

## NHBP ELDERLY SERVICES AND PROTECTION CODE

**SECTION 101.**        **PURPOSE:** A CODE TO PROVIDE PROTECTION OF THE HEALTH AND WELLBEING OF TRIBAL ELDERS RESIDING ON TRIBAL LANDS OR WHO ARE OTHERWISE WITHIN THE JURISDICTION OF THE TRIBE.

**SECTION 102.**        **DEFINITIONS:** TERMS USED IN THIS ACT, UNLESS A DIFFERENT MEANING IS CLEARLY INDICATED BY CONTEXT, MEAN:

(A)    **ABUSE.** ANY NEGLIGENT OR INTENTIONAL ACT WHICH RESULTS IN PHYSICAL INJURY OR PAIN OR EMOTIONAL DISTRESS OR INJURY, SEXUAL ABUSE, UNREASONABLE CONFINEMENT, MALNUTRITION, OR THE RECKLESS OR NEGLIGENT DEPRIVATION BY A CARETAKER OF GOODS AND SERVICES NECESSARY TO MAINTAIN PHYSICAL HARM OR MENTAL HEALTH.

(B)    **NHBP ELDERLY PERSON.** A PERSON 50 YEARS OR OLDER.

(C)    **ELDERLY PROTECTION TEAM (EPT).** A TEAM, WHICH SHALL CONSIST OF THE TRIBE'S NURSE PRACTITIONER OR PHYSICIAN, A DULY LICENSED SOCIAL WORKER, AND A MEMBER OF THE TRIBE'S LAW ENFORCEMENT PERSONNEL, WHICH SHALL HAVE THE RESPONSIBILITY TO INVESTIGATE REPORTS OF ABUSE OF ELDERLY PERSONS, INVESTIGATE REPORTS OF AN ELDERLY PERSON LIVING IN UNSAFE, UNSANITARY, OR DANGEROUS LIVING CONDITIONS ON TRIBAL LANDS; INVESTIGATE REPORTS THAT AN ELDERLY PERSON LIVING ON TRIBAL LANDS IS CAUSING HIMSELF TO BE IN IMMINENT DANGER.

(D)    **IMMINENT DANGER.** THE EXISTENCE OF ANY CONDITION OR CIRCUMSTANCE WHICH COULD REASONABLY BE EXPECTED TO CAUSE SERIOUS PHYSICAL OR MENTAL HARM TO AN ELDER.

(E)    **LEAST RESTRICTIVE ALTERNATIVE.** ELDERLY PERSON PROTECTIVE SERVICES PROVIDED IN A MANNER NO MORE RESTRICTIVE OR INTRUSIVE OF AN

ELDER'S LIBERTY THAN NECESSARY TO MAINTAIN SAFE AND SANITARY LIVING CONDITIONS OR TO AVOID IMMINENT DANGER OF AN ELDER.

(F) NEGLECT. THE FAILURE OF A CAREGIVER TO MEET THE NEEDS OF A DEPENDENT ELDERLY PERSON, WHICH MAY BE INTENTIONAL—EG, WITHHOLDING OF FOOD, MEDICATIONS, FAILURE TO CLEAN OR BATHE, OR UNINTENTIONAL, RESULTING FROM GENUINE IGNORANCE OF—OR PHYSICAL INABILITY TO ADDRESS—A PARTICULAR NEED

(G) MASCULINE TERMS. ALL MASCULINE TERMS SHALL BE MEANT TO INCLUDE BOTH THE MALE AND FEMALE GENDERS.

(H) PERSON IN NEED OF CARE. ELDERLY PERSON THAT THE EPT AS DETERMINED TO BE IN NEED OF PROTECTIVE SERVICES.

(I) SELF-NEGLECT. ELDERLY PERSON CAUSING HIMSELF TO BE IN IMMINENT DANGER OR UNSAFE, UNSANITARY, OR DANGEROUS LIVING CONDITIONS.

## **CHAPTER 2. INVESTIGATION AND PROVISIONS OF PROTECTIVE SERVICES.**

### **SECTION 201. EPT INVESTIGATION**

(A) UPON RECEIVING A REPORT OF ABUSE OF AN ELDERLY PERSON LIVING ON TRIBAL LANDS, OR A REPORT THAT AN ELDERLY PERSON LIVING ON TRIBAL LANDS IS LIVING CONDITIONS THAT ARE UNSAFE, UNSANITARY OR DANGEROUS, OR A REPORT THAT AN ELDERLY PERSON LIVING ON TRIBAL LANDS IS CAUSING HIMSELF TO BE IN IMMINENT DANGER, THE EPT SHALL MAKE A PROMPT AND THOROUGH INVESTIGATION TO DETERMINE IF SUCH ABUSE OR SUCH CONDITIONS EXISTS AND WHETHER THE ELDERLY PERSON IS A PERSON IN NEED OF CARE.

