

DENTAL HEALTH PROVIDER LICENSING

SUBCHAPTER I – GENERAL PROVISIONS

11-3-1 **Title**

This Code shall be known as the Colville Tribal Dental Health Provider Licensing and Standards Code.

11-3-2 **Purpose and Scope.**

The general purposes of this Code are:

- (a) To establish a regulatory and licensing system for dental health providers that is based on and reflects the priorities and values of the Colville Tribes;
- (b) To regulate dental health providers to protect the health, safety and welfare of the Tribes and its members;
- (c) To assure the patients of dental health providers, the community at large, the Tribes' health and dental programs, health plans, government agencies and programs, insurers and other entities that provide payment or reimbursement for the cost of dental health services that adequate minimum standards are established, maintained and adhered to by all of the Tribes' dental health providers;
- (d) To set standards for dental health providers;
- (e) To require certain dental health providers to have a Tribal License and engage in specific scopes of practice as authorized under this Code and their Tribal License;
- (f) To assure that dental health services are provided consistent with best practices, and are culturally appropriate;
- (g) To promote and expand access to adequate numbers of dental health providers;
- (h) To establish a legal and regulatory structure that will enable operation of the Colville Tribes' dental program, to provide the highest quality dental services in the most efficient and culturally competent manner, making optimal use of the skills of Tribal employees, in order to maximize the health care resources available to the Tribes; and
- (i) To reduce and then eliminate disparities in access to dental health care and in oral health experienced among Tribal members and other American Indians and Alaska Natives.

11-3-3 **Sovereign Authority.**

This Code is enacted pursuant to Article V, Section 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation, and the inherent sovereign authority of the Colville Tribes, and such other powers as have been delegated to, vested in, or confirmed in the Tribes through the actions of the United States.

11-3-4 **Findings.**

The Colville Tribes finds that:

- (a) The Colville Tribes is a Federally-recognized sovereign Indian Tribe with the right and responsibility to promote, protect and improve the health and welfare of its members, and to enhance the quality of the lives of all of its members by providing a combination of economic opportunities and a safety net of social services.

(b) The Colville Tribes provides health care services and programs for Tribal members, including a comprehensive dental program under the Indian Self-Determination and Education Assistance Act.

(c) Oral health is necessary for overall health. Chronic pain, missing teeth, infections and life-threatening emergencies can result from poor oral health care.

(d) American Indian and Alaska Native people have a higher prevalence of dental caries and untreated tooth decay in all age groups compared to the general population. American Indian and Alaska Native children ages two to five have nearly three times the United States average rate of dental decay.

(e) Indian Health Service (IHS) 2014 data shows that in the Portland IHS Area, 68 percent of those American Indian and Alaska Native children ages three to five screened had decay experience, and 35 percent had untreated decay.

(f) Oral health care disparities are attributable to factors including a lack of consistently available dental health professionals in the Indian health system.

(g) The Colville Tribes wishes to increase the number of Native health care providers generally and Tribal health care providers in particular who provide services to Tribal members and other eligible Native Americans.

(h) The Alaska Native Tribal Health Consortium (ANTHC) developed a program to train and utilize dental health aide therapists in Alaska Native tribal health programs, which has operated successfully for more than ten years. A study by the University of Washington School of Dentistry published in 2016 found that over 10 years, villages in the Yukon Delta in Alaska with DHATs, when compared to villages without DHATs, experienced the following outcomes:

- 284% decrease in first four front teeth extractions for children under 3 years old,
- 26% decrease in extractions for adults,
- 60% increase in access to preventative care for children,
- 75% increase in access to preventative care for adults,
- 44% decrease in the need to put children under general anesthesia for full mouth rehabilitations.

(i) The IHS's Community Health Aide Program Certification Board (CHAPCB) standards for Dental Health Aides, including dental health aide therapists, were adopted in 2002. Dental health aide therapists have practiced in accordance with international and IHS standards for mid-level dental practice since 2004. The ANTHC training program, which developed its two year curriculum in conjunction with the University of Washington, satisfies all of the CHAPCB *Standards and Procedures*.

