focus on the child's environment, needs and safety, which includes but is not limited to the:

- (1) Gathering of facts related to the current safety of a child and the risk of subsequent maltreatment, and ascertaining if other children live in the home and if so, initiating an additional investigation and assessment for those children;
- (2) Evaluation of the families' protective capacities related to child safety and risk for subsequent child maltreatment;
- (3) Evaluation of the family's strengths and needs;
- (4) Initial determinations for the necessity of the provision of services for the child and the child's household; and
- (5) Ability and/or willingness of the family to accept responsibility for jeopardizing issues, to make changes, and respond to services as part of a collaborative team process.

(b) If initial screening criteria are met, the behavioral health professional member of the ICWT shall accompany the family safety social worker to observe, collect facts and information with a focus on the behaviors of the family in their home environment, parenting protective capacities and other behaviors that create a safety risk or behavioral health issues.

(c) When the director receives a report of suspected maltreatment, the director, or other authorized person, shall check the agency's records and the North Carolina Central Registry of child abuse, neglect, and dependency reports to ascertain if any previous reports of maltreatment have been made concerning the alleged victim child or children. Central Registry checks are not necessary when the agency has conducted such a check within the previous 60 days or when the agency is providing continuous child protective services to the family.

(d) Face-to-face interviews with all alleged victim children shall be conducted within 24 hours, unless there is documentation in the case record to explain why such contact was not made.

(e) There shall be a face-to-face interview with any parent, guardian, custodian or caretaker with whom the victim child or children reside, unless there is documentation in the case record to explain why such an interview was not conducted. The parent, guardian, custodian or caretaker shall be interviewed on the same day as the victim child or children unless there is documentation in the case record to explain why such interviews were not conducted.

(f) The investigative assessment shall include a visit to the place where the child or children reside.

(g) There shall be a face-to-face interview with the alleged perpetrator or perpetrators unless there is documentation to explain why such an interview was not conducted.

(h) Any persons identified at the time the report was accepted for investigation as having information concerning the condition of the child or children shall be interviewed in order to obtain any information relevant to the investigation unless there is documentation in the case record to explain why such interviews were not conducted.

(i) The department shall implement a Signs of Safety evaluation model that includes a description of the following:

- (1) What are we worried about, which evaluates past harm, future danger and complicating factors;
- (2) What is working well, which evaluates existing strengths and safety of the family;
- (3) What needs to happen, which evaluates what the family must do to ensure the future safety of the child; and
- (4) Where the family is on a scale of zero (0) to ten (10), where ten (10) means there is enough safety for the department to close the case and zero (0) means it is certain that the child will be maltreated again.

(j) The investigative assessment record shall also include the following:

- (1) Documentation of all of the information obtained during the investigation;
- (2) Documentation of a safety response plan; and
- (3) Documentation of the case decision regarding substantiation of maltreatment.

(k) When additional information is necessary to complete an investigative assessment, information from the following sources shall be obtained and utilized:

- (1) Professionals or staff at an out-of-home care setting having relevant knowledge pertaining to the alleged maltreatment;

- (2) Other persons living in the household or attending or residing in the out-of-home care setting;
  - (3) Any other source having relevant knowledge pertaining to the alleged maltreatment; and
  - (4) Records; i.e., school, medical, mental and behavioral health, or incident reports in an out-of-home care setting.
- (l) The department shall exercise discretion in the selection of collateral sources in order to protect the family's or out-of-home care setting's right to privacy and the confidentiality of the report.
- (m) Conducting an investigation as outlined in Paragraphs (a) and (b) of this Rule when the alleged maltreatment occurred in an institution shall include the following:
- (1) A discussion of the allegation with the individual who has on-site administrative responsibility for the institution;
  - (2) A discussion of the procedure to be followed during the investigation;
  - (3) The utilization of resources within and without the institution as needed and appropriate; and
  - (4) A discussion of the findings with the Administrator of the institution which shall be confirmed in writing by the director and shall be held confidential by all parties as outlined in 10A CAR 70A .0113, of this Subchapter.

#### **10A CAR 70A .0107 WHEN MALTREATMENT IS FOUND**

- (a) When an investigative assessment reveals the presence of maltreatment, the social worker who conducted the assessment shall provide written notice to the following persons or agencies:
- (1) Any responsible individual who was alleged to have maltreated the child;
  - (2) Any parent or other individual with whom the child or children resided at the time the director initiated the investigation; and
  - (3) Any agency with whom the court has vested legal custody.
- (b) Written notice may be made by a social worker other than the social worker who conducted the assessment under C.C. 7B-302(a), if the social worker who conducted the assessment is unavailable. If the department of human services is unable to provide the written notice to the responsible individual, there shall be documentation of efforts made to deliver the written notice to the responsible individual in the case record. In addition to fulfilling the requirements of C.C. 7B-320(b), the written notice shall also include:

- (1) a statement informing the responsible individual that employers may access the Responsible Individuals List to determine suitability for employment; and
  - (2) a statement informing the responsible individual that the timeframes to request an expunction from the Tribal Attorney or the Court still apply, even if no notice is received from the Director after the Director has been requested to expunge.
- (c) The assessment findings shall be used to evaluate the need for services and to develop a case plan.
- (d) In all cases in which maltreatment is found, the ICWT shall determine whether protective services are needed and, if so, shall develop, implement, and oversee a plan to ensure that there is adequate care for the victim child or children. The case plan shall:
- (1) be based on the findings of the investigative assessment;
  - (2) contain goals representing the desired outcome toward which all case activities and services shall be directed;
  - (3) contain objectives that:
    - (A) describe specific desired outcomes;
    - (B) are measurable;
    - (C) identify necessary behavior changes;
    - (D) are based on an assessment of the specific needs of the child or children and family;
    - (E) are time-limited; and
    - (F) are mutually accepted by the director and the client.
  - (4) specify all the activities needed to achieve each stated objective;
  - (5) have stated consequences that will result from either successfully following the plan or not meeting the goals and objectives specified in the plan; and
  - (6) shall include petitioning for the removal of the child or children from the home and placing the child or children in appropriate care when protection cannot be initiated or continued in the child's or children's own home, after all reasonable, consistent and measurable efforts have been made to prevent removal, according to C.C. 7B-903.
- (e) When an investigative assessment leads the ICWT to find evidence that a child may have been abused or may have been physically harmed in violation of a criminal statute by a person other than the child's parent, guardian, custodian, or caretaker, the director shall follow all procedures outlined in C.C. 7B-301 in making reports to the Tribe's attorney and appropriate law enforcement agencies. The report shall include:

- (1) the name and address of the child, of the parents or caretakers with whom the child lives, and of the alleged perpetrator;
- (2) whether the abuse was physical, sexual or emotional;
- (3) the dates that the investigation was initiated and that the evidence of abuse was found;
- (4) whether law enforcement has been notified and the date of the notification;
- (5) what evidence of abuse was found; and
- (6) what plan to protect the child has been developed and what is being done to implement it.

(f) When an investigative assessment reveals the presence of maltreatment in an institution, the director shall complete the following steps:

- (1) the child's or children's legal custodian shall be informed;
- (2) an intervention plan for the care and protection of the child or children shall be developed in cooperation with the institution and the legal custodian; and
- (3) when maltreatment is found, a written report shall be made to the Tribe's attorney or prosecutor in the county where the institution is located.

#### **10A CAR 70A .0108 WHEN MALTREATMENT IS NOT FOUND**

When a thorough investigative assessment does not reveal maltreatment, the director shall:

(a) notify the following persons or agencies of the case finding:

- (1) any parent or caretaker who was alleged to have maltreated the child or children;
- (2) any parent or other individual with whom the child or children resided at the time the director initiated the investigative assessment; and
- (3) any agency with whom the court has vested legal custody;

(b) communicate to the persons or agencies named in (a) of this Rule that the Department shall no longer be involved with the child or children on a non-voluntary basis.

#### **10A CAR 70A .0109 NOTIFICATION OF REPORTER; REVIEW BY THE TRIBE'S ATTORNEY**

(a) Upon receipt of any report, the reporter shall be asked whether they wish to be identified. If the reporter wishes to be identified, the reporter shall be informed that if they wish, they may contact the agency and after all investigative assessments are completed pursuant to this Section, the reporter may be informed about whether a petition involving the report is filed with the court.

If reporter inquires whether a petition was filed, and no petition was filed, the reporter shall be informed of the reporter's right to request a review by the Tribe's attorney if the reporter is not satisfied with the decision not to file a petition. The reporter shall be informed that the request for review by a Tribe's attorney must be made within five working days of the notice.

(1) The reporter may waive the right to notification, and no notification is required if the person making the report does not wish to be identified.

(b) When the Tribe's attorney receives a request for review of a director's decision from a reporter, the Tribe's attorney shall notify the person making the report and the director of the time and place for the review, and the director shall immediately transmit to the Tribe's attorney a copy of a summary of the assessment.

(c) When the director receives a notice from the attorney that a review will be held regarding not filing a petition, he shall send immediately, but in all cases within three working days of the receipt of the notice, a copy of the investigation report/record to the Tribal attorney.

(d) Within 20 days after the reporter is notified of the right to a review and such review is requested, the Tribal attorney shall review the director's decision. The review shall include conferences with the person making the report, the members of the ICWT for the child and other persons known to have pertinent information about the child or the child's family. Upon completion of the review the Tribe's attorney may:

(1) affirm the decision of the director;

(2) request that the appropriate law enforcement agency investigate the allegations; or

(3) direct the director to file a petition in the matter.

*Ref: 7B-301(h);*

#### **10A CAR 70A .0109-1 PLEADING AND PROCESS**

(a) The pleading in a child maltreatment action is the petition. The process in a child maltreatment action is the summons.

#### **10A CAR 70A .0110 ASSUMING TEMPORARY PROTECTIVE CUSTODY OF A CHILD**

(a) The department of human services worker may take a child into temporary emergency custody without a court order and provide personal care and supervision for up to 12 hours, provided:

(1) the director concludes that there are reasonable grounds for believing the child is maltreated and that he would be injured or could not be taken into custody if it were first

necessary to obtain a court order. The director shall document in the family safety case record as soon as possible the following:

(A) the grounds upon which the decision was made to take temporary protective custody without a court order; and

(B) information specific to successful or unsuccessful attempts to notify the child's parents, guardian, custodian or caretaker that the child has been taken into temporary protective custody and that the parents, guardian, custodian or caretaker has a right to be present with the child pending a determination of the need for protective custody.

(2) the director files a petition for an immediate protective custody order unless he decides that temporary protective custody is no longer necessary and releases the child to his parents, guardian, custodian or caretaker.

(b) The director of human services shall file all petitions which allege that a child is maltreated.

#### **10A CAR 70A .0111 REVIEW OF COURT ORDERED PLACEMENTS**

(a) In cases where the court removes custody of a child from a parent or caregiver because of maltreatment and places the child in the custody of the Department of Human Services, the director shall not return the child to his parents or caregivers without the judge finding sufficient facts to show that the child will receive proper care and supervision.

(b) In any case where custody is removed from a parent, guardian, custodian, or caretaker the court shall conduct a review hearing within 60 days from the date of the dispositional hearing and shall conduct a review hearing within 60 days thereafter.

(c) The director of human services shall make a timely request to the clerk to calendar each review at a session of court scheduled for the hearing of child matters. The clerk shall give 15 days' notice of the review and its purpose to the parent, the child, if 11 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review.

(d) The director shall submit a written report to the judge that shall include but not be limited to:

(1) The case plan developed with the family to preserve the child's own home or to reunite the parents and children;

(2) The specific changes on the part of the parents and children;

(3) Whether the child can remain at home or be returned home, and the plan to be used when the child returns home;

- (4) If the child cannot return home, the plan to be used to establish the permanent living arrangement for the child, including projected time frames and any considerations of termination of parental rights;
- (5) Goals and objectives for the child's continuation in foster care if indicated and the role of foster parents in planning for the child;
- (6) A summary of the child's specific experiences in placement, both positive and negative, including the different placements the child has had since the last court hearing; and
- (7) Any other information the court deems necessary.

#### **10A CAR 70A .0112 CASE RECORDS FOR FAMILY SAFETY SERVICES**

(a) The director shall maintain a separate case record or a separate section in a case record on a child for whom protective services are initiated or who is placed in the custody of the department of human services by the court. The case record documentation shall be kept confidential. Information from the case record shall be released only in accordance with the Cherokee Code and the Cherokee Administrative Rules.

(b) The family safety services case record shall document the investigative assessment. In addition, when applicable, the protective services case record shall include:

- (1) summary documentation of the results of the check of the central registry of maltreated children whenever a report is accepted for investigation unless the agency has conducted such a check in the 60 days prior to the new report, or the agency is providing ongoing children's services to the family;
- (2) copies of all family assessments, including home study assessments, comprehensive clinical assessments, transition assessments and the child's and family's progress or lack of progress in completing the items documented in the case plan;
- (3) documentation of any safety response plan that was developed to ensure the child's safety during the course of the investigative assessment;
- (4) documentation of the case decision, the basis for the case decision, and the names of those participating in the decision;
- (5) documentation of notifications to parents, caretakers, the alleged perpetrator, or others specified in Rules .0107, .0108, .0109 and .0114 of this Section regarding the case decision;
- (6) documentation of contacts with and services provided to the family, current within 48 hours of service delivery. Documentation may be taped for transcription, typed or legibly handwritten, or included in the case management software, and shall include information about the family's response to and use of services, as well as any change in the assessment of safety or risk to the children;



- (7) the case plan developed during the investigative assessment or post adjudication , with any subsequent revisions to the plan;
- (8) documentation of reviews of the case plan, current within 48 hours, which reflect an assessment of the plan's effectiveness, the family's use of services, and the need for continued departmental involvement;
- (9) copies of the following:
- (A) Intake/Screening Form provided by the Department for all reports concerning the family whether these reports have been received while a case was active or while a case was closed;
  - (B) notices to the reporter, if any;
  - (C) requests made of other departments of social services for information relating to prior contacts by that agency with the family, when applicable; and
  - (D) Application/Report to the Central Registry.
- (10) copies of the following reports or documents, when applicable:
- (A) petitions relating to the legal or physical custody of children while receiving family safety services;
  - (B) reports to the court;
  - (C) reports or notifications to tribal attorneys or prosecutors;
  - (D) reports to law enforcement agencies;
  - (E) Child Medical Evaluations and Child Mental Health Evaluation requests, consents, and reports;
  - (F) any other medical, psychological, or psychiatric reports;
  - (G) notifications to licensing agencies; and
  - (H) any other reports, notifications, or documents related to the provision of child protective services.
- (11) summaries of the following information, when not otherwise documented in the case record:
- (A) at the time treatment services begin, a summary of the reasons services are being provided;
  - (B) when filing a petition for custody, the reasons custody is being sought; and
  - (C) at the time treatment services are terminated, a summary of the basis for the decision.

## **10A CAR 70A .0113 CONFIDENTIALITY OF FAMILY SAFETY RECORDS**

(a) The director shall not allow anyone outside of the department of human services other than tribal and federal agency personnel carrying out their lawful responsibilities for program audit and review to examine a protective services case record as described in Rule .0112 of this Subchapter unless:

- (1) the judge orders the director to allow examination; or
- (2) the child or the child's attorney requests to examine his own record.

(b) The director in carrying out his duties may share information and a summary of documentation from the case record without a court order with public or private agencies or individuals that are being utilized to provide or facilitate the provision of protective services to a child.

(c) The director shall allow the Tribal Attorney or Tribal Prosecutor or his designee access to the case record, including any information or documentation therein, which he needs to carry out his mandated responsibilities that result from a report of confirmed abuse or from the director's decision not to file a petition.

## **10A CAR 70A .0114 EXPUNCTION PROCESS FOR CHEROKEE RESPONSIBLE INDIVIDUALS LIST**

(a) Expunction shall be in accordance with C.C. 150, Article 3 and 10A CAR 70L.

(b) During the expunction process, the Department of Human Services shall continue to provide services to ensure the safety of the children identified as maltreated. If the Department of Human Services is unable to ensure safety, a child petition shall be filed and legal and medical intervention shall be sought.

(c) Once an expunction request by the Director has been completed, the Director shall make written notice to the Division of Cherokee Public Health and Human Services ("the Division"), directing the Division to modify or expunge the Responsible Individuals List, no later than five working days after the decision was made.

## **SECTION .0200 - EBCI CHILD MALTREATMENT AND FATALITY PREVENTION TEAM**

### **10A CAR 70A .0201 NATURE AND PURPOSE OF TEAM**

(a) EBCI's Child Maltreatment and Fatality Prevention Team ("Team") shall be established as a multiagency tribal team. Team membership shall consist of representatives from multiple disciplines and agencies in the community or in the Division that provide services to children and their families and other individuals who represent the community. This Team shall meet together on a regular basis:

- (1) to identify gaps and deficiencies in community resources which have an impact on the incidence of maltreatment or death;
- (2) to advocate for systemic improvements and needed resources where gaps and deficiencies exist in the child protection system;
- (3) to promote collaboration and integration between agencies in the creation, implementation or improvement of resources for children as a result of their review of selected cases;
- (4) to inform the Commission for Public Health, Substance Abuse and Child Well-being about actions needed to prevent, intervene or ameliorate child maltreatment or death; and
- (5) to make and implement recommendations for changes to laws, rules and policies that will support the safe and healthy development of children and prevent future child maltreatment and death.

