

TITLE. 48. WORKER'S COMPENSATION VTOTKV SETEMFEKETV

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CHAPTER 1. GENERAL PROVISIONS

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§ 1-101. Citation and purpose

This Code shall be known and cited as the “Workers’ Benefit Code” and shall be administered by the Tribal Workers’ Benefit Advisory Council (“TWBAC”), or its successor. The purpose of this Code is to establish the rights and benefits of employees of the Muscogee (Creek) Nation for on-the-job bodily injuries due to accidents or occupational illness or disease as set forth herein.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

§ 1-102. Waiver of sovereign immunity

The Muscogee (Creek) Nation hereby expressly grants a limited waiver of the Muscogee (Creek) Nation’s sovereign immunity from suit, with respect to specific enforcement of the Worker’s Benefit Code and only in the Muscogee (Creek) Nation Courts, provided that such waiver shall not extend to disputes between the Nation and any person or entity other than those with standing under the Worker’s Benefit Code; provided that such waiver of sovereign immunity shall constitute the Nation’s consent to suit by a covered worker for the limited purpose of collection of the Nation’s financial obligations to the covered worker established under this Code from the funds of the Nation that are not subject to restrictions by law of the Nation or other governmental

authority, and shall not be construed as granting a waiver for the purpose of obtaining a court judgment or order requiring payment from, delivery of, or otherwise affecting (1) any other funds or assets of the Muscogee (Creek) Nation, (2) any real property, personal property or chattels of the Muscogee (Creek) Nation or any entities, agencies or (3) any funds belonging to, or owed to, owned by, held in trust for, administered by or under the control of the Muscogee (Creek) Nation or any entities, agencies or political subdivisions of the Muscogee (Creek) Nation; and provided further that nothing in this limited waiver of sovereign immunity shall be construed as allowing any award of punitive damages or exemplary damages against the Muscogee (Creek) Nation. Nothing herein shall be construed as having conferred jurisdiction on any state courts or tribunals. Nothing herein shall be construed as making state law applicable to the Muscogee (Creek) Nation, its entities or its employees.

[Added by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞234, 405.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 59, 151 to 179.

§ 1–103. Insurance requirements

Every employer must insure for the benefits provided under this Code, but are allowed self-insured retention levels in accordance with the rules of the TWBAC. Any insurance company issuing a policy insuring benefits hereunder shall: (1) require a loss prevention/control program sufficient to enable the Nation to provide a safe workplace for all Tribal workers; and (2) assist the employer in reducing hazards in the workplace and in the implementation of continued safety policies and procedures.

[Added by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210, 223.	C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to 75, 161 to 162, 180.
Workers’ Compensation ☞186.	C.J.S. Workmen’s Compensation § 114.
Westlaw Topic Nos. 209, 413.	

§ 1–104. Definitions

Pronouns of the masculine gender used in this Code shall apply to both sexes. Unless stated otherwise in specific sections of the Code, time limits shall be calculated using calendar days. Unless the context otherwise requires, the definitions which follow govern the construction and meaning of the terms used in this Code:

A. “Administrator” or “Tribal Workers’ Benefit Claim Administrator” shall mean either the insurance company providing coverage hereunder, any subcontractor appointed by said insurance company, or subcontractor selected by the TWBAC, but shall not mean the TWBAC who shall administer the system.

B. “Attending physician” shall mean the physician, or other medical care provider that is responsible for the planning, provision and oversight of medical treatment to a covered worker who sustains a covered injury.

C. "Average weekly wage" shall mean as follows:

1. For a covered worker hired for a regular full or part-time position expected to last at least thirteen (13) weeks, the average weekly wage shall be calculated based on the preceding thirteen (13) weeks of the covered worker's actual wage earnings. In the case of a worker who has not worked for a covered employer within the immediate preceding thirteen (13) weeks, the average weekly wage shall be calculated based on the salary level the worker was hired at or is currently receiving.

2. For a covered worker hired for a temporary, emergency or special projects basis who has continuously worked for a minimum of thirteen (13) weeks, the average weekly wage shall be calculated as provided in paragraph 1, above.

3. For a covered worker hired on a temporary, emergency or special projects basis who has not continually worked for a minimum of thirteen (13) weeks, the average weekly wage shall be calculated by taking the expected total gross wages and divide by the expected number of work weeks.

4. For covered workers serving as volunteers, the average weekly wage shall be the salary of similarly paid positions for the covered employer performing similar work.

For purposes of this definition, the work week shall be as defined by the personnel manual or policy applicable to the covered employee at the time of injury.

D. "Benefits" shall mean the indemnity and medical payments provided by this Code.

E. "Indemnity" shall mean total disability and partial disability income benefits and impairment payments.

F. "Medical" shall mean medical expenses, mileage and any other expenses associated with medical treatment.

G. "Muscogee (Creek) Nation" and "Nation" mean the Muscogee (Creek) Nation, a federally recognized American Indian Tribe, its agencies, and any Tribal corporations and enterprises located within the jurisdictional boundaries of the Muscogee (Creek) Nation.

H. "Child" shall mean dependent natural legitimate children, dependent stepchildren, adopted children and acknowledged illegitimate children; but does not include married children unless they are shown to be dependents.

I. "Claimant" shall mean the injured covered worker or, in the event of death of the covered worker, dependents of the deceased covered worker.

J. "Consulting physician" shall mean the physician, other health care provider or other health care expert that is retained by the Administrator to assist the Administrator in carrying out its duties and responsibilities under this Code. Such activities may include, but are not limited to, determination of the validity of a claim; review of an attending physician's diagnosis and treatment plans; determination of MMI; and determination of impairment rating. At the discretion and expense of the Administrator, an injured worker may be required by

the Administrator to be seen by the consulting physician to assist in making any required recommendations.

K. "Course and scope of employment" shall mean the employer's employment of the covered worker at the time the injury occurred. An injury must arise out of and be in the normal course and scope of employment, as defined by job description, and the worker must be acting in furtherance of the employer's interest at the time of the incident and or accident, in order for a claim to be compensable.

L. "Covered employer" and "employer" shall mean the Nation, its agencies, boards, entities, communities, and enterprises.

M. "Covered worker" and "worker" shall mean every person who has entered into the employment of or performs work for a covered employer or apprenticeship for a covered employer, every executive officer elected or appointed and empowered under and in accordance with the charter and bylaws of a Tribal corporation, including a person holding an official position, or standing in a representative capacity of the employer, including officials elected or appointed by the Muscogee (Creek) Nation, compensated monetarily or otherwise, except as hereinafter specified. The terms covered worker and worker shall not include an independent contractor working under contract for an employer, whether that contract is express or implied. Covered workers shall include all persons employed by the employer regardless of where they work, whether it is on or off the Muscogee (Creek) Nation. Covered workers shall include volunteers or other persons providing work for an employer who do so without receiving compensation.

