

**SISSETON-WAHPETON OYATE
OF THE LAKE TRAVERSE RESERVATION
CHAPTER 36A
ALCOHOL AND DRUG ABUSE TREATMENT ACT:
FIRST RESPONDER AND GOOD SAMARITAN IMMUNITY CODE**

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Motion No. 28
Resolution No. SWO-19-017*

SISSETON-WAHPETON OYATE

**CHAPTER 36A
NALOXONE ACCESS AND FIRST RESPONDER IMMUNITY CODE**

TITLE I – GENERAL PROVISIONS

36A-01-01 TITLE.

This Code shall be known as the Naloxone Access and First Responder Immunity Code.

36A-01-02 PURPOSE AND INTENT.

This Code shall be construed to promote the following:

1. Pursuant to the Revised Constitution and By-Laws of the Sisseton-Wahpeton Oyate, the Tribal Council shall, among others, “promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate.” In order to effectuate this power and responsibility, the Tribal Council has determined a need to ensure protection for the members of Sisseton-Wahpeton Oyate, this Code shall protect eligible recipients, including first responders, who in good faith administer opioid overdose rescue treatment, including naloxone, to individuals believed to be suffering from acute overdose from prescription and illicit opioids.
2. In 2017, drug related crimes on the Lake Traverse Reservation had increased by 548% since 2008. According to the Center for Disease Control and Prevention and the Robert Wood Johnson Foundation, drug overdose was the leading cause of death in 2013, with overdose deaths exceeding motor-vehicle related deaths in 36 states and the District of Columbia. Since 2000, the drug overdose rate has increased 137%, including a 200% increase in the rate of overdose deaths involving opioids.
3. Naloxone is a prescription medication that when administered to an individual experiencing an opioid-related overdose restores the individual to consciousness and normal breathing. Naloxone is virtually always effective when administered correctly.
4. In use for more than thirty (30) years, naloxone is non-addictive and can easily be administered by someone who has training in overdose recognition and naloxone administration. People with such training identify opioid overdoses and indications for naloxone as well as medical experts do.
5. Overdose education and naloxone distribution programs that train family members, friends, and others in a position to assist someone experiencing an opioid-related overdose can

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effectively reduce opioid overdose deaths. Moreover, naloxone distribution for administration by non-medical experts can be highly cost-effective.

36A-01-03 SCOPE.

1. By treaty, the Sisseton-Wahpeton Oyate has the right to adopt laws, including laws “for the security of life and property” of its members.
2. The Sisseton-Wahpeton Oyate possesses the authority to regulate opioid overdose rescue treatment medication approved by the Food and Drug Administration that binds to the opioid receptors and blocks the effects of the opioid acting on those receptors in the event of an opioid-related overdose.
3. The Sisseton-Wahpeton Oyate has the inherent authority to protect its political integrity and provide for the welfare of its members and others who choose to live within its territory.
4. The problems created by controlled drugs within the boundaries of the Sisseton-Wahpeton Oyate are seriously impacting the ability of the tribe to provide for the health and wellbeing of its tribal members and threatens the political integrity of the Sisseton-Wahpeton Oyate.

36A-01-04 SPECIFIC APPLICABILITY.

This Code shall apply to opioid-related overdoses and shall take precedence over any general laws of applicability.

36A-01-05 EFFECTIVE DATE.

This Code shall be in full force and effect on the date of formal approval and adoption by the Tribal Council.

36A-01-06 SOVEREIGN IMMUNITY NOT WAIVED.

By the adoption of this Code the Tribe does not waive its sovereign immunity or consent to suit in any court, whether the court is tribal, federal, or state, and the adoption of this Code shall not be construed to be a waiver of the sovereign immunity of the Tribe nor a consent to suit against the Tribe in any court.

36A-01-07 SEVERABILITY.

If any clause, sentence, paragraph, section or part of this Act shall be adjudicated by the Tribal or Appellate Court to be invalid or unconstitutional, such judgment shall not affect, impair, or

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invalidate the remainder, but shall be confined in its operation to the clause, sentence, paragraph, section, or part, directly involved in the controversy in which the judgment was rendered.

36A-01-08 AMENDMENT.

This Code may be amended only upon an affirmative vote of a majority of the Tribal Council of the Sisseton-Wahpeton Oyate.

36A-01-09 EFFECT OF HEADINGS.

Headings shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any portion of this Code.

TITLE II – DEFINITIONS

36A-02-01 DEFINITIONS.