(j) The Alaska Tribal Health System Dental Health Aide Program and the CHAPCB standards are consistent with and will further the Colville Tribes' goals for a tribal dental health program, to help increase the number of Native health care providers and to address oral health care disparities attributable to the lack of consistently available, culturally competent, long-term dental health professionals in the Indian health system.

(k) The CHAPCB *Standards and Procedures*, initially developed by IHS consistent with international standards for mid-level dental providers, have evolved since 2002 as experience has been gained utilizing such providers in Native communities. The CHAPCB *Standards and Procedures* serve as a well-informed and time-tested resource and inspiration for development of, and partial incorporation into, Swinomish licensing standards.

(l) Oral health care services are most appropriately delivered by an effective, safe and culturally competent workforce.

(m) More than half of the procedures currently performed by a dentist at tribal dental health care programs can be performed at lower cost by a dental therapist acting within the scope of his or her certification or Tribal license, meeting the same standard of care as a dentist, at a lower cost, increasing access to more members and using the limited financial resources of those tribal dental health care programs more efficiently.

(n) The Colville Tribes desires for its dental program to provide the highest quality dental services in the most efficient and culturally competent manner, making optimal use of the skills of Tribal employees in order to maximize the health care resources available to the Tribes and its Tribal members. After reviewing the situation carefully, the Colville Tribes has concluded that the licensing and employment of dental therapists and supervising dentists will substantially and materially assist in reaching that goal.

(o) Since 2015, the Swinomish Indian Tribal Community, Division of Licensing has already developed and is implementing a comprehensive dental licensure scheme under its inherent sovereign authority and its tribal health program to certify qualified dental health providers; has successfully licensed dental health providers practicing at the Swinomish Dental Clinic; and serves as a regional licensing body for tribal dental health programs operated by federally recognized tribes in Washington and Oregon.

(p) The Tribes does not wish to duplicate the same comprehensive licensure scheme put into place by the Swinomish Indian Tribal Community for Tribal Dental Health Providers, as doing so would be resource intensive and would create delays in the Tribes' ability to hire Dental Health Aides to begin providing services as quickly as possible, and thus the Tribes finds that implementing its own dental licensure scheme beyond what is provided in this Code is not feasible.

(q) The Colville Tribes desires for the Swinomish Indian Tribal Community, Division of Licensing and the Dental Health Provider Licensing Board, to license the Colville Tribes' employees who are Dental Health Aides and Dentists.

11-3-5 Incorporation by Reference

Unless stated otherwise or inconsistent with any provision of this Code, the requirements for certification and practice of Dental Health Aides in the CHAPCB *Standards and Procedures*, as amended January 22, 2015, or subsequently amended, are incorporated by reference into this Code where indicated and shall apply as if set forth herein; *provided*, however, that in the event of a conflict or inconsistency between the CHAPCB *Standards and Procedures* and the Swinomish Indian Tribal Community's Dental Health Provider Licensing Code, under which the Colville Tribes' Dental Health Aides and supervising dentists must be licensed in accordance with this Code, the provisions of the Swinomish Indian Tribal Community's Dental Health Provider Licensing Code shall control. These *Standards and Procedures* may be referred to as "CHAPCB" and shall be cited as "CHAPCB" followed by the applicable section number. The *Standards and Procedures* may currently be accessed at <http://www.akchap.org/html/chapcb.html>.

11-3-6 Definitions.

(a) For the purposes of this Code, unless explicitly stated otherwise, the following definitions shall apply:

(1) "Atraumatic restorative treatment" means a maximally preventive and minimally invasive approach to stop further progression of dental caries. It involves the removal of soft, completely demineralized carious tooth tissues with hand instruments, and is followed by restoration of the cavity with an adhesive dental material that simultaneously seals the remaining tooth structure that remains at risk.

(2) “Dental Health Aide” means primary dental health aides I and II, dental health aide hygienists, expanded function dental health aides I and II, and dental health aide therapists, except as used in CHAPCB Article 30 of Chapter 2 regarding requirements for special classes of dental health aides;

(3) “Dentist” means a person who is:

(A) in the employ of the United States government, providing dental services in the discharge of official duties and licensed as a dentist in one of the States of the United States;

(B) in the employ of the Tribes, providing dental services in the discharge of official duties and licensed as a dentist in one of the States of the United States;
or

(C) licensed as a dentist by the State of Washington.