N. "Death" shall mean any fatality of the covered worker proximately and directly caused by work injury or occupational disease.

O. "Dependents" shall mean the following persons, and they shall be deemed to be the only recognizable dependents under the provisions of this Code:

1. The widow or widower, if married and living with the deceased at the time of deceased's death and legally entitled to be supported by the deceased as a dependent. For purposes of this Code, a covered worker may, in a written self-declaration to be provided by the employer, designate a person as his dependent domestic partner because of a traditional Native American marriage, or for other reasons, which person shall be treated as a dependent widow(er) if the person was living with the deceased covered worker at the time of his death, provided a person may not be designated as a dependent domestic partner if said person and employer could not be married in accordance with Title 6, § 2-104;

2. A child under eighteen (18) years of age, unmarried and dependent upon the deceased; or a child under twenty-five (25) years of age enrolled as a full-time student in an accredited education institution at the time of the covered worker's injury, unmarried and dependent upon the deceased; or

3. Any of the following persons who were wholly dependent on the earnings of the covered worker for support at the time of his injury. The relation of dependency must exist at the time of injury:

- i. A parent or grandparent; or
- ii. A grandchild, brother or sister, niece or nephew only if under eighteen (18) years of age, or incapable of self-support and dependent upon the deceased.

P. "Disability" shall mean the inability of the covered worker to obtain and/or retain wages equivalent to the pre-injury wage rate as a result of a direct loss of functional capacity compromising that individual's ability to perform the necessary duties of the job. This functional loss must be directly and materially attributable to a compensable work-related injury and/or occupational disease and must be supported by the worker's attending physician and, if requested by the Administrator, the consulting physician. "Partial disability" is distinguished as any incapacity less than one hundred percent (100%) disability as defined above.

Q. "Impairment" shall mean any anatomic or functional abnormality or loss existing after maximum medical improvement (MMI) as defined herein that results from a compensable injury and/or occupational disease and is reasonably presumed to be permanent based on reasonable medical probability.

R. "Injury" shall mean only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally result there from and occupational disease arising out of and in the course of employment as herein defined. Only injuries having as their source a risk not purely personal but one that is causally connected with the conditions of employment shall be deemed to arise out of the employment. Injury includes heart-related or vascular injury, illness or death only if resultant from stress in excess of that experienced by a person in the conduct of everyday living. Such stress must arise out of and in the course of a claimant's employment. Injury shall not include mental injury that is unaccompanied by physical injury, except in the case of rape which arises out of and in the course of employment.

S. "Intoxication" shall mean blood or impaired alcohol content in excess of five hundredths of a percent (.05%) or conviction of the offense of driving while intoxicated or actual physical control, (or words to that effect) by any court of competent jurisdiction, or loss of the normal use of one's mental and/or physical faculties resulting from the voluntary introduction into the body of (1) an alcoholic beverage; (2) a controlled substance; (3) a mind-altering drug and/or hallucinogenic; (4) an abusable glue or aerosol paint; or (5) any other similar substance.

T. "Maximum medical improvement" (MMI) shall mean the earlier of:

1. The point after which further material recovery from or last improvement to an injury can no longer reasonably be anticipated, based on the reasonable medical probability; or
2. The expiration of thirty-six (36) months from the date incapacity income benefits begin to accrue.

U. "Occupational disease" shall mean only those diseases which arise out of and in the course and scope of the worker's employment. Such diseases shall have a direct causal connection with the employment and must have followed as a natural incident thereto from injurious exposure occasioned by the nature

of the employment. Such disease must be incidental to the character of the business, occupation, or process in which the worker was employed and not independent of the employment. Such disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have resulted from that source as an incident and rational consequence. A disease which follows from a hazard to which a worker has or would have been equally exposed to outside of said occupation is not compensable as an occupational disease. Mental illness shall only be covered if accompanied by a physical injury.

V. "Parent or grandparent" shall mean the natural or adoptive father or mother or the natural or adoptive grandfather or grandmother of the covered worker.

W. "Policy" shall mean any Nation Workers' Benefit Policy of Insurance issued to the Nation.

X. "Quasi-dependent" shall mean those persons who were only partially dependent on the earnings of the covered worker for support at the time of the injury causing death.

Y. "Scheduled weeks" shall mean one hundred four (104) weeks and is the maximum number of weeks that a covered worker shall be entitled to functional impairment benefits under this Code.

Z. "Settlement" shall mean the date the release of all claims is executed and the monetary terms of the agreement met.

AA. "Spouse" shall mean the person married to the covered worker at the time of the death or injury to the covered worker. Spouse shall include all persons legally married to the covered worker, married because of a traditional Indian marriage ceremony, or who is a domestic partner to the covered worker as declared by the covered worker in a written self-declaration to be provided by the employer.

BB. "Tribal Court" shall mean the Muscogee (Creek) Nation District Court.

CC. "Tribal Workers' Benefit Advisory Council" ("TWBAC"), or its successor, shall mean the entity organized to administer the System in accordance with Section 2-101 et seq.

DD. "Tribal Workers' Benefit System" shall mean this Code, any and all rules and regulations promulgated hereunder, as well as the functions of the Administrator, the TWBAC and the arbitration panel established to adjudicate disputes under Chapter 9 of this Code.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

§ 1-105. Acknowledgment of Code

A. All covered workers and persons asserting a claim shall be conclusively presumed to have elected to take workers' benefits in accordance with the tenants, conditions, and provisions of this Code by virtue of employment with the Nation or other employers as defined herein. All covered workers and persons asserting a claim for workers' benefits acknowledge that the Nation is a federally recognized American Indian Tribe and is exercising its inherent sovereign authority in providing workers' benefits under this Code.

B. The employer shall be responsible for and shall have posted in a conspicuous location a notice as follows:

NOTICE TO WORKERS

YOUR EMPLOYER IS INSURED UNDER THE NATION WORKERS' BENEFIT SYSTEM THROUGH:

If you are injured or sustain an occupational disease while at work, you may be entitled to benefits as provided by the Workers' Benefit Code. **NOTIFY YOUR EMPLOYER IMMEDIATELY OF ANY INJURIES, NO MATTER HOW SLIGHT.** If you fail to do so, you may lose your benefits under the Nation Workers' Benefits System. In no event shall benefits be paid to a worker who failed to notify their employer within thirty (30) days after sustaining such work-related injury.

It is your responsibility to file a claim for benefits under the Nation Workers' Benefit Code with the Administrator of the Nation Workers' Benefit System. You are required to report any injuries or notification of occupational disease as soon as possible, and in no event more than ten (10) days after you have knowledge thereof. It is your responsibility to obtain any necessary forms from the Nation Workers' Benefit System Claim Administrator at:

Your exclusive remedy for any work connected injury or occupational disease is through the Nation Workers' Benefits System. The state's Worker Compensation System has no authority to accept a claim from you under the Nation Workers' Benefit Code as you are employed by the Muscogee (Creek) Nation, a sovereign Indian Nation employer, which is exclusively under the jurisdiction of its own Nation Workers' Benefit System.

