

CHEROKEE COUNCIL HOUSE  
CHEROKEE, QUALLA BOUNDARY

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Date

ORDINANCE NO. \_\_\_\_ (2016)

- WHEREAS, the Eastern Band of Cherokee recognizes that vulnerable adults in this community are in need of services, support and protection; and
- WHEREAS, historically the county has provided for the protection of vulnerable adults in this community but with the establishment of the Tribe's Public Health and Human Service Division the Tribe now has capacity to provide these services; and
- WHEREAS, in order to protect and serve the vulnerable adults in the community both the Public Health and Human Service agents and Court must work together to be helpful to families who are in need of adult protective services to ensure they are directed to the appropriate services.

NOW THEREFORE BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians, in Council assembled, at which a quorum is present, that Cherokee Code shall be amended by adding the following:

Cherokee Code Chapter 35A

**SUBCHAPTER II INCOMPETENCY AND GUARDIANSHIP**

**Article I**

**Sec.35A-1100. POLICY**

It is the policy of the Eastern Band of Cherokee Indians to protect persons who lack the capacity to make decisions regarding their own life or property. The Tribe supports planning tools and measures that can be used to delay or avoid guardianship. Guardianship for an incapacitated adult shall be used only as is necessary to promote and to protect the well-being of the adult. Guardianship shall be designed to encourage the development of maximum self-reliance and independence of the adult and shall be

ordered only to the extent necessitated by the adult's actual functional mental and physical limitations. An incapacitated person for whom a guardian has been appointed retains all legal and civil rights, except those which have been expressly limited by court order or have been specifically granted to the guardian by the court.

#### **Sec. 35A-1101. DEFINITIONS**

- (a) "Accounting" means the financial or status reports filed by a guardian of the estate of an incapacitated adult.
- (b) "Adult" means a person who is eighteen years of age or older, married or legally emancipated.
- (c) "Agency" means the Eastern Band of Cherokee Indians Public Health and Human Services Division as set out in Cherokee Code of Ordinances Sec. 130A-1.
- (d) "Clerk" means the Clerk of the Cherokee Court of the Eastern Band of Cherokee Indians.
- (e) "Competent" means any person who is not incapacitated.
- (f) "Court" means the Clerk of the Cherokee Court or the Cherokee Court of the Eastern Band of Cherokee Indians.
- (g) "Estate" means the property of the person who is subject to this chapter.
- (h) "Family" includes relationships based on bloodlines and marriage, such as parents, spouse, children, grandchildren, grandparents, in-laws, siblings, aunts, uncles, nieces, nephews, cousins and any others defined by Cherokee custom.
- (i) "General Guardian" means a guardian of both the estate and the person of the incapacitated adult.
- (j) "Guardian" means an adult, agency or other entity authorized to make decisions on the care and control of an incapacitated person, his property or assets and insure the person is not abused or neglected. Guardian may include a limited, emergency, or substitute guardian but does not include a guardian ad litem.
- (k) "Guardian ad Litem" means an attorney appointed to represent the best interests of an allegedly incapacitated adult not represented by an attorney. The guardian ad litem personally visits the respondent, determines the respondent's wishes with respect to the guardianship proceeding, presents the respondent's express wishes to the court and makes recommendations to the Court concerning the best interests of the allegedly incapacitated adult.
- (l) "Guardian of the Estate" means guardian of the property or assets of the incapacitated adult.
- (m) "Guardian of the Person" means the guardian appointed solely to provide or arrange for the incapacitated adult's care, comfort and maintenance, rehabilitation or custodial care and has the ability to consent to medical, legal, psychological or other professional care.
- (n) "Incapacitated adult" means a person who the Court has determined is unable to understand, make, communicate or act on decisions about his person or property, as a result of mental illness, mental deficiency, physical illness or disability or chronic use of drugs or alcohol or other cause.



