

Title 7. Children, Elders & Family - Chapter 706

ELDER PROTECTION

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706.1. Purpose and Policy

706.1-1. *Purpose.* The purpose of this law is to uphold the Nation's responsibility to honor and protect its elders. This law establishes a process to safeguard elders from harm, including abuse, neglect, self-neglect, and exploitation. This process includes:

- (a) reporting concerns of abuse, neglect, self-neglect, and exploitation of elders;
- (b) investigating reports to ensure the safety and well-being of elders; and
- (c) providing services and support for elders who require protection from abuse, neglect, self-neglect, and exploitation.

706.1-2. *Policy.* It is the policy of the Nation to honor, respect, and protect its elders. The Nation recognizes that elders possess unique and irreplaceable stores of knowledge, skill, and experience that enhance and enrich the lives of the entire Nation. The interests of the Nation, now and in the future, are advanced when its elders are confident that they are protected from abuse, neglect, self-neglect, and exploitation. In honoring these principles, the Nation embraces YukwatsistayaΛ the fire, the animating spirit within each of us as a reminder that protecting our elders is an expression of who we are as a People and a reflection of The Good Mind we strive to uphold as expressed by OnΛyote'a'ka, which includes:

- (a) Kahletsyalúsla. The heartfelt encouragement of the best in each of us.
- (b) Kanolukhwásla. Compassion, caring, identity, and joy of being.
- (c) Ka'nikuhli'yó. The openness of the good spirit and mind.
- (d) Ka'tshatstásla. The strength of belief and vision as a People.
- (e) Kalihwi'yó. The use of the good words about ourselves, our Nation, and our future.
- (f) TwahwahtsílayaΛ. All of us are family.
- (g) YukwatsístayaΛ. Our fire, our spirit within each one of us.

706.2. Adoption, Amendment, Repeal

706.2-1. This law was adopted by the Oneida Business Committee by resolution BC-07-08-26-B.

706.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

706.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

706.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

706.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

706.3. Definitions

706.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Abuse" means any of the following:
 - (1) Physical abuse.
 - (2) Emotional abuse.
 - (3) Sexual abuse.

- (4) Treatment without consent.
- (5) Unreasonable confinement or restraint.
- (b) “Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.
- (c) “Caregiver” means a person who has assumed responsibility for all or a portion of an individual’s care voluntarily, by contract, or by agreement, including a person acting or claiming to act as a legal guardian.
- (d) “Case management” means an assessment of need for direct services, development of a direct service plan and coordination and monitoring of the provision of direct services.
- (e) “Departmental report form” includes documentation of an elder-adult-at-risk agency’s response to or investigation of a report and is the information required to be submitted to the department.
- (f) “Direct services” includes temporary shelter, relocation assistance, housing, respite care, emergency funds for food and clothing and legal assistance.
- (g) “Elder-at-risk” means any person aged Fifty-Five (55) or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.
- (h) “Elder-adult-at-risk agency” means Oneida Aging and Disability, or an agency designated by the county board of supervisors to receive, respond to, and investigate reports of abuse, neglect, self-neglect, and financial exploitation.
- (i) “Emotional abuse” means language or behavior that serves no legitimate purpose and is intended to be intimidating, humiliating, threatening, frightening, or otherwise harassing, and that does or reasonably could intimidate, humiliate, threaten, frighten, or otherwise harass the individual to whom the conduct or language is directed.
- (j) “Financial exploitation” means any of the following:
 - (1) Obtaining an individual’s money or property by deceiving or enticing the individual, or by forcing, compelling, or coercing the individual to give, sell at less than fair market value, or in other ways convey money or property against his or her will without his or her informed consent.
 - (2) Theft.
 - (3) The substantial failure or neglect of a fiscal agent to fulfill his or her responsibilities.
 - (4) Unauthorized use of an individual’s personal identifying information or documents.
 - (5) Unauthorized use of an entity’s identifying information or documents.
 - (6) Forgery.
 - (7) Financial transaction card crimes.
- (k) “Investigative agency” means Oneida Aging and Disability, a law enforcement or a city, town, village, county, or state governmental agency or unit with functions relating to protecting health, welfare, safety, or property, including an agency concerned with animal protection, public health, building code enforcement, consumer protection, or insurance or financial institution regulation.
- (l) “Nation” means the Oneida Nation.
- (m) “Neglect” means the failure of a caregiver, as evidenced by an act, omission, or course

of conduct, to endeavor to secure or maintain adequate care, services, or supervision for an individual, including food, clothing, shelter, or physical or mental health care, and creating significant risk or danger to the individual's physical or mental health. "Neglect" does not include a decision that is made to not seek medical care for an individual, if that decision is consistent with the individual's previously executed declaration or do-not-resuscitate order as authorized by law.