NOTICE TO EMPLOYERS

You are required to display this poster conspicuously in a manner that will be of greatest benefit to your workers.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210.	C.J.S. Indians §§ 57 to 59, 66 to 72.
Workers' Compensation ☞401.	C.J.S. Workmen's Compensation §§ 156, 240,
Westlaw Topic Nos. 209, 413.	746 to 758.

§ 1-106. Time limits for reporting of incidents and filing of claims

A. A covered worker shall report to his immediate supervisor, department director, or the personnel manager/human resources director, any incident or accident which causes an on-the-job injury as soon as possible, but in no event later than ten (10) days of the incident. The supervisor, department director, personnel manager or human resources director receiving the report of the incident or accident shall submit the report to the Administrator within seven (7) days of receipt from the covered worker.

B. Claims for injury must be made by the covered worker to the Administrator within three (3) months of the date of occurrence.

C. Claims for occupational disease shall be made by the covered worker to the Administrator within three (3) months from date of first notice to the claimant by a physician or from the date of manifestation of symptoms, whichever is earliest, but in no event, longer than six (6) months from the date the worker terminates employment with the employer.

D. Failure to give notice of injury to the employer or to file a claim with the Administrator, within the above-stated time limit shall constitute a forfeiture by the covered worker, or, in case of death, his representatives of all benefits available and payable under this Code. The report(s) made in subsection A, above shall not substitute for the claims for injury or claims for occupational disease required in this section.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ⇄210, 414.
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to 179.

§ 1-107. Burden of proof

The burden of proof shall rest upon the covered worker, or, in the case of death, his dependents to prove:

- A. That the injury complained of was a result of an incident, accident or occupational disease;
- B. That the injury arose out of the covered worker's employment;
- C. That the injury arose while in the course and scope of employment and arose proximately out of covered employment; and
- D. That the injury arose while in the furtherance of the employer's interests.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ⇄210, 421.
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to 179.

§ 1-108. Right to waive defenses

The Administrator shall have the right and power to waive any and all defenses affecting the compensability of a covered injury under this Code.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

§ 1-109. Guardian for minor or incompetent

Any person who is mentally incompetent and/or under the age of eighteen (18) and is entitled to receive compensation under this Code shall be appointed a guardian or other representative by the Muscogee (Creek) Nation Tribal Court if a guardian has not been appointed in a prior action.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ⇄126, 133.

Infants ⇄76.

GENERAL PROVISIONS

Mental Health ~~§~~485.
Westlaw Topic Nos. 209, 211, 257A.
C.J.S. Indians §§ 46 to 50, 53, 150.

Title 48, § 1–109

C.J.S. Infants §§ 195, 321 to 336, 338 to 343.
C.J.S. Mental Health §§ 314, 316 to 325.

CHAPTER 2. TRIBAL WORKERS' BENEFIT ADVISORY COUNCIL

Section

- 2-101. Establishment.
- 2-102. TWBAC membership.
- 2-103. Powers of TWBAC.
- 2-104. Travel/expenses.

§ 2-101. Establishment

There is hereby established a Tribal Workers' Benefit Advisory Council ("TWBAC") whose purpose is to administer the Tribal Workers' Benefit System by promulgating rules and procedures of operations and to cooperate for the prevention of injuries and occupational diseases to workers, and in the event of injury or occupational disease, the worker's rehabilitation or restoration to health and vocational opportunity.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

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| Indians ☞210. | C.J.S. Indians §§ 57 to 59, 66 to 72. |
| Workers' Compensation ☞1076. | C.J.S. Workmen's Compensation §§ 700, 702. |
| Westlaw Topic Nos. 209, 413. | |

§ 2-102. TWBAC membership

The TWBAC shall be comprised of five (5) persons holding the following positions:

- A. The Muscogee (Creek) Nation Personnel Manager, or his/her designee;
- B. The Human Resources Director for Creek Nation Tulsa Casino or his/her designee;
- C. The Muscogee (Creek) Nation Controller or his/her designee;
- D. An employee of the Muscogee (Creek) Nation selected by the Muscogee (Creek) Nation Executive Director; provided that said employee shall not be a Deputy Director of the Nation;
- E. Tribal Trade and Commerce Authority Human Resources Director;
- F. Muscogee (Creek) Nation Business Enterprise Human Resources Director; and
- G. A physician at the Okmulgee Indian Health Center. A person shall serve on the TWBAC so long as that person holds the position qualifying the person to serve on the TWBAC.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

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| Indians ☞210, 216. | C.J.S. Indians §§ 57 to 59, 66 to 72. |
| Workers' Compensation ☞108. | C.J.S. Workmen's Compensation § 100. |
| Westlaw Topic Nos. 209, 413. | |

§ 2-103. Powers of TWBAC

TWBAC shall have the following duties and powers:

A. To meet on a bi-monthly basis to carry out the duties and powers of TWBAC;

B. To promulgate rules and regulations for the implementation and administration of this Code;

C. To periodically review the benefits provided for under this Code and to make recommendations to the National Council for amendments to benefit levels or any other needed revisions to this Code deemed advisable by the TWBAC;

D. To develop programs and to cooperate with the Administrator for the preparation and presentation of information and educational programs designed to prevent injuries and occupational diseases to covered workers;

E. To take any and all other actions deemed reasonable and necessary for the implementation of this Code, including but not limited to setting rates and adequate reserve levels;

F. To retain consultants when deemed necessary by the TWBAC in order to carry out its duties as provided herein;

G. To select the Administrator; and

H. To select an arbitration panel consisting of three (3) people trained in mediation to adjudicate the disputes regarding benefits provided under this Code as set forth in below.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210.

Workers' Compensation ☞1090.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation §§ 706 to 707, 710 to 712, 717.

§ 2-104. Travel/expenses

TWBAC members shall also receive travel expenses for all authorized travel and mileage reimbursement to and from meetings duly convened within the jurisdictional boundaries of the Muscogee (Creek) Nation, in accordance with Muscogee (Creek) Nation policies and procedures regarding travel.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

CHAPTER 3. ADMINISTRATIVE DUTIES AND POWERS

Section

- 3-101. Custodian duties.
- 3-102. Payment and distribution of benefits.
- 3-103. Nation workers' benefit system Administrator powers and duties.
- 3-104. Acceptance/denial of claim.