(4) “Preceptorship” means a period of practical experience and training under either the direct supervision of a Dentist or a dental health aide therapist, dental hygienist or dental health aide hygienist who is under the overall supervision of a Dentist.

(5) “Reservation” means all lands and waters within the exterior boundaries of the Colville Reservation.

(6) “Tribal Dental Health Aide” means a Dental Health Aide (including a primary dental health aide I and II, dental health aide hygienist, expanded function dental health aide I and II, and dental health aide therapists), as these terms are defined in CHAPCB 1.20.010, who is employed by the Tribes and licensed in accordance with this Code.

(7) “Tribal Dental Health Provider” means a person who is employed by the Tribes and licensed as a Tribal Dentist or a Tribal Dental Health Aide in accordance with this Code.

(8) “Tribal Dentist” means a Dentist, as that term is defined under this Section, who is employed by the Tribes and licensed in accordance with this Code.

(9) “Tribal License” means a license issued under the Swinomish Indian Tribal Community’s Dental Health Provider Licensing and Standards Code, Title 15, Chapter 11 of the Swinomish Indian Tribal Community’s Tribal Code.

(10) “Tribes” means the Confederated Tribes of the Colville Reservation.

(b) All other words and phrases have their ordinary and customary meanings.

SUBCHAPTER II – TRIBAL DENTAL HEALTH PROVIDER LICENSING QUALIFICATIONS AND STANDARDS

11-3-10

Tribal License Required for Dental Health Aides and Dentists.

(a) Tribal License Required. The following employees of the Colville Tribes, and persons who are eligible for employment by the Colville Tribes, who carry out the Colville Tribes’ dental health program under the Indian Self-Determination and Education Assistance Act, shall obtain a Tribal License in order to practice within the Colville Tribes’ dental program, except as otherwise provided in this Code.

(1) A Dental Health Aide; and

(2) A Dentist, but only if the Dentist is or may be responsible for supervising a Dental Health Aide; *provided however* that the Tribes may determine that a Dentist who is or may be responsible for supervising a Dental Health Aide need not obtain a Tribal License

if the Tribes determines that the Dentist is otherwise shown to be qualified by training or experience to supervise a Dental Health Aide and will provide the other, higher levels of dental care to the Tribes' patients.

(b) Scope of Practice. All Tribal Dental Health Providers shall practice within the scope of practice and licenses granted to the Tribal Dental Health Provider, consistent with the Colville Tribes' law, and any applicable state or federal law.

(c) Prohibition of Unlicensed Practice.

(1) Except as otherwise provided in this Code, no person shall provide dental services as a Dental Health Aide or as a Dentist within the Colville Tribes' dental health program without first applying for and being granted a Tribal License to provide such services as required by this Code, and continuing to maintain such an active license in good standing. Such a Tribal Dental Health Provider whose Tribal License becomes inactive shall not provide dental services until the license is renewed or a new active license is issued.

(2) Notwithstanding the provisions of Section 11-3-10(c)(1) above, in order to preserve continuity of treatment and minimize disruption of dental services, a Dental Health Aide or Dentist who has a valid state license or CHAPCB certification may provide services, within the scope of the license or certification, for the Colville Tribes' dental health program in the event of an unexpected absence of a Tribal Dental Health Provider whose position cannot be timely filled by another Tribal Dental Health Provider; *provided, however*, that each such state-licensed or CHAPCB-certified provider shall provide temporary services without obtaining a Tribal License for no more than fourteen (14) business days in a calendar year.

(d) Dental health care providers employed by the Tribes who are not Dental Health Aides, and Dentists who will never supervise a Dental Health Aide, are not required to obtain a Tribal License.

11-3-11 Supervision Requirements for Tribal Dental Health Aides.

A Tribal Dental Health Aide must comply with the following:

(a) The supervision requirements of CHAPCB 2.30.010 or any supervision requirements imposed as a condition of a Tribal License the Tribal Dental Health Aide holds; *provided, however*, that for purposes of this subsection the employment requirement in CHAPCB 2.10.010(a)(9)(A) shall be read to require that the supervising individual be employed by the Colville Tribes; and

(b) Any conditions imposed by the Tribal Dental Health Aide's clinical supervisor.