- (o) "Incapacity" means the extent the current functional ability of an adult to understand, make communicate or act on decisions and may vary in degree and duration or be as determined by the Court.
- (p) "Institution" means a non-profit or private organization that provides care for persons with disabilities or the elderly.
- (q) "Multidisciplinary evaluation" is requested by the court when it needs help in determining the respondent's disability, incapacity, or what guardianship plan will be appropriate. It is an evaluation that contains current medical, psychological and social work reports and may include but not be limited to education, vocational rehabilitation, and speech-and-hearing evaluations.
- (r) "Petitioner" means a person or agency who signs the petition to determine incompetency and guardianship.
- (s) "Respondent" means the person against whom the petition is filed.

### **Sec. 35A-1102 DETERMINATION OF INCOMPETENCY AND GUARDIANSHIP**

- (a) The Cherokee Court shall have original jurisdiction over any case arising within its jurisdiction.
- (b) Any person, including but not limited to a person selected by the adult, a family member, a caregiver or the agency may file a petition for a determination of incapacity, in whole or in part, and for the appointment of a limited or unlimited guardian for the alleged incapacitated adult and/or the adult's estate.
- (c) A guardianship petition shall include:
  - (1) The petitioner's name, residence, current mailing address and physical location, relationship to the respondent, and petitioner's interest in the proceeding;
  - (2) The respondent's name, age, principal residence, current mailing address and physical location;
  - (3) The name and address of any other persons known to have an interest in the petition, including the spouse, adult children, and if none, the respondent's parents and adult brothers and sisters, and if none, at least one adult nearest in kinship to the respondent who can be found with reasonably diligent efforts;
  - (4) The name and address of any person presently responsible for or having custody of the respondent;
  - (5) Reasons why guardianship is necessary, date of any examination and examples of behaviors;
  - (6) The type of guardianship requested. Specifically, if it is a proposed limited guardianship, the powers to be granted to the limited guardian;
  - (7) A description and estimate of the respondent's property, assets and liabilities, if guardianship over the estate or general guardianship is sought; and
  - (8) Who the petitioner recommends or seeks to have appointed as guardian.
- (d) After a petition is filed, the petitioner shall serve a copy of the petition and summons on the respondent and any other persons known to have an interest in the petition, pursuant to Rule 4 of the North Carolina Rules of Civil Procedure.



- (e) A summons shall accompany the petition, contain the date of the hearing and notify the respondent and other interested parties of the time in which to file a response to the petition.
- (f) When any petition is filed, the Court shall set an initial hearing, not more than thirty days from the date the petition was filed.
- (g) The Court shall appoint an attorney to represent the respondent, if the respondent is indigent. Should the respondent reject a court appointed attorney or waive the right to an attorney, the court shall appoint a *guardian ad litem* to assist the court.
- (h) When appointed, the guardian ad litem shall:
  - (1) Interview in person the respondent prior to the hearing, visit the respondent's current residence and any proposed residence;
  - (2) Present the respondent's position regarding the proposed guardianship to the court;
  - (3) Interview health care and other professionals involved with the respondent, other interested persons and the proposed guardian;
  - (4) Review both the medical report submitted by the licensed physician, the multidisciplinary evaluation, other records as necessary, and obtain independent medical and psychological assessments, if necessary.
  - (5) Participate in any mediation that occurs in conjunction with the proceeding.
  - (6) Unless otherwise ordered by the court, the duties of the guardian ad litem end and the guardian ad litem is discharged from his duties when the guardian accepts the appointment and an order appointing the guardian is entered by the court or the court otherwise finds the respondent competent and dismisses the petition.
- (i) Before a determination of incapacity, a multidisciplinary evaluation may be ordered by the Court.
  - (1) The multidisciplinary evaluation shall be completed within fourteen days after the order is entered.
  - (2) The court may order that the respondent attend a multidisciplinary evaluation in order to be evaluated.
  - (3) The petitioner shall assemble the information needed for a current multidisciplinary evaluation for the court.
  - (4) The petitioner shall file the completed multidisciplinary evaluation with the court and send copies of the evaluation to the respondent and the guardian ad litem.
- (j) At any time after the service of the summons upon the respondent, the court may refer the case to mediation. Participation in mediation is voluntary, and the court may not require that a settlement be reached through mediation.
  - (1) A Court hearing may be continued to allow mediation to be used. Notice of mediation and any continuance of court hearings shall be sent to all parties notified of the original hearing date.
  - (2) Any information received by the mediator, through files, reports, interviews, memoranda, case summaries, or notes and work products of the mediator, is privileged and confidential. No part of the proceeding shall be considered a matter of public record. Each mediation session shall be informal.