§ 3-101. Custodian duties

The Administrator or its designee shall be the payor of the workers' benefits. All authorized disbursements there from shall be paid by the Administrator or its designee with its stated authority and shall be the custodian of all claim files and related documents.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

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| Indians ☞210. | C.J.S. Indians §§ 57 to 59, 66 to 72. |
| Workers' Compensation ☞1090. | C.J.S. Workmen's Compensation §§ 706 to |
| Westlaw Topic Nos. 209, 413. | 707, 710 to 712, 717. |

§ 3-102. Payment and distribution of benefits

The Administrator shall administer this Code in accordance with the terms and conditions described herein and any rules promulgated by the TWBAC, and remit payment for all matters of benefit claims as provided for in this Code. Further, the Administrator shall have the authority to determine the distribution of benefit checks.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

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| Indians ☞210. | C.J.S. Indians §§ 57 to 59, 66 to 72. |
| Workers' Compensation ☞1090. | C.J.S. Workmen's Compensation §§ 706 to |
| Westlaw Topic Nos. 209, 413. | 707, 710 to 712, 717. |

§ 3-103. Nation workers' benefit system Administrator powers and duties

A. The Administrator shall be empowered to request medical reports, police reports, autopsy reports and special investigations. The Administrator shall also be empowered to engage the services of adjusters and consultants, and perform other activities as required to process any claim for benefits or to further this Code.

B. In the case of death of a covered worker, the Administrator may request the performance of an autopsy on the decedent from an appropriate official licensed to perform autopsies, and shall have the right to request any and all reports made from such autopsies if deemed necessary. If requested, the legal beneficiaries of the deceased worker are entitled to have a representative present at the autopsy ordered by the Administrator.

C. The Administrator may retain a consulting physician for purposes of assisting in carrying out the duties and powers provided for in this Code.

D. The Administrator shall complete and keep accurate administrative records. Claim files shall be maintained on all activities relating to the claims made under the policy. All closed files shall be preserved for not less than six (6) years.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210.

Workers' Compensation ☞1090.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation §§ 706 to 707, 710 to 712, 717.

§ 3-104. Acceptance/denial of claim

Upon receiving a claim for benefits from an injured worker, the Administrator shall promptly investigate the claim and do either of the following: 1) begin payment of compensation within twenty-one (21) days of a valid claim, or 2) send the claimant written notice by certified mail return receipt requested, within twenty-one (21) days, that further investigation is needed and the reasons for further investigation. The Administrator shall complete its investigation within forty-five (45) days of receipt of the claim and shall either commence the payment of benefits or notify the claimant in writing by certified mail return receipt requested that the claim is denied.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210.

Workers' Compensation ☞1090 to 1095.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation §§ 706 to 707, 710 to 715, 717 to 719.

CHAPTER 4. COVERAGE AND COMPENSABILITY

Section

- 4-101. Entitlement to benefits.
- 4-102. Disclosure of pre-existing disabilities.
- 4-103. Mental trauma injuries.
- 4-104. Going to and returning from work.
- 4-105. Benefits precluded by neglect and/or refusal of worker to submit to treatment.
- 4-106. Injury or death by consumption and/or application of drugs and/or chemicals.
- 4-107. Intoxication.
- 4-108. False statement or representation to obtain compensation; penalty and forfeiture.
- 4-109. Injuries resulting from self-inflicted injuries, willful misconduct, or "horseplay".
- 4-110. Injuries resulting from "acts of God".
- 4-111. Recreational, social or athletic activities.
- 4-112. Voluntary activities.
- 4-113. Injuries caused by third parties.

§ 4-101. Entitlement to benefits

A. Any claimant for benefits under this Code shall be responsible for filing his claim with the Administrator.

B. Coverage exists under this Code for a covered worker's injury without regard to fault or negligence, if the injury arises out of and in the normal course and scope of employment and if the worker was acting in furtherance of the employer's interest at the time of the injury, including, without limitation, any covered worker whose work at the time of injury was subject to Federal Workers' Compensation Acts. If an injury is an occupational disease as defined herein, the employer in whose employ the worker was last injuriously exposed to the hazards of the disease is considered to be the employer of the worker for purposes of obtaining benefits under this Code.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210.

Workers' Compensation ☞511, 606.
Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation §§ 288 to
290, 295, 365 to 367.

§ 4-102. Disclosure of pre-existing disabilities

A. All workers shall disclose any pre-existing physical or mental disorder and/or disability known, or that reasonably should have been known, to the worker that would prevent, affect or impair him from performing in a reasonable and safe manner the activities involved in the position in which he works. Disclosure shall be made in the employment application or before commencing new job duties after job reclassification, reassignment, promotion, demotion or other change in job duties. The content of such disclosure shall be made promptly by the worker after submitting a claim for benefits under this Code.

B. Any claim resulting from an employment-related aggravation of a pre-existing condition which was not disclosed as required under this Code shall be declined by the Administrator, if the claimant had knowledge of the pre-existing condition and failed to disclose such condition pursuant to Section 4-102.A.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210.	C.J.S. Indians §§ 57 to 59, 66 to 72.
Workers' Compensation ☞554.	C.J.S. Workmen's Compensation § 328.
Westlaw Topic Nos. 209, 413.	

§ 4–103. Mental trauma injuries

A. Mental traumas, disorders, and/or conditions, even if manifested in physical symptoms and/or related to stress, are not compensable injuries under this Code, except that mental trauma may be recoverable if it results from accidental injury or an incident traceable to a definite time, place and cause rather than from repetitive mental trauma.

B. Regardless of Section 4–103.A., a mental trauma or emotional injury that arises principally from a personnel action, including without limitation, a transfer, promotion, demotion or termination is not a compensable injury under this Code.

[Added by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210.	C.J.S. Indians §§ 57 to 59, 66 to 72.
Workers' Compensation ☞546.	C.J.S. Workmen's Compensation § 313.
Westlaw Topic Nos. 209, 413.	

§ 4–104. Going to and returning from work

An accident and/or incident occurring to a worker while on the way to or from work, including lunch break, is not within the course and scope of employment except when such traveling is directly connected with the worker's work and in furtherance of the employer's interest, provided the worker has not deviated from the direct course of travel.

[Add by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210.	C.J.S. Indians §§ 57 to 59, 66 to 72.
Workers' Compensation ☞719.	C.J.S. Workmen's Compensation § 431.
Westlaw Topic Nos. 209, 413.	

§ 4–105. Benefits precluded by neglect and/or refusal of worker to submit to treatment

A. No benefits shall be payable for the death or disability of a worker if the worker's death is caused by, or the worker's disability aggravated, caused or continued by, an unreasonable refusal or neglect to submit to and/or follow any competent or reasonable surgical or medical treatment, medical aid or advice. A worker who has refused and/or neglected to submit to medical and/or therapeutic treatment, or to take medications as prescribed, shall be deemed to have reached maximum medical improvement as defined herein. Any such existence of a disability that could have been reasonably treated to success with reasonable medical probability will be discounted in determining the appropriate incapacity rating as prescribed herein.

B. Any covered worker entitled to benefits under this Code shall be presumed to have reached maximum medical improvement if such covered worker

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has refused and/or neglected to seek appropriate medical treatment within six (6) months from the date of occurrence or from the last date of prior treatment.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210.