The following definitions shall apply to this Code:

1. “De-identified data” means the removal of information such as name, telephone number, medical record number, social security number and other data that would identify an individual’s connection with information. The purpose to de-identify data is so that such information can be preserved for research and informational purposes without identifying any particular individual.
2. “Drug-related overdose” means an acute medical condition that is the result of the ingestion or use by an individual of one or more controlled substances or one or more controlled substances including but not limited to in combination with alcohol, in quantities that are excessive for that individual that may result in death, disability, or serious injury. An individual’s condition shall be deemed to be a “drug-related overdose” if a reasonable person of ordinary knowledge would believe the condition to be a drug-related overdose that may result in death, disability, or serious injury.
3. “First responder” means a person who responds immediately to an emergency and shall include law enforcement officers, security officers, rangers, firefighters, and emergency medical services workers. It shall also include other individuals who, in a professional or personal capacity, responds rapidly to an emergency or critical incident and renders assistance.
4. “Health care professional” means an individual licensed, certified, or otherwise authorized by the Tribal, Federal or State government to prescribe drugs.

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5. "Indian" means any person who is a member of a federally recognized Indian tribe, band, group, pueblo, or community.
6. "Jurisdiction" or "Jurisdiction of the Tribe" means the Tribe's criminal, regulatory, and adjudicatory jurisdiction exercised on all lands located within the original boundaries of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation as defined in the Treaty of February 19, 1867, regardless of whether such land is held in trust, fee, or subject to restrictions; provided that as to non-members the jurisdiction of the Tribe extends to such lands within the Reservation that are held in trust, have been allotted, or are subject to restrictions.
7. "Law Enforcement" or "SWLE" means the Sisseton Wahpeton Law Enforcement.
8. "Law Enforcement Officer" means any person employed by Sisseton Wahpeton Law Enforcement who is authorized to make arrests for violations of the laws or ordinances and that the person is employed to enforce.
9. "Medical Control Provider" or "MCP" means the assigned local licensed medical provider permitted within their scope of practice, to monitor the prescribing of naloxone to first responders.
10. "Member" means an enrolled member of the Tribe as required by the Constitution of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.
11. "Naloxone" means an opioid overdose reversal medication approved by the Food and Drug Administration that can temporarily reverse the effects of an opioid overdose and prevent death. Naloxone is not a controlled substance and more than one dose may be necessary to maintain opioid reversal.
12. "Non-Indian" means a person who is not an enrolled member of a federally recognized Indian tribe, band, group, pueblo, or community.
13. "Non-member" means a person who is not an enrolled member of the Tribe.
14. "Opioid" means a controlled substance derived from opium or a synthetically manufactured medication, that includes but is not limited to heroin, morphine, codeine, oxycodone (Oxycontin), hydrocodone (Vicodin, Norco), fentanyl (Duragesic), hydromorphone (Dilaudid), oxymorphone (Opana) and methadone.
15. "Opioid Overdose Toolkit" means a rescue treatment kit that includes two doses of a naloxone product indicated for reversal of opioid overdose with instructions. The kit may additionally include supplies such as gloves or a face shield to provide rescue breathing.

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16. "Opioid-related drug overdose" means an acute condition when an excessive amount of opioid, or another substance with which an opioid was combined, is swallowed, inhaled, injected or absorbed through the skin, intentionally or unintentionally, leading to extreme physical illness, decreased level of consciousness, respiratory depression, coma, or the ceasing of respiratory or circulatory function and possible death.
17. "Standing order" means a pre-written, non-person specific order issued by a health care professional that authorizes the dispensing of a drug to, or administration of the drug by, an individual or individuals who satisfy pre-determined criteria.
18. "Training" means a Medical Control Provider-approved instructor-led training program on the use of naloxone devices, including how to identify an opioid overdose, how to use naloxone, naloxone formulations, resupply steps and how to refer individuals to treatment options.
19. "Tribal Court" means the Sisseton-Wahpeton Oyate Tribal Court of the Lake Traverse Reservation.
20. "Tribe" means the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation and includes its activities, programs, agencies, departments, divisions, instrumentalities, economic development enterprises, and their respective officials.

TITLE III – REQUIREMENTS FOR MEDICAL POLICIES AND PROCEDURES

36A-03-01 STANDING ORDERS.