- (3) Any agreement reached through the mediation process shall be reviewed by the court and may be made an order of the court.

(k) Incompetency Hearing

- (1) The respondent is entitled to be present at the hearing, to present evidence and to cross-examine witnesses.
- (2) The proceeding may be closed at the discretion of the court.
- (3) The court upon request, or on its own motion, may conduct hearings at the location of a respondent who is unable to be present in court. Any hearing under this Article shall be to the court without a jury. There shall be a record of the hearing.

(l) Proof of Incapacity

- (1) Incapacity must be proved by clear and convincing evidence. The rules of evidence shall apply and no hearsay evidence, not otherwise admissible in a court, shall be admitted into evidence, except as otherwise provided in this Article.
- (2) There is a legal presumption of capacity and the burden of proof shall be on the petitioner to prove the allegations set forth in the petition.
- (3) The proof at the hearing shall include certification by a licensed physician showing that the respondent is incapacitated in whole or in part, what functions are effected, the anticipated duration of the incapacity and that the best interests of the respondent will be served by the appointment of a guardian.

**Sec. 35A-1105. WHO MAY SERVE AS GUARDIAN**

(a) The following are entitled to consideration for appointment in the order listed below:

- (1) The spouse of the incapacitated adult, or if the spouse is deceased, a person named in a valid will of the deceased spouse or named in another writing, which was signed by the deceased spouse and attested to by at least two witnesses.
- (2) An adult child of the incapacitated adult.
- (3) A parent of the incapacitated adult, or a person nominated by the will of a deceased parent or named in another writing, which was signed by a parent and attested to by at least two witnesses.
- (4) Any relative of the incapacitated adult with whom the incapacitated adult has lived for more than six months.
- (5) A person appointed by the Court.
- (6) The agency.

(b) If persons have equal priority, the Court shall select the one best qualified to serve. The Court, acting in the best interests of the incapacitated adult, may choose a person having a lower priority.

- (c) The court shall consider whether a prospective guardian has ever been convicted of a felony or other crime and whether a prospective guardian owns or is employed at an institution where an incapacitated adult resides.
- (d) Any person seeking appointment as guardian under this Article shall provide to the court a criminal background check and credit history.

#### **Sec. 35A-1105. APPOINTMENT OF GUARDIAN**

- (a) The Court may appoint a guardian if it finds by clear, cogent and convincing evidence that the respondent is incapacitated and that the appointment is necessary to provide care and supervision of the respondent and/or the respondent's estate. The Court, at the time of appointment, or later upon an appropriate motion of the incapacitated adult or other interested person, may limit the powers of a guardian or create a limited guardianship.
- (b) The Court will grant only those powers to the guardian necessary due to the respondent's limitations and demonstrated needs and will make appointive or other orders that will encourage the development of the petitioner's maximum self-reliance and independence. The adult subject to the guardianship shall retain all legal rights and abilities other than those expressly limited or curtailed by the Court.
- (c) The Court may appoint a guardian of the person, who shall be entitled to custody of the person. The guardian of the person shall make provision for the incapacitated adult's care, comfort and maintenance and shall, as appropriate to the incapacitated adult's needs, arrange for the incapacitated adult's training, education, employment, rehabilitation or custodial care. The guardian of the person shall take reasonable care of the incapacitated adult's clothing, furniture, vehicles and other personal effects. The guardian of the person shall have authority to consent to any medical, legal, psychological or other professional care, counsel, treatment, and give other consent that may be required or in the incapacitated adult's best interest.
- (d) The Court may appoint a guardian of the estate solely for the purpose of managing the property, estate and business affairs of the person subject to the guardianship.
- (e) The Court may appoint a general guardian to act as a guardian of both the person and the estate.
- (f) The Court may appoint a limited or a temporary guardian of the person, estate or as a general guardian.