(B) THE FINDINGS OF ANY SUCH INVESTIGATION SHALL BE IN A WRITTEN REPORT PREPARED BY THE LICENSED SOCIAL WORKER AND CONCURRED IN BY THE MEMBERS OF THE EPT. IF THERE ARE ANY DISSENTS IN THE FINDINGS, THOSE ARE TO BE INCLUDED WITHIN THE REPORT.

## **SECTION 202. PROVISION OF PROTECTIVE SERVICES**

(A) UPON COMPLETION OF THE INVESTIGATION, IF THE EPT DETERMINES BASED ON THE INVESTIGATION THAT: (1) THE ELDERLY PERSON HAS BEEN ABUSED; (2) THE ELDERLY PERSON IS LIVING IN UNSAFE, UNSANITARY OR DANGEROUS CONDITIONS; OR (3) THE ELDERLY PERSON IS IN IMMINENT DANGER; AND THUS IS A PERSON IN NEED OF CARE, THE EPT SHALL DEVELOP A PLAN FOR PROVISION OF SUCH SERVICES.

(B) SERVICES PROVIDED TO A PERSON IN NEED OF CARE MAY INCLUDE, BUT ARE NOT LIMITED TO:

(1) ASSISTANCE IN OBTAINING NEEDED COUNSELING SERVICES FOR THE ABUSED ELDERLY PERSON AND/OR THE ABUSER.

(2) MEDIATION BETWEEN THE ABUSED ELDERLY PERSON AND THE ABUSER.

(3) ASSISTANCE IN LOCATING AND MOVING TO ALTERNATIVE LIVING QUARTERS, ON A TEMPORARY OR PERMANENT BASIS.

(4) ASSISTANCE IN OBTAINING NEEDED MEDICAL CARE, FOOD, CLOTHING AND HOUSEHOLD GOODS.

(5) ASSISTANCE IN ADDRESSING UNSAFE, UNSANITARY, OR DANGEROUS LIVING CONDITIONS IN AN ELDER'S HOME.

Amended October 28, 2010  
Resolution No. 10-28-10-07

12115.1  
106650.1

- (6) REMOVAL OF NEGLECTED ANIMALS.
- (7) APPOINTMENT OF A GUARDIAN BY ORDER OF THE COURT ONLY.
- (8) REMOVAL OF ANY PERPETRATOR FROM THE HOME OF THE ELDERLY PERSON.

### **SECTION 203. CONSENT TO PROTECTIVE SERVICES**

THE EPT SHALL NOT PROVIDE PROTECTIVE SERVICES TO A PERSON IN NEED OF CARE UNLESS THAT PERSON CONSENTS, EXCEPT AS PROVIDED IN CHAPTER 3 OF THIS TITLE. THE EPT SHALL NOTIFY THE PERSON IN NEED OF CARE THAT IT MAY SEEK A COURT ORDER IF THE PERSON IS UNWILLING OR UNABLE TO CONSENT TO SUCH CARE.

### **SECTION 204. REPORTS TO THE TRIBAL PROSECUTOR**

WHENEVER THE EPT MAKES A POSITIVE DETERMINATION OF ABUSE UNDER SECTION 201, THE EPT SHALL INFORM THE TRIBAL PROSECUTOR, AND SHALL FURNISH INFORMATION AS REQUESTED BY THE PROSECUTOR.

## **CHAPTER 3. PETITION FOR PROTECTIVE SERVICES**

### **SECTION 301. PETITION TO COURT FOR EMERGENCY PROTECTIVE SERVICES.**

(A) IF THE EPT DETERMINES THAT AN ELDERLY PERSON IS A PERSON IN NEED OF CARE AND THE PERSON FAILS TO CONSENT OR IS UNABLE TO CONSENT TO PROTECTIVE SERVICES, EPT MAY PETITION THE TRIBAL COURT FOR AN ORDER AUTHORIZING THE EPT SERVICES. THE PETITION MUST ALLEGE SPECIFIC FACTS TO SHOW THAT THE ELDERLY PERSON IS A PERSON IN NEED OF CARE AND IS UNWILLING OR IS UNABLE TO CONSENT TO SUCH SERVICES.