1. All medical facilities shall assign a MCP or equivalent who is a licensed medical professional with prescribing authority who will establish a standing order for dispensing opioid overdose rescue toolkits to eligible recipients.
2. Standing orders authorize the dispensing and administration of opioid overdose rescue treatment toolkits, including medication, to individuals whom the eligible recipients believe, in good faith, are suffering from opioid overdose. Rescue treatment medication issued under this section is for legitimate medical purpose in the usual course of professional practice.
3. All medical facilities shall develop local training and certification for first responders and eligible recipients using a curriculum that has been pre-approved by the MCP.
4. Eligible recipients shall include:
 - a. An individual who is at risk of experiencing an opioid-related overdose;

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Sisseton-Wahpeton Oyate
Judicial Committee

New Code Amended Code Repealed Code
Tribal Council Resolution No. SWO-19-017
Judicial Committee Adoption Date 1/12/19
Tribal Council Approval Date 3/10/19

- b. A family member, friend, or other individual who is in a position to assist someone who is at risk of experiencing an opioid-related overdose;
 - c. An offender with a history of drug and alcohol problems upon release from prison, jail or other confinement;
 - d. A first responder;
 - e. A substance use disorder treatment program representative;
 - f. A representative of a community-based organization that provides services to individuals at high risk of an opioid-related overdose;
 - g. A school nurse or other school employee authorized to administer medication; and
 - h. A probation or parole officer.
5. A standing order under section (1) shall specify, at a minimum:
- a. The naloxone formulations and means of administration that are approved for dispensing;
 - b. The eligible recipients to whom naloxone may be dispensed;
 - c. Any required MCP approved training for eligible recipients to whom naloxone is dispensed;
 - d. Location where training records will be maintained;
 - e. Education and training requirements for co-prescribers, such as Pharmacists;
 - f. Consent, screening and prescriber notification;
 - g. Informed consent instructions and procedures;
 - h. Patient screening criteria for assessment of overdose risk;
 - i. Documentation in the medical record;
 - j. Reporting procedures and acquisition of replacement kits;

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- k. In the absence of required training, (1) signs and symptoms of an opioid-related overdose, (2) proper administration of naloxone, (3) proper care of an individual to whom naloxone has been administered, and (4) procedures for summoning emergency medical assistance;
- l. Any circumstances under which eligible recipients may dispense naloxone; and
- m. The timeline for renewing and updating the order.

**TITLE IV
POSSESSION AND ADMINISTRATION**

36A-04-01 IMMUNITY FOR FIRST RESPONDERS RENDERING RESCUE FIRST AID.

1. A first responder who has completed requisite training, and who renders opioid overdose rescue treatment to a person in need on the Lake Traverse Reservation, shall not be liable to such person assisted for civil damages for any personal injuries which result from acts or omissions by such persons rendering opioid overdose rescue first aid, which may constitute ordinary negligence. Those individuals includes persons acting under the direction thereof in this section, who forcibility enters the residence of any person in order to render opioid overdose rescue first aid to a person reasonably believed to be in need shall not be liable to such persons for civil damages incurred as a result of such entry. The immunities provided in this section does not apply to acts or omissions constituting gross, willful or wanton negligence.
2. Notwithstanding any other Tribal law, it shall not be a crime for a person to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if that person, in good faith, seeks medical assistance for another person while such other person is experiencing a drug-related overdose, and the person seeking medical assistance fully cooperates with medical and law enforcement personnel, remains on scene and identifies themselves. This provision shall not apply to a person seeking medical assistance if such person sold controlled substances, controlled analog, or drug paraphernalia to the person for whom medical assistance is requested or to any other person. No other immunities or protection from arrest or prosecution for violations of the law are intended or may be inferred.
3. Notwithstanding any other Tribal law, it shall not be a crime for a person who while experiencing a drug-related overdose, and in need of medical assistance, to be under the influence of, or to possess for his or her own personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if the person or one or more other persons at the scene of the overdose, in good faith, seek medical assistance for the person experiencing the

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overdose subject to this Code. No other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred.

4. This section shall not affect laws prohibiting the selling of drugs, or the forcible administration of drugs against a person's will.
5. Nothing in this section shall affect liability for any offense that involves activities made dangerous by the consumption of a controlled substance, including, but not limited to, operating a motor vehicle.

TITLE V INTERVENTION AND REFERRAL TO TREATMENT

36A-05-01 CONTINUITY OF CARE – FOLLOW UP TREATMENT SERVICES.