(n) "Physical abuse" means the intentional or reckless infliction of bodily harm.

(o) "Record" includes any document relating to the response, investigation, assessment, and disposition of a report made under this law.

(p) "Self-neglect" means a significant danger to an individual's physical or mental health because the individual is responsible for his or her own care but fails to obtain adequate care, including food, shelter, clothing, or medical or dental care.

(q) "Sexual abuse" means a violation of Wisc. Stat. 940.225(1), (2), (3), or (3m).

(r) "Treatment without consent" means the administration of medication to an individual who has not provided informed consent, or the performance of psychosurgery, electroconvulsive therapy, or experimental research on an individual who has not provided informed consent, with the knowledge that no lawful authority exists for the administration or performance.

(s) "Unreasonable confinement or restraint" includes the intentional and unreasonable confinement of an individual in a locked room, involuntary separation of an individual from his or her living area, use on an individual of physical restraining devices, or the provision of unnecessary or excessive medication to an individual, but does not include the use of these methods or devices in entities regulated by the department if the methods or devices are employed in conformance with state and federal standards governing confinement and restraint.

(t) "Retaliation" means intimidating, threatening to cause or causing bodily, emotional, property, or financial harm.

706.4. Interdisciplinary Team

706.4-1. *Composition.* The Interdisciplinary Team consists of representatives from Aging and Disability Services, Oneida Police Department, Comprehensive Health Division, Oneida Behavioral Health, Oneida Law Office, Oneida Community Resource and Economic Support, Comprehensive Housing Department, Oneida Family Services, and any additional agencies designated by the Team as necessary to fulfill its duties.

706.4-2. *Confidentiality.* All members of the Interdisciplinary Team shall maintain strict confidentiality regarding all matters that come before the team. No member may disclose any information except as expressly authorized under this law.

(a) *Purpose-Based Disclosure.* Members may use or disclose confidential information only as necessary to perform duties under this law, including prevention, identification, investigation, or mitigation of elder abuse, neglect, exploitation, or self-neglect.

(b) *HIPAA Exception for Harm Prevention.* When a member is subject to HIPAA, the member may share protected health information with the Team under the exception permitting disclosure to prevent or lessen a serious and imminent threat to the health or

safety, provided that:

- (1) the disclosure is made in good faith to prevent or address abuse, neglect, or exploitation; and
 - (2) the disclosure is limited to persons reasonably able to prevent or mitigate the threatened harm, including members of the Interdisciplinary Team acting within their authority under this law.
- (c) *Minimum-Necessary Standard.* Any disclosure shall be limited to the minimum information necessary for the Team to perform its duties.
- (d) *Selective Participation.* Only members whose roles are relevant to a specific case shall access confidential information for that case.
- (e) *Redisclosure Prohibited.* Information received through the Team may not be further disclosed except as required to perform professional duties related to the case or as otherwise authorized by law.
- (f) *Conflict of Interest.* Members with a personal conflict, familial relationship, or other circumstance that may compromise confidentiality, or objectivity shall recuse themselves from case discussions.

706.4-3. *Reporting to Licensing Agencies.* The Team may report to a licensing agency any concerns that a regulated person has failed to comply with mandatory reporting requirements under this law or has abused or neglected an elder. The Team may also report concerns to the person's employer.

706.4-4. *Law Enforcement Assistance.* The Team may request assistance from the Oneida Police Department in investigating allegations of elder abuse or neglect and shall notify the Department of any allegations of criminal abuse or neglect.

706.4-5. *Duties:* The Team shall meet periodically and:

- (a) guide investigations of reported elder abuse;
- (b) review reports from adult protection workers and determine whether an Oneida elder is in danger of harm;
- (c) recommend actions to adult protection workers and to the Court to promote the care of elders;
- (d) determine whether a legal action should be initiated by the Nation;
- (e) determine whether an elder should be removed from the person's home temporarily or permanently;
- (f) recommend placement options when an elder cannot remain in their home;
- (g) identify available community resources, programs, and services;
- (h) promote cooperation, communication, and consistency between agencies;
- (i) assist in developing and implementing plans to promote the long-term wellbeing of elders and their families.

