

CHAPTER 5-4 ABUSE OF ELDERS AND VULNERABLE ADULTS

GENERAL PROVISIONS

5-4-1 Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this Chapter.

- (a) "Abandonment" means action or inaction by a person or entity with a duty of care for an elder or a vulnerable adult that leaves the elder or vulnerable person without the means or ability to obtain essential services.
- (b) "Abuse" means a nonaccidental act of physical or mental mistreatment or injury, or sexual mistreatment, which harms a person through action or inaction by another individual.
- (c) "Agency" means the Colville Confederated Tribes Area Agency on Aging.
- (d) "Consent" means express written consent granted after the person has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.
- (e) "Director" means the director or administrator of the Colville Confederated Tribes Area Agency on Aging.
- (f) "Elder" means any person who is sixty (60) years of age or older.
- (g) "Essential Services" means those services or things necessary to sustain a person's life, physical and mental health, and general well being, such as adequate food, clothing shelter, and health care. It may include service or items considered essential under the person's customs, tradition or religion, including but not limited to, access to traditional foods and access to religious ceremonies or services.
- (h) "Exploitation" means the illegal or improper use of an elder or vulnerable adult or that person's income or resources, including trust funds, for another person's profit or advantage. Exploitation includes the unreasonable imposition on the elder's time resources, such as leaving children or other persons in the care of the elder or vulnerable adult for extended periods or under circumstances in which the elder or vulnerable adult cannot adequately care for such children or other persons.
- (i) "Neglect" means a pattern of conduct or inaction by a person or entity with a duty of care for an elder or vulnerable adult that results in the deprivation of essential services to the elder or vulnerable person.
- (j) "Vulnerable adult" means a person eighteen (18) years of age or older who has the functional, mental, or physical inability to care for himself. "Vulnerable adult" shall include:
 - (1) Persons found incapacitated or adult persons who are otherwise eligible for the appointment of a guardian under this Code;
 - (2) A person who has a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the Director to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to the individual. The Agency shall adopt criteria which define neurological or other conditions under this Subpart in a way that is not limited to intelligence quotient scores as the sole determinant of these conditions and notify the Business Council upon such adoption; or
 - (3) Persons admitted to any long-term care facility or receiving services from home health, hospice, or home care agencies located or operating on the Colville Reservation.

5-4-2 Purpose—Intent

(a) The Business Council finds that elders and vulnerable adults may be subjected to abuse, neglect, exploitation, or abandonment and that there are a number of adults sixty years of age or older who lack the ability to perform or obtain those services necessary to maintain or establish their well-being. The Council further finds that many elders and vulnerable adults have health problems that place them in a dependent position and that a significant number of elders and vulnerable adults have mental and verbal limitations that leave them vulnerable and incapable of asking for help and protection.

(b) It is the intent of the Business Council to prevent or remedy the abuse, neglect, exploitation, or abandonment of elders and vulnerable adults who have a functional, mental, or physical inability to care for or protect themselves and to provide these persons with the protection of the Colville Tribal Court and the least-restrictive services, such as home care, and preventing or reducing inappropriate institutional care. The Council finds that it is in the interests of the public health, safety, and welfare of the Colville Reservation Community to provide a procedure for identifying these elder and vulnerable persons and providing the services and remedies necessary for their well-being.

(c) The Business Council further finds that many elders and vulnerable adults may be homebound or otherwise may be unable to represent themselves in court or to retain legal counsel in order to obtain the relief available to them under this Chapter. It is the intent of the Council to improve access to the courts for victims of abuse, neglect, exploitation, and abandonment in order to better protect the elderly and vulnerable adults.

5-4-3 Funding—Cooperative Agreements

Any services or functions of the Agency under this Chapter shall be subject to the availability of funding and resources and the Agency shall not be required to expend additional funds or resources beyond those appropriated. Subject to the approval of the Business Council, the Agency may enter into cooperative agreements with state or other agencies for funding or other services necessary to implement this Chapter.

5-4-4 Additional Remedies

Unless otherwise provided by this Chapter, nothing in this Chapter shall be deemed to preclude the Tribal Court, to the extent authorized by Tribal law, from:

(a) Issuing an injunction, temporary restraining order, or similar relief by ordering a respondent to temporarily or permanently refrain from conducting the acts or actions that gave rise to a complaint under this Chapter;

(b) Ordering the respondent to pay compensation or restitution to an individual or any other entity injured by the actions of the respondent; or

(c) Imposing any other civil or criminal remedy for violations of Tribal law or regulations.

5-4-5 Immunity from Liability

(a) Nothing in this Chapter shall be construed as a waiver of the sovereign immunity of the Colville Tribes unless otherwise provided by tribal law or the Business Council. Nor shall this Chapter be construed as superseding or abridging remedies provided by tribal law or the Business Council against any tribal officers, employees or volunteers.

(b) A person is immune from liability resulting from a report made under this Chapter or testimony, if in good faith he:

(1) Participates in making such report; or

(2) Testifies about the abuse, neglect, abandonment, or exploitation of an elder or vulnerable adult in a judicial proceeding under this Chapter.