#### **10A CAR 70A .0202 RESPONSIBILITY FOR TRAINING OF TEAM MEMBERS**

(a) The Division shall develop and make available for the team members on an ongoing basis, training materials to include:

- (1) The role and function of the Team;
- (2) Confidentiality requirements;
- (3) An overview of child protective services law and policy; and
- (4) Team record-keeping.

(b) The Team shall schedule relevant training as needed by its membership, using appropriate resources from the department of human services, other community agencies, the Division, or other individuals whose expertise can benefit the functioning of the team.

#### **10A CAR 70A .0203 CONFIDENTIALITY**

(a) Any member of the Team may share, during an official meeting of the team, any information available to that member that the team needs to carry out its responsibilities. The director, however, shall not share any information that discloses the identity of individuals who have reported suspected maltreatment to the department of human services.

(b) Each member of the Team and any invited participant shall sign a statement indicating their understanding of and adherence to confidentiality requirements. Such statement shall include the possible civil or criminal consequences of any breach of confidentiality as well as the applicability of these Rules to any personal files created or maintained by any team member or invited participant.

(c) A team member or invited participant who fails to comply with the confidentiality requirements of this Section shall be subject to dismissal from the team or to the denial of future participation in team reviews respectively.

(d) Information generated by an executive session of the Team shall be accessible for administrative purposes to the following:

(2) staff of the Division and staff of the Tribe who require access in the course of performing duties pertinent to the supervision and evaluation of Family Safety Program;

(3) the PHHS Family Safety Program Advisory Board (“Advisory Board”) when the Team makes its annual recommendations, if any, for system improvements and needed resources where gaps and deficiencies exist in the delivery of services to children and their families. Such report shall be general in nature not revealing confidential information about children and families; and

(4) the social services committee when receiving a report by the department on the activities of the Team.

(e) An individual may receive approval to conduct a study of the cases reviewed by the Team. Such approval must be requested in writing of the Director. The written request shall specify and be approved on the basis of:

(1) an explanation of how the findings of the study have potential for expanding knowledge and improving professional practices in the area of prevention, identification, intervention and treatment of child abuse, neglect, dependency, or child fatalities;

(2) a description of how the study will be conducted and how the findings will be used;

(3) a presentation of the individual's credentials in the area of critical investigation;

(4) a description of how the individual will safeguard confidential information; and

(5) an assurance that no report will contain the names of children and families or any other information that makes children and families identifiable.

Access will be denied when, in the judgment of director, the study is likely to have minimal impact on either knowledge or practice.

#### **10A CAR 70A SECTION .0300 – BACKGROUND CHECKS**

##### **10A CAR 70A .0301 – SCOPE**

(a) The EBCI PHHS requires that a criminal history check and a check of the central registry and responsible individuals list be conducted on all persons 18 years of age or older who reside in a licensed family foster home, a potential family foster home in the process of licensure or any home where a child may be placed by the Department of Human Service, including but not limited to kinship placements, or pre-guardianship or pre-adoption placements,

(b) The EBCI PHHS also requires the background checks referenced in subsection (a) be conducted on all persons who:

- (1) Are employed by or are seeking to be employed by a tribal child care facility, whether in a temporary or permanent capacity, including substitute providers; or
- (2) Own, operate, or seek to own or operate a child care center, center in a residence, or family child care home; or
- (3) Are a member of the household age 16 and older in a family child care home or center in a residence, including family members and nonfamily members who use the home on a permanent or temporary basis as their place of residence; or
- (4) Seeks to be an uncompensated provider who is counted in staff/child ratio or left alone with children in a child care facility.

(c) These background checks include the following:

- (1) Criminal history searches for felony and misdemeanor convictions at the tribe, county, state and federal levels of every jurisdiction of current residence or previous residences in the past 5 years; and
- (2) Sex offender registry, central registry and responsible individuals list searches at the tribe, county, state and federal levels in every jurisdiction of current residence or previous residences in the past 5 years; and
- (3) Fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI) and any other national crime information databases (as defined in section 534(e)(3)(A) of Title 28, United States Code).

#### **10A CAR 70A .0302 – AUTHORIZATION**

(a) For any prospective foster or adoptive parent and any other adult living in the home of such prospective parent or for any guardian (kinship or otherwise) and any other adult living in the home of any guardian, PHHS will obtain authorization to conduct the background checks referenced in 10A CAR 70A .0301 through consent obtained in EBCI DHS Form 3000.

(b) The information provided in EBCI DHS Form 3000 along with fingerprints will enable the background checks referenced in 10A CAR 70A .0301 to be conducted.

(c) PHHS shall comply with any request for information contained in EBCI's sex offender registry, central registry and responsible individuals list that is received from another jurisdiction, to the extent that EBCI maintains a sex offender registry, central registry and responsible individuals list.

#### **10A CAR 70A .0303 – PLACEMENT CRITERIA**

(a) Prior to placement of a child, regardless of whether title IV-E foster care maintenance payments or adoption or guardianship assistance payments are to be made on behalf of the child, the following requirements will apply to approval and/or placement determinations:

- (1) In any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if PHHS finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval and placement shall not be granted; and
- (2) In any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if PHHS finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and
- (3) Where a PHHS background check of a central registry or responsible individuals list reveals the name or information on any prospective foster or adoptive parent and on any other adult living in the home of such a prospective parent, or for any guardian or other adult living in the home of such guardian, PHHS has the discretion to determine whether such placement should be approved or denied, in keeping with the best interests of the child.

(b) Prior to placement of a child, regardless of whether the placement is a licensed foster home or is in the process of becoming a licensed foster home, a home study assessment must be completed. This home study assessment, as defined in C.C. 7B-101(a)(20) must include at minimum the following:

- (1) The strength of the relationship between the child and the relative;
- (2) The relative's desire and ability to protect the child from further maltreatment;
- (3) The ability of the relative to provide a home that is safe and nurturing;
- (4) The relationship between the child's parent and the relative, this includes a statement on the parent's feelings about placing the child with the relative;
- (5) Any history or current use of alcohol or other drugs by the relative, and whether or not that would be considered abusive and interfere with the relative's ability to care for the child;
- (6) The ability of the relative to meet the child's developmental needs; and
- (7) The relative's willingness and ability to cooperate with DHS and the DHS plan.

#### **10A CAR 70A .0304 – CONFIDENTIALITY**

(a) Pursuant to C.C. 130A-6, 10A CAR 69, and 10A CAR 70A .0102 and .0113, PHHS shall not permit the unauthorized disclosure of information in any sex offender registry, central registry

and responsible individuals list maintained by the EBCI and shall not permit any such information obtained pursuant to this Section from being used for a purpose other than the conducting of background checks.

(b) Information regarding children who may be missing, abducted, at risk or victims of sex trafficking as defined in 10A CAR 70A .0104(b)(6) shall be considered confidential and disclosed only to appropriate law enforcement authorities and the total number of children who are identified as sex trafficking victims shall be reported to the US DHHS Secretary on an annual basis.

## **CHAPTER 70 – CHILDREN SERVICES**

### **SUBCHAPTER 70B - FOSTER CARE SERVICES**

#### **SECTION .0100 - FOSTER CARE SERVICES - GENERAL**

##### **10A CAR 70B .0101 PURPOSE**

The Tribe has the authority to develop and carry out either directly or through local agencies a program of foster care services designed to preserve, rehabilitate, unite, reunite, and strengthen families; to protect the health, safety and well-being of children separated from or being cared for away from their families; and to provide substitute care for children who must be temporarily or permanently separated from their families or other caretakers.

##### **10A CAR 70B .0102 ELIGIBILITY**

(a) The department of human services may determine whether a child is eligible for IV-E foster care assistance payments if the following factors are established:

- (1) The child has been removed for any reason from his own home or from the home of a specified relative or caregiver by a judicial determination and placed in foster care as a result of that determination;
- (2) The placement of the child in foster care has occurred pursuant to a voluntary placement agreement entered into by the parents or guardians of the child and such placement has not been in excess of 60 consecutive days unless there has been a judicial determination by a court of competent jurisdiction (within the first 30 days of such placement) to the effect that such placement is in the best interest of the child.
- (3) Responsibility for care and placement of the child is designated to the department of human services by either the court order removing him from his home or by the voluntary placement agreement signed by the parent or guardian;
- (4) The child lives in:

(A) a licensed foster care facility which is licensed by the licensing agency with the authority to license in the jurisdiction in which it is situated;

(B) a private child caring institution which is licensed or approved by a Department of Health and Human Services and which is in compliance with Title VI of the Civil Rights Act or is licensed and approved by the Tribe's department of human services and which is in compliance with all tribal codes and regulations and any applicable federal laws;

(i) For purposes of this Subchapter, a child care institution means a private or public child care institution which accommodates no more than 25 children, and is licensed by the licensing agency with the authority to license in the jurisdiction in which it is situated, except in the case of a child who has reached 18 years of age, the term includes a supervised setting in which the individual is living independently. A child care institution does not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

(C) a private group home which is licensed or approved by a Department of Health and Human Services and which is in compliance with Title VI of the Civil Rights Act or is licensed and approved by the Tribe's department of human services and which is in compliance with all tribal codes and regulations and any applicable federal laws;

(D) a foster care facility which is under the auspices of a licensed or approved private child caring institution, provided such foster care services program has been licensed by a Department of Health and Human Services and is in compliance with Title VI of the Civil Rights Act or is licensed and approved by the Tribe's department of human services and which is in compliance with all tribal codes and regulations and any applicable federal laws;

(E) a foster care facility under the supervision of a private child placing agency (including those providing adoption services) and licensed by a Department of Health and Human Services or is licensed and approved by the Tribe's department of human services and which is in compliance with all tribal codes and regulations and any applicable federal laws; or

(F) a foster care facility located in another jurisdiction, provided such facility is in compliance with Title VI of the Civil Rights Act and is licensed or approved in the other state, and provided such placement has been approved under the appropriate intergovernmental placement procedure;

(5) The child is in need of care which is not available in his own home or the home of a relative or caregiver;



(6) The child is less than 18 years of age and is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and may reasonably be expected to complete the program before reaching age 19; or

(7) The child is a person who has attained the age of 18 but has not attained 21 years of age who meets one of the following criteria:

(A) The child is completing secondary education or a program leading to an equivalent credential; or

(B) The child is enrolled in an institution which provides post-secondary or vocational education; or

(C) The child is participating in a program or activity designed to promote, or remove barriers to, employment; or

(D) The child is employed for at least 80 hours per month; or

(E) The child is incapable of doing any of the above described activities due to a medical condition.

(b) Court action suspending or terminating parental rights shall not render a child ineligible for foster care assistance benefits if that child is otherwise eligible. A child may be eligible for foster care assistance benefits until the final decree of adoption is issued.

#### **10A CAR 70B .0103 FOSTER CARE ASSISTANCE PAYMENTS**

(a) Foster care assistance payments include food, and shelter, clothing, personal incidentals, and ordinary and necessary school and transportation expenses.

(b) The department of human services may request federal reimbursement for providing foster care assistance payments to title IV-E eligible children.

#### **10A CAR 70B .0104 FOSTER CARE MAINTENANCE PAYMENTS**

(a) Foster care maintenance payments for a child in foster care may cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to the child, and reasonable travel to the child's home for visitation with family, or other caretakers and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.

(1) Local travel associated with providing the items listed above is also an allowable expense.

- (2) In the case of child care institutions, such term must include the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items described in the preceding sentences.
- (b) Foster care maintenance payments are made only on behalf of an eligible child who is:
- (1) In the licensed family foster home of an individual, whether the payments are made to such individual or to a public or private child placement or child care agency; or
  - (2) In a child care institution, whether the payments are made to such institution or to a public or private child placement or child-care agency. Such payments are limited to include only those items that are included in Subsection (a) of this Section.
    - (A) In the in the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in is section.

**10A CAR 70B .0105 RELATIONSHIP TO CHILD SUPPORT ENFORCEMENT PROGRAM**

- (a) The director of human services must refer recipients of foster care assistance payment to the child support enforcement program except when the director of human services determines that a referral is not appropriate because one or more of the following circumstances exists:
- (1) The establishment of paternity or the securing of support is reasonably anticipated to result in:
    - (A) physical harm to the child;
    - (B) emotional harm to the child;
    - (C) physical harm to the foster parent or other caretaker with whom the child is living; or
    - (D) emotional harm to the foster parent or other caretaker with whom the child is living.
  - (2) The child for whom support is sought was conceived as a result of forcible rape or incest.
  - (3) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction.
  - (4) A parent is already ordered by the court to pay support.

- (5) The rights of both parents have been suspended or terminated by consent or court proceeding and the child may be legally placed for adoption by the department of human services or a child placing agency.
- (b) The department's application for foster care assistance payments shall operate to assign in proportionate parts as described in C.C. Chapter 110 all rights to child support owed or paid for the eligible foster child by his parent.
- (c) The caretaker relative from whose home the child is removed by voluntary placement agreement or court order shall be advised of the assignment of support rights, and shall be asked to sign a statement that he understands the assignment. His refusal to sign, however, shall not render the child ineligible for foster care assistance payments.
- (d) Referral to the Tribe's IV-D agency shall be completed for all foster care assistance cases in which deprivation is caused by absence of a parent, regardless of whether the paternity of a child born out of wedlock has been established.

#### **10A CAR 70B .0106 GOALS AND STRATEGIES**

- (a) The goal for each fiscal year commencing with the fiscal year which begins on October 1 is that of all the children in foster care receiving Title IV-E Foster Care Assistance the number of children who remain in foster care in excess of 24 months will decrease by 1.5 percent.
- (b) The following steps shall be taken to achieve the goal stated in (a) of this Rule. The Department of Human Services shall:
- (1) Provide a preplacement preventive services program designed to help children remain with their families or caregivers;
  - (2) Provide a post placement reunification services program designed to reunite children with their families in a timely fashion;
  - (3) Maintain a multidisciplinary and multiagency information system by adopting data informed strategies to quantify the effectiveness and impact on community indicators that cause or contribute to the need for the Department's involvement;
  - (4) Ensure that there is an individual case plan for each child in foster care;
  - (5) Ensure that the status of each child is reviewed no less frequently than monthly during ICWT staffings;
  - (6) Institute procedural safeguards to assure each child's dispositional hearing is in accordance with statutory requirements; and
  - (7) Institute procedural safeguards with respect to parental rights to be informed of changes in the child's placement and to visit the child.

**10A CAR 70B .0107 MEDICAID, SOCIAL SERVICES AND FOSTER CARE  
MAINTENANCE PAYMENTS**

(a) For the purposes of title XIX of the Social Security Act (“SSA”), any child with respect to whom foster care maintenance payments are made, is deemed to be a dependent child and a recipient of AFDC.

(b) For purposes of subtitle I of title XX of the SSA, any child with respect to whom foster care maintenance payments are made is deemed to be a minor child in a needy family and is deemed to be a recipient of assistance under part A of title IV.

(c) For purposes of this subsection, a child in a family foster home or child care institution as defined in 10A CAR 70B .0102(a)(4)(B)(i) whose costs are being covered by the foster care maintenance payments made with respect to the child’s minor parent, shall be considered a child with respect to whom foster care maintenance payments are made.

**SECTION .0200 - RESOURCE ITEMS TO SUPPORT SCHOOL PARTICIPATION  
10A CAR 70B .0201 DEFINITIONS FOR SCHOOL PARTICIPATION RESOURCE  
ITEMS**

As used in this Section, unless the context requires otherwise, the following terms shall have the meanings specified:

(1) “Elementary or secondary school student” means that the child is:

(A) Enrolled (or in the process of enrolling) in an institution which provides elementary or secondary education, as determined under the law of the State or other jurisdiction in which the institution is located;

(B) Instructed in elementary or secondary education at home in accordance with a home school law of the State or other jurisdiction in which the home is located;

(C) In an independent study elementary or secondary education program in accordance with the law of the State or other jurisdiction in which the program is located, which is administered by the local school or school district; or

(D) Incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by regularly updated information in the case plan of the child;

(2) "Fees for membership in school sponsored extracurricular activities" means fees or dues required for membership clubs and activities such as music, language, vocational or athletic clubs, honor societies, etc. who is receiving foster care services.

(3) "Foster child" means an individual who is under 18 or under age 21 years of age when meeting certain criteria described in 10A CAR 69 .0101(2), who is living in a licensed or approved family foster home or foster care facility and

(4) "Participation in school" means the pursuit of a high school diploma, an academic degree, or a competency in a vocation or trade.

(5) "School" means public and private schools and educational programs covering grades kindergarten through 12; technical institutes, and community colleges; Institutions of higher education whose curriculum is directed toward education beyond the high school level; and vocational and trade schools.

(6) "Special clothes" mean clothes such as gym suits, lab coats, band uniforms and other clothes which are required in order for a student to participate in certain courses as dictated by the school or in school sponsored athletic programs and other school sponsored extracurricular activities. Special clothes may be rented or purchased. Special clothes do not include regular clothing needed by individuals whether or not they are attending school.

(7) "Supplies" mean notebooks, writing paper, pens, pencils, etc., which every student is expected to have to equip him to participate successfully in classroom and homework assignments, supplies or equipment as dictated by specified courses, an individual teacher or instructor, and other items needed to support a foster child's participation in school.

#### **10A CAR 70B .0202 REIMBURSEMENT FOR SCHOOL PARTICIPATION RESOURCE ITEMS**

(a) At the Tribe's option, the following resource items may be reimbursed in order to support a foster child's participation in school:

(1) fees for membership in school sponsored extracurricular activities, except that the cost of membership in organizations and activities which may take place at school but which are sponsored by outside groups are not reimbursable;

(2) special clothes;

(3) supplies.