1. The attending physician in an emergency department, or a physician's designee, shall make reasonable efforts to obtain a signed patient consent to disclose information about the patient's opioid-related overdose to family members or others involved in the patient's health care including but not limited to the patient's primary health care provider, as well as SWO Behavioral Health and substance use disorder treatment programs.
2. The attending physician in an emergency department, or a physician's designee, shall make reasonable efforts to obtain a signed patient consent to disclose information about the patient's opioid-related overdose to family members or others involved in the patient's health care including but not limited to the patient's primary health care provider, as well as SWO Behavioral Health and substance use disorder treatment programs.
3. An attending physician or physician's designee, Indian Health Service physician or physician's designee or Indian Health Service pharmacist or pharmacist designee, shall make reasonable efforts to obtain a signed patient consent to disclose information about the patient's opioid-related overdose to SWO Behavioral Health and substance use disorder treatment programs.
4. If release of information consent cannot practicably be provided because of the patient's incapacity or an emergency circumstance, the physician, or physician's designee, may disclose information about a patient's opioid-related overdose in compliance with applicable privacy and confidentiality laws.
5. In the event an Indian Health Service patient experiences an opioid-related overdose, the patient's physician or physician's designee, shall provide the patient with educational material about addiction and a list of resources for substance use disorder treatment

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programs, including but not limited to SWO Behavioral Health and substance use disorder treatment programs.

6. Indian Health Service shall develop and implement a comprehensive and collaborative treatment plan of follow-up for patients treated in an emergency department and with their consent, refer them to any substance use disorder treatment program. Risk assessment, treatment planning, and continuity of care referral services shall occur after medical stabilization of the patients.

TITLE VI DATA COLLECTION AND EVALUATION

36A-06-01 AUTHORIZATION FOR PUBLIC HEALTH SURVEILLANCE DATA COLLECTION.

1. It is the intent of the Tribe, to establish and maintain a registry, database or other collection mechanism to track de-identified data to evaluate the data collected regarding:
 - a. The number of times and amount of naloxone administered to an individual experiencing opioid-related overdoses;
 - b. The number of time naloxone administration resulted in a reversal of an opioid-related overdose;
 - c. The number of opioid overdose rescue treatment incidents in which an approved opioid antagonist was administered; and
 - d. Any other naloxone activities deemed relevant to effective implementation of this Code.

TITLE VII POLICIES AND PROCEDURES

36A-07-01 ADMINISTRATIVE REGULATIONS AND RULES AUTHORIZATION.

1. Any Tribal Programs and the Indian Health Service shall promulgate policies and procedures necessary to implement their responsibilities under this Code.

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MOTION NO. 28: made by Winfield Rondell Jr., second by Francis Crawford, question by Curtis Bissonette, to approve the draft resolution, "Adoption of Chapter 36A, Alcohol and Drug Abuse Treatment Act – First Responder and Good Samaritan Immunity Code", as presented by Judicial Committee Chairwoman Lorraine Rousseau.

WEIGHTED VOTE ON MOTION NO. 28: 16 For: Cheryl Owen (3); Louis Johnson (1); Winfield Rondell Jr. (3); Francis Crawford (2); Milton Owen (2); Lisa Jackson (2); Curtis Bissonette (2); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Vice-Chairman.

MOTION PASSED.

Resolution No. SWO-19-

MOTION NO. 29: made by Louis Johnson, second by Francis Crawford, question by Cheryl Owen, to acknowledge the receipt of the Buffalo Lake District Minutes for the meetings held February 24, 2019 and March 2, 2019.

WEIGHTED VOTE ON MOTION NO. 29: 16 For: Cheryl Owen (3); Louis Johnson (1); Winfield Rondell Jr. (3); Francis Crawford (2); Milton Owen (2); Lisa Jackson (2); Curtis Bissonette (2); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Vice-Chairman.

MOTION PASSED.

MOTION NO. 30: made by Louis Johnson, second by Milton Owen, question by Lisa Jackson, in resolution form, to appoint Kenneth Johnson to the Sisseton-Wahpeton Housing Authority Board of Commissioners as the Buffalo Lake District Representative.

WEIGHTED VOTE ON MOTION NO. 30: 16 For: Cheryl Owen (3); Louis Johnson (1); Winfield Rondell Jr. (3); Francis Crawford (2); Milton Owen (2); Lisa Jackson (2); Curtis Bissonette (2); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Vice-Chairman.

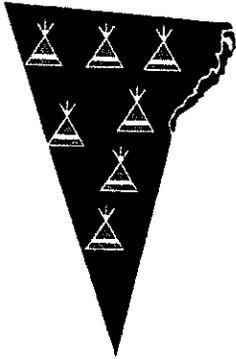
MOTION PASSED.

Resolution No. SWO-19-

MOTION NO. 31: made by Lisa Jackson, second by Winfield Rondell Jr., question by Curtis Bissonette, to acknowledge the receipt of the Big Coulee District Minutes for the meeting held February 28, 2019.

WEIGHTED VOTE ON MOTION NO. 31: 16 For: Cheryl Owen (3); Louis Johnson (1); Winfield Rondell Jr. (3); Francis Crawford (2); Milton Owen (2); Lisa Jackson (2); Curtis Bissonette (2); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Vice-Chairman.