11-3-12 Scope of Practice for a Tribal Dental Health Aide Prior to Obtaining a Tribal License.

A person who is employed by the Colville Tribes may perform services of a Dental Health Aide prior to being licensed in accordance with this Code, the extent the services are performed as follows:

(a) As part of training required for licensing;

(b) As part of a preceptorship required under CHAPCB sections 2.30.100(b), 2.30.220(c)(1)(B) or (c)(2), 2.30.230(d), 2.30.240(c)(1)(D) or (c)(2), 2.30.250(c), 2.30.260(d), 2.30.400(b), 2.30.500(b), 2.30.550(d), or 2.30.600(3);

(c) As authorized by a provisional Tribal License;

(d) By a person who has been previously certified as a Dental Health Aide by the Indian Health Service and is undergoing a further preceptorship so that the supervising Tribal Dentist can evaluate his or her skills prior to making recommendations for licensing; or

(e) While an application for a Tribal License is pending, after successful completion of all required training and preceptorships.

11-3-13

Training, Education, Supervision, and Competency Requirements.

(a) Dental Health Aides.

(1) A person to be licensed or licensed in accordance with this Code as a Tribal Dental Health Aide must satisfy and comply with the requirements for training, education, supervision, and competencies, as required by the Swinomish Indian Community Dental Health Provider Licensing Board and the Swinomish Indian Tribal Community Dental Health Provider Licensing and Standards Code, as applicable.

(2) An applicant to be licensed as a Dental Health Aide must demonstrate that the person has formal education, training and/or personal or professional experience that would be reasonably expected to result in cultural competency.

(3) A person who otherwise satisfies the requirements of this Section to be licensed must agree to limit his or her scope of practice to that authorized under his or her Tribal License and any further limitations imposed by his or her supervisor.

(b) Dentists. A person to be licensed or licensed in accordance with this Code as a Tribal Dentist must also satisfy and comply with the following requirements for training, education, supervision, and competencies:

(1) Possess and maintain an active license as a Dentist in a State of the United States, as prescribed in Section 11-3-6(a)(3),

(2) Report to the Colville Tribes and the Swinomish Indian Community Dental Health Provider Licensing Board any limitation on the license required under subsection (A);

(3) Demonstrate that the person has formal education, training and/or personal or professional experience that would be reasonably expected to result in cultural competency;

(4) Agree to limit his or her scope of practice to that authorized under his or her State or Tribal License and any further limitations imposed by his or her supervisor; and

(5) Have experience working with and supervising Dental Health Aides or have completed a course acceptable to the Tribes and the Swinomish Indian Tribal Community's Dental Health Provider Licensing Board regarding supervision of Dental Health Aides.

11-3-14

Continuing Education

(a) Tribal Dental Health Aides. A Tribal Dental Health Aide must comply with all requirements for continuing education identified in CHAPCB 3.10.050 and, if licensed to perform dental radiology, the additional requirements of CHAPCB 2.30.240(c). Approved continuing education programs for a Tribal Dental Health Aide must also satisfy the requirements of CHAPCB 3.10.200, provided:

(1) sponsoring organizations under CHAPCB 3.10.200(b) may also include any state dental society or association or any state dental hygiene society or association; and

(2) the Swinomish Indian Tribal Community's Division of Licensure may approve a continuing education program or self-study education program consistent with the Community's Dental Health Provider Licensure Code and the requirements of CHAPCB 3.10.200(c) or (d).

(b) Tribal Dentists. A Tribal Dentist must satisfy all continuing education requirements required by each jurisdiction in which the Tribal Dentist is licensed and any additional requirements imposed by the Colville Tribes' dental program.

11-3-15

Tribal Dental Health Aide Training and Curriculum.

Tribal Dental Health Aide training and curriculum must satisfy the requirements of CHAPCB Chapter 7 or their equivalent, provided that training or curriculum that does not directly satisfy the requirements of CHAPCB must be presented to the Swinomish Indian Community Dental Health Provider Licensing Board for review and approval.