(b) The department of human services must authorize the provision of the resource items.

(c) Resource items may be purchased or rented through either the cash or vendor payment method.

(d) Reimbursement for allowable foster care services resource items may be claimed in accordance with rules to be established in the form of manual material or memoranda.

#### **SECTION .0300 – REUNIFICATION ASSESSMENT**

#### **10A CAR 70B .0301 WHEN TO COMPLETE A REUNIFICATION ASSESSMENT**

(a) For foster care services cases, the ICWT shall complete a home study and comprehensive clinical assessment for all cases.

(b) For those cases in which children enter foster care and reunification is the permanent plan, the home study and reunification assessment shall occur prior to the child returning home.

## **CHAPTER 70 CHILDRENS SERVICES**

### **SUBCHAPTER 70C – INTERGOVERNMENTAL PRACTICE**

#### **SECTION .0100 – CONTROLLING STATUTES**

##### **10A CAR 70C .0101 - INTERGOVERNMENTAL COMPACT**

(a) Unless otherwise stated in a mutually agreed upon Memorandum of Agreement (“MOA”), the provisions of Cherokee Code Chapter 7B, Articles 38 and 39 shall control all practice and procedures involving the orderly and timely placement and/or transfer of children between the Department and other jurisdictions.

(b) As described in C.C. 7B-3808, the Interstate Compact on the placement of Children (“ICPC”) is a federal statute regarding the placement of children between jurisdictions and does not apply to federally recognized Indian Tribes. The EBCI shall strive to meet the spirit of that law and shall regulate the placement of children between jurisdictions under Articles 38 and 39 of Chapter 7B in the Cherokee Code, this Subchapter and any policies and procedures created by the Department and any MOAs formed with other jurisdictions.

#### **SECTION .0200 – REQUEST FOR SERVICES BETWEEN JURISDICTIONS**

##### **10A CAR 70C .0201 REQUEST FOR STUDY OF HOME ENVIRONMENT**

(a) Within 60 days after the Department receives from another jurisdiction a request to conduct a study of a home environment for purposes of assessing the safety and suitability of placing a child in the home, the Department shall, directly or by contract—

- (1) Conduct and complete the study; and
- (2) Return to the other jurisdiction a report on the results of the study, which shall address the extent to which placement in the home would meet the needs of the child; and

(b) If the Department fails to comply with subsection (a) within the 60-day period as a result of circumstances beyond the control of the Department (such as a failure by a Federal agency to provide the results of a background check, or the failure by any entity to provide completed medical forms, requested by the Department at least 45 days before the end of the 60-day period), the Department shall have 75 days to comply with subsection (a) if the Department documents the circumstances involved and certifies that completing the home study is in the best interests of the child; except that

(1) This section shall not be construed to require the Department to have completed, within the applicable period, the parts of the home study involving the education and training of the prospective foster or adoptive parents.

(c) The Department shall treat any report described in subsection (a) that is received from another jurisdiction (or from a private agency under contract with another jurisdiction) as meeting any requirements imposed by the Department for the completion of a home study before placing a child in the home, unless, within 14 days after receipt of the report, the Department determines, based on grounds that are specific to the content of the report, that making a decision in reliance on the report would be contrary to the welfare of the child.

(d) The Department shall not impose any restriction on the ability of the administration, supervision, or supervision of the administration of another program operating under an approved State/Indian Tribe IV-E plan to contract with a private agency for a home study described in subsection (a) to be conducted.

#### **10A CAR 70C .0202 REQUEST FOR SERVICE IN THE TRIBE**

(a) Upon receipt of an out-of-tribe request to send a child to the Tribe, the Department shall determine if any of the Tribe's intergovernmental placement codes or regulations apply and if not, the request will be forwarded to the appropriate party.

(b) If any of the laws do apply or if there is any uncertainty of applicability, the Department shall review for adequacy of information submitted, shall make appropriate suggestions, and shall forward the request to the appropriate party.

(c) The Department shall review the evaluation of the placement resource and make a disposition regarding placement. The sending agency or jurisdiction shall inform the Department of plans for the child.

(d) The Department shall review progress reports, make appropriate suggestions, and transmit all reports to the sending agency or jurisdiction.

(e) Upon receipt of recommendation that agency or court supervision is no longer required, the sending agency or jurisdiction must provide written notification for termination including court order.

#### **SECTION .0300 – INTERJURISDICTIONAL ADOPTIONS**

##### **10A CAR 70C .0301 PLACEMENT OUTSIDE OF EBCI JURISDICTION**

(a) The department will not deny or delay the placement of a child for adoption when an approved family is available outside of the jurisdiction of the department.

(b) Where an approved family alleges that it was denied adoptive placement by the department or where the adoptive placement is alleged to have been delayed by the department (it did not act with reasonable promptness), such family shall follow the procedures set out in 10A CAR 70L to contest the department's determination.

**CHAPTER 70: CHILDRENS SERVICES**

**SUBCHAPTER 70D – AUDIT AND REVIEW OF DEPARTMENT OF HUMAN SERVICES – CHILDRENS SERVICES**

**SECTION .0100 AUDIT OF CHILDREN’S SERVICES – GENERAL PROVISIONS  
10A CAR 70D .0101 AUDIT OF TITLE IV-B AND IV-E PROGRAMS**

- (a) The Division has arranged for the EBCI Office of Internal Audit, in conjunction with the Department of Regulatory and Compliance, to conduct a periodic and independent audit of programs assisted under SSA Titles IV-B and IV-E.
- (b) The audit described in subsection (a) shall be conducted no less frequently than once every fiscal year.

**SECTION .0200 REVIEW OF PAYMENTS AND STANDARDS  
10A CAR 70D .0201 REVIEW OF PAYMENTS AND LICENSING STANDARDS**

- (a) Within sixty (60) days prior to the end of the Tribe’s fiscal year, the Division shall on an annual basis review at a minimum:
  - (1) the amount of the payment made for foster care maintenance and adoption assistance to assure the amount is appropriate; and
  - (2) the licensing standards for family foster homes and child care institutions, if applicable.

**CHAPTER 70: CHILDRENS SERVICES**

**SUBCHAPTER 70E – LICENSING OF FAMILY FOSTER HOMES**

**SECTION .0600 – GENERAL**

**10A CAR 70E .0601 SCOPE**

- (a) The EBCI Public Health and Human Services is the licensing authority for family foster homes and therapeutic foster homes.
- (b) The rules in this Subchapter apply to the licensing of family foster homes and therapeutic foster homes and those persons who receive children for the purpose of placement in family foster homes and therapeutic foster homes.

**10A CAR 70E .0602 DEFINITIONS**



Except when the context of the Rule indicates that the term has a different meaning the following definitions shall apply to the rules in Subchapter 70E:

- (1) "Agency" means a child placing agency that is authorized by law to receive children for purposes of placement in foster homes or adoptive homes.
- (2) "Family Foster Home" means the home of an individual or family fully licensed or approved as meeting the standards established by the Division, which provides 24-hour out-of-home care for children.
  - (A) Anything less than full licensure is insufficient for meeting IV-E eligibility requirements.
- (3) "Family Foster Care" means a planned, goal-directed service in which the temporary protection and care of children take place in a family foster home. Family foster care is a child welfare service for children and their parents who must live apart from each other for a period of time due to maltreatment or other circumstances necessitating out-of-home care.
- (3) "Licensee" means the holder of a foster care license issued by PHHS or another jurisdiction having authority and responsibility to license.
- (4) "Licensor" means the person authorized by the Eastern Band of Cherokee Indians Public Health and Human Services Division to ensure all applicants seeking licensure complete the required process.
- (5) "Licensing Authority" means the Eastern Band of Cherokee Indians Public Health and Human Services Division.
- (6) "Owner" means any person who holds an ownership interest of five percent or more of the applicant. A person includes a sole proprietor, co-owner, partner or shareholder, principal or affiliate, or any person who is the applicant or any owner of the applicant.
- (7) "Reasonable and Prudent Parent Standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the department to participate in extracurricular, enrichment, cultural, and social activities.
  - (a) In this context, 'caregiver' means a foster parent with whom a child in foster care has been placed or a designated official for a child care institution in which a child in foster care has been placed.
- (8) "Supervising Agency" means the Human Services Program authorized to receive children for purposes of placement in foster homes or adoptive homes. Supervising

agencies are responsible for recruiting, training, and supporting foster parents. Supervising agencies recommend the licensure of foster homes to the licensing authority.

- (9) "Therapeutic Foster Care" means a foster home where the foster parent has received additional training in providing care to children with behavioral mental health or substance abuse problems.

## **SECTION .0700 – LICENSING REGULATIONS AND PROCEDURES**

### **10A CAR 70E .0701 LICENSING AUTHORITY FUNCTION**

(a) The licensor shall submit the licensing application for family foster care and therapeutic foster care to the licensing authority. When the licensing authority receives licensing materials, the licensing authority shall review the licensing materials relative to standards, policies, and procedures for licensing. The licensing authority shall communicate with the licensor submitting the materials if additional information, clarification or materials are needed to make a decision regarding license approval.

(b) A license is valid for the period of time stated on the license for the number of children specified and for the place of residence identified on the license.

### **10A CAR 70E .0702 RESPONSIBILITY**

Each licensor providing foster care services shall assess its applicants and licensees. Licensors shall submit to the licensing authority information and reports that are used as the basis of either issuing or continuing to issue licenses.

### **10A CAR 70E .0703 NEW LICENSES**

(a) The licensor shall submit all licensing materials to the licensing authority dated within 180 days prior to submitting an application for a new license. The licensor shall submit medical examinations of the members of the foster home to the licensing authority dated within 6 months prior to submitting an application for a new license.

(b) The licensor shall submit all licensing application materials required for a license to the licensing authority at one time. The licensing authority shall return incomplete licensing applications to the licensor.

(c) The licensing authority shall issue a new license, if approved according to the rules in this Section, effective the date the application and all required materials are received by the licensing authority.

#### **10A CAR 70E .0704 RELICENSURE AND RENEWAL**

(a) Materials for renewing a license are due to the licensing authority 30 days prior to the date the license expires.

(1) The licensor shall send a notice of expiration no later than 180 days prior to expiration of the foster care license.

(b) All relicensing materials shall be completed and dated within 180 days and no later than 30 days prior to the date the license is set to expire. Medical examinations of the members of the foster home shall be completed and dated within 6 months prior to submitting materials for relicensure.

(c) All relicensing materials shall be submitted at one time to the licensing authority. The licensing authority shall return incomplete relicensure applications to the licensor who will then contact the licensee to request missing materials.

(d) If materials are submitted after the foster home license expires, a license is issued by the licensing authority effective the date the licensing materials are approved by the licensing authority.

(1) If a foster home license expires prior to approval of relicensure/renewal due to untimely submission of required materials, no foster care payments may be made on behalf of the child to the non-licensed home.

(i) Documentation shall be provided to the licensing authority that trainings for first aid, CPR, and universal precautions are updated.

#### **10A CAR 70E .0705 CHANGE IN FACTUAL INFORMATION ON THE LICENSE**

(a) A license may be changed during the time it is in effect if the change is in compliance with licensing standards.

(b) The licensor shall submit supportive data to the licensing authority for the following:

(1) changes in age range, number of children, and sex; or

(2) change in residence

(c) A foster home license may not be changed to a residential child-care facility license.

## **10A CAR 70E .0706 foster home transfer procedures**

(a) A foster home licensed and in good standing with the licensing authority may transfer from the supervision of EBCI PHHS to the supervision of another department of social services or private child-placing agency upon request. Procedures for transferring licenses include:

- (1) EBCI PHHS licensor providing copies of the most recent mutual home assessment, training, and licensing documents to the receiving supervising agency;
- (2) EBCI PHHS licensor agency notifying the custodian(s) of the foster children placed in the home of the transfer;
- (3) The receiving supervising agency notifying the custodian(s) of the foster children placed in the home of the transfer;
- (4) A Foster Care Facility License Action Request Form from the previous supervising agency that is marked terminated shall be submitted to the licensing authority;
- (5) A Foster Care Facility License Action Request Form from the receiving supervising agency that is marked new license shall be submitted to the licensing authority;
- (6) A cover letter from the EBCI PHHS licensor stating they are aware of the transfer shall be submitted to the licensing authority;
- (7) A cover letter from the receiving supervising agency requesting transfer shall be submitted to the licensing authority; and
- (8) A mutual out-of-home assessment written by the receiving supervising agency shall be submitted to the licensing authority.

(b) The materials in Paragraph (a) of this Rule shall be submitted to the licensing authority within 30 days after the foster parents request to transfer to another supervising agency.

(c) A foster home licensed and in good standing with another licensing authority may transfer from the supervision of another department of social services or private child-placing agency to the supervision of EBCI PHHS upon request. The materials in Paragraph (a) of this Rule shall whenever possible be submitted to the Foster Care Licensure and Appeals Manager of EBCI PHHS within 30 days after the foster parents request to transfer to EBCI PHHS.

## **10A CAR 70E .0707 TERMINATION**

(a) Licenses terminate at the end of the two year license period unless all relicensing materials have been received by the licensing authority prior to the license expiration date.

(b) The licensing authority shall terminate a license before the end of the two year license period if requested by the foster parents.

#### **10A CAR 70E .0708 REVOCATION, CHANGE OF STATUS AND DENIAL OF LICENSE**

(a) The licensing authority may revoke or deny licenses when an agency authorized to investigate allegations of maltreatment finds the foster parent has maltreated a child.

(b) The licensing authority may revoke or deny a license when the foster home is not in compliance with licensing standards in this Subchapter.

(c) The licensing authority shall base the revocation or denial on the following:

- (1) A child's circumstances;
- (2) A child's permanency plan;
- (3) The nature of the non-compliance; and
- (4) The circumstances of the placement.

(d) Foster parents shall be notified in writing of the reasons for the licensing authority's decision to revoke or deny a license. Specific reasons will be given for denial to allow for corrective action and reapplication by the foster parent. When a license has been revoked, foster parents shall submit their license to the licenser so it can be returned to the licensing authority.

(e) The licensing authority may revoke or deny licensure to an applicant who has a finding that would place the applicant on the following:

- (1) Health Care Personnel Registry pursuant to N.C.G.S. 131E-256; or
- (2) Any Sex Offender and/or Central Registry.

(f) The licensing authority may also deny licensure to an applicant under any of the following circumstances:

- (1) the applicant was the owner of a licensable facility or agency and that a facility or agency had its license revoked;
- (2) the applicant is the owner of licensable facility or agency that had its license downgraded to probationary status as a result of violations or had its license denied;
- (3) the applicant was the owner of a licensable facility or agency who voluntarily relinquished that facility or agency's license after the initiation of probation or revocation proceedings, or there is a pending appeal of a denial, status change, or revocation, of that facility or agency's license; or

- (5) the applicant has as any part of its governing body or management an owner who previously held a license that was revoked.
- (6) The provisions of paragraph (f) apply in the same manner to family foster homes as to owners of a licensable facility or agency.

(g) Appeal procedures specified in 10A CAR 70L are applicable for persons seeking an appeal to the licensing authority's decision to revoke, change the status or deny a license. If the action is reversed on appeal, the application shall be approved back to the date of the denied application if all qualifications are met.

### **10A CAR 70E .0709 KINDS OF LICENSES**

(a) Full License. A full license shall be issued for no more than two years when all licensing requirements are met.

(b) Provisional License

- (1) A provisional license shall be issued for no more than six months while some below-standard component is being corrected.
- (2) A provisional license for the same below-standard program component shall not be renewed.

(c) Probationary License

- (1) A probationary license shall be issued to a licensee who has had a license but is temporarily unable to comply with a rule or has been subject to multiple complaints or concerns about noncompliance if the following conditions apply:
  - (A) The noncompliance does not present an immediate threat to the health and wellbeing of the children but would be likely to do so if allowed to continue.
  - (B) The licensee has a plan approved by the licenser to correct the area of noncompliance within the probationary period.
- (2) A probationary license may be issued for up to six months but will not be extended beyond this. At the end of the six-month period the original license shall be reinstated for the remainder of its term, a new license shall be issued, or the original license will be revoked.
- (3) An existing license is invalidated when a probationary license is issued.

### **10A CAR 70E .0710 OFF BOUNDARY FACILITIES AND FOSTER HOMES**

(a) The use of off-boundary residential child-care facilities and foster homes for the placement of children in the custody of DHS shall be in accordance with the following:

- (1) Prior to placement into an off-boundary foster home, group home, child-caring institution, maternity home or any other residential child-care facility, the jurisdiction's department of social services placing the child in the off boundary facility shall determine that the foster home, group home, child-caring institution, maternity home, or any other residential child-care facility is licensed according to the standards of that state.
- (2) The EBCI Human Services Program shall monitor the licensing and relicensing of the off boundary foster home, group home, child-caring institution, maternity home or any other residential child-care facility through reporting during ICWT staffings, to ensure that no child for whom they have responsibility is in an unlicensed foster home, group home, child-caring institution, maternity home or any other residential child-care facility.
- (3) An off-boundary department of social services shall submit to the licensing authority written documentation that an off-boundary foster home, group home, child-caring institution, maternity home or any other residential child-care facility has been licensed and that an Interstate Compact for the Placement of Children or similar form for the child to be placed on the boundary has been signed by both jurisdictions in order for the foster home, group home, child-caring institution, maternity home or any other residential child-care facility to be issued a license identification number for foster care reimbursement purposes.