(B) UPON RECEIVING A PETITION, THE TRIBAL COURT SHALL IMMEDIATELY SCHEDULE A HEARING TO DETERMINE IF SUCH CARE IS NECESSARY BECAUSE THE ELDERLY PERSON IS (1) BEING ABUSED; (2) IS AN IMMINENT DANGER TO HIMSELF; OR (3) IS LIVING IN UNSAFE, UNSANITARY, OR DANGEROUS LIVING CONDITIONS.

(C) ABSENT GOOD CAUSE, A HEARING ON THE PETITION MUST BE HELD WITHIN FIVE (5) DAYS OF THE PETITION BEING FILED.

**SECTION 303. RIGHTS TO THE ELDERLY PERSON.**

THE ELDERLY PERSON SHALL IMMEDIATELY BE NOTIFIED IN WRITING THAT A PETITION HAS BEEN FILED IN TRIBAL COURT, THE REASONS FOR THE PETITION, AND THE DATE AND TIME OF THE HEARING. THE ELDERLY PERSON SHALL HAVE THE RIGHT TO BE PRESENT AT THE HEARING, TO BE REPRESENTED BY COUNSEL AT HIS EXPENSE, AND TO PRESENT TESTIMONY ON HIS BEHALF.

**SECTION 304. HEARING-DETERMINATION BY THE COURT.**

(A) AT THE HEARING, THE EPT SHALL PRESENT EVIDENCE THAT THE ELDERLY PERSON IS A PERSON IN NEED OF CARE AND HAS FAILED TO CONSENT.

(B) IF THE COURT DETERMINES BY A PREPONDERANCE OF THE EVIDENCE THAT THE ELDERLY PERSON IS IN IMMINENT DANGER, OR IS LIVING IN UNSAFE, UNSANITARY, OR DANGEROUS LIVING CONDITIONS IT MAY ENTER AN ORDER AUTHORIZING THE PROVISION OF PROTECTIVE SERVICES.

**SECTION 305. ELDER PROTECTION ORDER.**

AN ORDER FOR ELDERLY PROTECTION SERVICES MAY INCLUDE, BUT IS NOT LIMITED, TO THE FOLLOWING:

(1) REQUIRING THE PERSON WHO HAS ABUSED OR NEGLECTED AN ELDER TO REMOVE HIMSELF/HERSELF FROM THE ELDER'S HOME;

(2) RESTRAINING THE PERSON WHO HAS ABUSED OR NEGLECTED AN ELDER FROM CONTINUING SUCH ACTS OR PROHIBITING THE PERSON WHO HAS ABUSED OR NEGLECTED AN ELDER FROM CONTACTING OR ATTEMPTING TO CONTACT THE ELDER;

(3) REMOVING THE ABUSED OR NEGLECTED ELDER FROM THE PLACE WHERE THE ABUSE OR NEGLECT HAS TAKEN OR IS TAKING PLACE IF IT IS DEMONSTRATED THAT REMOVAL IS NECESSARY TO PREVENT SERIOUS EMOTIONAL OR PHYSICAL HARM;

(4) REQUIRING AN ELDER'S FAMILY OR CARETAKER OR ANY OTHER PERSON WITH A FIDUCIARY DUTY TO ACCOUNT FOR THE ELDER'S FUNDS AND PROPERTY.

(5) REQUIRING ANY PERSON WHO HAS ABUSED OR NEGLECTED AN ELDER TO PAY RESTITUTION TO THE ELDER FOR DAMAGES RESULTING FROM THE PERSON'S WRONGDOING;

(6) APPOINTING A GUARDIAN AD LITEM FOR THE ELDER;

(7) RECOMMENDING THAT A REPRESENTATIVE PAYEE BE NAMED; OR

(8) ORDERING THE APPROPRIATE TRIBAL AGENCIES AND PROGRAMS TO PREPARE A PLAN FOR AND DELIVER ELDER PROTECTION SERVICES WHICH PROVIDE THE LEAST RESTRICTIVE ALTERNATIVE FOR SERVICES, CARE, TREATMENT, OR PLACEMENT CONSISTENT WITH THE ELDER'S NEEDS. HOWEVER, IF THERE ARE ANY COSTS ASSOCIATED WITH THESE SERVICES THE TRIBE SHALL NOT BE LIABLE FOR SUCH COSTS, WHERE THE ELDER OR ANOTHER STATE OR FEDERAL PROGRAM OR AGENCY, INCLUDING BUT NOT EXCLUSIVE OF MEDICARE, MEDICAID, OR LIHEAP, CAN OR IS OTHERWISE OBLIGATED TO PAY THESE COSTS.