MOTION PASSED.



Sisseton-Wahpeton Oyate

LAKE TRAVERSE RESERVATION
P.O. Box 509
12554 BIA Hwy. 711
Agency Village, South Dakota 57262
Phone: (605) 698-3911

TRIBAL COUNCIL RESOLUTION NO. SWO-19-017

Adoption of Chapter 36A, Alcohol and Drug Abuse Treatment Act – First Responder and Good Samaritan Immunity Code

- WHEREAS,** The Sisseton-Wahpeton Oyate is organized under a Constitution and By-laws adopted by the members of the Tribe on August 1-2, 1966, and approved by the Commissioner of Indian Affairs on August 25, 1966, and last amended effective November 15, 2006; and
- WHEREAS,** The Constitution ARTICLE III, Section 1, states that, the Sisseton-Wahpeton Oyate shall be governed by a Council, and ARTICLE VII, Section 1, states that, the Council shall have the following powers: (a) to represent the Tribe in all negotiations with Federal, State and local governments; (b) to acquire, own, use, manage, lease and otherwise encumber and to dispose of Tribal property, both real and personal, wherever situated; (c) to engage in any business that will further the economic development of the Tribe and its Members, and to use Tribal funds or other resources for such purposes; (d) to make rules governing the relationship of the members of the Tribe, to Tribal property, and to one another as members of the Tribe; (e) to hire employees and agents, including legal counsel, directly or as independent contractors, and to compensate them for their services; (f) to deposit Tribal funds to the credit of the Tribe, without limitations of the amount in any account; (g) to take any action by ordinance, resolution, or otherwise which are reasonably necessary through committees, boards, agents or otherwise, to carry into effect the for-going purposes; (h) to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate; (i) adopt resolutions regulating the procedures of the Tribal Council, its officials and committees in the conduct of Tribal Affairs; and
- WHEREAS,** In exercise of its sovereign and inherent duty, the Tribal Council has determined a need to ensure protection for the members of the Sisseton-Wahpeton Oyate, including eligible recipients and first responders, the Tribal Council finds a need to adopt Naloxone Access and First Responder Immunity Code; and
- WHEREAS,** Tribal Council notes that drug related crimes have increased by 548% on the Lake Traverse Reservation from 2008 to 2017, and that drug related overdoses of opioids is a national epidemic; and
- WHEREAS,** That the use of rescue medication, such as Naloxone, is needed to save the life of members suffering an opioid related overdose, this need also brings a need for first responders and good Samaritans to be free from civil liability in the event they, in good faith, administer rescue medication in an attempt to save a life; and

Adoption of Chapter 36A, Alcohol and Drug Abuse Treatment Act – First Responder and Good Samaritan Immunity Code

WHEREAS, On October 4, 2018, the Judicial Committee was presented with Chapter 36A Alcohol and Drug Abuse Treatment Act – First Responder and Good Samaritan Immunity Code where it then went out to the Districts for review and approval; and

WHEREAS, On January 17, 2019, the Judicial Committee held a public forum for Chapter 36A Alcohol and Drug Abuse Treatment Act – First Responder and Good Samaritan Immunity Code.

NOW, THEREFORE, BE IT RESOLVED, Tribal Council has determined that Chapter 36A Alcohol and Drug Abuse Treatment Act – First Responder and Good Samaritan Immunity Code is a need and has the potential to save lives; and

FINALLY, BE IT RESOLVED, the Tribal Council of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, hereby adopts the Chapter 36A Alcohol and Drug Abuse Treatment Act – First Responder and Good Samaritan Immunity Code.

CERTIFICATION

We, the Undersigned duly elected Tribal Vice-Chairman and Tribal Secretary of the Sisseton-Wahpeton Oyate Tribal Council, do hereby certify that the above resolution was duly adopted by the Sisseton-Wahpeton Oyate Tribal Council, which is composed of 10 members (representing a total of 15 Tribal Council weighted votes and two Executive Committee votes for a total of 17 votes) of whom 9 constituting a quorum, were present at a Tribal Council meeting, duly noticed, called, convened and held at the TiWakan Tio Tipi, Agency Village, South Dakota, March 19, 2019, by a vote of 16 for, 0 opposed, 0 abstained, 0 absent from vote, 1 not voting, and that said Resolution has not been rescinded or amended in any way.



Floyd Kirk Jr., Tribal Vice-Chairman
Sisseton-Wahpeton Oyate

ATTEST:



Myrna Thompson, Tribal Secretary
Sisseton-Wahpeton Oyate