706.4-6. *Decision-Making.* Decisions shall be made by consensus of members present at a duly noticed meeting.

706.4-7. *Notice of Meetings.* Notice of regularly scheduled meetings is presumed complete upon scheduling. Notice of emergency meetings shall be provided at least twenty-four (24) hours in advance by email, text, or phone call/voicemail.

706.4-8. *Family and Community Engagement.* The Team shall prioritize resolving issues of abuse or neglect through family and community assistance and may convene meetings with designated

family and community members for this purpose.

706.4-9. *Funding Authority*. The Team may solicit and accept grants or funds from federal, state, tribal, and local governments and private sources to further the purposes of this law, in accordance with the Nation's applicable laws, policies, and procedures.

706.4-10. *Administrative Support*. Aging and Disability Services shall serve as the Team's primary contact, organize meetings, and maintain records.

706.4-11. *Subject Matter Experts*. The Team may engage subject matter experts from any entity necessary to access resources required to fulfill its duties.

706.5. Reporting

706.5-1. *Duty to Report*. Any person who knows or has reasonable cause to suspect that an elder is being or has been abused, neglected, self-neglected, or exploited shall immediately report the information to the Oneida Police Department or Oneida Aging and Disability Services, unless prohibited by a legally recognized privilege. Individuals bound by a privileged relationship may only make an anonymous disclosure if there is an urgent need for hospitalization, guardianship, protective services, or protective placement.

706.5-2. *Mandated Reporters*. The following individuals have a mandated duty to report suspected abuse, neglect, self-neglect, and exploitation of elders:

- (a) The elder's family members or caretakers;
- (b) Any elected official of the Nation;
- (c) Any employee of the Nation, including but not limited to:
 - (1) physicians, surgeons, dentists, podiatrists, chiropractors, nurses, dental hygienists, optometrists, medical examiners, emergency medical technicians, paramedics, or other health care providers;
 - (2) psychiatrists, psychologists, or psychological assistants;
 - (3) licensed or unlicensed social workers, professional counselors, or marriage and family therapists;
 - (4) persons employed in the mental or behavioral health profession;
 - (5) persons employed as physical or occupational therapists, or their assistants;
 - (6) law enforcement officers;
 - (7) judges, attorneys, court counselors, clerks of court, and other judicial system officials or staff;
- (d) Any person or agency with fiduciary responsibilities to an elder, such as accountants, property managers, financial advisors, or financial institutions.

706.5-3. *Anonymous Reports*. Except for mandated reporters identified in section 706.5-2, any person reporting elder abuse, neglect, self-neglect, or exploitation may remain anonymous.

706.5-4. *Immunity from Liability*. Any person who in good faith, reports suspected abuse, neglect, self-neglect, or exploitation of an elder shall be immune from any legal action arising from that report.

706.5-5. *Civil Penalty for Failure to Report*.

- (a) Any person required by this law to report suspected elder abuse, neglect, self-neglect, or exploitation who fails to do so is subject to a civil penalty not to exceed two thousand dollars (\$2,000).
- (b) The Court shall impose the penalty only after petition, notice, an opportunity for

hearing, and a determination that the person had a mandated duty to report and failed to comply.

(c) A person who fails to report may also be subject to civil liability for damages suffered by the elder as a result of the failure to report, notwithstanding any determination by the Court regarding violation of this law.

706.5-6. *Civil Penalty for Bad Faith Reports.*

(a) Any person who knowingly makes a false report of suspected abuse, neglect, self-neglect, or exploitation is subject to a civil penalty not to exceed two thousand dollars (\$2,000).

(b) The Court shall impose the penalty only after petition, notice, an opportunity for hearing, and a determination that the person knowingly made a false report.

(c) A person making a false report may also be subject to civil liability for damages suffered by the person(s) named in the false report.

706.5-7. *Report Requirements.* Reports of suspected elder abuse, neglect, self-neglect, or exploitation shall be made to the Oneida Police Department or Oneida Aging and Disability Services.

(a) Oral reports shall be immediately documented in writing by the Director or designee.

(b) Anonymous reports shall be investigated as required by this law.