#### **Sec. 35A-1106. DUTIES OF THE GUARDIAN**

- (a) A guardian shall have the following duties:
  - (1) Maintain a relationship of ethics and trust with the adult subject to the guardianship;
  - (2) Exercise a high degree of fiduciary responsibility and care in managing the estate of the protected person; and



- (3) Derive no personal benefit of any kind from his management of the estate of the protected person; and
  - (4) Consider the expressed desires and personal values of the person subject to the guardianship to the extent known and may consult with other family members and caregivers to the extent appropriate and possible to gain such information.
  - (5) Within 14 days of his appointment, any guardian, who is an individual, shall participate in a training relating to the ethics, standards, powers and limitations of guardianship. The Court may coordinate with the Adult Protective Agency for this training.
- (b) The Court may require any guardian, before taking and receiving into custody the money or funds of a protected person, to provide security in the form of a bond, in such amount as the Court may order. In lieu of a bond, the Court may accept a voluntary garnishment to the court of the guardian's per capita to be invoked by the court should it be required.
- (c) By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship. Notice shall be delivered or mailed to the guardian at the address listed in the court records, pursuant to Rule 5 of the North Carolina Rules of Civil Procedure.

#### **Sec. 35A-1107. GUARDIANSHIP OVERSIGHT**

- (a) Article 10 of this subchapter shall apply to guardians of the estate and general guardians. Instruction on completing these accountings shall be provided by the Court.

#### **Sec. 35A-1108. TERMINATION OF GUARDIANSHIP**

- A. The authority and responsibility of a guardian terminates upon the death of the guardian or the protected person, the determination of incapacity of the guardian, death of the guardian or upon removal or resignation.
- B. Any person or agency may petition for the removal of a guardian. The Court, after hearing, may remove a guardian if in the best interest of the protected person. The Court may refer the matter to mediation.
- C. Upon removal, resignation or death of the guardian, or if the guardian is determined to be incapacitated, the Court may appoint a successor guardian and make any other appropriate order. Before appointing a successor guardian, or ordering that a person's incapacity has terminated, the Court shall follow the same procedure to safeguard the rights of the protected person that apply to a petition for appointment of a guardian.

## **Sec. 35A-1109. APPEALS AND CONTEMPT OF COURT**

- A. Any order entered pursuant to this Article may be appealed under the appellate rules of the Cherokee Court.
- B. Any willful violation of an order entered pursuant to this Article, willful failure to file accountings or attend trainings shall constitute contempt of court and may be punished civilly or criminally.

### **Cherokee Code Chapter 108**

## **ARTICLE 2. Adult Protection Act**

### **Sec. 108-6. Policy**

The Eastern Band of Cherokee Indians is committed to protecting all vulnerable adult members of our Tribe and to continue our traditional respect for tribal elders. Growing numbers of vulnerable adults are subject to abuse, neglect, exploitation and mistreatment. Elders are valuable resources for our Tribe because they are the repositories and custodians of our history, culture, language and tradition and they are the Tribe's best hope to pass these on to the Tribe's children. Thus, it is in the interest and serves the welfare of our Tribe to protect vulnerable adults and tribal elders from abuse, neglect, exploitation and mistreatment.

### **Sec. 108-7. Definitions**

Definitions as used in this Article have the following meaning:

- (a) "Abuse" means the willful act of physical or mental mistreatment or injury, sexual offense, unreasonable confinement, or keeping essential services from a vulnerable adult.
- (b) "Adult" means a person who is eighteen years or age or older, married or legally emancipated.
- (c) "Agency" means the Eastern Band of Cherokee Indians Public Health and Human Services Division as set out in Cherokee Code of Ordinances Sec. 130A-1.
- (d) "Capacity to Consent" means a vulnerable adult's sufficient understanding to make or communicate agreement concerning their person or essential services.
- (e) "Caretaker" is a person, agency or organization voluntarily providing or required by contract, Tribal law, family relationship, court order or custom to provide services or resources to a vulnerable adult.
- (f) "Court" means the Cherokee Court of the Eastern Band of Cherokee Indians.
- (g) "Emergency" means a situation where a vulnerable adult is at imminent risk of harm.