Workers' Compensation ☞798.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation § 481.

§ 4-106. Injury or death by consumption and/or application of drugs and/or chemicals

No benefits of any nature shall be payable to a covered worker for injury and/or death caused or contributed to by any drug, including narcotics and hallucinogens, whether organic or chemical in nature, or any gas, vapors, and/or fumes taken and/or inhaled voluntarily, or by voluntarily poisoning, except those drugs prescribed by a physician or other practitioner licensed to prescribe such medication and only when taken as prescribed.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

§ 4-107. Intoxication

No benefits of any nature shall be payable to a covered worker injured or killed while intoxicated, as defined in Section 1-104.S, regardless of whether or not the intoxicated condition was the proximate cause of the injury or death. It is only necessary to prove that the covered worker was intoxicated at the time of the incident or accident to deny benefits under this Code. All workers accepting employment with the employer and under this Code agree to submit to post-incident/post-accident drug and alcohol screening as authorized in the employer's personnel policies, and agree to waive any privilege associated with the results of said tests.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210.

Workers' Compensation ☞798.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation § 481.

§ 4-108. False statement or representation to obtain compensation; penalty and forfeiture

If, in order to obtain any benefits under the provisions of this Code, any person willfully makes a false statement or representation, including material omissions of fact, he shall forfeit all rights to compensation, benefits or payment upon proof that the offense was committed. Any claim resulting from an employment-related aggravation of a pre-existing condition which was not disclosed as required under this Code may be declined by the Administrator pursuant to Section 4-102.B.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ⇨210.

Workers' Compensation ⇨771.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation §§ 471 to 472.

§ 4-109. Injuries resulting from self-inflicted injuries, willful misconduct, or "horseplay"

No benefits of any nature shall be payable to a covered worker whose injury or death was caused by the covered worker's willful intention to injure himself or another. An injury sustained during "horseplay" is not incurred in the normal course and scope of employment and thus such an injury is not compensable. In addition, the willful disregard of a safety order from the employer to the worker to wear or use a safety device and/or to perform work in a certain manner may cause a worker to forfeit all rights to compensation, benefits, or payment upon proof that the offense was committed and that such disregard or performance was the direct and proximate cause of the injury, death, and/or occupational disease. A covered worker's willful disabling of safety devices on equipment constitutes a willful intention to injure himself thereby precluding eligibility for benefits under this Code.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ⇨210.

Workers' Compensation ⇨671, 774, 778.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation §§ 468, 471 to 475.

§ 4-110. Injuries resulting from "acts of God"

No benefits of any nature shall be payable to a covered worker who is injured or killed when the injury arose out of an act of God, unless the employment exposed the worker to a greater risk of injury from an act of God than ordinarily applies to the general public. Further, injury or death that results from a natural cause (i.e., heart attack, stroke or other natural function failure) that does not arise out of the normal course and scope of employment while the worker was acting in the furtherance of the employer's interest, shall not be compensable.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ⇨210.

Workers' Compensation ⇨637.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation § 456.

§ 4-111. Recreational, social or athletic activities

No benefits of any nature shall be payable to a covered worker who is injured or killed if the injury or accident occurred as a result of the worker's voluntary participation in an off-duty, recreational, social or athletic activity not constituting part of the worker's work-related duties, except where these activities are expressly required by the employment.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210.

Workers' Compensation ☞664.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation §§ 401, 405 to 406.

§ 4-112. Voluntary activities

No benefits under this Code shall be payable to a covered worker if the injury, disease or death arises from participation in voluntary physical fitness activities during the regular work day, regardless of whether the employee is or is not compensated for the time in which the physical fitness activities take place.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210.

Workers' Compensation ☞255, 664.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation §§ 158, 401, 405 to 406.

§ 4-113. Injuries caused by third parties

No benefits of any nature shall be payable to a covered worker who is injured or killed as the result of an act of a third party, result of an act of a third party, including co-workers, who intended to injure the worker because of reasons personal to that worker and not directed at the worker for reasons relevant to his employment.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210.

Workers' Compensation ☞678.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation §§ 409, 420, 424.

CHAPTER 5. BENEFITS—GENERAL PROVISIONS

Section

- 5-101. Right to compensation and medical treatment benefits.
- 5-102. Workers' benefit as exclusive remedy.
- 5-103. Effect of compensation paid in other jurisdictions or third party recovery.
- 5-104. Liability of third parties; subrogation.
- 5-105. Assignability of benefits; attachment of liens.
- 5-106. Aggravation of pre-existing disease or condition.
- 5-107. Termination of benefits upon death.

§ 5-101. Right to compensation and medical treatment benefits

A covered worker coming within the provisions of this Code who is injured, or in the event of a workers' death, the dependents of such covered worker, arising out of and in the normal course and scope of employment and while acting in furtherance of the employer's interest at the time of the incident and/or accident, unless the injury is otherwise limited or excluded by the terms and conditions of this Code, shall be entitled to receive, and shall be paid, for loss sustained on account of the injury, death and/or occupational disease, such benefits as provided under this Code.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

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| Indians ☞210. | C.J.S. Indians §§ 57 to 59, 66 to 72. |
| Workers' Compensation ☞230, 410.1. | C.J.S. Workmen's Compensation §§ 135, 137. |
| Westlaw Topic Nos. 209, 413. | |

§ 5-102. Workers' benefit as exclusive remedy

The rights and remedies for a worker on account of injury or occupational disease for which benefits under this Code are recoverable, shall be the exclusive and only rights and remedies of such worker, the worker's personal or legal representative, dependents, or next of kin, at common law or otherwise, on account of such injury and/or occupational disease against the employer, the employer's representative, insurer, guarantor or surety, for any matter relating to the occurrence of or payment for any injury or death covered under this Code and including any other benefits or compensation that a worker may attempt to obtain from a third party that may be able to seek indemnification from an employer.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

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| Indians ☞210. | C.J.S. Indians §§ 57 to 59, 66 to 72. |
| Workers' Compensation ☞2084. | C.J.S. Workmen's Compensation §§ 1587 to 1591. |
| Westlaw Topic Nos. 209, 413. | |

§ 5-103. Effect of compensation paid in other jurisdictions or third party recovery

A covered worker who pursues and recovers compensation under the workers' compensation laws of another jurisdiction in violation of this Code, is

barred from hereby expressly recovering under this Code. If a covered worker files suit or makes formal demands against a third party for monetary damages due to accidental injury, occupational disease or death for which benefits are provided under this Code, the covered worker or, in the case of death, the dependents of the deceased, shall forfeit and waive any and all rights to compensation under this Code.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

§ 5-104. Liability of third parties; subrogation

The employer and/or its representative, insurer, guarantor or surety shall be subrogated to the common law rights of the worker to pursue any claims for compensation against any third party that is liable for the death of or injuries to said worker arising out of and in the normal course and scope of employment and while the worker was acting in furtherance of the employer's interest to the extent of the benefits bestowed upon said worker. In case of recovery, the Administrator or arbitration panel established under Chapter 9 of this Code shall enter judgment for distribution of the proceeds thereof as follows:

A. A sum sufficient to repay the employer and/or the Administrator for the amount of compensation actually paid to the worker under this Code up to that time;

B. A sum sufficient to pay the employer the present worth, computed at the current legal interest rate for court judgments and decrees, of the future payments of compensation for which the employer is liable, but the sum is not the final adjudication of the future payments which the worker is entitled to receive and if the sum received by the employer is in excess of the amount required to pay the compensation, the excess shall be paid to the worker.

