



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
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Legislation Details (With Text)

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Title:	PUBLIC HEALTH AND WELLNESS FUND ACT - 2023 PUBLIC HEALTH LITIGATION SETTLEMENT AMENDMENTS				
Sponsors:	Dora Patzkowski, Mike Dobbins, Mike Shambaugh, Victoria Vazquez, Joshua Sam, Shawn Crittenden, Joe Deere, E. O. "JR." Smith, Daryl Legg, Candessa Tehee, Rex Jordan, Julia Coates, Johnny Kidwell, Danny Callison, Melvina Shotpouch, Keith Austin				
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1/26/2023	1	TRIBAL COUNCIL	Approved	Pass
1/26/2023	1	RULES COMMITTEE	Approved and Forwarded to Council	Pass

PUBLIC HEALTH AND WELLNESS FUND ACT - 2023 PUBLIC HEALTH LITIGATION SETTLEMENT AMENDMENTS

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be known and cited as the "Cherokee Nation Public Health and Wellness Fund Act" **or alternatively the "Cherokee Nation Public Health and Wellness Fund 2023 Public Health Litigation Settlement Amendments"** and codified at Title 68, Chapter XX "Revenue and Taxation", of the Cherokee Nation Code, which is hereby amended in accordance with the Act.

Section 2. Legislative Intent and Purpose

The purpose of this Act is to establish a revenue source for the public health of Cherokee citizens throughout the Cherokee Nation reservation. Revenues shall be generated from unrestricted third party revenue collected by Cherokee Nation's Health Services. This revenue shall be used to provide Cherokee Citizens access to personal health, including access to wellness/fitness centers and substance abuse treatment facilities. **LA 13-22 amended LA-12-21 the Act to expand its purposes further and to address the use of certain opioid industry litigation settlement funds. LA [xx]-23 clarifies the unrestricted nature of third party**

revenue collections for the Public Health and Wellness Fund and further expands the purpose of the act to address the use of certain additional opioid industry litigation settlement and e-cigarette industry settlement funds.

Section 3. Legislative History

Amends Legislative Acts 12-21 and 13-22.

Section 4. Substantive Provisions

§ 1001 Definitions. The following words and phrases shall have the meanings ascribed in this article, except where the context requires otherwise:

- A. "Act" means the Cherokee Nation Public Health and Wellness Fund Act.
- B. "Third Party Revenue" means revenue generated from health insurance claims or billings to health insurance carriers/providers.
- C. "Unrestricted" means those payments collected by Cherokee Health Services billing staff that have no use restrictions imposed by the insurance provider, excluding reimbursements that cannot lawfully be used for any purpose identified in this Act.
- D. "Principal Chief" means the Principal Chief of the Cherokee Nation.
- E. "Treasurer" means the Treasurer of the Cherokee Nation.
- F. "2021 Opioid Settlement": Means the settlement reached between Cherokee Nation and certain opioid distributors dated November 24, 2021. "Opioid Settlement": Means the settlements reached between Cherokee Nation and certain business entities in the opioid industry dated as follows:
 - i. November 24, 2021
 - ii. February 1, 2022
 - iii. September 23, 2022
 - iv. October 29, 2022
 - v. December 16, 2022
- G. "E-Cigarette Settlement": Means the settlement reached with e-cigarette maker Juul Labs Inc on the subject of youth vaping dated October 25, 2022.

§ 1002 Authority.

The Principal Chief, through budgetary approval by the Council, shall have authority to manage all funds collected under this Act.

§ 1003 Collection of Third Party Revenue Funds.

- A. Each year, seven percent (7%) of the revenues from Third Party Revenue unrestricted health

insurance billings collected by Cherokee Nation Health Services shall be set aside for public health and **behavioral health services substance abuse treatment, provided that nothing herein shall compel the expenditure of any third party revenue in a manner that violates any lawful restrictions on such funding.**

- B. Within ten (10) days after the end of each month during which this act is in effect, Health Services shall prepare and submit to the Treasurer a report identifying the collection of **unrestricted funds Third Party Revenue** generated through the patient visits in **each of** the Cherokee Nation Health system. Based on the reporting, the Treasurer may submit budget modifications, for approval by the Council of the Cherokee Nation, as needed to reflect the change in revenue collection.
- C. Nothing contained within this Act shall prevent Cherokee Nation from acquiring other funds, including public and private funding, to use toward the betterment of public and individual health of Cherokee Nation citizens and meeting the intent of this Act.

