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CHAPTER 37

04-01-80

INVOLUNTARY TREATMENT OF MENTALLY ILL PERSONS

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37-01-01 DEFINITIONS

37-01-02 Mental Health Professional mean:

1. A licensed psychiatrist;
2. A licensed clinical psychologist;
3. A psychiatric social worker with a master's degree from an accredited program;
4. A registered nurse with a minimum of two years of psychiatric or psychological clinical experience under the supervision of a qualified mental health professional as defined by (1) and (2) above;
5. A licensed physician.

37-01-03 Mentally Ill Person - means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgement, or discretion in the conduct of personal affairs and social relationships. "Mentally Ill Person" does not include a mentally retarded or mentally deficient person of significantly subaverage general intellectual functioning which originated with impairment in adaptive behavior. Drug addiction and alcoholism do not, per se, constitute mental illness, although persons suffering from these conditions may also be suffering from mental illness.

37-01-04 Persons Requiring Treatment - means either:

1. A person who mentally ill, and who, as a result of such condition can reasonably be expected to inflict intentional or unintentional and imminent serious physical harm on himself or another person, and who has engaged in an act or acts that substantially support this expectation; or
2. A person who is mentally ill, and who as a result of such condition is unable to attend to his basic physical needs, such as food, clothing, or shelter; that, must be attended to for him to avoid serious harm, and who has demonstrated that inability by failure to meet those basic physical needs.

37-01-05 Person Requiring Emergency Treatment - means a mentally ill person in such condition that immediate treatment is necessary for the protection from physical harm of himself and others.

37-01-06 Counsel - means a licensed attorney or lay advocate.

37-02-01 **PERSON ACTING IN GOOD FAITH NOT SUBJECT TO CIVIL OR CRIMINAL LIABILITY**

Any person acting in good faith upon either actual knowledge or reliable information, who shall make application for commitment pursuant to this Chapter, shall not be subject to civil or criminal for such act. Any person, who without probable cause shall make application for commitment alleging that another person is mentally ill, may be liable for prosecution.

37-03-01 **TREATMENT PETITION**

Proceedings for the involuntary treatment of an allegedly mentally ill individual may be commenced by any person eighteen (18) years of age or older, by presenting information necessary for preparation of an application in the form of a petition. The petition shall contain the following information:

1. The name, address, and age of petitioner;
2. The name, address, age, marital status and occupation when known, of the alleged person requiring treatment.
3. The name, address, when known, of said person's nearest relatives, or, if none, of a friend of the person; and
4. The facts upon which the allegations are based, including statement by the individual signing the petition, statement by Tribal Police or other person having knowledge of his her illness, and a specification, where known, of the nature of the mental illness.

37-04-01 **REVIEW OF PETITION BY COURT**

The Court shall review the petition to see if it meets the requirements of Section 37-03-01. The Court shall determine whether the petition establishes probable cause to believe that the respondent meets the criteria of a person requiring treatment or a person requiring emergency treatment. If probable cause has not been established, the petition shall be dismissed. If probable cause is found to exist, the Court shall order a suitable person or person's to submit a written background investigation upon which petition is based.

**37-05-01 APPOINTMENT OF COUNSEL**

If the person cannot employ his own counsel, a Tribal Judge shall appoint suitable counsel. Assignment of counsel shall be made within seventy-two (72) hours prior to the hearing or immediately in the case of a person requiring emergency treatment.

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**37-06-01 IMMEDIATE APPREHENSION OF ALLEGED MENTALLY ILL PERSON**

After reviewing a petition for emergency treatment, and if probable cause is shown, the court shall enter and order for immediate Apprehension and Detention of the alleged ill person.

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**37-06-02** He or she may be detained at an appropriate facility, it may designate as long as necessary to complete the examination and hold a hearing but no longer than seventy-two (72) hours, excluding Saturdays, Sundays, and Holidays, if evaluation services are not available on those days.

**37-07-01 PLACE OF HEARING**

The hearing shall be conducted at such a place as the Court may designate as proper and humane, with due regard to the comfort and safety of the alleged mentally ill person and others.

**37-08-01 PETITION TO BE ACCOMPANIED BY CERTIFICATE OF EXAMINATION**

A petition for treatment shall be accompanied, where possible, with a certificate of a qualified mental health professional. If no certificate accompanies the petition, the petition must set forth the reasons that an examination could not be secured.