C. The balance, if any, shall be paid over to the worker. For subrogation purposes hereunder, any payment made to a covered worker, his guardian, parent, next of kin or legal representative, by or on behalf of any third party, his or its principal or agent liable for, connected with, or involved in causing an injury to such worker shall be considered as having been so paid as damages resulting from and because said injury was under circumstances creating a legal liability against said third party, whether such payment be made under a covenant not to sue, compromise settlement, denial of liability, or otherwise.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210.

C.J.S. Indians §§ 57 to 59, 66 to 72.

Workers' Compensation ☞2189 to 2191.

C.J.S. Workmen's Compensation §§ 1673 to

Westlaw Topic Nos. 209, 413.

1676.

§ 5-105. Assignability of benefits; attachment of liens

Benefits are not assignable, except that a legal beneficiary may, assign the right to death benefits. Income from death benefits are subject only to the following liens or claims, to the extent of any income or death benefits that are unpaid on the date the Administrator receives written notice of the lien, judgment, or claim in the following order of priority:

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- A. Court-ordered child support issued or recognized by the Muscogee (Creek) Nation Tribal Court;
- B. A subrogation interest established under this Code; and
- C. Debts owed to the Nation.

[Added by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210. C.J.S. Indians §§ 57 to 59, 66 to 72.
Workers' Compensation ☞1097. C.J.S. Workmen's Compensation § 730.
Westlaw Topic Nos. 209, 413.

§ 5–106. Aggravation of pre-existing disease or condition

If a covered worker is suffering from a pre-existing disease and/or injury at the time an occupational incident, accident and/or disease occurs or arises in the normal course and scope of employment and while the worker was acting in furtherance of the employer's interest at the time of the injury and/or incident, and the pre-existing disease and/or injury is aggravated thereby, the aggravation of the disease or injury is, subject to provisions herein. The amount of the award for that disability as set forth in this Code may be reduced or denied in its entirety by the Administrator in consideration of the following:

- A. A prior settlement from any source for the same impairment;
- B. The difference between the degree of impairment of the worker before the covered injury and the degree of impairment after the injury; or
- C. The benefits to be paid for impairments and/or disabilities would be in excess of one hundred percent (100%) of the whole person. For purposes of this section, benefits include those benefits or payments made under this Code, benefits from the worker's compensation laws of any other jurisdiction or payments from third parties.

[Added by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210. C.J.S. Indians §§ 57 to 59, 66 to 72.
Workers' Compensation ☞552. C.J.S. Workmen's Compensation § 325.
Westlaw Topic Nos. 209, 413.

§ 5–107. Termination of benefits upon death

Where a worker is entitled to compensation for an injury sustained, and death ensues from any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability for such compensation thereafter shall terminate.

[Added by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210. Westlaw Topic Nos. 209, 413.
Workers' Compensation ☞440.1. C.J.S. Indians §§ 57 to 59, 66 to 72.

CHAPTER 6. BENEFITS

Section

- 6-101. Vocational rehabilitation.
- 6-102. Waiting period.
- 6-103. Total disability and partial disability income benefits.
- 6-104. Impairment benefits.
- 6-105. Benefit-issuance period.
- 6-106. Not to exceed pre-injury average weekly wage.
- 6-107. Benefit offsets.

§ 6-101. Vocational rehabilitation

Vocational rehabilitation benefits or training are not mandatory under this Code, but may, in the discretion of the Administrator, be ordered pursuant to its authority established herein, or as required under rules promulgated by the TWBAC.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

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| Indians ⌘210. | Westlaw Topic Nos. 209, 413. |
| Workers' Compensation ⌘900.1. | C.J.S. Indians §§ 57 to 59, 66 to 72. |

§ 6-102. Waiting period

An initial waiting period of seven (7) consecutive calendar days is to accrue before the covered worker shall be entitled to benefits under this section. In cases where the injury results in a disability continuing fourteen (14) days or more, the benefits will be allowed from the date of disability.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

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| Indians ⌘210. | C.J.S. Indians §§ 57 to 59, 66 to 72. |
| Workers' Compensation ⌘837. | C.J.S. Workmen's Compensation § 555. |
| Westlaw Topic Nos. 209, 413. | |

§ 6-103. Total disability and partial disability income benefits

A. When the worker is disabled from work duty as determined by the consulting physician, or in the Administrator's discretion, the attending physician, by reason of a compensable injury or occupational disease, benefits shall be payable as follows:

1. If the covered worker is one hundred percent (100%) disabled, benefits are payable at seventy percent (70%) of the worker's pre-injury average weekly wage during the continuance of such total disability, in case of temporary total disability, seventy percent (70%) of the employee's average weekly wages shall be paid to the worker during the continuance thereof, but not in excess of fifty-two (52) weeks, except as otherwise provided for in this Code. After compensation has been paid for a period of forty-two (42) weeks, the worker may request a review of the case by the TWBAC for continued temporary total disability benefits. Upon a finding that benefits should be extended beyond the initial fifty-two (52) week period, compensation may be continued for additional

successive fifty-two (52) week periods, provided that the worker requests a review of the case at forty-two (42) weeks during each period involved, and upon a finding by the TWBAC that benefits should be extended. Total payments of compensation for temporary total disability may not exceed three hundred (300) weeks in the aggregated except for good cause shown as determined by the TWBAC.

2. If the covered worker is less than one hundred percent (100%) disabled, benefits are payable at seventy percent (70%) of the difference between a worker's pre-injury average weekly wage and the wage the covered worker is earning or capable of earning in his partially disabled condition.

B. Except as provided herein, such benefits will continue to be paid in accordance with the terms of this Code until which time the earliest of the following occurs:

1. The expiration of thirty-six (36) months from the date of the occurrence, or in the case of an occupational disease thirty-six (36) months from the earliest of the first manifestation of the symptoms or notification from a physician that the illness is inherent or related to the worker's occupation;

2. The consulting physician, or at discretion of the Administrator, the attending physician, declares that the worker has reached maximum medical improvement;

3. The worker is incarcerated;

4. A full, unrestricted release is provided by the attending physician;

5. A modified or light duty release is provided by the consulting physician or attending physician and a bona fide job offer of suitable work consistent with the worker's disability is rejected;

6. A new or intervening incident is the proximate cause of disability;

7. Benefits are refused by the worker;

8. Presumption of MMI or abandonment of medical treatment;

9. Suspension of benefits by the Administrator for reasons authorized in this Code or by the authority of the arbitration panel established under Chapter 9;

10. The worker's earning capacity is reduced for reasons other than the disability from the work-related injury; or

11. The covered worker dies from any cause not resulting from the injury for which he was entitled to compensation under this section, and the covered worker's estate is not entitled to any further benefits.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ⇄210.