(c) Written reports shall include, if available:

(1) The elder's name, address or location, and telephone number;

(2) The name, address or location, and telephone number of the person(s) or agency suspected of abuse, neglect, or exploitation;

(3) The nature and degree of any limitations of the elder;

(4) The name, address or location, and telephone number of the elder's caretaker, if applicable;

(5) The name, address or location, and telephone number of any witnesses;

(6) A description of the acts reported as abusive, neglectful, or exploitative;

(7) Any other information that may assist in determining abuse, neglect, self-neglect, or exploitation;

(8) The name, address, and telephone number of the reporter for follow-up purposes, unless the report is anonymous.

706.6. Investigation

706.6-1. *Initiation of Investigations.* Upon receipt of a report alleging abuse, financial exploitation, neglect, or self-neglect of an elder adult at risk who is believed to be an Oneida Elder, the Oneida Aging and Disability Designee shall promptly coordinate with appropriate elder-at-risk agencies. The Oneida Aging and Disability Designee shall take all reasonable steps to ensure timely and organized action to protect the elder while maintaining active involvement throughout the investigative process.

706.6-2. *Minimum Investigative Actions.* The elder-adult-at-risk agency's response shall include one or more of the following:

(a) A visit to the elder's residence;

(b) Observation of the elder, with or without consent of a guardian or agent under an activated power of attorney for health care, if any;

- (c) A private interview with the elder, to the extent practicable, with or without consent of a guardian or agent under an activated power of attorney for health care, if any;
- (d) An interview with the guardian or agent under an activated power of attorney for health care, if any, and with any caregiver;
- (e) A review of the elder's treatment and health care records;
- (f) A review of the elder's financial records maintained by a financial institution, entity, caregiver, or immediate family member. Financial records shall be released without informed consent under either of the following circumstances:
 - (1) To an elder-adult-at-risk agency or other investigative agency under this section, including voluntary disclosure by the record holder;
 - (2) Pursuant to a lawful court order.

706.6-3. *Medical Examination.* The elder-adult-at-risk agency may transport the elder adult at risk for a medical examination by a physician if:

- (a) The elder adult at risk or his or her guardian or agent under an activated power of attorney for health care consent; or
- (b) The elder is incapable of consenting and one of the following applies:
 - (1) The elder has no guardian or agent under an activated power of attorney for health care;
 - (2) The guardian or an agent under an activated power of attorney for health care, is suspected of abuse, neglect, or financial exploitation;
 - (3) The examination is authorized by court order.

706.6-4. *Law Enforcement Assistance.* The elder-at-risk agency may request law enforcement assistance during visits to the elder's residence or as otherwise necessary. Upon request, a law enforcement officer shall accompany the agency investigator and provide assistance as needed.

706.6-5. *Offer of Services and Referrals.* Upon responding to a report, the elder-at-risk agency shall determine whether the elder or any other individual involved requires services. The agency shall provide or arrange for necessary services under the least restrictive conditions appropriate to achieve the intended objectives.

706.6-6. If, after responding to a report, the elder-adult-at-risk agency has reason to believe that abuse, financial exploitation, neglect, or self-neglect has occurred, the agency may:

- (a) Request immediate assistance to initiate protective services or contact an investigative agency;
- (b) Take emergency protective action, including emergency protective placement, if in the elder's best interests and the least restrictive intervention;
- (c) Refer the case to law enforcement or the district attorney, if a crime is suspected.
- (d) Refer the case to licensing or regulatory authorities if the residence, facility, or program is or should be regulated;
- (e) Refer the case to the Department of Safety and Professional Services if a credentialed individual is involved;
- (f) Refer the case to the Department of Financial Institutions if financial exploitation involves a registered individual or entity;
- (g) Petition for guardianship, protective services, or protective placement or seek review of an existing guardianship if necessary to prevent harm.

706.6-7. *Confidentiality.* Departmental report forms are confidential and may not be released

except:

- (a) To the elder, any person named as a suspect, and the suspect's attorney, excluding the identity of the reporter or any person whose safety may be endangered.
 - (b) To agencies or entities providing assistance, subject to confidentiality requirements;
 - (c) To individuals or organizations designated for audits or program evaluation, provided identifying information is not disclosed;
 - (d) Pursuant to a lawful court order;
 - (e) To agencies or individuals providing direct services, including attending physicians, for purposes of diagnosis, treatment, or coordination of care;
 - (f) To the guardian of the elder adult at risk or the guardian of any person named in a report who is suspected of abuse, neglect, or financial exploitation. These individuals may inspect the report, except that identifying information about the reporter or any person whose safety may be endangered by disclosure shall not be released;
 - (g) To law enforcement officials as necessary to carry out their duties, in accordance with applicable internal policies and this law;
- To the Oneida Interdisciplinary Team, a federal agency, state or local governmental unit, or an agency of another state that requires the report to fulfill its responsibility to protect elder adults at risk from abuse, neglect, exploitation, or self-neglect;
- (i) To the individual who made the report in a professional capacity, for the limited purpose of informing them of actions taken to protect or provide services to the alleged victim.