## **SECTION .0800 – MUTUAL OUT-OF-HOME ASSESSMENT**

### **10A CAR 70E .0801 PURPOSE**

(a) The licenser shall conduct a mutual out-of-home assessment study of the foster home to determine if the home meets the requirements for licensure and is suitable for family foster care of children needing family foster care services or therapeutic foster care of children needing therapeutic foster care services.

(b) The licenser shall provide information to applicants that will make it possible for the applicants to make a knowledgeable decision about their interest in pursuing licensure. The licenser shall learn enough about the applicants to determine whether the applicants can meet the needs of children and care for children in accordance with licensing requirements. The licenser shall also learn enough about the applicants to determine the kind of child they can best serve.

### **10A CAR 70E .0802 METHOD OF MUTUAL OUT-OF-HOME ASSESSMENT**

(a) The mutual out-of-home assessment shall be carried out in a series of planned discussions between the licensing worker of PHHS, the prospective foster parent applicants and other members of the household. The family shall be seen by the licensing social worker in the family's home, in the licenser's office, or in the community.

(b) In an application involving a single applicant, there shall be two separate face-to-face interviews occurring on two different dates. In an application involving joint applicants, there shall be a separate face-to-face interview with each applicant and an additional two face-to-face interviews with both applicants. The two face-to-face interviews shall occur on two different dates. There shall be separate face-to-face interviews with each member of the household. Training and group sessions do not count as face-to-face interviews. The assessment process shall be a joint effort of the licenser and the applicants to determine the applicants' suitability for providing foster care and the kind of child the applicants can best parent.

### **10A CAR 70E .0803 ASSESSMENT PROCESS**

(a) The licenser shall advise the applicants at the first contact with the agency of the licensing requirements for foster care. The licenser shall make a decision whether to continue a mutual home assessment.

(b) The licenser shall inform the applicants about the services, policies, procedures, standards, and expectations of the agency regarding the provision of foster care services. The applicants shall weigh the responsibilities entailed in providing foster care services and make a decision whether to continue a mutual home assessment.

(c) Mutual Assessment of the Home and the Family:

- (1) The mutual out-of-home assessment shall be presented and recorded in such a way that other staff of PHHS can make use of the family as a resource for children. The assessment of the home shall indicate whether the home is in compliance with licensing standards.
- (2) A mutual out-of-home assessment shall include a family history of applicants, including information about parents, siblings, marriages and family support systems; ability to cope with problems, stress, frustrations, crises, and loss; disciplinary methods used by the applicants' parents; personal experiences of abuse and neglect and domestic violence; criminal convictions; drug or alcohol abuse; emotional stability and maturity; ability to give and receive affection; religious orientation, if any; and educational and employment history.
- (3) A mutual out-of-home assessment shall be made of the applicants' skills and abilities to provide care for children as set forth in 10A CAR 70E .1104(a).



- (4) All members of the household shall be assessed with respect to their commitment to providing care for children.
- (5) The foster home shall be assessed to determine if there is space to accommodate the number of children recommended for the license capacity.
- (6) The foster home applicants shall be assessed with respect to their willingness to participate in shared parenting requirements.

#### **10A CAR 70E .0804 USE OF REFERENCES**

References shall be used to supplement the information obtained through interviews and observation regarding the applicants. All adult members of the foster home shall provide three references to the licenser.

#### **10A CAR 70E .0805 FOSTER PARENT AGREEMENT**

The Foster Parent(s) Agreement, further described in 10A CAR 70E .0902, defining each party's rights and obligations shall be reviewed and signed by the foster parent(s) and the licensing worker at the time of the initial licensing and at relicensure/renewal.

### **SECTION .0900 – FORMS**

#### **10A CAR 70E .0901 LICENSE APPLICATION**

Application for a license shall be made on a form provided by the licensing authority. The licenser or his/her designee shall sign the form and thereby indicate both the home meets the licensing standards, and the licenser intends to use the home in accordance with the license and provide services to the foster parents. The foster parents shall sign the application indicating their agreement with the information provided, declaring it is true and accurate. The form shall be submitted to the licensing authority no later than 30 days prior to expiration of existing license.

#### **10A CAR 70E .0902 FOSTER PARENT AGREEMENT**

- (a) Foster parents shall sign an agreement under which the foster parents shall:
  - (1) Allow the licenser or representative of the licenser to visit the home in conjunction with licensing procedures, foster care planning, and placement;
  - (2) Accept children into the home only through the licenser or the PHHS Family Safety program and not through other individuals, agencies, or institutions;

- (3) Treat a child placed in the home as a member of the family, and when so advised by the licensor or Family Safety worker, make every effort to support, encourage, and enhance the child's relationship with the child's parents or guardian;
- (4) Maintain continuous contact and exchange of information between the licensor and the foster parents about matters affecting the adjustment of any child placed in the home. The foster parents shall agree to keep these matters confidential and discuss them only with the licensor, Family Safety staff members, or with other professional people designated by the agency;
- (5) Obtain the permission of the licensor if the child is to be out of the home for a period exceeding two nights **WITHOUT** the foster parent;
- (6) Obtain the permission of the licensor if the child is to be out of the service area or the state for a period exceeding two nights **WITH or WITHOUT** the foster parent;
- (7) Report to the licensor any changes in the composition of the household, change of address, or change in the employment status of any adult member of the household;
- (8) Make no independent plans for a child to visit the home of the child's parents, guardian, or relatives without prior consent from the licensor;
- (9) Adhere to the plan of medical care, both for routine care and treatment, and emergency care and hospitalization; and
- (10) Provide any child placed in the home with supervision at all times while the child is in the home, not leave the child unsupervised, and adhere to the supervision requirements specified in the out-of-home family services agreement or person-centered plan.

(b) The licensor shall sign an agreement under which the licensor and Family Safety program shall:

- (1) Assume responsibility for the overall planning for the child and assist the foster parents in meeting their day-to-day responsibility towards the child;
- (2) Inform the foster parents concerning the agency's procedures and financial responsibility for obtaining medical care and hospitalization;
- (3) Pay the foster parents a monthly room and board payment, and if applicable, a respite care payment for children placed in the home;
- (4) Discuss with the foster parents any plans to remove a child from the foster home by discussing at each visit the status of the permanency plan and any change in timeline for removal;

- (5) Give the foster parents notice before removing a child from the foster home;
  - (6) Visit the foster home and child according to the out-of-home family services agreement or person-centered plan and be available to give needed services and consultation concerning the child's welfare;
  - (7) Respect the foster parents' preferences in terms of sex, age range, and number of children placed in the home;
  - (8) Provide or arrange for training for the foster parents;
  - (9) Include foster parents as part of the decision-making team for a child; and
  - (10) Allow foster parents to review and receive copies of their licensing record.
- (c) The agreement shall also contain any other provisions mutually agreed by the parties.
- (d) The foster parents and the licenser or a representative of licenser shall sign and date the agreement initially and at each relicensure. The foster parents and the licenser shall retain copies of the agreements.

**10A CAR 70E .0903 DEPARTMENT OF Human Services INTERGOVERNMENTAL AGREEMENT**

- (a) Before children are placed in a foster home on the Qualla Boundary (the supervising agency) other than the county of their home (the responsible county), the Human Service agency and the DHS shall agree in writing that the supervising agency shall:
- (1) accept responsibility for supervising the child;
  - (2) not initiate placement planning for the child without prior agreement from the responsible county, except when an emergency placement in another foster home or licensed facility is necessary;
  - (3) immediately inform the responsible county when an emergency placement in another foster home or licensed facility precludes prior approval;
  - (4) engage in no treatment or planning relationship with the child's parents, guardian, or relatives, except upon request of the responsible county;
  - (5) keep the case confidential; and
  - (6) submit to the responsible county, at intervals specified in the agreement, a written evaluation of the child's adjustment.

- (b) In the agreement, the responsible county shall agree to:
- (1) make payments for room and board and difficulty of care or respite care, if applicable, to the supervising county in the amounts and at the times specified in the agreement;
  - (2) take responsibility for placement of the child;
  - (3) make restitution, in accordance with a plan specified in the agreement, for damage that the child causes to the foster parents' property;
  - (4) inform the supervising county concerning future planning for the child; and
  - (5) write the room and board check in a manner specified in the agreement, in order to protect confidentiality.
- (c) The agreement shall specify the manner in which payment for clothes, medical costs, and allowances shall be made.
- (d) The agreement shall specify the dates between which the agreement shall be effective. The agreement shall be signed by the directors of the two county departments of social services. The responsible county and the supervising county shall each have a signed copy of the agreement. The responsible county shall provide the children's services program representative with a copy of the signed agreement, if requested.

## **SECTION .1000 - CAPACITY**

### **10A CAR 70E .1001 FOSTER HOME**

- (a) No foster home shall be allowed to accept more children than can be accommodated by the size of the home. The homes capacity shall be determined during the home assessment. Factors to be considered include, but are not limited to:
- (1) Number of bedrooms in the home;
  - (2) Number of beds each bedroom can safely and comfortably support;
  - (3) Level of privacy afforded to the foster child(ren); and
  - (4) The foster parents skill level, stamina, and ability to care for the children.
- (b) The licenser and the foster home applicant shall mutually decide how many children the family is comfortable supporting.
- (c) No foster home shall be forced to support more children than the foster home applicant and/or the licenser feel can be safely and comfortably supported in that home.

(d) The licenser or the licensing authority may choose to limit the amount of foster placements in a home despite the capacity of the home or the wishes of the foster home applicant.

(e) No more than four children including no more than two foster children shall reside in any therapeutic foster home at any time. The four children include the foster parent's own children, children placed for therapeutic foster care, children placed for family foster care or any other children living in the home. Therapeutic foster parents shall not provide in-home day care or babysitting services in the therapeutic foster home.

(f) Exceptions or non-safety waivers to the capacity standards in Paragraphs (a-e) of this Rule may be made:

- (1) if written documentation is submitted to the licensing authority for therapeutic foster care that siblings will be placed together and the foster home complies with Subparagraphs (2) and (3) of this Paragraph. The person-centered plan or out-of-home family services agreement for each sibling shall specify that siblings shall be placed together and shall also address the foster parents' skill, stamina, and ability to care for the children;
- (2) if written documentation is submitted to the licensing authority that the foster home complies with 10A CAR 70E .1108; and
- (3) if written documentation is submitted to the licensing authority that the foster home complies with 10A CAR 70L .0102.

(g) Members of the household 18 years old and over and not receiving foster care services are not included in capacity, but there shall be physical accommodations in the home to provide them room and board.

## **SECTION .1100 – STANDARDS FOR LICENSING**

### **10A CAR 70E .1101 CLIENT RIGHTS**

(a) Foster parents shall ensure that each foster child:

- (1) Has clothing to wear that is appropriate to the weather;
- (2) Is allowed to have personal property;
- (3) Is encouraged to express opinions on issues concerning care;
- (4) Is provided care in a manner that recognizes variations in cultural values and traditions;
- (5) Is provided the opportunity for spiritual development and is not denied the right to practice religious beliefs;
- (6) Is not identified in connection with the licenser in any way that would bring the child or the child's family embarrassment;
- (7) Is not forced to acknowledge dependency on or gratitude to the foster parents;

- (8) Is encouraged to contact and have telephone conversations with family members, when not contraindicated in the child's visitation and contact plan;
- (9) Is provided training and discipline that is appropriate for the child's age, intelligence, emotional makeup, and past experience;
- (10) Is not subjected to cruel or abusive punishment;
- (11) Is not subjected to corporal punishment;
- (12) Is not deprived of a meal or contacts with family for punishment or placed in isolation time-out except when isolation time-out means the removal of a child to an unlocked room or area from which the child is not physically prevented from leaving. The foster parent may use isolation time-out as a behavioral control measure when the foster parent provides it within hearing distance of a foster parent. The length of time alone shall be appropriate to the child's age and development;
- (13) Is not subjected to verbal abuse, threats, or humiliating remarks about himself/herself or his/her families;
- (14) Is provided a daily routine in the home that promotes a positive mental health environment and provides an opportunity for normal activities with time for rest and play;
- (15) Is provided training in good health habits, including proper eating, frequent bathing, and good grooming. Each child shall be provided food with nutritional content for normal growth and health. Any diets prescribed by a licensed medical provider shall be provided;
- (16) Is provided medical care in accordance with the treatment prescribed for the child;
- (17) Of mandatory school age maintains regular school attendance unless the child has been excused by the authorities;
- (18) Is encouraged to participate in neighborhood and group activities, have friends visit the home and visit in the homes of friends;
- (19) Assumes responsibility for himself/herself and household duties in accordance with his/her age, health, and ability. Household tasks shall not interfere with school, sleep, or study periods;
- (20) Is provided opportunities to participate in recreational activities;
- (21) Is not permitted to do any task which is in violation of child labor laws or not appropriate for a child of that age;
- (22) Is provided supervision in accordance with the child's age, intelligence, emotional makeup, and experience; and
- (23) If less than eight years of age and weighs less than 80 pounds is properly secured in a child passenger restraint system that is approved and installed in a manner authorized by the Commissioner of Motor Vehicles.

(b) Foster parents shall initially and at relicensure sign a Discipline Agreement that specifically acknowledges their agreement as specified in Subparagraphs (a)(9), (10), (11), (12), and (13) of this Rule, as well as discipline requirements outlined in the out-of-home family services agreement or person-centered plan. The foster parents and the licenser shall retain copies of these agreements.

## **10A CAR 70E .1102 MEDICATION**

Foster parents are responsible for the following regarding medication:

- (1) General requirements:
  - (a) Retain the manufacturer's label with expiration dates visible on non-prescription drug containers not dispensed by a pharmacist;
  - (b) Administer prescription drugs to a child only on the written order of a person authorized by law to prescribe drugs;
  - (c) Allow prescription medications to be self-administered by children only when authorized in writing by the child's licensed medical provider;
  - (d) Allow non-prescription medications to be administered to a child taking prescription medications only when authorized by the child's licensed medical provider; allow non-prescription medications to be administered to a child not taking prescription medication, with the authorization of the parents, guardian, legal custodian, or licensed medical provider;
  - (e) Allow injections to be administered by unlicensed persons who have been trained by a registered nurse, pharmacist, or other person allowed by law to train unlicensed persons to administer injections;
  - (f) Record in a Medication Administration Record (MAR) provided by the licenser all drugs administered to each child. The MAR shall include the following: child's name; name, strength, and quantity of the drug; instructions for administering the drug; date and time the drug is administered, discontinued, or returned to the licenser or the person legally authorized to remove the child from foster care; name or initials of person administering or returning the drug; child requests for changes or clarifications concerning medications; and child's refusal of any drug; and
  - (g) Follow-up for child requests for changes or clarifications concerning medications with an appointment or consultation with a licensed medical provider.
- (2) Medication disposal:
  - (a) Return prescription medications to the licenser or person legally authorized to remove the child from foster care; and
  - (b) Return discontinued prescription medications to a pharmacy or the licenser for disposal, in accordance with 10A CAR 70G .0510(c).
- (3) Medication storage:
  - (a) Store prescription and over-the-counter medications in a locked cabinet in a clean, well-lighted, well-ventilated room other than bathrooms, kitchen, or utility room between 59° F (15° C) and 86° F (30° C);
  - (b) Store medications in a refrigerator, if required, between 36° F (2° C) and 46° F (8° C). If the refrigerator is used for food items, medications shall be kept in a separate, locked compartment or container within the refrigerator; and
  - (c) Store prescription medications separately for each child.
- (4) Psychotropic medication review:

- (a) Arrange for any child receiving psychotropic medications to have his/her drug regimen reviewed by the child's licensed medical provider at least every six months;
  - (b) Report the findings of the drug regimen review to the licenser; and
  - (c) Document the drug review in the MAR along with any prescribed changes.
- (5) Medication errors:
- (a) Report drug administration errors or adverse drug reactions to a licensed medical provider or pharmacist; and
  - (b) Document the drug administered and the drug reaction in the MAR.

### **10A CAR 70E .1103 PHYSICAL RESTRAINTS**

(a) Foster parents who utilize physical restraint holds shall not engage in discipline or behavior management that includes:

- (1) Protective or mechanical restraints;
- (2) Drug used as a restraint, except as outlined in Paragraph (b) of this Rule;
- (3) Seclusion of a child in a locked room; or
- (4) Physical restraint holds except for a child who is at imminent risk of harm to himself/herself or others until the child is calm.

(b) Foster parents shall not administer drugs to a foster child for the purpose of punishment, foster parent convenience, substitution for adequate supervision or for the purpose of restraining the child. A drug used as a restraint means a medication used only to control behavior or to restrict a child's freedom of movement, and is not a standard to treat a psychiatric condition.

(c) Before a foster parent shall administer physical restraint holds, each foster parent shall complete training that includes at least 16 hours of initial training in behavior management, including techniques for de-escalating problem behavior, the appropriate use of physical restraint holds, monitoring of vital indicators, and debriefing children and foster parents involved in physical restraint holds. Foster parents authorized to use physical restraint holds shall annually complete at least eight hours of behavior management training including techniques for de-escalating problem behavior. This training shall count toward the training requirements as set forth in 10A CAR 70E .1117(6). Only foster parents trained in the use of physical restraint holds shall administer physical restraint holds.