(c) Conduct conforming with the reporting and testifying provisions of this Chapter shall not be deemed a

violation of any confidential communication privilege.

5-4-6 Standing—Jurisdiction

A petition for a protective order or an action for damages under this Chapter may be brought by the plaintiff, or where necessary, by his or her family members and/or guardian or legal fiduciary, or as otherwise provided under this Chapter. The death of the plaintiff shall not deprive the court of jurisdiction over a petition or claim brought under this Chapter. Upon petition, after the death of the plaintiff, the right to initiate or maintain the action shall be transferred to the executor or administrator of the deceased, for the benefit of the surviving spouse, child or children, or other heirs as set forth in the Revised Code of Washington Chapter 4.20 as of the date of adoption of this Chapter by the Business Council.

5-4-7 Custom and Tradition

Any action under this Chapter shall be conducted in a manner, which is consistent with the custom and/or traditional beliefs, if any, of the elder or vulnerable adult to which the action applies and any such action which is contrary to such custom and/or traditional beliefs is prohibited. In determining the custom or traditional beliefs of a particular elder or vulnerable adult, any person taking action under this Chapter may rely on the advice of counselors familiar with such custom or traditional beliefs.

5-4-8 Severability

If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of the Chapter or the application of the provision to other persons or circumstances is not affected.

PREVENTION OF ABUSE, EXPLOITATION, NEGLECT AND ABANDONMENT

5-4-40 Reporting Requirements

(a) Except as otherwise provided by this Section, any:

(1) Person, including but not limited to, financial institutions or attorneys, having reasonable cause to believe that an elder or vulnerable adult has suffered abuse, exploitation, neglect, or abandonment, or is otherwise in need of protective services may, report such information to the Agency;

(2) Professional, police officer, social worker, employee of the agency, a social service, welfare, mental health, or health agency, including but not limited to Indian Health Service (IHS) personnel, home health, hospice, and home care agencies located on the Colville Reservation, congregate long-term care facility, including but not limited to adult family homes, boarding homes, nursing homes located on the Colville Reservation or assisted living services located or operating on the Colville Reservation, or health care provider located or operating on the Colville Reservation, including but not limited to doctors, nurses, psychologists, and pharmacists having reasonable cause to believe that a vulnerable adult has suffered abuse, exploitation, neglect, or abandonment, shall make an immediate oral report of such information to the agency and shall report such information in writing to the agency within ten (10) days of receiving the information.

(b) The making of permissive reports as provided under this Section does not create any duty to report and no civil liability shall attach for any failure to make such report. Any report submitted under this Section regarding an elder who is not a vulnerable adult shall not be submitted without the written consent of the elder. Any person mandated to report abuse, neglect, exploitation or abandonment of a vulnerable adult as provided by this Section who knowingly fails to do so or willfully prevents someone else from doing so shall be subject to a civil cause of action by the vulnerable adult, or where necessary, by his or her family members and/or guardian or legal fiduciary.

5-4-41 Reports—Contents

(a) A report made under this Chapter shall contain, if known:

(1) The identification of the elder or vulnerable adult;

- (2) The nature and extent of the suspected abuse, neglect, exploitation, or abandonment;
- (3) Any evidence of previous abuse, neglect, exploitation, or abandonment;
- (4) The name and address of the person making the report; and
- (5) Any other helpful information.

(b) Unless there is a judicial proceeding or the person consents, the identity of the person making the report shall be confidential.

5-4-42 Response to Reports

(a) The agency shall insure that all reports made under this Chapter are responded to. In non-emergency situations the agency shall investigate a report submitted under this Chapter within three (3) days of receiving the report. In the case of an emergency, the agency and/or the Tribal Police shall immediately investigate a report submitted under this Chapter.

(b) Entry of a private dwelling or any other location where there is a reasonable expectation of privacy for the purpose of investigating a report submitted under this Chapter may be conducted in accordance with the Colville Tribal Civil Rights Act and other tribal law.

(c) If the agency finds that an incident of abuse, neglect, exploitation, or abandonment has occurred, it shall:

- (1) Provide information to the elder or vulnerable adult on protective services available to the elder or vulnerable adult;
- (2) Inform the elder or vulnerable adult of the right to refuse such services; and
- (3) With the consent of the elder or vulnerable adult, insure that appropriate protective services are provided to the elder or vulnerable adult.

(d) As part of its obligations under this Section, the agency may develop cooperative agreements with Colville Tribal or other community-based agencies servicing the abused elderly and vulnerable adults. The agreements may cover such subjects as the appropriate roles and responsibilities of the agency and community-based agencies in identifying and responding to reports of abuse, neglect, exploitation or abandonment, the provision of case-management services, standardized data collection procedures, and related coordination activities. The services shall not be provided if the elder or vulnerable adult withdraws or refuses consent. If the agency determines that the elder or vulnerable adult lacks the ability or capacity to consent, it may file a petition for guardianship as provided by this Code for the purpose of providing the services under this Section.