**37-09-01 CONTENTS OF CERTIFICATE OF EXAMINATION**

The certificate of examination shall be based upon a personal examination of the individual and shall be conducted within seventy-two (72) hours after the filing of the petition. It shall contain the following information:

1. Evaluations of the respondent's physical and mental conditions;
2. A conclusion as to whether the respondent meets the criteria of a person requiring treatment with a clear explanation of how that conclusion was derived from the evaluation required;
3. If the report concludes that the respondent meets the criteria of a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives.
4. The signature of the examiner who prepared the reports.

5. Record of all drugs, medication or other treatment prescribed to person within seventy-two (72) hours.

**37-10-01 NOTICE**

Certified copies of the petition, and a summons of hearing shall be personally served on the alleged mentally ill person at least five (5) days prior to the hearing or immediately in the case of a person requiring emergency medical treatment. The summons of hearing shall include the following:

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1. Notice of the time, date, and place of hearing and directing the alleged mentally ill person to appear in person and notifying him that if he should fail to do so, the Court may issue a warrant directing the Tribal Police to secure the protective custody to said alleged mentally ill person and to cause his personal appearance at said hearing.
2. Notice to the alleged mentally ill person of his right to be represented by counsel or of counsel selected and appointed by the Tribal Judge to represent him.
3. Notice to the alleged mentally ill person of his right to have witnesses testify on his behalf and any other documentation that the person may have to support his case.
4. Notice that the alleged mentally ill person must be examined by a qualified mental health professional or physician, either by voluntarily appearing for the examination within twenty-four (24) hours after service of the summons, or by being apprehended by the Tribal Police and detained for examination upon order of alleged mentally ill person to appear voluntarily.
5. Notice of the right of the alleged mentally ill person to obtain an additional examination at his own expense. In a case requiring emergency treatment, the notice shall state that this right may be exercised after commitment for emergency treatment.

**37-11-01 EXAMINATION BY COURT ORDER**

In the event the respondent upon receiving notice of the hearing refuses to be examined by a qualified mental health professional or a physician, the Court may issue a warrant and detain the person at a facility it may designate as long as is necessary to complete the examination, and hold a hearing, but in no event longer than seventy-two (72) hours, excluding Saturdays, Sundays, and holidays, if, evaluation services are not available on those days.

37-12-01 **EXAMINER TO REPORT TO COURT**  
After an examination, the examining mental health professional or physician shall transmit a certificate to the court and personally appear at the hearing. The alleged mentally ill person has the right to obtain an additional examination at his own expense, which may be placed in evidence before the Court.

37-13-01 **PRECAUTIONS AGAINST DRUGS HAMPERING DEFENSE**  
The qualified mental health professional or physician treating the patient, shall take all reasonable precautions to ensure that, at the time of the hearing, the person alleged to be mentally ill shall not be so under the influence of, or so suffer the effects of drugs, medication, or other treatment as to be hampered in preparing for or participating in the hearing. The Court at the time of the hearing shall be presented a record of all drugs, medication, and other treatment such person has received during the seventy-two (72) hours immediately prior to the hearing.

37-14-01 **PRESENCE OF THE ALLEGED MENTALLY ILL PERSON AT HEARING**  
The alleged mentally ill person and his attorney shall be present at all hearings unless the patient's attorney has agreed that the alleged mentally ill person be excused; the reasons for which shall be noted in the record. The alleged mentally ill person's attorney may subpoena and cross-examine witnesses and present evidence.

37-15-01 **CLEAR AND CONVINCING EVIDENCE REQUIRED FOR FINDING OF MENTAL ILLNESS**  
If the Court finds by clear and convincing evidence that the respondent is mentally ill and that treatment is necessary in order to prevent the respondent from endangering himself or others, the Court, by written findings, may order him to undergo either inpatient or outpatient treatment at an appropriate mental health facility.

37-16-01 **ALTERNATIVES TO HOSPITALIZATION MUST BE EXHAUSTED**  
Before ordering inpatient treatment, the Court shall assess the availability and appropriateness for the respondent of a treatment program other than hospitalization.

37-16-02 **Observation** - Upon completion of all testimony at the hearing, if the Court is in doubt whether such person is mentally ill and in need of treatment, the Court may order such a person to undergo observation, examination, and treatment at an appropriate mental health facility, a private hospital, or such facility as the Indian Health Service may designate, for a period of fourteen (14) days. The Court may adjourn the hearing until the end of said fourteen (14) day period and take final action based on the

reports of the physician or mental health professional of the particular facility observing and treating the individual.