(d) Foster parents shall be trained by instructors who have met the following qualifications and training requirements:

- (1) Instructors shall demonstrate competence by scoring 100 percent on testing in a training program aimed at preventing, reducing, and eliminating the need for restrictive interventions;
- (2) Instructors shall demonstrate competence by scoring 100 percent on testing in a training program teaching the use of physical restraint;
- (3) instructors shall demonstrate competence by scoring a passing grade on testing in an instructor training program as determined by the North Carolina Division of Mental Health, Developmental Disabilities and Substance Abuse;



- (4) The instructors' training shall be competency-based, and shall include measurable learning objectives, measurable testing (written and by observation of behavior) on those objectives, and measurable methods to determine passing or failing the course;
  - (5) The content of the instructor training shall be approved by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services, and shall include presentation of understanding the adult learner, methods of teaching content of the course, evaluation of trainee performance and documentation procedures;
  - (6) Instructors shall be retrained at least annually and demonstrate competence in the use of physical restraint to the North Carolina Interventions (NCI) Quality Assurance Committee;
  - (7) Instructors shall be trained in CPR;
  - (8) Instructors shall have coached experience in teaching the use of restrictive interventions at least two times with a positive review by the coach, and trainers shall teach a program on the use of physical restraints at least once annually; and
  - (9) Instructors shall complete a refresher instructor training at least every two years.
- (e) In administering physical restraints, the following shall apply:
- (1) Foster parents shall use only those physical restraint holds approved by the North Carolina Interventions (NCI) Quality Assurance Committee. Approved physical restraint holds can be found at the following web site:  
<http://www.dhhs.state.nc.us/mhddsas/training/rscurricula/agencylist10-18-06web.pdf> (Reviewed Restrictive and Physical Interventions Curricula by Name) which are hereby incorporated by reference including subsequent amendments and editions;
  - (2) Before employing a physical restraint hold, the foster parent shall take into consideration the child's medical condition and any medications the child may be taking;
  - (3) No child shall be restrained utilizing a protective or mechanical device;
  - (4) No child or group of children shall be allowed to participate in the physical restraint of another child;
  - (5) Physical restraint holds shall:
    - (A) Not be used for purposes of discipline or convenience;
    - (B) Be used only when there is imminent risk of harm to the child or others and less restrictive approaches have failed;
    - (C) Be administered in the least restrictive manner possible to protect the child or others from imminent risk of harm; and
    - (D) End when the child becomes calm.
  - (6) The foster parent shall:
    - (A) Ensure that any physical restraint hold utilized on a child is administered by a trained foster parent with a second trained foster parent or with a second trained adult in attendance. Concurrent with the administration of a physical restraint hold and for a minimum of 15 minutes subsequent to the termination of the hold, a foster parent shall monitor the child's breathing, ascertain the child is verbally responsive and motorically in control, and

ensure the child remains conscious without any complaints of pain. The licenser may seek a waiver from the licensing authority for a foster parent to administer a physical restraint hold without a second trained adult in attendance, and completion of the waiver request form. The licensing authority shall grant the waiver if it receives written approval from the child's parent, guardian, or custodian that the administering of a physical restraint hold without a second trained person present is acceptable, written approval from the licenser that the foster parent is authorized to administer a physical restraint hold without a second trained person present, and documentation that there is approval by the child and family team and documented in the person-centered plan or out-of-home family services agreement that it is acceptable for the foster parent to administer a physical restraint hold without a second trained person present;

- (B) Immediately terminate the physical restraint hold or adjust the position to ensure that the child's breathing and motor control are not restricted, if at any time during the administration of a physical restraint hold the child complains of being unable to breathe or loses motor control;
  - (C) Immediately seek medical attention for the child, if at any time the child appears to be in distress; and
  - (D) Conduct an interview with the foster child about the incident following the use of a physical restraint hold.
- (7) The licenser shall interview the foster parent administering the physical restraint hold about the incident following the use of a physical restraint hold..
- (8) The licenser shall document each incident of a child being subjected to a physical restraint hold on an incident report provided by the licensing authority. The incident report shall include:
- (A) The child's name, age, height, and weight;
  - (B) The type of hold utilized;
  - (C) The duration of the hold;
  - (D) The trained foster parent administering the hold;
  - (E) The trained foster parent or trained adult witnessing the hold;
  - (F) The less restrictive alternatives that were attempted prior to utilizing physical restraint;
  - (G) The child's behavior that necessitated the use of physical restraint; and
  - (H) Whether the child's condition necessitated medical attention.

(f) Foster parents shall annually receive written approval from the licenser or licensing authority before administering physical restraint holds. The foster parent shall retain a copy of the written approval and a copy shall be placed in the foster home record.

#### **10A CAR 70E .1104 CRITERIA FOR THE FAMILY**

(a) Foster parents shall be persons whose behaviors, circumstances, and health are conducive to the safety and well-being of children. Foster parents shall be selected on the basis of demonstrating strengths in the skill areas of Subparagraphs (1) through (12) of this Paragraph which permit them

to undertake and perform the responsibilities of meeting the needs of children, in providing continuity of care, and in working with the licenser. Foster parents shall demonstrate skills in:

- (1) Assessing individual and family strengths and needs and building on strengths and meeting needs;
- (2) Using and developing effective communication;
- (3) Identifying the strengths and needs of children placed in the home;
- (4) Building on children's strengths and meeting the needs of children placed in the home;
- (5) Developing partnerships with children placed in the home, parents or the guardians of the children placed in the home, the licenser, Family Safety and the community to develop and carry out plans for permanency;
- (6) Helping children placed in the home develop skills to manage loss and skills to form attachments;
- (7) Helping children placed in the home manage their behaviors;
- (8) Helping children placed in the home maintain and develop relationships that will keep them connected to their pasts;
- (9) Helping children placed in the home build on positive self-concept and positive family, cultural, and racial identity;
- (10) Providing a safe and healthy environment for children placed in the home which keeps them free from harm;
- (11) Assessing the ways in which providing family foster care or therapeutic foster care affects the family; and
- (12) Making an informed decision regarding providing family foster care or therapeutic foster care.
- (13) Willingness for preparation and training as foster parents, including but not limited to training involving being adequately prepared with the appropriate knowledge and skills to provide for the needs of the child and applying the reasonable and prudent parenting standard.

(b) Age. A license may only be issued to persons 21 years of age and older.

(c) Health. The foster family shall be in good physical and mental health as evidenced by:

- (1) A medical examination completed by a licensed medical provider on each member of the foster home within the last 6 months prior to the initial licensing application date, and biennially thereafter;
- (2) Documentation that each adult member of the household has had a TB skin test or chest x-ray prior to initial licensure unless contraindicated by a licensed medical provider. The foster parents' children are required to be tested only if one or more of the parent's tests positive for TB;
- (3) A medical history form completed on each member of the household at the time of the initial licensing application and on any person who subsequently becomes a member of the household;
- (4) No indication of alcohol abuse, drug abuse, or illegal drug use by a member of the foster family;
- (5) No indication that a member of the foster family is a perpetrator of domestic violence;

- (6) No indication that a member of the foster family has abused, neglected, or exploited a disabled adult;
- (7) no indication that a member of the foster family has been placed on any Sex Offender and/or Central Registry;
- (8) no indication that a member of the foster family has been placed on the Health Care Personnel Registry pursuant to N.C.G.S. 131E-256; and
- (9) no indication that a member of the foster family has been found to have abused or neglected a child or has been a respondent in a child court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child.

(d) Education. Foster parent applicants shall have graduated from high school or received a GED (Graduate Equivalency Diploma) or shall have an ability to read and write as evidenced by their ability to administer medications as prescribed by a licensed medical provider, maintain medication administration logs and maintain progress notes.

(e) Required Applicants. Foster parent applicants who are married are presumed to be co-parents in the same household and both shall complete all licensing requirements. Adults 21 years of age or older, living in currently licensed or newly licensed foster homes who have responsibility for the care, supervision, or discipline of the foster child shall complete all licensing requirements. The licenser shall assess each adult's responsibility for the care, supervision, or discipline of the foster child.

#### **10A CAR 70E .1105 CONFLICT OF INTEREST**

(a) In situations where the department licenses the foster home of members of its advisory board, governance structure, tribal council, and social services committee the following protocol will be followed:

- (1) The foster parent(s) referenced in paragraph (a) will sign an agreement stating that they will not use their position to gain information about the child nor will they use their position to influence decisions on the future of the child.
- (2) PHHS will create a “firewall” between a foster parent referenced in paragraph (a) and the agency. Such foster parent will not be allowed to attend meetings where the child’s case is discussed unless the meeting requires the attendance of the foster parent. Such foster parent will not be allowed to access any information relating to the child’s case, in electronic or paper format, unless authorized by the department.
  - (A) Such foster parent shall not be allowed access to any information relating to the child’s birth parents, unless authorized by the department.
- (3) PHHS will identify a social worker, supervisor or manager who can work with the foster parent without conflict. PHHS will consider the relationship, including familial and personal, the assigned worker has with the foster parent.

- (4) If PHHS determines the foster home cannot be supervised properly then a recommendation will be made to transfer the foster home to another agency, department or jurisdiction, in keeping with the best interests of the child.
- (b) In situations where the department licenses the foster homes of agency employees and/or relatives of agency employees the following protocol will be followed:
- (1) The employee(s) in question will meet with their supervisor to discuss the potential conflicts of interest that may arise.
  - (2) The employee(s) will sign an agreement stating that they understand their position in the agency cannot be used to obtain information about the child's case or gain services.
  - (3) The employee(s) will be restricted from accessing any information, electronic or paper format, in relation to the child's case.
  - (4) The situation will be reviewed by the directors, managers, and/or supervisors. If it is found that the foster home cannot be supervised correctly then a recommendation will be made to move the foster home to another agency, department or jurisdiction, in keeping with the best interests of the child.

#### **10A CAR 70E .1107 RELATIONSHIP TO Licenser**

- (a) Foster parents shall agree to work with the licenser in the following ways:
- (1) Work with the child and the child's parent(s) or guardian(s) in the placement process, reunification process, adoption process, or any change of placement process;
  - (2) Consult with social workers, mental health personnel, licensed medical providers, and other persons authorized by the child's parent(s), guardian(s) or custodian who are involved with the child;
  - (3) Maintain confidentiality regarding children and their parent(s) or guardian(s);
  - (4) Keep records regarding the child's illnesses, behaviors, social needs, educational needs, and family visits and contacts; and
  - (5) Report to the licenser any changes as required by 10A CAR 70E .0902.
- (b) In addition to Subparagraphs (a)(1) through (5) of this Rule, foster parents who provide therapeutic foster care services shall be trained as set out in 10A CAR 70E .1117

## **10A CAR 70E .1108 Fire and building safety**

(a) Each foster home shall be in compliance with all applicable portions of Chapter 143 of the Cherokee Code in effect at the time the foster home was constructed or last renovated. This portion of the code may be accessed at:

[https://www.municode.com/library/nc/chokeee\\_indians\\_eastern\\_band/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH143BUCOFLCO](https://www.municode.com/library/nc/chokeee_indians_eastern_band/codes/code_of_ordinances?nodeId=PTIICOOR_CH143BUCOFLCO)

(b) All homes shall be protected from all fire hazards including the following:

- (1) All hallways, doorways, entrances, ramps, steps, and corridors shall be kept clear and unobstructed at all times;
- (2) An evacuation plan shall be developed, and all persons in the home shall be knowledgeable of the plan;
- (3) A mounted "ABC" fire extinguisher with a rating not less than 1-A shall be installed and readily available in the residence;
- (4) Homes built prior to July 1975 shall have a battery or electric smoke alarm installed outside every sleeping area. Homes built between July 1975 and June 30, 1999, shall have electric smoke alarms placed outside sleeping areas as required by the NC Residential Code in effect at construction time. Homes built after June 30, 1999 shall have smoke alarms in every sleeping room, outside bedrooms and other areas, interconnected as required in the NC Residential Code;
- (5) A Carbon Monoxide (CO) detector shall be installed in homes that use fuel oil products, coal, wood or gas to heat, cool, cook, operate a hot water heater or gas logs;
- (6) All homes shall have telephone service;
- (7) No egress door shall have a double keyed dead bolt; and
- (8) Extension cords shall not be used as a substitute for permanent wiring. Extension cords shall be used only for portable appliances and shall be listed by Underwriters Laboratory (UL).

(c) Before a home is licensed, it shall be inspected and receive a passing rating on the fire and building safety inspection report completed by the local fire inspector. Before a home is relicensed, it shall have a current fire and building safety inspection report with a passing rating completed by the local fire inspector.

## **10A CAR 70E .1109 HEALTH REGULATIONS**

The licenser shall have a discussion regarding water quality and sanitation with the applicants. The licenser shall document the date the discussion was held and include a statement that the family is not aware of any health hazards caused by the family's water and sanitation facilities. The licenser shall ask the family about water testing that has been done and any immediate or past problems concerning water quality and sanitation. As part of the on-site visit, the licenser shall observe that the home has running water. As part of the on-site visit, the licenser shall observe that the home

has a sanitary toilet and bathing facility. Licensure of a foster home shall not be recommended if the licenser has any reason to believe the water supply is not safe or the toilet and bathing facilities are not sanitary.

#### **10A CAR 70E .1110 environmental regulations**

- (a) The home and yard shall be maintained and repaired so that they are not hazardous to the children in care.
- (b) The house shall be kept free of uncontrolled rodents and insects.
- (c) Windows and doors used for ventilation shall be screened.
- (d) The kitchen shall be equipped with an operable stove and refrigerator, running water and eating, cooking, and drinking utensils to accommodate the household members. The eating, cooking, and drinking utensils shall be cleaned and stored after each use.
- (e) Household equipment and furniture shall be in good repair.
- (f) Flammable and poisonous substances, medications, and cleaning materials shall be stored out of the reach of children placed for foster care.
- (g) Explosive materials, ammunition, and firearms shall each be stored separately, in locked places.
- (h) Documentation that household pets have been vaccinated for rabies shall be maintained by the foster parents.
- (i) Each home shall have heating, air-cooling, or ventilating capability to maintain a range between 65° F (18.3° C) and 85° F (29.4° C).
- (j) Rooms including toilets, baths, and kitchens without operable windows, shall have mechanical ventilation to the outside.

#### **10A CAR 70E .1111 ROOM ARRANGEMENTS**

- (a) Each home shall have a family room to meet the needs of the family including children placed for foster care.
- (b) The kitchen shall be large enough for preparation of food and cleaning of dishes. Each home shall have a dining area to meet the needs of the family including children placed for foster care.
- (c) The home shall have bedroom(s) or sleeping areas that are safe, comfortable, and provide privacy for the child(ren).

(d) Children shall not be permitted to sleep in an unfinished basement or in an unfinished attic.

(e) Each child shall have his/her own bed. Each bed shall be provided with a supported mattress, two sheets, blanket, bedspread, and be of size to accommodate the child. No day bed, convertible sofa, or other bedding of a temporary nature shall be used for the exclusive sleeping area of the child except for temporary care for up to two weeks. The sleeping room shall not be shared by children of the opposite sex except by children age five and under. The sleeping arrangements shall provide space within the bedroom for the bed and the child's personal possessions. When children share a bedroom, unless otherwise authorized by the department, a child under six shall not share a room with a child over 12, except when siblings are placed together. No more than four children shall share a room.

(f) Separate and accessible drawer space and closet space for personal belongings and clothing shall be available for each child.

(g) The home shall have indoor, operable sanitary toilet, hand-washing, and bathing facilities. Homes shall be designed in a manner that will provide children privacy while bathing, dressing, and using toilet facilities.

#### **10A CAR 70E .1112 EXTERIOR SETTING AND SAFETY**

The exterior spaces around the foster home, including any yard spaces shall be clear of any dangerous objects or hazardous items including access to water, such as swimming pools, beaches, rivers, lakes, or streams. Access to such hazards shall be avoided by either a fence at least 48 inches high with a locked gate around the hazard, or by a fence at least 48 inches high with a locked gate around the yard and exterior space of the home while still providing play space for children. Access to water in above ground swimming pools shall be prevented by locking and securing the ladder in place or storing the ladder in a place inaccessible to the children. The licenser shall observe and document that the foster parents have taken measures to protect foster children from having unsupervised access to swimming pools, beaches, rivers, lakes, streams, other water sources, or other hazards.

#### **10A CAR 70E .1113 LICENSING COMPLIANCE VISITS**

Licensing social workers of EBCI PHHS shall visit with the foster family on at least a bi-monthly (every two months) basis for the specific purpose of assessing licensing requirements. Three of the bi-monthly visits each year shall take place in the foster home. The licensing social worker may require the remaining visits to occur at a location of the licensing social worker's preference.

#### **10A CAR 70E .1114 CRIMINAL HISTORIES**



(a) An applicant shall not be licensed if the applicant, or any member of the applicant's household 18 years of age or older, refuses to consent to a criminal history check required by 10A CAR 70A Section .0300.

(b) An applicant or any member of the applicant's household is not eligible for licensure if the applicant or any member of the applicant's household has been convicted of a felony involving:

- (1) Child maltreatment;
- (2) Spouse abuse;
- (3) A crime against a child or children (including child pornography); or
- (4) A crime involving violence, including rape, sexual assault, or homicide but not including other physical assault or battery.

(c) An applicant or any member of the applicant's household is not eligible for licensure if the applicant or any member of the applicant's household or any person the applicant allows to have regular access to the home (i.e. a key to the home, eats meals at the home) has within the last five years been convicted of a felony involving:

- (1) Physical assault;
- (2) Battery; or
- (3) A drug-related offense.