**SECTION 306. DURATION OF THE ELDERLY PROTECTION ORDER.**

AN ELDER PROTECTION ORDER SHALL BE ISSUED FOR A PERIOD NOT TO EXCEED 60 DAYS. THE TRIBAL COURT SHALL REVIEW THE ORDER EVERY SIXTY DAYS TO DETERMINE WHETHER THE NEED FOR SERVICES STILL EXISTS, AND SHALL HAVE THE DISCRETION TO CLOSE THE CASE AT ANY TIME IF IT FINDS THE SITUATION HAS BEEN RESOLVED.

**CHAPTER 4. RECORDKEEPING AND ACCESS TO RECORDS**

**SECTION 401. EPT RECORDS.**

THE EPT SHALL KEEP A SEPARATE CASE FILE FOR EACH REPORT OF ABUSE IT RECEIVES. THE FILE SHALL INCLUDE A COMPLETE RECORD OF THE COMPLAINT ITSELF, THE RESULTS OF THE INVESTIGATION, ANY SERVICES PROVIDED, A SUMMARY OF ANY COURT PROCEEDINGS, AND ANY OTHER PERTINENT INFORMATION.

**SECTION 402. CONFIDENTIALITY.**

(A) *NAME OF REPORTER.* THE NAME OF ANY PERSON WHO REPORTS ABUSE OR NEGLECT UNDER THIS CODE IS CONFIDENTIAL AND SHALL NOT BE RELEASED TO ANY PERSON UNLESS THE REPORTER CONSENTS TO THE RELEASE OR THE RELEASE IS ORDERED BY THE TRIBAL COURT. THE COURT MAY RELEASE THE REPORTER'S NAME ONLY AFTER NOTICE TO THE REPORTER IS GIVEN, A CLOSED EVIDENTIARY HEARING IS HELD, AND THE NEED TO PROTECT THE ELDER IS FOUND TO BE GREATER THAN THE REPORTER'S RIGHT TO CONFIDENTIALITY. THE REPORTER'S NAME SHALL BE RELEASED ONLY TO THE EXTENT AS DETERMINED NECESSARY TO PROTECT THE ELDER.

(B) *INVESTIGATION RECORDS.* THE EPT RECORDS SHALL BE CONFIDENTIAL, EXCEPT THAT THE ELDERLY PERSON WHO IS THE SUBJECT OF A REPORT SHALL HAVE ACCESS TO HIS FILE AT ANY TIME, AND SHALL BE INFORMED OF SUCH ACCESS DURING THE INITIAL INVESTIGATION; THE TRIBAL PROSECUTOR SHALL HAVE ACCESS TO THE EPT RECORDS TO

PREPARE AND PRESENT A PETITION TO THE TRIBAL COURT; AND THE TRIBE'S LAW ENFORCEMENT PROGRAM MAY PROVIDE SUCH INFORMATION AS REQUIRED BY THE TRIBAL PROSECUTOR FOR ANY CRIMINAL PROCEEDINGS.

(C) *COURT PROCEEDINGS AND HEARING RECORDS.* A PROCEEDING HELD UNDER THIS CODE WILL BE CLOSED AND CONFIDENTIAL. PERSONS WHO MAY ATTEND ARE THE ELDER, THE ELDER'S FAMILY AND CARETAKER, REPRESENTATIVES OF EPT, NECESSARY COURT OFFICIALS, AND ATTORNEYS FOR THE PARTIES. OTHER PERSONS MAY APPEAR ONLY TO TESTIFY. NO ONE ATTENDING OR TESTIFYING AT SUCH A PROCEEDING SHALL REVEAL INFORMATION ABOUT THE PROCEEDING UNLESS ORDERED TO DO SO BY COURT ORDER. RECORDS OF PROCEEDINGS WILL ALSO BE CLOSED AND CONFIDENTIAL.

(D) *VIOLATIONS; PENALTIES.* ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION SHALL BE SUBJECT TO CIVIL PENALTY OF UP TO \$250.00 PER OCCURRENCE. THE COURT SHALL ASSESS THE PENALTY AFTER PETITION, NOTICE, OPPORTUNITY FOR HEARING, AND A DETERMINATION THAT A VIOLATION HAS OCCURRED. IN ADDITION, IF THE VIOLATION IS COMMITTED BY AN EMPLOYEE OF THE TRIBE, THE EMPLOYEE MAY ALSO BE SUBJECT TO DISCIPLINARY ACTION UP TO AND INCLUDING TERMINATION.