- (h) "Essential Services" means services or things necessary to sustain a person's general wellbeing. These include but are not limited to adequate food, shelter, clothing, hygiene, medical and mental health care, and legal services.
- (i) "Exploitation" means the illegal or improper use of a vulnerable adult or his resources for personal gain or profit or the failure to use the vulnerable adult's resources for his benefit or according to his desires.
- (j) "Financial Institution" means a banking corporation, trust company, savings and loan association, credit union, or other entity, principally engaged in lending money or receiving or soliciting money on deposit.
- (k) "Financial Record" means an original of or a copy of a customer's record held by a financial institution.
- (l) "Neglect" means failure by a caretaker to provide essential services or supervision for a vulnerable adult; abandonment of a vulnerable adult, which leaves him without the means or ability to obtain or receive essential services; interfering with the delivery of essential services to an elder or vulnerable adult; or self-neglect, which is the inability of an elder or vulnerable adult to obtain or maintain essential services for himself.
- (m) "Protective Services" means services, provided or arranged by the EBCI Public Health and Human Services Division, and/or other entities or individuals, necessary to protect a vulnerable adult from abuse, neglect or exploitation, which include but are not limited to investigations, mental or physical health evaluations and mobilization of essential services, social services, case management or other protections.
- (n) "Vulnerable adult" means (1) an elder who is subject to the jurisdiction of this Tribe and is 60 years of age or older; (2) a person subject to the jurisdiction of this Tribe, who is eighteen years of age or over, or who has been lawfully emancipated and who is unable to make decisions or take action to protect himself from abuse, neglect or exploitation, due to a physical or mental disease, illness or chronic condition, including but not limited to alcohol or chemical addiction, a developmental disability or a disability caused by degenerative conditions associated with advanced age.

#### **Sec. 108-8. Jurisdiction**

The Cherokee Tribal Court shall have original jurisdiction over any case within the service area of the Department of Public Health and Human Services described in C.C. § 130A-2.1 and any legal actions arising under this article.

#### **Sec. 108-9. Duty to Report; Method; Immunity for Reporting**

Any person who suspects that a vulnerable adult is being abused, neglected or exploited shall make a report to the agency, orally or in writing. A report may be made anonymously. No one who makes a



report in good faith, provides information or records, or testifies in a court proceeding about the abuse, neglect or exploitation of a vulnerable adult may be held criminally or civilly liable.

#### **Sec. 108-10. Confidentiality of Reporter**

The identity of a person who in good faith reports suspected abuse, neglect or exploitation shall be confidential and shall not be released, unless the reporter consents to the release or the tribal court orders the release after finding the need to protect the vulnerable adult outweighs the reporter's interest in confidentiality. The contents of the vulnerable adult protective services investigation shall be confidential and released without a court order only to the Court, the Cherokee Tribal Police Department, the guardian ad litem or the vulnerable adult.

#### **Sec. 108-11. Agency Response to Reports**

- (a) The agency shall begin an investigation upon receiving a report of abuse, neglect or exploitation of a vulnerable adult. The purpose of any investigation is to evaluate and determine whether protective services are needed.
- (b) The agency's investigation must be initiated:
  - (1) Immediately, when human life is in immediate jeopardy, or when the vulnerable adult is being physically harmed.
  - (2) Within two hours, when the vulnerable adult is in imminent danger.
  - (3) Within twenty-four hours, when the vulnerable adult may be in a situation that may lead to increased harm or risk to the person.
  - (4) Within seventy-two hours, when the situation is ongoing or a quicker response will not change the level of risk for the person.
- (c) The agency shall complete a written report within thirty days for allegations of abuse or neglect and forty-five days for allegations of financial exploitation.
- (d) The investigation shall, at minimum, consist of the following:
  - (1) Personal interviews of the vulnerable adult, caretaker(s), and others who know about the allegations. The agency has the authority to interview the vulnerable adult with no other people present.
  - (2) An assessment of the living conditions of the vulnerable adult.
  - (3) An examination of medical records or other documents that may assist in the investigation. The staff of any agency or organization operating on tribal lands shall cooperate fully with the agency's investigation.