(d) An applicant or any members of the applicant's household with criminal convictions except those specified in Paragraph (b) of this Rule may be considered for licensure based on the following factors:

- (1) Nature of the crime;
- (2) Length of time since the conviction;
- (3) Circumstances surrounding the commission of the offense or offenses;
- (4) Number and type of prior offenses;
- (5) Evidence of rehabilitation;
- (6) Age of the individual at the time of the commission of the offense or offenses; and
- (7) Letter of support for licensure from the executive director of the agency.

#### **10A CAR 70E .1115 RESPONSIBLE INDIVIDUALS LIST**

(a) An applicant is not eligible for licensure if the applicant has within the last five years been substantiated for abuse or serious neglect and is placed on a Responsible Individuals List.

(b) After five years, an applicant who is on the Responsible Individuals List may be considered for licensure based on the following factors:

- (1) Nature of the substantiation;
- (2) Length of time since the substantiation;
- (3) Circumstances surrounding the substantiation;
- (4) Evidence of rehabilitation;
- (5) History of convictions and violations; and
- (6) Letter of support for licensure from the executive director of the agency.

(c) The licenser shall provide documentation to the licensing authority of the results of Child Abuse and Neglect Central Registry Checks of states where the applicant has resided the past five years.

#### **10A CAR 70E .1116 CRIMINAL HISTORY CHECKS**

(a) The licenser shall complete the following activities at initial licensure for new foster parent applicants and any member of the prospective foster parents' household 18 years of age or older:

- (1) Provide notice of background checks to be performed in application documentation;
- (2) Obtain a signed consent/authorization form for a criminal history check and submit the signed consent/authorization form to the licenser;
- (3) Obtain two sets of fingerprints on SBI identification cards and forward both sets of fingerprints to the licenser; and
- (4) Conduct a local criminal history check and submit the results of the criminal history checks to the licensing authority.

(b) The licenser shall conduct a local criminal history check and submit the results of the criminal history checks to the licensing authority at relicensure for foster parents and any member of the prospective foster parents' household 18 years of age or older.

(c) Nothing in this Subsection is intended to conflict with the background check provisions of 10A CAR 70A Section .0300.

#### **10A CAR 70E .1117 TRAINING REQUIREMENTS**

Each licenser shall provide, or cause to be provided, preservice and in-service training for all prospective and licensed foster parents as follows:

- (1) Prior to licensure or within six months from the date a provisional license is issued, each applicant shall successfully complete 30 hours of preservice training. Preservice training shall include the following components:
  - (a) General Orientation to Foster Care and Adoption Process;
  - (b) Communication Skills;
  - (c) Understanding the Dynamics of Foster Care and Adoption Process;
  - (d) Separation and Loss;
  - (e) Attachment and Trust;
  - (f) Child and Adolescent Development;
  - (g) Behavior Management;
  - (h) Working with Birth Families and Maintaining Connections;
  - (i) Lifebook Preparation;

- (j) Planned Moves and the Impact of Disruptions;
  - (k) The Impact of Placement on Foster and Adoptive Families;
  - (l) Teamwork to Achieve Permanence;
  - (m) Cultural Sensitivity;
  - (n) Confidentiality;
  - (o) Health and Safety;
  - (p) Reasonable and Prudent Parenting
- (2) Prior to licensure or within six months from the date a provisional license is issued, therapeutic foster parent applicants shall receive at least ten additional hours of preservice training in behavioral mental health treatment services including the following:
- (a) Role of the therapeutic foster parent;
  - (b) Safety planning; and
  - (c) Managing behaviors.
- (3) During the initial two years of licensure, each therapeutic foster parent shall receive additional training in the following areas:
- (a) Development of the person-centered plan;
  - (b) Dynamics of emotionally disturbed and substance abusing youth and families;
  - (c) Symptoms of substance abuse;
  - (d) Needs of emotionally disturbed and substance abusing youth and families; and
  - (e) Crisis intervention.
- (4) Training in first-aid, cardiopulmonary resuscitation (CPR) and universal precautions such as those provided by the American Red Cross, the American Heart Association, or equivalent organizations shall be provided to foster parents before a foster child is placed with the foster family. Training in CPR shall be appropriate for the ages of children in care. First-aid, CPR, and universal precautions training shall be updated as required by the American Red Cross, the American Heart Association, or equivalent organizations. The licenser shall ensure that family foster parents and therapeutic foster parents are trained in medication administration before a child is placed with the foster family.
- (5) Child-specific training shall be provided to the foster parents as required in the out-of-home family services agreement or person-centered plan as a condition of the child being placed in the foster home. When the child or adolescent requires treatment for abuse – reactive, sexually reactive and sexual offender behaviors, specific treatment shall be identified in his/her person-centered plan. Training of therapeutic foster parents is required in all aspects of reactive and offender specific sexual treatment and shall be made available by a provider who meets the requirements specified for a qualified professional. When the child or adolescent

requires treatment for substance abuse, specific treatment shall be identified in his/her person-centered plan. Training and supervision of therapeutic foster parents are required in all aspects of substance abuse and shall be made available by a provider who meets the requirements specified for a qualified substance abuse prevention professional. This training shall count towards the training requirements of Item (6) of this Rule.

- (a) Reasonable and prudent parent training is required and may be continued as necessary after placement of the child and the preparation shall include knowledge and skills relating to the reasonable and prudent parent standard for the participation of the child in **age or developmentally-appropriate activities**, including knowledge and skills relating to the developmental stages of the cognitive, emotional, physical, and behavioral capacities of a child, and knowledge and skills relating to applying the standard to decisions such as whether to allow the child to engage in social, extracurricular, enrichment, cultural, and social activities, including sports, field trips, and overnight activities lasting 1 or more days, and to decisions involving the signing of permission slips and arranging of transportation for the child to and from extracurricular, enrichment, and social activities.

(i) "Age or developmentally-appropriate" means:

- (A) activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally-appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and
- (B) in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

- (6) Prior to licensure renewal, each foster parent shall successfully complete at least twenty hours of in-service training. This training may be child-specific or may concern issues relevant to the general population of children in foster care. In order to meet this requirement:

- (a) Each licenser shall provide, or cause to be provided, at least 10 hours of in-service training for foster parents annually;
- (b) The training shall include subjects that would enhance the skills of foster parents and promote stability for children;
- (c) A foster parent may complete training provided by a community college, a licenser, or other departments of State or county governments; and, upon approval by the licenser, such training shall count towards meeting the requirements specified in this Item; and

- (d) Each licenser shall document in the foster parent record the type of activity the foster parent has completed pursuant to this Item.
- (7) A foster family caring for a child with HIV (human immunodeficiency virus) or AIDS (acquired immunodeficiency syndrome) shall complete six hours of training on issues relevant to HIV or AIDS annually. This training may count towards the training requirements Item (6) of this Rule.
- (8) Training requirements for physical restraint holds pursuant to 10A CAR 70E .1103.

## **CHAPTER 70: CHILDREN'S SERVICES**

### **SUBCHAPTER 70I : GUARDIANSHIP ASSISTANCE PAYMENTS**

#### **SECTION .0100 - PURPOSE AND DEFINITIONS**

##### **10A CAR 70I .0101 PURPOSE**

(a) The purpose of this subchapter is to describe Department criteria for eligibility and receipt of guardianship assistance for a child in the care or custody of the Department.

(b) The Tribe is not responsible for guardianship assistance for a child placed for guardianship by a public child welfare agency other than the Department.

##### **10A CAR 70I .0102 DEFINITIONS**

The following definitions apply to this Subchapter:

(a) "Base rate payment" means a payment to the foster parent or relative caregiver for the costs of providing the child with the following:

- (1) Food — including the cost to cover a child special or unique nutritional needs;
- (2) Clothing — including purchase and replacement;
- (3) Housing — including maintenance of household utilities, furnishings, and equipment;
- (4) Daily supervision — including teaching and directing to ensure safety and well-being at a level which is appropriate based on the child or young adult's chronological age;
- (5) Personal incidentals — including personal care items, entertainment, reading materials, and miscellaneous items; and
- (6) The cost of providing transportation — including local travel associated with expenditure for gas and oil, and vehicle maintenance and repair associated with transportation to and from extracurricular, child care, recreational, and cultural activities.

(b) "Caregiver" means a person with whom a child has resided for 60 consecutive days and provides that child with the care, maintenance and supervision consistent with the duties and responsibilities of a parent, guardian or custodian of the child, and is a:

(1) "Relative" which means:

(A) a person who has reached the age of eighteen who is related by blood or marriage to a child, including but not limited to grandparent, aunt or uncle, brother or sister, in-laws, niece or nephew, first or second cousins or stepparents; or

(B) a person who provides parenting to a child in the traditional Cherokee way; or

(C) an individual with a substantial relationship to the child.

(c) "Child" means a person who has not reached their eighteenth birthday and is not married, emancipated, or a member of the Armed Forces of the United States, or for purposes of the title IV-E guardianship assistance program, child means:

(1) A person who has attained the age of 18 but has not attained 21 years of age who meets one of the following criteria:

(A) The child is completing secondary education or a program leading to an equivalent credential; or

(B) The child is enrolled in an institution which provides post-secondary or vocational education; or

(C) The child is participating in a program or activity designed to promote, or remove barriers to, employment; or

(D) The child is employed for at least 80 hours per month; or

(E) The child is incapable of doing any of the above described activities due to a medical condition.

(d) "Department" means the Department of Human Services.

(e) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(f) "Guardianship assistance" means assistance on behalf of an eligible child to offset the costs associated with establishing the guardianship and meeting the ongoing needs of the child.

"Guardianship assistance" may be in the form of a payment, medical coverage, or reimbursement of guardianship expenses.

(g) "Guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian or guardian setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities

of the guardian and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(h) "Guardianship assistance agreement only" means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian or guardian of an eligible child or young adult, when the potential guardian or guardian is not receiving a guardianship assistance payment or medical coverage at the time of the agreement but may request it at a later date.

(i) "Guardianship assistance base rate" means the portion of the guardianship assistance payment that is negotiated with the guardian and cannot exceed the amount of the foster care base rate payment for the child's age.

(j) "Guardianship assistance payment" means a monthly payment made by the Department to the guardian on behalf of the eligible child.

(k) "Nonrecurring guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian of an eligible child for a one-time payment to reimburse the guardian for the reasonable and necessary expenses incurred in legally finalizing the guardianship.

(l) "Nonrecurring guardianship expenses" means a one-time payment of up to \$2,000 per child that the Department will make to a guardian to assist with the reasonable and necessary expenses associated with obtaining legal guardianship of an eligible child.

(m) "Parent" means a biological or adoptive parent of a child whose parental rights have not been terminated.

(n) "Potential guardian" means an individual who:

(1) Has been approved by the Department or participating tribe to be a child's guardian;  
and

(2) Is in the process of legalizing the relationship to the child through the judgment of the court.

(o) "Sibling" means one of two or more children or young adults related:

(1) By blood or adoption through a common legal parent;

(2) Through the marriage of the legal or biological parents of the children.

## **SECTION .0200 - FUNDING**

### **10A CAR 70I .0201 FUNDING OF GUARDIANSHIP ASSISTANCE**

(a) When grandparents or other approved caregivers make a permanent commitment to and assume legal guardianship of a child for whom they have been a caregiver, the Department provides guardianship assistance as described in this subchapter.

(b) Guardianship assistance for Title IV-E children may be funded in part or in whole with Title IV-E funds as authorized by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351).

## **SECTION .0300 - ELIGIBILITY, APPLICATION AND CASE PLAN REQUIREMENTS**

### **10A CAR 70I .0301 ELIGIBILITY OF GUARDIANSHIP ASSISTANCE**

(a) Benefits in the form of guardianship assistance shall be granted in accordance with the rules of the Division to any dependent child where it has been determined that:

(1) The child has been:

(i) removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and

(ii) eligible for title IV-E foster care maintenance payments while residing for at least 6 consecutive months in the home of the prospective relative guardian.

(2) Being returned home or adopted are not appropriate permanency options for the child.

(3) The child demonstrates a strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child.

(4) With respect to a child who has attained 14 years of age, the child has been consulted regarding the guardianship arrangement.

(5) The child has been placed with a successor guardian named in the guardianship agreement in accordance with 10A CAR 70I .0305.

### **10A CAR 70I .0302 APPLICATION REQUIREMENTS**

(a) Except as described below, the Department must begin negotiation of the guardianship assistance agreement no later than 30 calendar days after receipt of the completed guardianship assistance application.

(1) The Department may delay negotiation following a request by the caseworker, guardian, or potential guardian when there are extenuating circumstances regarding the child or family. The Department must begin negotiation no later than 30 calendar days from notification that the extenuating circumstance causing the delay has been resolved.



(b) A guardianship assistance application is considered complete when the Department has received a signed application and all supporting documentation.

#### **10A CAR 70I .0303 COURT ORDER OF GUARDIANSHIP**

(a) Guardianship assistance may only be provided for a legal guardianship established by the statutory code or laws of the tribe or other jurisdiction.

(b) When a child is in the care or custody of the Department and legal guardianship has been established, the Department must move the court for an order establishing one of the following:

(1) Termination of Department's care or custody and dismissal of the Department or as a party to the case; or

(2) If the child has been committed permanently to the Department, an order setting aside the order of permanent commitment and relieving the Department of responsibility for the care, placement, and supervision of the child.

(c) The Department may not provide guardianship assistance if the court establishes guardianship but orders the Department to continue supervision of the child or guardian.

#### **10A CAR 70I .0304 CASE PLAN REQUIREMENTS FOR A CHILD IN THE CUSTODY OF THE DEPARTMENT**

(a) For a child with respect to whom the permanency plan is placement with a relative and the child is eligible to receive guardian assistance payments, the Department shall include in the case plan a description of:

(1) The steps that the Department has taken to determine that it is not appropriate for the child to be returned home or adopted;

(2) The reasons for any separation of siblings during placement;

(3) The reasons why a permanent placement with a fit and willing relative through a guardianship assistance arrangement is in the child's best interests;

(4) The ways in which the child meets the eligibility requirements for a guardianship assistance payment;

(5) The efforts the Department has made to discuss adoption by the child's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons; and

(6) The efforts made by the Department to discuss with the child's parent or parents the guardianship assistance arrangement, or the reasons why the efforts were not made.

## **10A CAR 70I .0305 GUARDIANSHIP ASSISTANCE AGREEMENTS**

(a) The Department must:

- (1) negotiate and enter into a written, binding guardianship assistance agreement with the prospective relative guardian of a child who meets the requirements of guardianship assistance pursuant to 10A CAR 70I .0301 and C.C. 108-5; and
- (2) provide the prospective relative guardian with a copy of the agreement.

(b) The agreement must specify, at a minimum-

- (1) The amount of, and manner in which, each kinship guardianship assistance payment will be provided under the agreement, and the manner in which the payment may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child;
- (2) The additional services and assistance that the child and relative guardian will be eligible for under the agreement;
- (3) The procedure by which the relative guardian may apply for additional services as needed;
- (4) That the Department will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed \$2,000;
- (5) That the agreement shall remain in effect without regard to the Department's service area or the residency of the relative guardian; and
- (6) Any successor legal guardian, so that in the event of the death or incapacity of the relative guardian, the eligibility of the child for a kinship guardianship assistance payment shall not be affected by reason of the replacement of the relative guardian with a named legal guardian.

## **10A CAR 70I .0306 CHANGES THAT MUST BE REPORTED AND RENEGOTIATION OF GUARDIANSHIP ASSISTANCE AGREEMENTS**

(a) A guardian receiving guardianship assistance must immediately report, orally or in writing, to the Department any changes in circumstances of the child or guardian that makes the child ineligible for guardianship assistance including when:

- (1) The child:
  - (A) Is emancipated;
  - (B) Dies;
  - (C) Marries; or

(D) Is adopted.

(2) The court modifies, vacates or terminates the guardianship.

(b) A guardian receiving guardianship assistance must immediately report, orally or in writing, to the Department any changes in circumstances of the child or guardian that may make the child ineligible for guardianship assistance including when:

(1) The child:

(A) Is out of the home of a guardian for more than a thirty-day period or, if more than one guardian, is out of the home of both guardians for more than a thirty-day period;

(B) Has a change in needs including but not limited to eligibility for a change in the level of care payment;

(C) Is placed in substitute care;

(D) Is no longer receiving financial support from a guardian or, if there is more than one guardian, both guardians;

(E) Is incarcerated for more than three consecutive months; or

(F) Has a change in any benefit received other than tribal per capita payments.

(2) A guardian is, or if more than one guardian, both guardians are:

(A) No longer legally responsible for the financial support of the child;

(B) No longer responsible for the child; or

(C) No longer providing support to the child.

(3) A guardian seeks to terminate or modify the guardianship.

(4) The court:

(A) Modifies the guardianship, or

(B) Awards child custody or guardianship to another individual.

(c) A guardian receiving a guardianship assistance payment must immediately report, orally or in writing, to the Department the following:

(1) When there are two guardians and one guardian dies, the surviving guardian must notify the Department.

(2) When there is a change in address.

(3) When a guardian or child is planning to move from his or her place of residency.

(d) The Department shall:

- (1) Notify the guardian of circumstances that may affect a child's eligibility for guardianship assistance; and
  - (2) Send inquiries to a guardian to ensure the child continues to be eligible for guardianship assistance.
- (e) Guardians must respond to inquiries from the Department within 30 calendar days or as required by the Department.

