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**EXECUTIVE ORDER FACILITATING THE SHARING OF HEALTH DATA BETWEEN
CHEROKEE NATION'S HEALTH SERVICES DEPARTMENT AND PUBLIC HEALTH
DEPARTMENT IN THE INTEREST OF PROTECTING PUBLIC HEALTH AND
PROTECTING PATIENT PRIVACY**

1. **AUTHORITY:** The Constitution and laws of the Cherokee Nation.
2. **POLICY:** It is in the interest of the Cherokee Nation to ensure that the Nation's Public Health Department has safe and secure access to health data¹ collected by Cherokee Nation's Health Department without undermining patient privacy and in a manner that protects public health. Meeting these interests requires cooperation between the two departments and a careful examination of the privacy interests of individual patients. As the two departments are units of an executive branch that is substantially unitary in function, cooperation on such matters is prerequisite and preexists this order². Yet, the understandable and admirable concern on the part

² Cherokee Nation Health Services and Cherokee Nation Public Health, like substantially all departments within the executive branch, are not “independent” government agencies. Both departments are units of a single unitary executive administration overseen by the Principal Chief. Such departments operate neither independent of the executive branch nor independent of each other, other than as the Principal Chief, under the Principal Chief’s constitutional authority and subject to Council enacted laws of the Cherokee Nation, may separate the departments’ functions for reasons of organizational efficiency, prioritization of resources and other such matters. As such, data collected, stored and used by either department is data collected, stored and used by the executive branch of the Cherokee Nation. Neither department is independently or uniquely collecting, storing or using data for reason other than executing authorized functions of the Cherokee Nation executive branch. Accordingly the sole arbiter as it relates to the collection, storage and usage of data by departments of the executive branch is the Principal Chief, whose authority is in turn subject to internal and external legal authority operating on the Principal Chief’s collection, storage and usage of data (eg., The Health Insurance Portability and Accountability Act, known as HIPAA.)

of both departments for patient privacy requires the issuance of this order to provide both departments with the guidance and assurance necessary to protect public health. As discussed more fully herein, adequate administrative and legal safeguards exist within the executive branch, Cherokee law and federal law to share health data in a manner that meets all of the important interests at stake when operating, as we do, large and successful systems of health care delivery and public health services. Accordingly, this “Executive Order Facilitating the Sharing of Health Data Between Cherokee Nation’s Health Department and Public Health Department in the Interest of Protecting Public Health” is warranted.

3. **Background:** Prior to Fiscal Year 2023 Public Health was a program within Cherokee Nation Health Services. Beginning in FY 2023 Public Health separated to become a stand-alone executive director level department. This action was necessary to align with the Administration’s expectation that Public Health expand and explore areas of future growth and greater impact. This split occasioned a degree of uncertainty over the sharing of health data, which is collected at the patient level by Health Services. A process has existed through which uncertainty over specific types of data or specific data is to be resolved by a decision of Health’s Data Governance Committee under Health’s Governing Board. That process has not fully resolved questions concerning the minimum necessary data for certain public health activities. That process did not operate in the context of Cherokee Nation Public Health operating as the formally designated “mandated reporting agency.”

The collection, storage and usage of health data is of course subject to The Health Insurance Portability and Accountability Act (HIPAA), codified at 42 U.S.C. § 1320d et seq. Strict compliance with HIPAA reflects not only Cherokee Nation Health Service’s standard for protecting patient privacy, but indeed the minimum standard over which it continually aims to exceed through its processes and standards.

The HIPAA Privacy Rule³ permits access to otherwise protected health information for public health activities. The HIPAA Privacy Rule expressly permits public health authorities to determine what information is the minimum necessary for certain “public health activities.”⁴ Accordingly, as a general matter, **Public Health should have access to health data from Health Services which is necessary for engaging in these public health activities.**⁵

³ 45 CFR Part 164, Subpart E

⁴ See 45 CFR 164.512(b)

⁵ This entire order is based on the assumption that, absent a HIPAA privacy rule exception, Cherokee Nation Health Services is prohibited from sharing health data, including PHI with Cherokee Nation Public Health. This assumption, in the view of the Principal Chief, has not been fully tested or resolved. But, rather than resolve that issue, and to err on the side of protecting patient privacy, we proceed under this order as if such data sharing within executive branch health departments