§ 1004 **Uses of Third Party Revenue Funds.**

- A. Revenue collected under **§ 1003 of** this Act shall be used for both capital investments and operational expenses for Wellness Centers and Addiction Treatment facilities, other behavioral health programs, or grant programs in support of activities consistent with the purposes of this Act by third party entities for the benefit of Cherokee Nation citizens. Budget and intended use of the funds shall be appropriated by the Council of the Cherokee Nation through the comprehensive annual budget. The Principal Chief shall prioritize and plan the use of funds to address the public health and wellness needs of citizens and communities.
- B. Annually, unspent or unused funds collected under this Act shall be carried over into the following fiscal year. The carryover funds shall be used only for the expenditures consistent with the purposes of this Act.
- C. Funds collected under **§ 1003 of** this Act may be used as cash match for other funding sources, including Federal, State or private grant or funding programs, so long as the funding or grant opportunity is consistent with intent of this Act. Cash match shall not surpass twenty-five percent (25%) of the seven percent (7%) revenue collected from **unrestricted third party insurance collections Third Party Revenue.**
- D. The Principal Chief shall develop and present a phased project plan to the Council of the Cherokee Nation, on or before September 30, 2021. Any subsequent project plans or updates shall be provided to Council at least annually.

§ 1005 Use of 2021 Opioid Settlement Funds

A. Behavioral Health Capital Fund:

1. A. The Council of the Cherokee Nation authorizes the use of 2021 Opioid Settlement funds for the purposes of behavioral health capital projects relating to addiction treatment or prevention within the Cherokee Nation reservation, as follows:

a) Fiscal Year 2022: \$5,000,000

- b) Fiscal Year 2023: \$5,000,000
- e) Fiscal Year 2024: \$5,000,000
- i. Fiscal Year 2023: \$20,000,000
- ii. Fiscal Year 2024: \$25,000,000
- iii. Fiscal Year 2025: \$20,000,000
- iv. Fiscal Year 2026: \$4,000,000
- v. Fiscal Year 2027: \$4,000,000

2. ~~B.~~ Funds authorized but unexpended under subsection A of this subsection may be carried over into subsequent fiscal years authorized under this Act.

B. Behavioral Health Innovative Addiction Recovery Programs Fund

1. The Council Authorizes Cherokee Nation Health Services and Cherokee Nation Public Health Department to develop pilot drug addiction treatment and prevention programs, or to provide matching funds for any third party grant for such purposes, using Opioid Settlement funds in the amount of \$1,000,000 per fiscal year for fiscal years 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031 and 2032, provided:

- i. Funds authorized but unexpended under this Section of the Act may be carried over into subsequent fiscal years authorized under this Section of the Act.

2. Cherokee Nation Health Services and/or Cherokee Nation Department of Public Health shall provide the Council, annually commencing with fiscal year 2024, with a report summarizing projects funded under this section of the Act, the efficacy of such projects and such other information as shall advise the Council of the effectiveness of expenditures.

C. Career Services Addiction Recovery Employment Programs Fund

1. The Council Authorizes Cherokee Nation Career Services to develop pilot programs to provide employment, job training or emergency economic assistance for Cherokee Nation citizens in addiction recovery programs, or to provide matching funds for any third party grant for such purposes, using Opioid Settlement funds in the amount of \$1,000,000 per fiscal year for fiscal years 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031 and 2032, provided:

- i. Funds authorized but unexpended under this Section of the Act may be carried over into subsequent fiscal years authorized under this Section of the Act.

2. Cherokee Nation Career Services shall provide the Council, annually commencing with fiscal year 2024, with a report summarizing projects funded under this section of the Act, the efficacy of such projects and such other information as shall advise the Council of the effectiveness of expenditures.