706.6-8. *Written Investigative Report.*

- (a) The Oneida Aging and Disability Designee shall provide a written investigative report and file it with Oneida Aging and Disability Services.
- (b) The report shall include all pertinent information obtained during the investigation, including interviews, observations, assessments, and other relevant facts.
- (c) The report shall remain on file for five (5) years, even if insufficient evidence exists to pursue legal action.
- (d) If the allegations are substantiated, Oneida Aging and Disability Services may mediate a resolution or forward the matter to the Oneida Law Office for legal action.

706.6-9. *Interference with Investigation and Retaliation.*

- (a) No person shall intentionally interfere with a lawful investigation of suspected elder abuse, neglect, self-neglect, or exploitation.
- (b) No person shall retaliate against any individual who, in good faith, reports suspected abuse or cooperates with an investigation.
- (c) Any person who interferes with or retaliates shall be subject to a civil penalty of up to two thousand dollars (\$2,000) per occurrence. The Court shall impose the penalty only after petition, notice, an opportunity for hearing, and a determination that interference or retaliation occurred.
- (d) Notice of the Court's determination shall be provided to the person's employer and any relevant licensing agencies. If the violator is an employee of the Nation, disciplinary action shall be imposed consistent with Nation employment laws.

706.6-10. *Criminal Investigation.* Any investigation or procedure under this law may continue concurrently with a criminal investigation. Oneida Aging and Disability Services shall cooperate with law enforcement to ensure the criminal investigation is not compromised.

706.7. Rights of Parties

706.7-1. *Rights of Elders.* An elder shall have the following rights:

- (a) *Notice of Investigation.* An elder has the right to be informed about an elder abuse investigation before it begins unless an emergency exists, in which case the elder shall be informed as soon as possible, but not later than one (1) business day after the investigation begins.
- (b) *Refusal of Services.* An elder has the right to refuse to accept elder protective services (even if there is good cause to believe that the elder has been or is being abused, neglected, self-neglected, or exploited) provided that the elder is able to care for himself or herself and/or has the capacity to understand the nature of the services offered.
- (c) *Property Rights.* An elder who owns or lawfully occupies property retains the right to exclude others from their premises, subject to applicable law. This includes the right to deny entry to any individual, except as otherwise authorized by court order or warrant.
- (d) *Right to Exclude Entry.* An elder has the right to refuse the Oneida Aging and Disability Designee entrance into their home. The Oneida Aging and Disability Designee shall inform the elder of this right before seeking entry and shall also inform the elder of the Oneida Aging and Disability Designee's authority to seek a warrant to gain access.
- (e) *Representation by Counsel.* The elder has the right to be represented by counsel at his or her own expense at all proceedings.
 - (1) If the elder seeks to proceed independently, then the elder may retain private counsel to represent himself or herself at his or her own cost or proceed without counsel (*pro se*).
 - (2) If the elder seeks to have the assistance of the Oneida Aging and Disability in filing the Petition, then Oneida Aging and Disability and the Oneida Law Office shall make a determination on whether a legal claim exists and then make a determination on how to proceed.

706.7-2. *Rights of the Accused.*

- (a) *Refusal of Services.* The accused may refuse services offered by Oneida Aging and Disability Services for themselves but may not refuse services offered to the elder.
- (b) *Right to Deny Entry.* The accused may refuse entry to their home by the Oneida Aging and Disability Designee. Before seeking entry, the Oneida Aging and Disability Designee shall inform the accused of this right and shall also advise the accused that the Oneida Aging and Disability Designee may seek a warrant to gain access if necessary.
- (c) *Representation by Counsel.* The accused has the right to be represented by counsel at their own expense in all proceedings under this law.

706.8. Jurisdiction

706.8-1. The Oneida Trial Court has jurisdiction over any action brought under this law. Personal jurisdiction over an individual under this law may be established where the parties are members of the Nation, or employees of the Nation.

End.

Adopted – BC-07-08-26-B