SUBCHAPTER III – TRIBAL LAW RECOGNIZING AND COMPLYING WITH SWINOMISH INDIAN TRIBAL COMMUNITY DENTAL HEALTH PROVIDER LICENSING AND STANDARDS CODE

11-3-20

The Tribes and Tribal Dental Health Providers Bound By Tribal License and Swinomish Indian Tribal Community Dental Health Provider Licensing and Standards Code; Preservation of Tribal Law

(a) As a matter of Tribal law, the Tribes' Dental Health Aides and Dentists who have applied for a Tribal License and/or were issued a Tribal License in accordance with this Code shall be subject to and fully comply with all applicable law governing the Tribal License, including but not limited to the Swinomish Indian Tribal Community Dental Health Provider Licensing and Standards Code, Title 15, Chapter 11 of the Swinomish Indian Tribal Community Tribal Code, and abide by all decisions of the Swinomish Indian Tribal Community's Division of Licensing and Dental Health Provider Licensing Board, the Swinomish Tribal Court, and the Swinomish Tribal Court of Appeals.

(b) As a matter of Tribal law, the Tribes formally recognizes and agrees to be bound by all procedural requirements imposed on Tribal Dental Health Providers and applicants for a Tribal License by the Swinomish Indian Tribal Community's Division of Licensing and Dental Health Provider Licensing Board under applicable law of the Swinomish Indian Tribal Community, including but not limited to the Swinomish Indian Tribal Community Dental Health Provider Licensing and Standards Code, Title 15, Chapter 11 of the Swinomish Indian Tribal Community Tribal Code.

(c) As a matter of Tribal law, the Tribes formally recognizes and agrees to abide by and implement all decisions related to applications for a Tribal License and Tribal Licenses issued to Tribal Dental Health Aides and Tribal Dentists by the Swinomish Indian Tribal Community's Division of Licensing and Dental Health Provider Licensing Board, the Swinomish Tribal Court, and the Swinomish Tribal Court of Appeals, in accordance with applicable law of the Swinomish Indian Tribal Community, including but not limited to the Swinomish Indian Tribal Community Dental Health Provider Licensing and Standards Code, Title 15, Chapter 11 of the Swinomish Indian Tribal Community Tribal Code. This includes, without limitation, the following:

- (1) Denial of an application for a Tribal License;
- (2) Issuance of a Tribal License, including a provisional restricted license;
- (3) Scope of practice, supervision, training, education and competency requirements;
- (4) Investigations;
- (5) All disciplinary determinations, including but not limited to permanent revocation of a Tribal License, suspension of a Tribal License, public or private censure, public or private letter of reprimand, probationary status, surrender of a Tribal License, and other such sanctions.

(d) The Tribes may, separate from and in addition to the disciplinary sanctions outlined in Section 11-3-20(c)(5) of this Code, impose a disciplinary sanction on any person holding a Tribal License under this Code if the Tribes itself finds that the person has violated any of the conditions applicable to Dental Health Aides set out in CHAPCB 4.10.010, or has committed an act that under Tribal law or policy that would merit disciplinary action and/or disqualify the person from receiving a Tribal License under this Code.

11-3-21 Reporting for Investigation

Whenever a person has a reasonable basis to believe that a Tribal Dental Health Provider licensed under this Code has committed an action that would, if substantiated, constitute ground for discipline under Tribal law or policy, or under the Swinomish Indian Tribal Community's Dental Health Provider Licensing and Standards Code, that person may file a written report with the Colville Tribes' Healthcare Compliance Officer stating the facts of the alleged action or inaction and the basis for believing them to be true. The Healthcare Compliance Officer shall thereafter coordinate with the Swinomish Indian Tribal Community Division of Licensing, as applicable.

