§ 2101. Policy

A. It is the policy of the Navajo Nation that any individual who, due to a physical or mental illness or disorder, is a threat to the health or safety of themselves or others, should receive appropriate treatment in the least restrictive environment.

B. This Act is part of a coordinated community response to care for members of the Navajo Nation, and others to whom the jurisdiction of the Navajo Nation extends, who are suffering from a physical or mental illness or disorder so that the individual and community can be restored to and live in harmony (hózhó).

C. The Navajo principle of k'é (respect, solidarity, compassion and cooperation) shall be applied at all steps of the civil commitment, evaluation, treatment processes, and reintegration of the afflicted person into the community.

§ 2102. Interpretation and application of the Act

A. The purpose and intent of the Navajo Nation Health Civil Commitment Act of 2006 is to balance the interests of the individual and the community where an individual is suffering from physical or mental illness(es) or disorder(s) and the untreated consequences of the physical or mental illness(es) or disorder(s) presents a reasonable likelihood of serious harm to the health or safety of the afflicted individual or the community, or both.

B. This Act shall be liberally construed to be consistent with the policy of the Navajo Nation expressed in 13 N.N.C. § 2101.

§ 2103. Responsibilities in coordinating community response

A. The President of the Navajo Nation, and all divisions, departments, offices, programs, enterprises and entities of the Navajo Nation shall work together to develop a health civil commitment process that meets the needs of the Navajo people through the most effective and efficient use of health care resources available to the Navajo Nation.

B. The Executive Director of the Navajo Division of Health, or his or her designee, shall work with the divisions, departments, offices, programs, enterprises and entities of the Navajo Nation and with external agencies, enterprises and entities, including those of the states and their subdivisions, to ensure that the most urgent needs of the Navajo people are met with the highest quality health care available.

C. The Navajo Nation Rules of Civil Procedure and Rules of Evidence shall apply to all health civil commitment proceedings, unless they are inconsistent with this Act.

§ 2104. Definitions

A. "Least restrictive treatment procedure" means a course of treatment that provides the maximum freedom to the individual while protecting that individual and others, or both, from the individual's behavior, illness or disorder. Treatment in the least restrictive environment does not include detention in any correctional facility as a result of alleged or adjudicated criminal
behavior. An individual shall receive treatment in a facility as close to his or her home as possible.

B. "Least restrictive environment" means that:

1. Each patient committed solely on the ground that there is a reasonable likelihood that he or she will cause harm to himself or herself, or to suffer substantial mental or physical deterioration shall be placed in the most appropriate and therapeutic setting available, that is, a setting in which treatment provides the patient with a reasonable opportunity to improve and which is no more restrictive of his or her physical or social liberties than is believed conducive to the most effective treatment for the patient, and

2. Each patient committed solely or in part on the ground that there is a reasonable likelihood that he or she will cause harm to others shall be placed in a setting in which treatment is available and the risks of physical injury or property damage posed by such placement are warranted by the proposed plan of treatment. Treatment in the least restrictive environment does not include detainment in any correctional facility as a result of alleged or adjudicated criminal behavior. An individual shall receive treatment in a home or community setting or in a local medical or treatment facility as close to the individual's home as possible.

C. "Likelihood of serious harm" means:

1. A substantial risk of physical harm in the near future to the individual, as manifested by evidence of threats of, or attempts at, suicide or serious physical harm; or

2. A substantial risk of physical harm in the near future to other individuals as manifested by evidence of homicidal or other violent behavior, or evidence that others are placed in reasonable fear of violent behavior and serious harm; or

3. A substantial risk of physical impairment or injury in the near future to the individual as manifested evidence that such individual's judgment is so impaired that he or she is unable to protect himself or herself in the community; or

4. A substantial and serious threat of spread in the near future of an infectious illness which has life-threatening consequences for a significant number of people exposed, which spread can be prevented by reasonable precautions and illness management and where the infected individual either refuses, or is unable to comply with voluntary treatment or confinement procedures, as necessary to protect the public health; or

5. A pregnant woman whose ongoing substance abuse presents a substantial risk to the unborn child.
D. "Individual" or "person" means an adult or minor child under 18 years of age.

E. "Family member" means a blood relative to the third degree or the individual's spouse.

F. "Health care professional" means a health practitioner who has an active State or Navajo Nation license and who works in licensed health care delivery settings or programs, consistent with the training, experience and other requirements identified by their licensing body.

G. "Evaluation" means an assessment consisting of an individual patient's history, corroborating information, presenting signs and symptoms, and physical exam, to include a mental status assessment, as well as necessary laboratory or psychological testing, or both, which results in an opinion on a patient's condition and treatment recommendations by a health care professional.

§ 2105. Application for evaluation

Any adult family member, legal guardian, or employee of a governmental agency suspecting that an individual suffers from an illness or disorder, and as a result presents a reasonable likelihood of serious harm to himself or herself or the community because of an illness or disorder, may apply to the family court for an ex parte order requiring the individual to be held in the least restrictive environment and to undergo an evaluation, as defined in 13 N.N.C. § 2104(G).