#### **10A CAR 70I .0307 REVIEW, ADJUSTMENT, SUSPENSION, EXPIRATION AND TERMINATION OF GUARDIANSHIP ASSISTANCE**

- (a) The Department may review a guardianship assistance agreement when the Department:
- (1) Receives information indicating that the child may no longer be eligible for guardianship assistance or may be eligible for guardianship assistance in a different amount, including when the Department receives information regarding any of the circumstances described in 10A CAR 70I .0306;
  - (2) Determines, when the child is not residing in the home of the guardian, that a periodic review of the guardianship assistance agreement is required;
  - (3) Receives information that indicates a review is necessary based on a change in the needs of the child or circumstances of the family;
  - (4) Determines that the guardian has not complied with the requirements of the guardianship assistance agreement.
- (b) Department review of a guardianship assistance agreement may result in a renegotiation, suspension, adjustment, or termination of the guardianship assistance agreement or guardianship assistance payments.
- (c) Guardianship assistance may be adjusted at any time by mutual agreement between the guardian and the Department.
- (d) When there is an across-the-board reduction or increase in the base rate payment or level of care payment that the child would be eligible to receive if the child were in foster care, the Department may, after a case-by-case review and without concurrence of the guardian, adjust the monthly guardianship assistance payment to an amount that does not exceed the new foster care payment the child would be eligible to receive if currently in foster care, as follows:
- (1) In the case of a reduction, only those payments that exceed the amount the child would be eligible for if currently in foster care would be reduced, and the reduction would only be to the amount that the child would be eligible to receive if currently in foster care.
  - (2) In the case of an increase, the Department, considering the needs of the child and the circumstances of the guardian, may increase the guardianship assistance payment to an

amount that does not exceed the new foster care payment the child would receive if currently in foster care.

(e) If, upon review under section (a) of this rule or an adjustment under section (d) of this rule, the Department intends to adjust guardianship assistance without the concurrence of the guardian, the Department will provide the guardian and the child (if 11 or older) with written notice.

(f) Unless terminated under sections (g) or (h) of this rule, the guardianship assistance agreement and the Department's obligation to provide guardianship assistance expires automatically on the date any of the following events occur:

(1) When the child:

(A) Reaches the age of 18 or when the child reaches the age of 21 if the child meets the criteria of a child under 21 as defined in 10A CAR 70I .0102(c);

(B) Is emancipated;

(C) Dies;

(D) Marries;

(E) Is adopted; or

(F) No longer meets the requirements for continued guardianship assistance.

(2) A guardian dies, or if more than one guardian, both die.

(3) The court vacates the guardianship order or otherwise terminates the guardianship or appoints another individual as guardian of the child.

(g) Guardianship assistance may be suspended at any time by mutual agreement between the Department and the guardian.

(h) After a review and on a case-by-case basis, the Department may terminate a guardianship assistance agreement upon ten calendar days written notice to the potential guardian or guardian when the Department determines that:

(1) The potential guardian or guardian is no longer responsible for the child;

(2) The potential guardian or guardian is no longer providing support to the child; or

(3) The child is no longer eligible for guardianship assistance or is eligible for guardianship assistance in a different amount.

(i) If a child receiving guardianship assistance is subsequently adopted by the guardian, the child may be eligible for adoption assistance (see 10A CAR 70M and the Title IV-E Eligibility and Reimbursability Handbook Section 13).

**SECTION .4000 - MEDICAID, SOCIAL SERVICES AND OTHER FEDERALLY ASSISTED PROGRAMS**

**10A CAR 70I .0401 MEDICAID, SOCIAL SERVICES AND GUARDIANSHIP ASSISTANCE**

- (a) For the purposes of titles XIX and XX of the Social Security Act (“SSA”) any eligible child for whom there is a guardianship assistance payment being made pursuant to the provisions of title IV-E of the SSA is deemed to be:
- (1) a dependent child, as defined by Aid to Families with Dependent Children (“AFDC”) in effect on July 16, 1996; and
  - (2) a recipient of AFDC under title IV-A of the SSA in the State in which the child resides.

**SUBCHAPTER 70L – WAIVER PROCEDURES, DENIAL, AMENDMENT, SUSPENSION, REVOCATION, TERMINATION AND APPEAL PROCEDURES**

**SECTION .1000 – GENERAL PROVISIONS AND WAIVERS**

**10A CAR 70L .0101 GENERAL PROVISIONS**

- (a) Unless otherwise defined herein, the definitions of 10A Chapter 70, Cherokee Code Chapters 7B and 150 shall apply to this Subchapter.
- (b) Definitions:
- (1) Agreement – means any contract entered into by the Division or any of its subordinate units with another party which generally provides for the provision of some service, support, assistance or other understanding between the Division and such other party.
  - (2) Application – means any formal request made for services, support, or assistance provided by the Division.
- (c) Purpose:
- (1) The purpose of this Subchapter is to establish a uniform system that the Division can utilize to ensure that its determinations and administrative procedures are carried out and implemented in accordance with the policies, rules, and laws adopted and established by the Tribe, and are consistent with due process and other applicable protections, to bring parties efficient and high quality public service under the basic guarantees of due process while also encouraging the informal solution of administrative issues.
- (d) Scope – This Subchapter applies to the Division and all of its subordinate units.

## **10A CAR 70L .0102 WAIVER OF LICENSING RULES**

(a) The PHHS Department of Regulatory & Compliance is the licensing authority and shall allow a waiver to a licensing rule or rules to persons subject to licensure in accordance with the following criteria:

- (1) Persons seeking a waiver shall submit a written request on a form developed by the licensing authority, to the licensing authority showing that another way of meeting a rule maintains the health, safety, and well-being of individuals being served at or above the level required by the rule.
- (2) No waiver shall be allowed by the licensing authority to any rule governing fire safety.
- (3) The waiver when allowed remains in effect for the term of the license and may be renewed if the licensing authority determines that the health, safety and well-being of individuals being served are not threatened.
- (4) Upon receipt of the waiver request form, a decision to grant or deny the waiver shall be made by the licensing authority within 10 business days of its receipt.

## **SECTION .0200 – DENIAL: AMENDMENT: SUSPENSION: REVOCATION: TERMINATION**

### **10A CAR 70L .0201 DENIAL, AMENDMENT, SUSPENSION AND REVOCATION OF LICENSE**

(a) **Denial:** The EBCI PHHS Department of Regulatory & Compliance is the licensing authority and shall deny a license at any time for failure to comply with adopted licensing rules or for operating in a manner that threatens the health, safety or well-being of individuals in the facility or home or who are otherwise served by the department. In addition, the licensing authority may deny an application based on a determination that:

- (1) The applicant is not in compliance with rules for which the applicant is seeking licensure;
- (2) The licensing authority has initiated revocation proceedings against any licensee for violation or non-compliance with applicable rules.
- (3) There is a pending appeal (including a request for reconsideration, reconsideration hearing, mediation or contested case under 10A CAR 70L .0301) of a denial, status change or revocation against any licensee;
- (4) The applicant has an individual as part of their governing body or management who previously held a license which was revoked or summarily suspended;

(5) Where applicable, the applicant is an individual who has a finding or pending investigation by the Health Care Professional Registry in accordance with N.C.G.S. 131E-256, or has otherwise failed to successfully completed a required background check

**(b) Notice:** When the department of regulatory and compliance determines that an application for a license is denied, the following applies:

(1) Pursuant to C.C. 150-11 and 10A CAR 70L .0301, the applicant shall be given an opportunity to provide reasons why the license should be issued in a request for reconsideration of the determination.

(2) The licensing authority shall within thirty (30) days of receipt of request for reconsideration, respond to the requesting party with an official interpretation issued by the hearing officer or committee.

(3) Upon receipt of the official interpretation, the applicant may, within thirty (30) days, do one of the following as provided in C.C. 150, Article 3 and 10A CAR 70L .0301:

(A) Make a request for a reconsideration hearing; or

(B) Make a request for the parties to pursue mediation; or

(C) If all parties do not agree to mediation, an interested party may challenge the decision of the official interpretation by filing a petition for a contested case to be heard by an administrative law judge in the Cherokee Court, as provided in C.C. Chapter 150, Article 4.

(4) The application shall not be issued until a final decision is made by either:

(A) An official interpretation if not further challenged; or

(B) A decision made after a reconsideration hearing or mediation; or

(C) A decision made by an administrative law judge after a contested case hearing.

(5) The facility or licensee shall not operate until a decision is made to issue a license, despite an appeal action.

**(c) Amendment:** The licensing authority may amend a license to indicate a provisional status whenever the licensing authority determines there are violations of rules, but the violations do not pose an immediate threat to the health, safety or welfare of the clients served. The following applies to provisional status:

(1) Provisional status shall be approved for not less than thirty (30) days and not more than six (6) months.

(2) Provisional status shall be effective immediately upon notice to the licensee and must be posted in a prominent location, accessible to public view, within the licensed premises.



(3) The facility shall inform each client residing or receiving services from the facility or their legally responsible person concerning the facility's provisional status.

(4) A regular license shall be issued when a facility is determined by the licensing authority to be in compliance with applicable rules.

(5) If a facility fails to comply with the rules within the time frame for the provisional status, the license shall automatically terminate on the expiration date of the provisional status.

(6) If a licensee has a provisional status at the time that the licensee submits a renewal application, the license, if renewed, shall also be of a provisional status unless the licensing authority determines that the violations have been corrected.

(7) A decision to issue a provisional status shall not be stayed during the period of an appeal for a contested case as specified in C.C. 150-18(d) and the licensee may not continue to display its license during the period for a reconsideration hearing, mediation or appeal, unless otherwise stated in the licensing authority's official determination or as ordered by the reviewing administrative law judge.

**(d) Status Change:** The following applies to a status change:

(1) The licensing authority shall issue a status change and include any findings that the public health, safety or welfare considerations require action to be taken against the license.

(2) A license status change shall be effective on the date specified in the notice or on the date of service of the notice at the last known address of the licensee, whichever is later.

(3) The licensee may contest the change in status by following the process outlined in 10A CAR 70L .0301.

**(e) Revocation:** The licensing authority shall revoke a license at any time for failure to comply with rules adopted by the licensing authority or for operating in a manner that threatens the health, safety or well-being of individuals in the facility or home. . Revocation of licensure by the licensing authority shall be affected by mailing to the applicant or license holder, by certified mail, a notice of determination setting forth the particular reasons for such action. A revocation shall become effective 30 days after the mailing of the notice absent a request for reconsideration as specified in 10A CAR 70L .0301. In the event of a petition for a contested case hearing a revocation shall not become effective until a final decision is made in the contested case hearing.

#### **10A CAR 70L .0202 DENIAL, AMENDMENT, OR TERMINATION OF AN AGREEMENT, APPLICATION OR PROVISION OF SERVICES, SUPPORT OR ASSISTANCE**

**(a) Denial:** The EBCI PHHS Department of Regulatory & Compliance ("Department of R&C") shall deny an application or agreement at any time for failure to comply with policies,

procedures, rules or laws adopted or established by the Tribe. In addition, the Department of R&C may deny an application or agreement based on a determination that:

- (1) The applicant or party to an agreement is not in compliance with rules for which the applicant is seeking services, support or assistance;
- (2) The Department of R&C has initiated amendment or termination proceedings against any applicant or party to an agreement for violation or non-compliance with applicable rules.
- (3) There is a pending appeal (includes a request for reconsideration, reconsideration hearing, mediation or contested case under 10A CAR 70L .0302) of a denial, amendment or termination determination against any applicant or party to an agreement for the same or related application or agreement;
- (4) Where applicable, the applicant or party to an agreement is an individual who failed to successfully completed a required background check.

**(b) Notice:** When the Department of R&C determines that an application or agreement is denied, the following applies:

- (1) Pursuant to C.C. 150-11 and 10A CAR 70L .0302, the applicant or party to an agreement shall be given an opportunity to provide reasons why the application or agreement should be approved in a request for reconsideration of the determination.
- (2) The Department of R&C shall within thirty (30) days of receipt of the request for reconsideration, respond to the requesting party with an official interpretation issued by the hearing officer or committee.
- (3) Upon receipt of the official interpretation, the applicant or party to an agreement may, within thirty (30) days, do one of the following as provided in C.C. 150, Article 3 and 10A CAR 70L .0302:
  - (A) Make a request for a reconsideration hearing; or
  - (B) Make a request for the parties to pursue mediation; or
  - (C) If all parties do not agree to mediation, an interested party may challenge the decision of the official interpretation by filing a petition for a contested case to be heard by an administrative law judge in the Cherokee Court, as provided in C.C. Chapter 150, Article 4.
- (4) The application or agreement shall not be approved or effective until a final decision is made by either:
  - (A) An official interpretation if not further challenged; or
  - (B) A decision made after a reconsideration hearing or mediation; or

(C) A decision made by an administrative law judge after a contested case hearing.

**(c) Amendment:** The Department of R&C may amend an application or agreement whenever the Department of R&C determines there are violations or non-compliance with policies, rules, laws or terms of an application or agreement, but the violations or non-compliance do not pose an immediate threat to the health, safety or welfare of those involved. The following applies to amendments in applications or agreements:

(1) An application or agreement shall be amended when it is determined that such amendment is required to maintain compliance with applicable policies, rules and laws established by the Tribe or found within the terms of an agreement.

(2) If an applicant or party to an agreement fails to comply with promulgated amendments within a time frame that may be established by the amended application or agreement, the application or agreement shall be subject to termination upon the expiration date established therein.

(3) If challenged, a determination made to amend an application or agreement is not effective during the request for reconsideration, reconsideration hearing, mediation or appeal, unless otherwise stated in the Department of R&C's official determination or as ordered by the reviewing administrative law judge.

(A) An amendment to an application or agreement may be challenged pursuant to 10A CAR 70L .0302.

**(d) Termination:** The following applies to the termination of an agreement or the provision of services, supports, or assistance:

(1) The Department of R&C may terminate an agreement or the provision of services, supports, or assistance whenever the Department of R&C determines there are violations or non-compliance with policies, rules or laws adopted or established by the Tribe or where there has been violation or non-compliance with terms of an application or agreement.

(2) The Department of R&C shall terminate only those services, supports, assistance or agreements as necessary to ensure compliance with policies, rules or laws adopted or established by the Tribe or with terms of an application or agreement.

(3) Termination shall be effective on the later of either:

(A) The date specified in the determination of termination; or

(B) The date of service of the determination of termination at the last known address of the recipient of services, support, or assistance or party to an agreement.

(3) The recipient of services, supports, or assistance, or a party to an agreement may contest the determination of termination by following the process outlined in 10A CAR 70L .0302.

(A) Unless otherwise provided, the termination may not be stayed until a final decision is made. If the termination is later reversed and the services, supports, assistance or agreement is reinstated, such services, supports, assistance or other terms of an agreement shall be provided retroactively.

## **SECTION .0300 – APPEAL PROCEDURES**

### **10A CAR 70L .0301 LICENSURE APPEAL PROCEDURES**

(a) Within 30 days of the decision to deny, suspend or revoke a license the applicant or license holder may make a request for reconsideration of the determination made by the licensing authority. See C.C. 150-11. All requests for reconsideration must be in writing and contain a statement of the facts prompting the request sufficient to allow for appropriate processing by the licensing authority.

(b) The request for reconsideration of the licensing authority's determination shall be delivered in person, by mail, facsimile, or electronic mail to the PHHS Director of Regulatory and Compliance. This contact information will be provided in the licensing authority's determination and can also be obtained by calling PHHS at 828-554-6180.

(c) As set out in C.C. Chapter 150-11, upon receipt of the request for reconsideration, the licensing authority must issue an official interpretation within thirty (30) days.

(d) Once the applicant or licensee receives the official interpretation from the licensing authority, the applicant or licensee may, within thirty (30) days, do one of the following:

(1) Make a request in writing, in the same manner as Subsection (b), for a reconsideration hearing to be held by the licensing authority's hearing officer or committee; or

(2) Request for the parties to pursue mediation; or

(3) If all parties do not agree to mediation and the contesting applicant or licensee does not wish to participate in a reconsideration hearing, the contesting applicant or licensee may challenge the official interpretation of the licensing authority by filing a petition for a contested case to be heard by an administrative law judge in the Cherokee Court, pursuant to C.C. 150-16(b) and C.C. 150, Article 4.

(e) Any determination and/or official interpretation, except for that of revocation, shall be in full force and effect during any request for reconsideration, reconsideration hearing, mediation or contested case hearing.

**10A CAR 70L .0302 APPEAL PROCEDURES FOR DENIALS, AMENDMENTS, OR TERMINATIONS OF AN AGREEMENT, APPLICATION, OR THE PROVISION OF SERVICES, SUPPORTS OR OTHER ASSISTANCE**

(a) Within 30 days of the decision to deny, amend or terminate an agreement, application or the provision of services, supports or other assistance, the applicant, a party to an agreement or recipient of services, supports or other assistance (“applicant, party, or recipient”) may make a request for reconsideration of the determination made by the Department of R&C. See C.C. 150-11.

(1) All requests for reconsideration must be in writing and contain a statement of the facts prompting the request sufficient to allow for appropriate processing by the Department of R&C.

(b) The request for reconsideration of the Department of R&C’s determination shall be delivered in person, by mail, facsimile, or electronic mail to the PHHS Director of Regulatory and Compliance. This contact information will be provided in the determination and can also be obtained by calling PHHS at 828-554-6180.

(c) Upon receipt of the request for reconsideration, the Department of R&C must issue an official interpretation within thirty (30) days.