Relatedly, Cherokee Nation has an interest in the collection, storage and usage of certain public health data that is shared with other sovereigns to protect public health. At present Health Services reports data on reportable diseases to the Oklahoma State Department of Health through a dedicated state portal. Cherokee Nation cannot retrieve such data for public health surveillance and response once submitted. Health Services does not report this data to Public Health. Health Services providing these reports to Public Health, which in turn reports the data to OSDH, would enable Cherokee Nation to maintain access and control over the data.

4. Determinations and Directives:

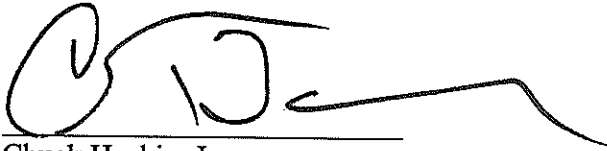
- a) **Cherokee Nation Public Health is Cherokee Nation’s Mandated Reporting Agency:** Cherokee Nation Public Health is the mandated reporting agency for public health data submission to all public health authorities, under approved agreements or other legal authority, including but not limited to the United States Centers for Disease Control and Prevention and the Oklahoma State Department of Health.
- b) **Health Data Access by Cherokee Nation Public Health:** Cherokee Nation Public Health shall have access to patient health data collected and stored by Cherokee Nation Health Services to the extent consistent with the former’s public health activities within the meaning of the HIPAA Privacy Rule, including:
 - i. Reporting of disease, injury and vital events such as birth or death.
 - ii. Conduct of public health surveillance.
 - iii. Public health investigations.
 - iv. Public health interventions.
- c) **Existence and Resolution of a “Question Concerning Health Data Release to Public Health”:** Within three (3) days of receipt of a request for health data from Cherokee Nation Public Health where the Executive Director of Health must provide the requested information or determine that a “Question Concerning Health Data Release to Public Health” exists and shall:

requires the application of an exception to the HIPAA privacy rule and the guidance of an executive order. See also footnote 2, *supra*.

- i. Place the Question Concerning Health Data Release before the Health Data Governance Committee for a same day determination, and provide the Executive Director of Public Health, the Chief of Staff and the Attorney General a courtesy copy of the question provided:
 - ii. The Executive Director of Public Health may submit the Question Concerning Health Data Release to the Attorney General, with a copy provided to the Executive Director of Health and the Chief of Staff, for a final and binding determination by the Attorney General within seven days after submission⁶,
 1. when the Executive Director of Health has received a request for health data but has not timely responded to it or has not timely presented a Question Concerning Health Data Release to the Health Data Governance Committee, or
 2. when the Health Data Governance Committee declines to approve the release of any part of the request for health data.
- d) **Health Data Sharing Work Group:** To effectuate the purposes and policies of this order and to minimize the need for posing and resolving a Question Concerning Health Data Release to Public Health, a Health Data Sharing Work Group shall meet no less than quarterly to discuss relevant health data issues, approve processes, policies and procedures, and to catalog and maintain Questions Concerning Health Data Release to Public Health, composed of these officials / staff (or their proxies as designated from time to time, along with relevant staff in attendance by invitation).
- i. Chief of Staff (Chair)
 - ii. Executive Director of Health Services
 - iii. Executive Director of Public Health
 - iv. Attorney General's designated Health General Counsel
 - v. Health Services Chief Information Officer.

⁶ And for such additional seven day periods as the Attorney General may need in order to resolve the question.

5. **ORDER:** The Principal Chief's "Executive Order Facilitating the Sharing of Health Data Between Cherokee Nation's Health Services Department and Public Health Department in the Interest of Protecting Public Health", is so ordered.
6. **EFFECTIVE DATE:** This Order is effective immediately on the 29th day of May 2025.

A handwritten signature in black ink, appearing to read 'CHUCK HOSKIN, JR.', with a long horizontal flourish extending to the right.

Chuck Hoskin, Jr.
Principal Chief
Cherokee Nation