A. Evaluation. The evaluation shall be completed within seven working days after the entry of the court order.

B. Application. The application shall contain such information and facts as shown by clear and convincing evidence that the individual's behavior(s), illness(es) or disorder(s) present a reasonable likelihood of serious harm to himself or herself or the community, and warrants an evaluation. Such information and facts shall include, but not be limited to:

1. A statement by the applicant that he or she believes, on the basis of personal observation, that the individual is, as a result of a physical or mental illness or disorder, a danger to himself or herself or the community, and that during the time necessary to complete the requested evaluation, the applicant presents a reasonable likelihood of serious harm; and

2. A statement of the specific nature of the serious harm; and

3. A summary of the observations upon which the statement of serious harm is based; and

4. The signature of the applicant.

C. Scheduled evaluation. The application shall identify one health care professional who will conduct the evaluation, a second health care professional who will concur in the evaluation, and shall include the date and location of the evaluation.
D. Use and protection of health information. Any evaluation conducted pursuant to 13 N.N.C. § 2105 may be used in a health civil commitment hearing held pursuant to 13 N.N.C. § 2106. Evaluation reports shall be maintained in a manner consistent with the Navajo Nation Privacy and Access to Information Act, 2 N.N.C. § 81 et seq.

§ 2106. Petition for treatment

Upon petition by any adult family member, legal guardian, or employee of a governmental agency, and after a hearing on the petition, if the traditional native healing methods are not a viable alternative, the Navajo Nation Family Court may then order an individual to undergo further medical evaluation or a course of treatment, or both.

A. Petition. The petition for treatment of any individual must contain the following information:

1. Name and address of the individual to be treated;
2. Name(s) and address(es) of the person(s) filing the petition;
3. The type of illness or disorder from which the individual suffers;
4. A brief statement of observations describing the individual's communications, behaviors, or actions occurring as a result of the illness or disorder which present a likelihood of serious harm;
5. A statement of the least restrictive treatment procedures available; and
6. A signed evaluation by one health care professional who has conducted the evaluation and a second health care professional who has concurred in the evaluation. In cases where an individual is a danger because of mental illness, one of the two health care professionals shall be a clinical psychologist or a psychiatrist. No liability will attach for any such evaluation statement so long as it is made in good faith and with reasonable professional judgment.

B. Scheduling Order. Upon receipt of the petition that meets the requirements of Subsection A, above, the family court shall schedule a hearing on the merits to be heard on an expedited basis. The family court may immediately order the individual to be held in the least restrictive environment in order to protect the public or individual from him or herself. This temporary holding order may be for a period of up to seven working days, and may be extended, as provided in this Act.

C. Notice to the individual. Upon scheduling of a hearing, and in any event at least 72 hours before the family court conducts the hearing on the petition for court-ordered treatment, the individual shall be served with the following documents:

1. A copy of the petition and evaluation in support thereof; and
2. Notice of the date, time and place of the hearing, which shall be
held in the courtroom or other place on the Navajo Nation that the family
court may designate to ensure humane treatment with due regard for the
comfort and safety of the individual and others; and

3. Advice of individual rights in these proceedings, including, but not limited
to:
   a. The right to legal counsel, and that, if necessary, the family court
      will appoint counsel on the same basis as other pro bono
      appointments; and
   b. Adequate time to prepare for the hearing, which time may,
      however, extend the time of any temporary hold ordered by the
      family court; and
   c. The right to confront the witnesses against him or her; and
   d. The right to present the testimony or evaluations of health care
      professionals on his or her behalf, at his or her own expense; and
   e. The right to a fair and impartial hearing into the matter by the
      family court.

D. Petition hearing.

1. During the petition hearing, the petitioner shall have the burden of
   proving, through clear and convincing evidence, that the individual suffers
   from an illness or condition, and as a result presents a reasonable
   likelihood of serious harm.

2. The individual has the right to counsel during the petition hearing and, if
   necessary, the family court may appoint counsel on the same basis as other
   pro bono appointments.

3. The individual shall be present for the petition hearing, shall be afforded
   all due respect and dignity, and shall be entitled to participate in his or her
   best interest, unless the family court makes written findings that the
   individual would be disruptive or has a communicable disease, and no
   reasonable accommodation is available to facilitate his or her
   participation. The family court shall require clear and convincing
   evidence that the individual should not be present at the hearing for such
   reasons, and, upon making its written findings, may proceed with the
   hearing in the individual's absence.

4. Hearings on petitions for health treatment shall be closed to the public and
   court records shall be sealed at the discretion of the court. However, the
   court may permit the family members of the individual to be present.

E. Independent evaluation. If requested by the individual who is the subject of the
petition, the family court may order the petition hearing stayed to allow an independent
evaluation of the individual, as defined in 13 N.N.C. § 2104(G), at the individual's expense. The family court shall ensure that the individual is informed of available resources to pay for the independent evaluation. During the stay, the family court may extend its temporary holding order to protect the individual or others, or both. During the period of the temporary holding order, the individual shall be held in the least restrictive environment.

F. The Navajo Nation Rules of Civil Procedure and Rules of Evidence shall apply to all health commitment proceedings, unless they are inconsistent with this Section.