#### **Sec. 108-12. Production of Financial Records in Cases of Suspected Financial Exploitation**

- (a) When the agency is investigating a report of financial exploitation, the agency may petition the tribal court *ex parte* to enter an order directing a financial institution, entity or person to provide the financial records of a vulnerable adult to the agency.



- (b) Before issuing an order, the court must find that the agency is investigating a report that a vulnerable adult is being or has been financially exploited; the records are needed in order to evaluate the report; and time is of the essence, as there is a reasonable factual basis to believe that there is an immediate danger to the financial assets of the vulnerable adult.

#### **Sec. 108-13. Protecting Financial Assets of the Vulnerable Adult**

- (a) If an immediate order is needed to protect a vulnerable adult's financial assets, the agency may request, *ex parte*, for a court order freezing a vulnerable adult's financial assets so that they may not be withdrawn, spent or transferred without further order of the court.
- (b) Before issuing an order, the court must find that there is a reasonable factual basis to believe that there is an immediate danger to the financial assets of the vulnerable person.
- (c) When an *ex parte* order is issued, a hearing shall be scheduled within 14 days. A copy of the petition and order shall be immediately served on the vulnerable adult. The *ex parte* order will remain in effect until a hearing is held and a new order is entered, the *ex parte* order is dismissed by the court, or the agency voluntarily dismisses the *ex parte* order before the date of the hearing.

#### **Sec. 108-14. Providing Protective Services with Consent of the Vulnerable Adult**

If the agency determines that a vulnerable adult is in need of protective services, it shall immediately provide or arrange for protective services, so long as the vulnerable adult has the capacity to consent and consents to the protective services.

#### **Sec. 108-15. Refusal to Consent or Withdrawal of Consent for Protective Services**

- (a) A vulnerable adult may refuse to accept protective services, even if there is good cause to believe that the person has been or is being abused, neglected or exploited, so long as the person has the capacity to consent and to understand the nature of the services offered.
- (b) If a vulnerable adult has the capacity to consent but does not consent or later withdraws consent to receiving protective services, the services shall cease.

#### **Sec. 108-16. Caretaker Refusal of Protective Services for the Vulnerable Adult**

- (a) When the caretaker of a vulnerable adult who has consented to protective services interferes with or refuses to allow the provision of protective services, the agency may petition the tribal court for an order forbidding the caretaker from interfering with or refusing the provision of protective services to the vulnerable adult.
- (b) The petition must allege specific facts to show that the vulnerable adult is in need of protective services, the person has consented to them and the caretaker is interfering with or refuses to allow the person to receive them. The petition shall be served on the vulnerable adult and the caretaker and a hearing scheduled prior to the issuance of a court order.



- (c) If there is an emergency, the agency may request *ex parte* that the Court enter an immediate order forbidding the caretaker from interfering with or refusing the provision of protective services. The agency must set out the facts in section (b) above and the court must find that there is a reasonable factual basis to believe that an emergency exists.
- (d) When an *ex parte* order is issued, a copy of the petition and order shall be immediately served on the vulnerable adult and the caretaker. A hearing shall be scheduled within 14 days of filing the petition. The *ex parte* order will remain in effect until a hearing is held and a new order is entered, the *ex parte* order is dismissed by the court, or the agency voluntarily dismisses the *ex parte* order before the date of the hearing.