D. Behavioral Health Scholarship Fund:

1. The Council of the Cherokee Nation Authorizes the use of Opioid Settlement funds to create a \$5 million scholarship endowment through the Cherokee Nation Foundation paid

in Fiscal Year 2023;

2. The Council of the Cherokee Nation authorizes a committee to negotiate an agreement with the Cherokee Nation Foundation, said committee
 - i. Shall consist of the Principal Chief or his designee, the Speaker of the Council or his designee member of the Council of the Cherokee Nation, and a third committee member selected by the foregoing members who shall be a citizen of the Cherokee Nation;
 - ii. Shall negotiate said agreement to meet the following objectives: (1) establish a perpetual source of undergraduate and / or graduate scholarship assistance for Cherokee Nation students pursuing degrees in behavioral health fields, (2) provide, without imposing any applicant residency requirement, a preference for scholarship recipients who demonstrate a likelihood of providing professional service within the Cherokee Nation Reservation and (3) provide an enhanced educational grant option for applicants agreeing to work for Cherokee Nation in relevant professional fields for a period of grant pay back;
 - iii. Shall negotiate said agreement for a term not to exceed 15 years, subject to renewal at the option of the Principal Chief on such extended terms as the Principal Chief may negotiate consistent with the purposes and polices of this Section of the Act;
 - iv. Shall report draft of said agreement (including such extensions or new terms negotiated pursuant to Section B.2.iii of this Section) to the Council of the Cherokee Nation Committee on Education for a period of no less than 15 and no more than 45 days before the agreement goes into effect.

§ 1006 Use of E-Cigarette Settlement Funds

A. Smoking Cessation Fund:

1. The Council of the Cherokee Nation authorizes the Cherokee Nation Department of Public Health the use of the E-Cigarette Settlement funds to fund capital projects, program operations or grant matching requirements to promote commercial tobacco and e-cigarette smoking cessation for Cherokee citizens, irrespective of the citizens' residency, in the amount of \$350,000 per fiscal year for fiscal years 2023, 2024, 2025, 2026, 2027, 2028, 2029, and 2030, provided:
 - i. Funds authorized but unexpended under this Section of the Act may be carried over into subsequent fiscal years authorized under this Section of the Act.
 - a. Cherokee Nation Department of Public Health shall provide the Council, annually, with a report summarizing projects and programs funded under this section of the Act, the efficacy of such projects and such other information as shall advise the Council of the effectiveness of expenditures.
 - b. Cherokee Nation Department of Public Health shall provide to the Council a "Final Report

on E-Cigarette Settlement Smoking Cessation Fund” no later than December 31, 2029, to including recommendations for the expenditure of any unspent funds under this Section of the Act.

§ 1007 Comprehensive Annual Report on Settlement Funds Balance; Use of Unmarked Funds

- A. Treasurer’s Annual Public Health Settlement Report: On an annual basis commencing with fiscal year 2024 through the exhaustions of all funds, the Treasurer shall provide to the Council of the Cherokee Nation a report stating the net balance remaining of all Opioid Settlement and E-Cigarette Settlement funds.**
- B. Settlement Funds Not Earmarked: To the extent that any Opioid Settlement or E-Cigarette Settlement funds have not been earmarked for authorized expenditure under this Act, or to the extent that such funds are not expended within the time frames authorized by this Act, said funds shall be available for appropriation by amendment of this Act or such other act of Council, including any budget appropriations act, provided said funds are expended consistent with the terms of the relevant settlement agreements and are reported in the Treasurer’s Annual Public Health Settlement Report.**

Section 5. Provisions as Cumulative

The provisions of this act shall be cumulative to existing law. If a provision of the Act is inconsistent with existing Cherokee Nation law, including any provision of Title 68 of the Cherokee Nation Code, the operative provision of this Act shall apply.

Section 6. Severability

The provisions of this act are severable and if any part or provision hereof shall be held void the decision of the Court so holding shall not affect or impair any of the remaining parts or provisions of this act.

Section 7. Effective Date

It being immediately necessary for the welfare of the Cherokee Nation, the Council of the Cherokee Nation hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.