11-3-22 Memorandum of Agreement

(a) In order for the Swinomish Indian Tribal Community's Division of Licensing, Dental Health Provider Licensure Board to license the Tribes' Dental Health Aides and Dentists, the Tribes shall put in place a Memorandum of Agreement with the Swinomish Indian Tribal Community that provides for the following, at a minimum:

(1) That the individual licensed or to be licensed as a Tribal Dental Health Provider is subject to the following in connection with such licensure:

(A) The authority of the Swinomish Indian Tribal Community, including but not limited to the Division of Licensing, Dental Health Provider Licensing Board, the Swinomish Tribal Court and the Swinomish Tribal Court of Appeals, and

(B) All applicable Swinomish Tribal law, in addition to Title 15, Chapter 11 of the Swinomish Indian Tribal Community Tribal Code, and

(C) The enforcement of such law by the Swinomish Indian Tribal Community in accordance with Subchapters V and VI of Title 15, Chapter 11 of the Swinomish Indian Tribal Community Tribal Code, including without limitation the authority of the Swinomish Tribal Court and Swinomish Tribal Court of Appeals.

(2) To be bound by Title 15, Chapter 11 of the Swinomish Indian Tribal Community Tribal Code, including without limitation the Swinomish Indian Tribal Community's continuing responsibility for oversight of the Tribal Dental Health Provider's licensure.

(3) To comply with Washington Substitute Senate Bill 5079 (effective July 23, 2017) as presently constituted or as hereafter amended..

(4) That the Tribes has tribal law in place—*see* Section 11-3-10(c) of this Code—prohibiting any person from providing services as a Dental Health Aide on the Colville Reservation without a valid Tribal License, and that any such providers with such a valid license shall maintain the license in good standing.

(5) That the Tribes and any of its employees applying to be licensed or who are licensed as a Tribal Dental Health Provider will abide by all decisions of the Swinomish Indian Tribal Community in connection with such a license, including without limitation the decisions made by the Dental Health Provider Licensing Board, the Division of Licensing, the Swinomish Tribal Court and the Swinomish Tribal Court of Appeals, in accordance with Title 15, Chapter 11 of the Swinomish Indian Tribal Community Tribal Code.

(6) That the Tribes will pay all fees or charges assessed or incurred by the Swinomish Indian Tribal Community for the filing, investigation, consideration and determination of an application for licensure filed by an individual who is or will be an employee of the Tribes.

(7) That any Dental Health Aide applying for a Tribal License or was issued a Tribal License as required by this Code, is an employee within the Tribes' comprehensive dental program and will provide only certain dental services in accordance with his or her Tribal License and applicable State law, and will be supervised by a Dentist who either has a Tribal License under this Code or is otherwise shown to be qualified by training or experience to supervise a Dental Health Aide, and that the Dentist will provide the other, higher levels of dental care to the Tribes' patients.

(8) That the Tribes will determine and certify to the Swinomish Indian Tribal Community whether the individual meets the Tribe's required standard of cultural competence in order to practice in the Tribe's dental health program.

(b) A Memorandum of Agreement entered into by and between the Tribe and the Swinomish Indian Tribal Community pursuant to Section 11-3-22(a) of this Code shall have the force and effect of Tribal law.

SUBCHAPTER IV – ENFORCEMENT AND SOVEREIGN IMMUNITY

11-3-30 Enforcement

(a) The Tribes' Healthcare Compliance Officer shall take any action authorized by this Code to ensure compliance with or to prevent violation of this Code.

(b) In the event Healthcare Compliance Officer determines that a person is in violation of this Code, failure to correct the violation within 60 days or other reasonable time period established by the Healthcare Compliance Officer shall subject the violator to civil remedies established by tribal law or regulation.

(c) The Healthcare Compliance Officer may establish rule and regulations under Colville Tribal Code Chapter 2-4 to carry out the duties set forth in this Code.

11-3-31 Sovereign Immunity.

Except as otherwise provided in a Memorandum of Agreement entered into in accordance with Section 11-3-22 of this Code, the sovereign immunity of the Tribes is not in any way waived or limited by this Code, or by any action commenced pursuant to this Code, and nothing in this Code shall constitute or be construed as a waiver of the sovereign immunity of the Tribes. Such sovereign immunity shall extend to the Tribes, all Tribal officials, employees, any individual or entity with whom the Tribes has contracted to provide services pursuant to or in accordance with this Code, as to all actions taken in, or concerning, the administration or enforcement of this Code, and as to all actions taken pursuant to any authority of any action, decision or order authorized by this Code.

(Adopted March 7, 2019, Resolution 2019-115)