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Office of the Chief

Chuck Hoskin Jr.
Principal Chief

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Deputy Principal Chief

EXECUTIVE ORDER 2021-10- CTH

EXECUTIVE ORDER EXTENDING COVID-19 VACCINE REQUIREMENTS AND EXTENDING AND EXPANDING INCENTIVES

1. **AUTHORITY:** The Constitution and laws of the Cherokee Nation.
2. **POLICY:** Cherokee Nation’s policy on the COVID-19 vaccine is reflected in Executive Order 2021-01-CTH (May 11, 2021)¹. That policy, firmly endorsing the safety and efficacy of COVID-19 vaccination, is hereby reaffirmed. Indeed, our experience since the COVID-19 vaccine became available and in the six months since the aforementioned Order was issued validates the Nation’s firm position on the subject. In that regard, the National Institute of Health estimates that vaccination has saved the lives of nearly 140,000 Americans as of August 2021.² Moreover, Cherokee Nation’s policy, and the strategies reflected in the aforementioned Order, resulted in increasing our government workforce vaccination rate from 35% to 75%. Accordingly, the policy of the Cherokee Nation remains decidedly in favor of COVID-19 vaccination to the greatest extent possible for our workforce and our citizens.
3. **DEFINITIONS:**
 - a) **New Employees:** Individuals employed directly by Cherokee Nation who commence employment on any date on or after the effective date of this Order.
 - b) **Employees Subject to Applicable Federal Vaccine Mandates:** Employees employed by Cherokee Nation (or Job Training Participants) in departments deemed by the Office of Principal Chief or its designee to be subject to a vaccine mandate imposed directly or indirectly on that individual by federal law or regulation or effect of said law or regulation. For the purposes of this section, the “Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff

¹ <https://www.cherokee.org/media/y5yphlm/executed-executive-order-for-2021-02-cth-vaccinations.pdf>

² COVID-19 Vaccines Prevented Nearly 140,000 U.S. Deaths, <https://newsinhealth.nih.gov/2021/10/covid-19-vaccines-prevented-nearly-140000-us-deaths> (retrieved November 19, 2021)

Vaccination Interim Rule of November 5, 2021” (“CMS Mandate”) is such a mandate. The failure to comply with the CMS Mandate poses a foreseeable risk to the health of Cherokee Nation citizens due to, among other things, the loss of health care funding and the attendant reduction in force of Cherokee Nation’s health workforce and reduction of health programs and services.

- c) **All Other Employees:** Employees employed directly by Cherokee Nation as of the effective date of this Order.
- d) **Job Training Program Participants:** Individuals participating in any job training program administered by Cherokee Nation, utilizing any funding source and at any worksite, including work sites managed by third parties or identified as Cherokee Nation entities.
- e) **Non-Essential Job Functions:** Those aspects of the work of an employee or Job Training Program Participant which is not crucial to completing the core functions of their job. This includes travel to training conferences and attendance at public events in their official capacity, unless approved by the Principal Chief or his designee.
- f) **Non-Disciplinary Lateral Transfer:** The transfer of any employee or Job Training Participant within the scope of this Order to a position at the same rate of pay and benefits without a substantial impact on any other major terms and conditions of employment.
- g) **Full Vaccination:** Full COVID-19 vaccination as defined by the United States Centers for Disease Control, excluding Booster Vaccinations.
- h) **Booster Vaccination:** Additional doses, beyond “Full Vaccination,” of the COVID-19 vaccine as recommended by the United States Center for Disease Control and Prevention.
- i) **Cherokee Nation Entities:** Any entity wholly owned by the Cherokee Nation as well as the Housing Authority of the Cherokee Nation.