Westlaw Topic Nos. 209, 413.

Workers' Compensation ⇄840.3, 840.7,
840.3.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6-104. Impairment benefits

A. At the expiration of thirty-six (36) months from the date of the incident, accident and/or occupational disease, the worker is presumed to have reached MMI regardless of disability and/or current medical status. The attending

physician is to provide an impairment rating in accordance with the most current edition of the American Medical Association (AMA) based on reasonable medical probability. In addition, the attending physician is required to provide a treatment plan for reasonable and necessary future medical needs. The attending physician's impairment rating and treatment may be subject to review and revision by the consulting physician at the discretion of the Administrator,

B. The impairment ratings are to be converted to the covered worker as a whole. Those ratings assigned to a specific body part are to be converted in accordance with the AMA guidelines.

C. The rating may not be issued prior to the declaration of maximum medical improvement. The Administrator may reserve issuance of payment under the following conditions:

1. Contribution for prior impairment ratings;
 2. Clarification by the Administrator as to the validity of the date for MMI;
- or
3. Similar rating or maximum medical improvement issues to be resolved by the consulting physician or, if necessary, the arbitration panel established under Chapter 9.

D. The rating recognized by the arbitration panel established under Chapter 9 is binding. The rating will not be retroactively paid for weeks accrued in resolving the rating issue subsequent to the date of maximum medical improvement. Such benefits will become effective the date of the ruling and commence at that time. Benefits will not be withheld beyond a reasonable time period in clarification of the rating and MMI date.

E. Benefits will be payable based on the impairment rating issued to the covered worker multiplied by two hundred thousand dollars (\$200,000) and divided by the total number of scheduled weeks (104). Benefits payable under this section are limited to a total of two hundred thousand dollars (\$200,000) regardless of the impairment rating issued and regardless of the number of body parts involved.

F. A lump sum settlement for impairments will be given to a covered worker who receives a rating of fifteen percent (15%) of the covered worker as a whole or less. Notwithstanding provisions herein, the Administrator shall retain the right and discretion to order lump sum settlements in those cases with a rating of greater than fifteen percent (15%) of the covered worker as a whole.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210.
Workers' Compensation ☞860.1.

Westlaw Topic Nos. 209, 413.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6-105. Benefit-issuance period

Except as provided herein:

- A. All benefits under this chapter are to be issued weekly;

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B. There shall be no acceleration of benefits under this Code; and

C. Any settlement issued on behalf of a covered worker shall be executed by signed memorandum only.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

§ 6-106. Not to exceed pre-injury average weekly wage

In no event may the worker's incapacity income benefits or other income sources that supplement the loss income exceed one hundred percent (100%) of the worker's pre-injury average weekly wage, as may be increased by a Tribal-approved cost of living adjustment.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

§ 6-107. Benefit offsets

The Administrator is entitled to reduce benefits payable to covered workers in an amount equal to employee payments paid for by the employer for any pecuniary wages paid in the form of social security, long-term and short-term disability, employer-elected salary contribution, vacation or sick leave, except for sick or paid administrative leave in the first seven (7) calendar days after an accident and or onset of an occupational disease, or any other entitlement of a similar nature paid in whole or in part by the employer. Further, if any overpayment is made under this chapter to the covered worker of any disability income benefits as set forth in Section 6-103, such shall be deducted from any benefits payable under functional impairment benefits as set forth in Section 6-104; or in the case where no functional impairment benefits are payable, then such overpayment of benefits may be deducted through payroll deductions.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210.

Workers' Compensation ☞934.1 to 934.11.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

CHAPTER 7. DEATH BENEFITS

Section

- 7-101. Distribution of death benefits.
- 7-102. Redistribution of death benefits.
- 7-103. Verification of eligibility of death benefits.
- 7-104. Burial benefits.

§ 7-101. Distribution of death benefits

When death ensues to the covered worker by reason of a compensable injury or occupational disease, benefits shall be payable to the covered worker's dependents who were wholly dependent on the earnings of the worker for support at the time of his injury, compensation upon the basis of seventy percent (70%) per week of the worker's average weekly wage, commencing from the date of death as follows:

A. If there are no children entitled to benefits, then all death benefits shall pass to the surviving spouse for the earlier of 1) the date at which the worker would have reached sixty-five (65); 2) the life of the surviving spouse or 3) until remarriage. To be an eligible "surviving spouse," the surviving spouse must have been married and living with the decedent at the time of the compensable injury. If there are surviving eligible children, the surviving spouse shall be entitled to one-half (1/2) of death benefits and the remaining one-half (1/2) of death benefits shall be paid to each surviving eligible child in equal shares.

B. If there is no surviving spouse, equal shares of all to:

1. Any child of the deceased until the child reaches the age of eighteen (18), or until the child dies, or until the date the worker would have reached the age of sixty-five (65), whichever occurs first;

2. Any child beyond eighteen years of age, if such child older than eighteen (18) years of age is enrolled as a full-time student in any accredited educational institution at the time of the injury to the covered worker. That child shall be entitled to benefits until the earliest of:

- a. the date on which the child dies,
- b. the date on which the child reaches twenty-five (25),
- c. the date on which the child ceases, for a second consecutive academic term, to be enrolled as such a student; or
- d. the date on which the worker would have reached the age of sixty-five (65) years of age;

3. Any child who was physically or mentally incapacitated from earning at the time of the compensable injury causing death for the duration of the incapacity, or the incapacitated child's death, or on the date in which the worker would have reached the age of sixty-five (65) years of age, whichever is earlier; or

C. If there is no surviving spouse, nor any surviving eligible children, death benefits shall be paid to any surviving minor and/or dependent grandchildren equally, until such time as the surviving minor and/or grandchild dies or ceases

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to be a minor or until the date on which the worker would have reached the age of sixty-five (65), whichever is earlier.

D. If there is no surviving spouse, child or grandchild, the death benefits shall be paid to a surviving dependent who is a parent, sibling or grandparent of the deceased and who is wholly dependent on the earnings of the worker for support at the time of the compensable injury. If more than one (1) of these dependents survives the deceased, the death benefits shall be divided among them in equal shares. Death benefits shall be paid until the earlier of the date on which the worker would have reached the age of sixty-five (65) or until the death of the dependent.