**Sec. 108-17. Providing Protective Services to the Vulnerable Adult Who Lacks the Capacity to Consent**

- (a) If the agency determines that a vulnerable adult is being abused, neglected or exploited and lacks the capacity to consent to protective services, the agency may petition the tribal court for an order authorizing the agency to provide protective services. The petition must allege specific facts to show the vulnerable adult is in need of protective services and lacks the capacity to consent to protective services because of his mental or physical disease, illness or chronic condition.
- (b) When the petition is filed, it shall be served on the vulnerable adult and caretaker if one is known and set for hearing within 14 days from the date of the filing of the petition. The vulnerable adult must receive at least five days' notice of the hearing. The vulnerable adult has the right to be present and be represented by counsel. An attorney shall be appointed for the vulnerable adult if they cannot afford one. <sup>(HS1)</sup> If the vulnerable adult waives his right to an attorney, the Court, in its discretion, may appoint a guardian ad litem for the vulnerable adult.
- (c) At the hearing, the judge must find by clear and convincing evidence that the vulnerable adult is in need of protective services and lacks the ability to either consent or deny them. Based upon those findings, the judge may order the provision of protective services. The order may include what person or organization is responsible for obtaining or consenting to the protective services.
- (d) Within 60 days of the entry of the order, the court will conduct a review to determine if services are still necessary and whether a petition for guardianship should be filed. For good cause, the protective services order may be extended for an additional 60 days.
- (e) Where it is necessary to enter a premises without the vulnerable adult's consent, after obtaining a court order in compliance with subsection (c) above, the agency may do so. Any law enforcement officer from the Cherokee Tribal Police Department may accompany the agency in entering the premises if requested.

**Sec. 108-18. Ex Parte Emergency Protective Services Order**



- (a) Upon petition by the agency, the tribal court may issue *ex parte* an immediate order for the provision of protective services to a vulnerable adult after finding there is reasonable factual basis to believe:
- (1) The vulnerable adult is in need of protective services but does not have the capacity to consent to them;
  - (2) An emergency exists where there is the likelihood that the vulnerable adult may suffer irreparable injury or death if protective services are delayed; and
  - (3) Reasonable attempts have been made to locate the caretaker(s) or family members and secure from them such services or consent to the agency's provision of such services; and
  - (4) There is either no one authorized by law or court order to give consent for the vulnerable adult to receive protective services or that person refuses to consent to the provision of protective services.
- (b) When an order is issued, a copy of the petition and order shall be immediately served on the vulnerable adult and any caretaker. When an *ex parte* order is issued under this subsection, a hearing shall be set by the court within 14 days of the date of the filing of the order. The vulnerable adult has the right to be present and be represented by counsel. An attorney shall be appointed for the vulnerable adult if they cannot afford one. If the vulnerable adult waives his right to an attorney, the Court, in its discretion, may appoint a guardian ad litem for the vulnerable adult.
- (c) The *ex parte* order will remain in effect until a hearing is held and a new order is entered, the *ex parte* order is dismissed by the court, or the agency voluntarily dismisses the *ex parte* order before the date of the hearing.
- (d) Where it is necessary to enter a premises without the vulnerable adult's consent after obtaining a court order in compliance with subsection (a) above, the agency may do so. Any law enforcement officer from the Cherokee Tribal Police Department may accompany the agency in entering the premises if requested.
- (e) If after hearing on the *ex parte* order a new order is entered by the court, then within 60 days of the entry of the order, the court will conduct a review to determine if services are still necessary and whether a petition for guardianship should be filed. For good cause, the protective services order may be extended for an additional 60 days.

#### **Sec. 108-19. Protective Services Requested**

Protective Services may be provided on a voluntary basis when requested by a vulnerable adult, who is found by the agency to be in need of such services. Voluntary protective services are provided subject to available appropriations and resources. If the vulnerable adult's consent to such voluntary services or placement is withdrawn, they shall cease.

#### **Sec. 108-20. Adoption of Standards, Procedures, Policies and Guidelines**

The agency shall adopt standards and other procedures, policies and guidelines with forms to insure the effective implementation of the provisions of this Article.

BE IT FINALLY ORDAINED that this ordinance shall be effective upon ratification by the Principal Chief, and all ordinances and resolutions that are inconsistent with this ordinance are rescinded.

*Submitted by: Office of the Attorney General*