**37-17-01 FILING AND ISSUANCE OF FINDINGS AND ORDER**

The findings and order of the Court shall be filed with the Clerk of Court who shall have certified copies served upon the respondent, and the Indian Health Service Unit Director, or the Administrator of the Tribal or private facility designated by the Tribe.

**37-18-01 APPEALS FROM COURT'S DECISION**

Appeals for the Court's decision shall be made to the Tribal Court of Appeals. The respondent shall have the right to an expedited treatment. Otherwise, he has the same rights as in a criminal appeal. The appeal shall be limited to a review of the proceedings at the lower Court and shall not be a de novo hearing, and respondent may request a transcript of the hearing before the lower Court where a stenographer is used or a copy of a tape recording of the hearing. If the respondent is indigent, the Tribe will supply said material without cost to the respondent.

**37-19-01 TRANSPORTATION OF PATIENT**

The Court shall appoint a suitable person to transport the patient to an appropriate facility.

**37-20-01 CARE PENDING ADMISSION TO FACILITY**

If it shall be shown to the Court's satisfaction that any person found to be mentally ill and a fit subject for custody and treatment as provided in this title, cannot at once, be admitted to the designated facility and cannot, with safety, be allowed to go at liberty, the Court shall require that such patient shall be suitably and humanely provided for otherwise, until such admission can be had, or until the occasion therefore no longer exists.

**37-21-01 PATIENTS TO BE FREE FROM PHYSICAL RESTRAINT AND ISOLATION**

Patients shall have the right to be free from physical restraint and isolation. Except for emergency situations when it is likely that patients could harm themselves or others and when less restrictive means of restraint are not feasible, patients may be physically or chemically restrained or placed in isolation only on a qualified mental health professional's written order, which explains the rationale of such action. The written order may be entered only after the qualified mental health professional has personally seen the patient concerned and evaluated whatever episode or situation is said to call for restraint or isolation.

37-21-02 Emergency use of restraints, or isolation shall be for no more than one (1) hour, by which time a qualified mental health professional shall have been consulted and shall have entered an appropriate order in writing. Such written order shall be effective for no more than twenty-four (24) hours and must be renewed by the Court if restraint or isolation are to be continued. While in restraint or isolation the patient must be seen by qualified personnel who will chart the patient's physical and psychiatric condition at reasonable intervals.

37-22-01 **TREATMENT BY SPIRITUAL MEANS**

Nothing in this title or in any rule or regulation adopted pursuant thereto shall be construed to deny treatment by spiritual means through prayer for any person detained for evaluation or treatment who desires such treatment, or to a minor if his parent, guardian, or conservator desires such treatment.

37-23-01 **NONCOMPLIANCE WITH THE ORDER**

If the individual ordered to undergo a program of treatment at any time does not comply with the order, the Court shall conduct a hearing for the sole purpose of determining or noncompliance; and if noncompliance is determined, the Court may modify its original order and direct the individual to undergo an alternative program of treatment. At least five (5) days notice of the hearing shall be given to the mentally ill person, and he shall be represented by counsel.

37-24-01 **MONTHLY STATUS REPORT**

The Tribal Court shall request a status report when needed from IHS or other appropriate mental health professionals on all persons ordered to be treated involuntarily until such time as such treatment is no longer required.

37-24-02 Review Hearing - The Tribal Court shall conduct a review hearing at ninety (90) day intervals on all persons remaining under an order for involuntary treatment. The place of said review hearing shall be determined by the Court. The patient shall have the right to be present at that hearing, to be represented by counsel, and to subpoena and cross-examine witnesses. At the review hearing, the Court shall require the presentation of a report on the status of the mentally ill person, and on the need for continuing treatment. The report shall be prepared by a mental health professional and presented at the review hearing by the preparer.

37-25-01 **RECORD**

A record shall be made of all hearings before the Court. Such record may be either by stenographic or tape recordings.

**37-26-01 RECORDS OF COURT**

All record and papers of the Court concerning any case shall be filed with the Clerk of Court who shall keep a separate and complete file of all findings and orders and transactions of the Court.

**37-27-01 CONFIDENTIALITY OF RECORDS**

The records and papers of the Court concerning any case involving the treatment or commitment for treatment of any mentally ill person shall be available for inspection by the mentally ill person or his legal representative or guardian, or upon petition to Court, stating the reason such record is needed.

**37-28-01 SEVERABILITY**

If any clause, sentence, paragraph, section, or part of this code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgement shall have been rendered.

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