4. **REQUIREMENT OF COVID VACCINE³:** Subject to the exceptions and conditions set forth in paragraph 6, below:

- a) **All New Employees:** shall achieve full COVID-19 vaccination within 45 days of commencement of employment, the failure of which shall result in immediate termination of employment, unless such earlier time frame for an Applicable Federal Vaccine Mandate shall apply.
- b) **All Job Training Program Participants:** shall achieve full COVID-19 vaccination within 45 days of commencement of participation. The Executive Director of Career Services may extend this deadline for a maximum of an additional 45 days for any Job Training Program Participant in order to meet operational needs.
- c) **Limited Waiver of EO 2021-01-CTH Termination Requirement:** The Principal Chief's Office is aware that for operational and social welfare reasons the department of Career Services sought and received an informal waiver of the termination provisions of the vaccine mandate under Executive Order 2021-01-CTH for Job Training Participants. Any Job Training Participant engaged in work as of the date of this Order who would have been subject to termination pursuant to a failure comply with the mandate set forth in Executive Order 2021-01-CTH is hereby formally exempted from termination on that basis. Notwithstanding this exemption, all current Job Training Program Participants as of the date of this order are subject to the 45 day full vaccination requirement of Section 4(b) of this Order commencing on the effective date of this Order.
- d) **All Other Employees:** not fully vaccinated during the effective period of this Order shall be suspended from Non-Essential Job Functions until full vaccination is achieved.
- e) **Employees Subject to Applicable Federal Vaccine Mandates:** shall be subject to disciplinary action up to and including immediate termination consistent with said mandate and extant departmental and Human Resources policies.

³ This section substantially continues the presiding COVID vaccine requirements of Executive Order 2021-01-CTH (5/21/21), including but not limited to new employee and job training participant vaccine requirements and suspension of non-essential duties of all other employees.

f) **Non-Disciplinary Unilateral Transfers:** Executive Directors are directed, beginning January 4, 2022, to determine whether any employees who are not fully vaccinated pursuant to this Order should be subject to Non-Disciplinary Lateral Transfer in order to protect the health and safety of other employees or the general public in Cherokee Nation facilities. Executive Directors (or their director level designees) must assess the risks of COVID exposure of the subject employee's co-workers or the general public based on the nature of the subject employee's work, the work site as well as the degree and nature of the subject employee's interaction with co-workers and the public in terms of frequency, duration and physical proximity. In making this assessment the Executive Director or designated director should consult with Cherokee Nation Public Health. Based on this assessment the Executive Director shall determine whether such transfer is warranted. The Executive Director, in consultation with Human Resources and Public Health, shall determine whether an opportunity for a Non-Disciplinary Unilateral Transfer exists such that said transfer would substantially mitigate the risk of the subject employee exposing other employees or the general public to COVID-19. The Executive Director must further determine, in case such transfer opportunity exists, whether to effectuate such transfer and to justify any decision to decline to effectuate such transfer based on the operational needs of the department. Such assessment and determination shall be repeated every two months during the effective period of this Order. Each assessment and determination shall be made in writing and filed with the Chief of Staff. The failure of an Executive Director to make such an assessment and determination may result in disciplinary action against the Executive Director, up to and including termination. However, in no circumstance is an Executive Director required to make any transfer described herein.

5 **PROOF OF VACCINATION:** Proof of vaccination under this Order includes any medical record memorializing the date of vaccination and whether partial vaccination, Full Vaccination and/or booster vaccination is indicated. This includes, but may not be limited to, the vaccination card issued to the employee by the medical provider.

6. **EXEMPTIONS:** New Employees, Employees Subject to Applicable Federal Vaccine Mandates, Other Employees and Job Training Program Participants are exempt from this on any of the following bases

- a) **Medical Exemption:** The New Employee, Other Employee or Job Training Program Participant has a documented medical condition indicating that the individual would experience an adverse health reaction to the vaccine, as determined by prevailing public health standards.
- b) **Religious Exemption:** The New Employee, Other Employee or Job Training Program Participant's sincerely held religious belief, practice or observance prevents the individual from taking the vaccine.
- c) **Expressly Prohibited by Federal Funding:** This order is unenforceable, on a case by case basis, to the extent that it violates an express federal statute, rule, regulation or policy prohibiting such enforcement.
- d) **No mandate herein applies to any individual under the age of 18 other than Applicable Federal Vaccine Mandates under this Order.**

7. **HUMAN RESOURCE DEPARTMENT TO DEVELOP POLICIES:** The Human Resources Department shall develop policies consistent with this Order and communicate the same to all employees.