(d) Once the applicant, party, or recipient receives the official interpretation from the Department of R&C, the applicant, party, or recipient may, within thirty (30) days, do one of the following:

(1) Make a request in writing, in the same manner as Subsection (b), for a reconsideration hearing to be held by the Department of R&C’s hearing officer or committee; or

(2) Request for the parties to pursue mediation; or

(3) If all parties do not agree to mediation and the contesting applicant, party or recipient does not wish to participate in a reconsideration hearing, the contesting applicant, party or recipient may challenge the official interpretation of the licensing authority by filing a petition for a contested case to be heard by an administrative law judge in the Cherokee Court, pursuant to C.C. 150-16(b) and C.C. 150, Article 4.

(e) Unless otherwise provided, any determination and/or official interpretation, shall be in full force and effect during any request for reconsideration, reconsideration hearing, mediation or contested case hearing.

**CHAPTER 70: CHILDRENS SERVICES**

**SUBCHAPTER 70M - ADOPTION ASSISTANCE**

**SECTION .0100 - TITLE IV-E ADOPTION ASSISTANCE ELIGIBILITY**

## 10A CAR 70M .0101 GENERAL PROVISIONS

(a) To be eligible for Title IV-E adoption assistance a child must:

- (1) Meet the age requirements specified in the Title IV-E Eligibility and Reimbursability Policy Manual (“IV-E Manual”) at 13.2.2.2; and
- (2) Meet one of the applicable child eligibility criteria as specified in section (b) of this rule; or
- (3) Meet one of the non-applicable child eligibility criteria specified in section (d) of this rule.
- (4) Effective October 1, 2011, to be eligible for an extension of Title IV-E adoption assistance through age 20, the young adult must also be part of an adoption assistance agreement that was made effective after the child reached 16 years of age, but before the child attained 18 years of age.

(b) For the purposes of this rule an "applicable child", as defined in section 473(e) of the Social Security Act, is a child who meets the requirements of at least one of the following subsections:

- (1) The child's oldest age attained in the current federal fiscal year (October 1 through September 30) meets the applicable child age requirements;
  - (A) The applicable child age requirements are set forth in the IV-E Manual at 13.2.2.2, which by this reference, is incorporated into this rule.
  - (B) A printed copy of this IV-E Manual may be obtained by contacting the Division of Public Health and Human Services (“PHHS”), Regulatory and Compliance Department.
- (2) The child has been in foster care under the responsibility of the Department for any 60 consecutive month period prior to finalization of the adoption; or
- (3) The child is a sibling of another child the Department has determined is an applicable child and both children are placed in the same adoption arrangement.
- (4) A child found to be an applicable child under subsections (b)(1) to (3) of this section must meet the applicable child eligibility requirements, inclusive of the special needs criteria, described in section 473(a)(2)(A)(ii) of the Social Security Act and in the IV-E Manual at 13.2.2.4, to be eligible for Title IV-E adoption assistance.

(c) An applicable child is not eligible for Title IV-E adoption assistance when:

- (1) The child is not a citizen or resident of the United States; and
- (2) The child was adopted outside of the United States or was brought into the United States for the purpose of being adopted.

(3) A child that is not a citizen or resident of the United States, and was adopted outside of the U.S. or brought into the U.S. for the purpose of being adopted may be eligible for Title IV-E adoption assistance for any subsequent adoptions if the initial adoption fails and the child is placed into foster care. For the subsequent adoption, the child will have to meet the Title IV-E eligibility requirements under this rule.

(d) A child who does not meet the applicable child criteria in section (a) must qualify under one of the following subsections:

(1) The child's eligibility for Title IV-E foster care was established at the time of removal.

(2) The child meets all eligibility requirements for Supplemental Security Income (SSI) benefits.

(3) The child's payments in a licensed family foster home or private child caring agency are covered by the foster care maintenance payment being made for his or her minor parent.

(4) The child's eligibility for an adoption assistance payment was established for a prior adoption and the child is now available for adoption because of one of the following:

(A) The prior adoption has been dissolved and the parental rights of each adoptive parent have been suspended, terminated or relinquished; or

(B) Each adoptive parent of the child has died.

(e) Independent Adoptions. To be eligible for Title IV-E adoption assistance, a child voluntarily relinquished to an individual must meet the following criteria:

(1) The child meets the eligibility criteria for Supplemental Security Income (SSI); or

(2) The child is in a subsequent adoption and he or she received Title IV-E adoption assistance in a previous adoption.

(3) The child must meet the special needs criteria (as described in IV-E Manual 13.2.2.4).

(f) Eligibility after Removal from an Adoption Assistance Placement.

(1) Finalized Adoption: When a child in a finalized adoption is placed in substitute care:

(A) The department must open a new case for the child; and

(B) An eligibility determination must be performed for Title IV-E foster care, based on the removal from the adoptive parents.

(2) Non-finalized Adoption: When a child in a non-finalized adoptive placement is placed in substitute care:

(A) The department must open a substitute case plan for the child; and

(B) An eligibility redetermination must be performed for Title IV-E foster care, based on the original removal of the child.

(g) Eligibility for Title IV-E adoption assistance may not be presumed for a child placed with a guardian, and receiving a guardianship assistance payment through the Department's Guardianship Assistance program. An adoption assistance eligibility determination must be completed based on the original removal of the child.

## **SECTION .0200 - ORGANIZATION AND ADMINISTRATION - RESERVED**

## **SECTION .0300 - FUNCTIONS OF DHS AS AN ADOPTION AGENCY**

### **10A CAR 70M .0301 GENERAL PROVISIONS**

(a) DHS as a child-placing agency shall perform the following functions which include but are not limited to:

- (1) Provision of casework and other supportive services to biological parents considering adoption;
- (2) Provision of casework and other supportive services to the child considered for adoption;
- (3) Provision of casework and other supportive services to adoptive applicants through pre-placement assessments;
- (4) Selection of home and placement process;
- (5) Supervision after placement;
- (6) Fulfillment of social and legal responsibilities;
- (7) Compilation and preservation of complete case records;
- (8) Provision of post-adoption services.

### **10A CAR 70M .0302 PREPLACEMENT ASSESSMENT**

(a) The agency shall complete a preplacement assessment within 30 days after the application for adoption has been approved and the request for the assessment has been received. In a case involving a single adoptive applicant, there shall be two separate face-to-face interviews occurring on two different dates. In a case involving joint applicants, there shall be a separate face-to-face interview with each applicant and an additional two face-to-face interviews with both applicants. At least one interview shall be conducted in the applicants' home. There shall be separate face-to-



face interviews with each member of the household ten years of age or older. The assessment process shall be a joint effort of the adoption agency and the applicants to determine the kind of child the applicants can best parent. Any assessment that was completed 18 months or more before placement of a child occurs shall be updated to include current information about the family. Any agency updating a preplacement assessment not originally completed by that agency assumes responsibility for the entire assessment, and the new assessment shall reflect that it is the responsibility of the agency conducting the update. Physical examinations of family members shall be current to within 18 months of the assessment.

(b) The agency shall assess the following areas and shall record the information in the adoptive applicants' record:

- (1) the applicants' reasons for wanting to adopt;
- (2) the strengths and needs of each member of the household;
- (3) the attitudes and feelings of the family, extended family, and other individuals involved with the family toward accepting adoptive children, and parenting children not born to them;
- (4) the attitudes of the applicants toward the birth parents and in regard to the reasons the child is in need of adoption;
- (5) the applicants' attitudes toward child behavior and discipline;
- (6) the applicants' plan for discussing adoption with the child;
- (7) the emotional stability and maturity of applicants;
- (8) the applicants' ability to cope with problems, stress, frustrations, crises, and loss;
- (9) the applicants' ability to give and receive affection;
- (10) the applicants' child-caring skills and willingness to acquire additional skills needed for the child's development;
- (11) the applicants' ability to provide for the child's physical and emotional needs;
- (12) whether the applicant has ever been convicted of a crime other than a minor traffic violation;
- (13) the strengths and needs of birth children or previously adopted children,
- (14) the applicant's physical and mental health, including any addiction to alcohol or drugs;
- (15) financial information provided by the applicant, including property and income;
- (16) the applicants' personal character references;
- (17) the applicant's religious orientation, if any;
- (18) the location and physical environment of the home;
- (19) the plan for child care if parents work;
- (20) recommendations for adoption in regard to the number, age, sex, characteristics, and special needs of children who could be best served by the family;
- (21) any previous request for an assessment or involvement in an adoptive placement and the outcome of the assessment or placement;
- (22) whether the individual has ever been a respondent in a domestic violence proceeding or a proceeding concerning a minor who was allegedly abused, neglected, dependent, undisciplined or delinquent, and the outcome of the proceeding or whether the individual has been found to have abused or neglected a child or has been a respondent in a child court proceeding that resulted in the

- removal of a child or has had child protective services involvement that resulted in the removal of a child;
- (23) documentation of the results of the search of the Responsible Individual's List for all adult members of the household that indicates they have not had child protective services involvement resulting in a substantiation of child abuse or serious neglect;
  - (24) documentation of the results of Child Abuse and Neglect Central Registry Checks of states where the applicant has resided the past five years;
  - (25) whether the applicant has located a parent interested in placing a child for adoption with the applicant, and a brief, non-identifying description of the parent and the child;
  - (26) the applicants' age, date of birth, nationality, race or ethnicity; enrollment status;
  - (27) the applicant's marital and family status and history, including the presence of any children born to or adopted by the applicant, and any other children in the household;
  - (28) the applicant's educational and employment history and any special skills; and
  - (29) any additional fact or circumstance that may be relevant to a determination of the applicant's suitability to be an adoptive parent, including the quality of the home environment and the level of functioning of any children in the household.

When any of the information listed in this Paragraph is not reasonably available, the preplacement assessment shall state why the information is unavailable.

(c) The assessment shall be prepared and typed by the agency and shall be reviewed by the agency's adoption review committee, signed and dated by an authorized agency representative when complete and final, and shall become part of the applicants' permanent record. The agency's adoption review committee shall be composed of a minimum of three members, including an agency representative in a management position in children's services, the child's social worker(s) responsible for the placement and adoption functions of the child's case, and an at-large member selected by the agency.

(d) Once the agency has made a decision regarding the suitability of the applicant as an adoptive placement, the preplacement assessment shall include documentation of the factors which support that determination. If the agency determines that the applicant is not suitable to be an adoptive parent, the assessment shall state the specific concerns that support the determination. A specific concern is one that reasonably indicates the placement of any minor, or a particular minor, in the home of the applicant would pose a significant risk of harm to the well-being of the minor.

(e) The agency preparing the preplacement assessment may redact from the assessment provided to the placing parent or guardian information reflecting the prospective adoptive parent's financial account balances and information about the prospective adoptive parent's extended family members, including surnames, names of employers, names of schools attended, social security numbers, telephone numbers and addresses.

## **10A CAR 70M .0303 NOTIFICATION REGARDING PREPLACEMENT ASSESSMENT**

- (a) The agency shall notify the client who was the subject of a preplacement assessment whether the assessment was favorable or unfavorable within 30 days after the agency completes the assessment.
- (b) The agency shall share with the client the specific reasons a child cannot be placed in their home if the preplacement assessment is unfavorable.
- (c) The client may request an internal review by the executive director of the adoption agency if the client disagrees with the unfavorable preplacement assessment.
- (d) The client may use the procedures set out in 10A CAR 70L to contest an unfavorable preplacement assessment.

### **10A CAR 70M .0304 LEGAL PROCESS**

- (a) The department shall instruct the adoptive parents in procedures regarding the legal process for adoption and shall instruct them on how to file their adoption petition.
- (b) The department shall prepare and file the required consents and other documents and reports with the court at the appropriate times once the adoption petition has been filed.
- (c) During the process of preparing court reports, the petitioner, and each member of the petitioner's home shall be interviewed by the department social worker in the petitioner's home. An additional interview shall be conducted in the presence of the petitioner and the adoptee to observe interactions between them.

### **10A CAR 70M .0305 RECORDS**

- (a) The agency shall keep separate records for each adoptive applicant and family that contain the following:
  - (1) application form;
  - (2) certified copies of marriage certificates, if applicable;
  - (3) certified documentation of marriage termination, if applicable;
  - (4) current medical records on all family members and psychological or psychiatric reports, if applicable;
  - (5) references from at least three sources;
  - (6) preplacement assessment conducted by the agency;
  - (7) copies of correspondence to, from, and in regard to the applicants;
  - (8) summary and dates and content of contacts prior to and following approval for adoption until the decree of adoption is entered;
  - (9) copies of information given to the applicant and family concerning the child or children to be placed for adoption with them;
  - (10) copies of all legal documents pertaining to the adoption; and
  - (11) summary containing the placement decision, pre-placement and post-placement contacts with the family and child.

(b) In the event the applicants were not accepted or did not have a child placed with them, the record shall contain a narrative indicating the reasons and the manner in which the decision was presented to the applicants. The agency may destroy in office the closed records of applicants who were not accepted or who did not have a child placed with them three years after the date of their application or application denial, unless included in a federal or state fiscal or program audit that is unresolved. The agency may destroy the record in office when released from all audits.

(c) All individual children, birth parents and adoptive family records shall be permanently retained by the agency. After a period of seven years, the files may be microfilmed or scanned in accordance with provisions of following which the original files may be destroyed by a shredding process.

(d) All children, birth parents and adoptive applicant and family records shall be kept in locked quarters and information from the files may be divulged only in compliance with provisions of the CAR, tribal code, the department's policies and procedures and federal law.

#### **10A CAR 70M .0306 ADOPTIVE HOME RECRUITMENT – RESERVED.**

### **SECTION .0400 – ADOPTION ASSISTANCE PAYMENTS**

#### **10A CAR 70M .0401 ADOPTION ASSISTANCE PAYMENT ELIGIBILITY**

(a) Eligibility for Title IV-E adoption assistance payments for Applicable and non-applicable children shall be determined based on the criteria set forth in Section 13.2 of the Title IV-E Eligibility and Reimbursability Policy Manual.

(b) An adoption assistance agreement made in accordance with the requirements of 10A CAR 70M .0402 must be completed before adoption assistance payments can be provided.

(c) Adoption assistance benefits for which a child may be eligible shall become effective the first month following the month in which the Decree of Adoption is issued.

#### **10A CAR 70M .0402 ADOPTION ASSISTANCE AGREEMENT**

(a) The department shall not provide any adoption assistance payments prior to the completion of an adoption assistance agreement that meets the requirements of this Subsection.

(b) All adoption assistance agreements are binding on all parties and must be:

- (1) A written instrument;
- (2) Entered into by the prospective adoptive parent(s) and the department;
- (3) Signed by all parties to the agreement; and
- (4) Executed prior to the final decree of adoption.

(c) The adoption assistance agreement must contain the following:

- (1) The responsibilities of the parties;
- (2) Detailed financial reporting requirements including but not limited to the:
  - (A) Types and amount of assistance;
  - (B) Eligibility for Medicaid, if applicable;
  - (C) Types of services available and conditions under which benefits may be increased or decreased; and
  - (D) Date for beginning and ending benefits and services.

**SECTION .0500 - OUT-OF-STATE ADOPTION FEES – GENERAL-RESERVED.**

**SECTION .0600 - NON-RECURRING ADOPTION COSTS: GENERAL**

**10A CAR 70M .0601 PURPOSE OF REIMBURSEMENT OF NON-RECURRING ADOPTION EXPENSES**

Reimbursement of non-recurring adoption expenses incurred by adoptive parents shall be provided by DHS in accordance with requirements set forth in this Section to facilitate the adoption of children with special needs, and in accordance with procedures established by the State Division of Social Services.

**10A CAR 70M .0602 DEFINITIONS**

Non-recurring costs for which reimbursement can be claimed are those costs associated with the adoption that are incurred prior to or at the time of the adoption and which include:

- (1) Reasonable and necessary adoption fees;
- (2) Court costs;
- (3) Attorney's fees;
- (4) Adoptive home study;
- (5) Physical examinations;
- (6) Pre-adoption and any other assessments that may be required;
- (7) Supervision of the placement prior to entry of the final order of adoption; and

(8) Transportation and costs of lodging and food for the child and adoptive parents when necessary to complete the adoptive process.

### **10A CAR 70M .0603 REQUIREMENTS**

The non-recurring expenses of a person who adopts a child with special needs will be reimbursed up to the maximum allowable amount based on the following criteria:

- (1) The child cannot or should not be returned to the home of his parents.
- (2) The child has been determined by the department to have special needs due to one or more of the following:
  - (a) The child's ethnic background, age,; or
  - (b) The child has a medical condition or physical, mental or emotional handicap; or
  - (c) The child is a member of a minority group or sibling group being placed together.
- (3) Reasonable but unsuccessful efforts have been made to place the child into an adoptive home without providing adoption assistance, except when it would be against the best interests of the child to seek a family other than the one with which he has been living as a foster child and with whom he has established significant emotional ties.
- (4) On or before entry of the final order of adoption a written agreement concerning reimbursement of non-recurring costs is entered into between the department and a person who adopts a child with special needs.

### **10A CAR 70M .0604 REIMBURSEMENT FOR NON-RECURRING ADOPTION EXPENSES**

- (a) The maximum amount for which adoptive parents will be reimbursed for all non-recurring adoption expenses shall not exceed two thousand dollars (\$2,000).
- (b) No maximum rates for specific reimbursable services shall be established by the department.

### **CHAPTER 70: CHILDRENS SERVICES**

#### **SUBCHAPTER 70N – DELINQUENCY PREVENTION – Reserved.**

### **CHAPTER 70: CHILDRENS SERVICES**

#### **SUBCHAPTER 700 – SERVICES TO THE EMOTIONALLY DISTURBED- Reserved.**