5-4-43 Obstruction or Denial of Access

If access to an elder or vulnerable adult alleged to be abused, neglected, exploited, or abandoned, is denied to an employee of the agency seeking to investigate such abuse, neglect, exploitation, or abandonment:

(a) The agency may seek an injunction to prevent interference with the investigation. The Tribal Court shall issue the injunction if the agency shows that:

- (1) There is reasonable cause to believe that the person is an elder or vulnerable adult and is or has been abused, neglected, exploited, or abandoned; and
- (2) The employee of the agency seeking to investigate the report has been denied access as provided by this section.

(b) The person authorized to seek entry of the premises may contact the Tribal Police who shall assist in

obtaining access, if the denial of access is conducted in a manner which causes such authorized person to reasonably believe that efforts to obtain entry will be forcibly resisted or there is otherwise apparent danger to such person. If peaceable entry is not feasible, the tribal police may take such action as is authorized by tribal law to obtain entry.

5-4-44 Data Collection System

The agency may maintain a system for statistical data collection, accessible for bona fide research only as the Business Council by rule, adopted in accordance with the administrative procedure provisions of this Code, prescribes. The identity of any person obtained through such data collection system is strictly confidential.

5-4-45 Cause of Action for Damages

(a) In addition to other remedies available under tribal law, an elder or vulnerable adult who has been subjected to abuse, neglect, exploitation, or abandonment, shall have a cause of action for damages on account of his injuries, pain and suffering or loss of property sustained thereby, against any person who has caused the abuse, neglect, exploitation, or abandonment or who has permitted another to engage in the abuse, neglect, exploitation, or abandonment.

(b) The tribal prosecutor or the director may:

(1) Upon consultation with the alleged victim, bring an action against any person who engages in the conduct described under this Section; or

(2) If he certifies that in his opinion, the action is of general public importance, intervene in any action brought under this Section.

(c) In addition to remedies otherwise provided in this section, upon prevailing in an action under this Subsection, the court shall award the tribes costs of investigation and penalties. Penalties may not exceed \$5,000 per occurrence.

(d) In an action brought under this section, a prevailing plaintiff shall be awarded his actual damages, together with the costs of the suit, including a reasonable attorney's fee. The term "costs" includes, but is not limited to, the reasonable fees for a guardian, guardian ad litem, and experts, if any that may be necessary to the litigation of a claim brought under this section.

ABUSE AND EXPLOITATION PROTECTIVE ORDER

5-4-80 Petition for Protective Order

(a) An elder or vulnerable adult or the agency on behalf of and with the consent of an elder or vulnerable adult may file a petition for a protective order from abuse or exploitation, or the threat thereof, in Tribal Court. The petition:

(1) Shall allege that the petitioner is an elder or vulnerable adult and that he has been abused or exploited or is threatened with abuse or exploitation by the respondent;

(2) Shall be accompanied by affidavit made under oath stating the specific facts and circumstances which demonstrate the need for the relief sought;

(3) May be made whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

(b) A petitioner is not required to post bond to obtain relief in any proceeding for a protective order under this Chapter.

(c) Neither the agency nor the Colville Confederated Tribes shall be liable for failure to seek relief on behalf of any persons under this section.

5-4-81 Hearing

(a) Unless otherwise provided by this section, the Tribal Court shall order a hearing on a petition for protective order filed under this Chapter not later than fourteen (14) days from the date of such filing. Personal service shall be made upon the respondent not less than five (5) days before the hearing. If timely service cannot be made, the Court may set a new hearing date.

(b) In the event that the Tribal Court determines that an emergency exists involving danger of immediate harm to person or property, or there is other good cause, it may issue a temporary protection order without notice or hearing. Such protection order shall not be enforced until the person to whom it is directed has been served with a copy of it or has otherwise been informed of its contents, and a hearing shall be held as soon thereafter as possible.

5-4-82 Issuance of Order

(a) An order of protection issued by the Tribal Court under this Chapter may:

- (1) Restrain the respondent from committing acts of abuse or exploitation;
- (2) Exclude the respondent from petitioner's residence for a specified period or until further order of the court;
- (3) Prohibit contact by respondent for a specified period or until further order of the court;
- (4) Require an accounting by respondent of the disposition of petitioner's income or other resources;
- (5) Restrain the transfer of property for a specified period not exceeding ninety (90) days;
- (6) Require the respondent to pay filing fees and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee;
- (7) Require other relief as the court deems necessary.

(b) Any relief granted by a protective order, other than a judgment for costs, shall be for a fixed period not to exceed one (1) year after which time it shall be reviewed by the Court to determine if the order should remain in affect for such period as is necessary to protect the elder or vulnerable adult from abuse or exploitation as determined by the Court.

5-4-83 Execution of Protective Order

When a protective order under this Chapter is issued, the court may, upon request of the petitioner, order a Tribal Police officer to assist in the execution of such order.

(Chapter enacted-original code 5/7/79)