E. If the worker is not survived by any of the above dependents and is survived by quasi-dependents who were only partially dependent upon the earnings of the covered worker at the time of his death, then weekly compensation payable under this section shall be equal to the same proportion of the weekly benefits for the benefit of the person wholly dependent as the amount contributed by the worker to such quasi-dependents bears to the annual earnings of the deceased at the time of injury. Death benefits shall be paid until the earlier of the date on which the worker would have reached the age of sixty-five (65) or until the death of the dependent.

F. If the worker is not survived by any legal beneficiaries, any duty to pay such benefits, but not including burial benefits, under this chapter shall cease immediately;

G. If a worker is entitled to compensation for an injury sustained, and death ensues from any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability thereafter shall terminate.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ⇔210.

Workers' Compensation ⇔410.1.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 7-102. Redistribution of death benefits

A. If a legal beneficiary as defined in Section 7-101 dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries in accordance with Section 7-101.

B. If all legal beneficiaries cease to be eligible, any duty to pay the remaining death benefits payable under Section 7-101 shall cease immediately.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ⇔210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

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§ 7-103. Verification of eligibility of death benefits

Upon request from the Administrator, all persons claiming to be eligible for death benefits shall furnish all necessary written documentation to support their claim of eligibility.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 7-104. Burial benefits

If death results from a compensable injury, the person and/or entity who incurs liability for the costs of the burial shall be paid five thousand dollars (\$5,000.00) to cover said expenses. This burial benefit payment shall not be reduced as a result of any burial benefit paid by any other source.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Workers' Compensation ☞440.1.
Westlaw Topic No. 413.

CHAPTER 8. MEDICAL BENEFITS

Section

- 8-101. Entitlement to medical benefits.
- 8-102. Right to select doctor; employer selection.
- 8-103. Release of medical-related information.
- 8-104. Medical expenses.
- 8-105. Settlement of future medical treatment.

§ 8-101. Entitlement to medical benefits

All covered workers are entitled to reasonable health care, supplies and reasonably necessary transportation incurred for such services. Medical benefits are payable from the date the compensable injury or accident occurred.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

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| Indians ☞210. | Westlaw Topic Nos. 209, 413. |
| Workers' Compensation ☞966. | C.J.S. Indians §§ 57 to 59, 66 to 72. |

§ 8-102. Right to select doctor; employer selection

A. Except in an emergency where the employer, Administrator or his agent cannot be reached immediately, all health care must be approved or recommended by the employer or Administrator. Health care treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the worker. If the worker has reason to be dissatisfied with the care offered, he should communicate the basis of such dissatisfaction to the employer, in writing, following which the employer and the worker may agree to alternate care reasonably suited to treat the injury. If the employer and the worker cannot agree on alternate care, the arbitration panel established under Chapter 9 may, upon written application and the reasonable proofs of the necessary thereof, allow and order other such care. Any non-authorized treatment of the covered worker is not payable under this section and shall be at the worker's sole expense.

B. Chiropractic, osteopathic, naturopathic, acupuncture or other non-traditional forms of treatment must be approved by the Administrator and approved by the attending physician. Duration of treatment and/or number of visits to such medical providers shall be subject to Administrator's approval, who may rely upon the advice of the consulting or attending physician.

C. After notice and opportunity for a hearing, the arbitration panel established under Chapter 9 of this Code may issue a decision relieving the Administrator of its duty to pay for health care furnished by a health care provider or any other person selected in a manner inconsistent with the requirements of this chapter.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

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| Indians ☞210. | Westlaw Topic Nos. 209, 413. |
| Workers' Compensation ☞966. | |

CHAPTER 9. ADJUDICATION OF DISPUTES

Section

9-101. Appeals from decisions of the Administrator.

9-102. Hearings.

9-103. Claimant attorney's fees and other related arbitration costs.

§ 9-101. Appeals from decisions of the Administrator

The Administrator shall administer the Tribal Worker's Benefit System in accordance with the terms and conditions set forth in this Code. Any appeal from a final decision of the Administrator shall follow the procedures as set forth in this Code and in accordance with any and all rules and regulations of the TWBAC. All appeals shall be filed within thirty (30) days of the decision of the Administrator.

A. First Level—Binding Arbitration. A worker may appeal a decision of the Administrator by filing a contested claim with the arbitration panel and an administrative hearing shall be held, if so requested in writing. Further, the Administrator may seek a declaratory decision that the actions of the Administrator are in compliance with this Code, and may request a hearing in writing. A worker appealing the decision of the Administrator shall bear the burden of proof that the Administrator's decision was not in compliance with, or was in violation of, this Code. The arbitration panel will conduct all hearings in accordance with their established rules and render a written decision in the dispute. The decision of the arbitration panel shall be final and binding on all parties except for an appeal to the Muscogee (Creek) Nation Tribal Court as provided herein.

B. Second Level—Tribal Court. Any and all appeals from a decision of the arbitration panel shall be heard by the Muscogee (Creek) Nation Tribal Court. The arbitration panel's decision shall be upheld unless the Tribal Court finds that the decision was:

1. Unsupported by evidence;
2. Arbitrary and capricious;
3. An abuse of discretion by the Administrator; or
4. Contrary to this Code or other applicable law.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210, 418, 430.
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to
179.

§ 9-102. Hearings

A. The worker and the Administrator shall have the right to be represented by an attorney at their own expense in all matters presented before the arbitration panel and/or the Tribal Court, if applicable, to cross-examine all witnesses and to review all evidence, as may be related to the matter under consideration. However, attorney fees are limited by Section 9-103.

B. The arbitration panel hearing shall not be bound by formal rules of evidence or by technical or formal rules of procedure. The arbitration panel may conduct investigations in such a manner as its judgment is best calculated to ascertain the substantial rights of the parties and to promote the spirit and intent of the Tribal Workers' Benefit System.

C. A full and complete record of the arbitration panel proceedings shall be kept by the TWBAC by a method provided for in their rules and regulations and shall be available to any party who requests the record in writing, demonstrating reasonable need for such record, and by paying the fee set forth in the rules and regulations of the TWBAC.

[Added by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210, 419, 500.
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to 179.

§ 9–103. Claimant attorney's fees and other related arbitration costs

A. If the arbitration panel awards benefits to the worker in excess of the

Administrator's original benefit determination (as communicated to the worker), the claimant's attorney's fees will be approved with a maximum limit of ten percent (10%) of the total benefit award, or five thousand dollars (\$5,000), whichever is less. Disputes over attorney's fees must be filed with the arbitration panel in accordance with the TWBAC established rules and regulations.

B. The claimant or Administrator may engage the services of physicians or experts for hearing purposes at the respective parties' costs which are not reimbursable regardless of the ultimate outcome of the dispute. The opinions of such consultants will be considered in a contested case, notwithstanding the provisions of this Code limiting the outside or unauthorized treatment.

[Added by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

Library References

Indians ☞210, 660, 661.
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to 179.