- a) **Non-binding Federal Guidance; Binding Federal Mandates:** In applying the exemptions above, the Human Resources Department may refer to extant guidance from the United States Equal Employment Opportunity Commission, though that guidance is non-binding on Cherokee Nation. The Human Resources Department must, however, incorporate relevant standards and rules into said exemptions applicable to Employees Subject to Applicable Federal Vaccine Mandates.

8. **EMPLOYEE AND JOB TRAINING PARTICIPANTS INCENTIVES:**

- a) **Full Vaccination Incentive:** The Full Vaccination Incentive Program authorized by Executive Order 2021-01-CTH (\$300) is hereby extended through June 1, 2022.
- b) **Departmental Incentive:** Departments that achieve 100% department wide Full Vaccination, exclusive of Job Training Participants and departmental employees who are exempt under this Order, by April 1, 2022, shall receive a premium

payment of \$300 per departmental employee. The Executive Director of Human Resources shall begin determining Full Vaccination of each department upon the effective date of this order and make a final determination no later than April 1, 2022, with payments to be issued no later than June 1, 2022. For the purposes of this program the composition and identify of a “department” shall be recommended by the Executive Director of Human Resources and approved by the Chief of Staff consistent with the Cherokee Nation organizational chart. Generally, “departments” are those groups of employees reporting up to and including an executive director.

- c) **Booster Vaccination Incentive:** The Full Vaccination Incentive Program is hereby expanded to include a Booster Vaccination Incentive of \$300 to be administered in a manner consistent with the \$300 Full Vaccination Incentive Program and expires June 1, 2022.
9. **Sequoyah and Immersion Schools Student Incentive:** The Chief of Staff is directed to develop and implement an incentive / reward program for students of Sequoyah Schools and Immersion School to encourage full vaccination. Said program shall incentivize students who have not become fully vaccinated and reward those who are already fully vaccinated on an equal basis. Said program shall include a payment of no less than \$300 upon proof of Full Vaccination. Said program shall expire June 1, 2022. The program shall include at least two on-site vaccine clinics at Sequoyah and Immersion schools during the operation of the program, the first no later than December 2, 2021.
10. **Tribal Sovereignty Protection:** Determinations as to the applicability of federal vaccine mandates on Cherokee Nation shall be subject to the rigorous scrutiny of The Office of Principal Chief in consultation with the Cherokee Nation Attorney General.
11. **Application of Order to Other Branches:** No portion of this order applies to employees under the direct supervision the judiciary or the Council of the Cherokee Nation as of the date of this Order. But, by this Order those branches are encouraged to use this Order as operational guidance. The judiciary and the Council of the Cherokee Nation may opt into


any incentive program under this order by written request of their respective presiding officers.

12. **Application of Order to Cherokee Nation Entities:** No portion of this order applies to Cherokee Nation Entities, though Cherokee Nation Entities are encouraged to use this Order as operational guidance. Based on availability of funds the individual employee vaccine incentive may be extended to support Cherokee Nation entities with approval of the Chief of Staff.

13. **ORDER:** COVID-19 vaccine requirements and incentives for Cherokee Nation's Executive Branch government work force are extended and expanded from Executive Order 2021-01-CTH as set forth herein.

14. **EFFECTIVE DATE:** This Order is effective December 1, 2021, and supersedes Executive Order 2021-01-CTH to the extent that order is inconsistent with this Order.

15. **EXPIRATION DATE:** This Order shall expire on December 31, 2022.



Chuck Hoskin, Jr.
Cherokee Nation, Principal Chief

Date Signed: 11/23/21