§ 2107. Health Commitment Order

A. After the petition hearing and upon a finding based on clear and convincing evidence that the individual is suffering from an illness or condition which causes the individual to present a reasonable likelihood of serious harm, the family court may order that the individual undergo a course of treatment.

B. The course of treatment ordered shall be the least restrictive treatment procedure available and include traditional native healing methods to the extent advisable. The commitment order shall comply with all certification requirements of the receiving facility or agency that are not inconsistent with the sovereignty of the Navajo Nation.

C. The order shall provide for transportation of the individual and the development of a long-term discharge or other treatment plan, which may include subsequent telephone conferences with the family court.

D. In issuing its order, the family court shall receive information from the Executive Director of the Navajo Division of Health and Executive Director of the Division of Social Services, or his or her designee, regarding available resources for the course of treatment developed by the Navajo Nation, other resources identified by the parties, and other agreements between the Navajo Nation and other governments, if the facility or agency of another government is to be used.

E. The order shall specify when it will be reviewed by the family court, but at a minimum every 120 days. The order shall not be in effect for longer than 120 days without review by the family court.

F. The family court's review must conform to the standards of the original petition hearing, and include a substantive review of treatment and the opinion(s) of the treating health care professional(s). Unless the family court is convinced upon clear and convincing evidence that the individual continues to present a reasonable likelihood of serious harm to himself or herself or others, the individual shall be released, despite the need for further treatment.

G. The individual can be released before the next regularly scheduled family court review upon the determination of the treating health care professional(s) that commitment is no longer necessary, or upon expiration of the order. Upon such determination, the treating health care professional(s), the individual, or the individual's counsel shall inform the family court that the individual has been released and no further court proceedings are necessary to allow the release.
H. At any time, with or without the concurrence of the individual's guardian or conservator, the individual who is the subject of the health commitment order may petition the family court for release.

§ 2108. Guardianship

A. The family court may, as part of a health commitment order, appoint an individual, preferably a person acceptable to the individual subject to the order or a willing family member, to serve as a guardian for the individual, or conservator for his or her property, upon a showing, by clear and convincing evidence, that the individual is no longer capable of protecting himself or herself, or his or her property.

B. The guardian or conservator shall act in a fiduciary capacity for the individual or property of the individual he or she has been appointed to serve, and shall take action for the individual's benefit. The family court may make either a general or limited appointment for a specific purpose, but shall limit the guardianship to the specific needs of the individual and require a regular accounting.

C. The family court shall specify a date on which the guardianship or conservatorship will expire. A guardianship or conservatorship ordered under this Section shall not extend beyond the period of commitment ordered under 13 N.N.C. § 2107.

D. The guardian shall be required to be involved in all medical discussions and decisions made for the individual's benefit.

§ 2109. Emergency protective custody

A. In the event that an individual presents a reasonable likelihood of serious harm outside the regular hours of family court operations, or for emergency care, the individual may be held in protective custody by the Navajo Nation Division of Public Safety for a maximum of 72 hours excluding holidays and weekends, during which an application or petition must be filed and a temporary holding order issued pursuant to Sections 2105 and 2106.

B. Health care professionals may take appropriate actions, as necessary, to safeguard an individual who comes to the emergency room or treatment room of a health care facility on their own, including actions that are necessary while waiting for appropriate law enforcement personnel to take custody of the individual. To the extent necessary to protect public safety, an individual held in law enforcement custody may be entrusted to appropriate health care professionals to take those actions that are professionally responsible and clinically appropriate.

C. Health care professionals shall not be held personally liable for actions taken when the actions are professionally responsible and clinically appropriate.

D. Emergency Involuntary Mental Health Admissions. A law enforcement officer may detain and transport a individual for emergency mental health evaluation and care in the absence of a family court order, only if:

1. The individual is otherwise subject to lawful arrest; or
2. There are reasonable grounds for the officer to believe that the individual has just attempted suicide; and

3. The officer, based on his or her own observation and investigation, has reasonable grounds to believe that the individual, as a result of a mental disorder, presents a likelihood of serious harm to himself or herself or to others, and requires immediate detention to prevent such harm; and

4. The officer, upon arrival at an evaluation facility is interviewed by the admitting physician or his or her designee, to provide information relative to the need for emergency protective custody; and

5. A health care professional has certified that the individual, as a result of a mental disorder, presents a reasonable likelihood of serious harm to himself or herself or to others, and requires emergency detention to prevent such harm.

§ 2110. Minors

In all proceedings involving persons under the age of 18 years, the parent(s), guardian, or legal custodian shall be notified and have the right to be present.

§ 2111. Severability

Should any provision of the Health Commitment Act of 2006 be found invalid by the Courts of the Navajo Nation, the remaining provisions which can be implemented without the invalid provision(s) will be given full force and effect. To this extent, the provisions of the Act are severable.

§ 2112. Periodic review and amendments

The Health Commitment Act of 2006 may be amended from time to time by the Navajo Nation Council upon the recommendation of the Health and Social Services Committee and the Judiciary Committee of the Navajo Nation Council.