

# SENECA NATION OF INDIANS



## SENECA ELDER PROTECTION CODE

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## **1. TITLE**

This code shall be known and cited as the “Seneca Elder Protection Code” or “SEPC” (hereinafter referred to as the “Code”).

## **2. AUTHORITY**

Section XIII of the Constitution of the Seneca Nation of Indians (the “Seneca Nation”) grants the Council the “power to make laws” that do not conflict with the Constitution.

## **3. POLICY**

It is the policy of the Seneca Nation to continue the traditional respect the citizens of the Seneca Nation have for their elders. Elders are a valuable resource because they are repositories and custodians of Seneca Nation history, culture, language, and tradition. Our elders represent living connections between our past and present and they are our best hope at preserving and promoting the Seneca way of life. The interests of the Seneca Nation, now and in the future, are best served when our elders can be confident they are protected from abuse, neglect, and exploitation and are free to fully participate in the activities and proceedings of the community and the Seneca Nation.

## **4. PURPOSE**

The purpose of this Code is to establish Seneca Nation law that protects elders within the jurisdiction of the Seneca Nation from abuse, exploitation, self-neglect, and neglect as defined in this Code. The Code shall be liberally construed and interpreted to achieve its purpose and to comport with the customs and traditions of the Seneca Nation. This Code provides for:

- A. Identification and appropriate resolution of abuse, neglect, self-neglect, or exploitation cases;
- B. Reporting abuse, neglect, self-neglect, or exploitation to the proper agency;
- C. Receiving reports and investigating suspected abuse, neglect, self-neglect, or exploitation;
- D. Delivering Seneca elder protection services.

## **5. DEFINITIONS**

- A. "Abuse" shall mean physical abuse, emotional abuse, or sexual abuse as those terms are defined in this Code.
- B. “Advocate” means an employee of Elder Protective Services. The duties and qualifications of the Advocate shall be as determined by the Elder Protective Services in the Standard Operating Procedures or by Seneca Nation law.

- C. "Caregiver" is:
1. A person who is required by Seneca Nation law or custom (or state or federal law) to provide services or resources to a Seneca elder;
  2. A person who has voluntarily undertaken to provide care or resources to a Seneca elder;
  3. An institution or agency which voluntarily provides or is required by Seneca Nation law or custom (or state or federal law) to provide services or resources to a Seneca elder; or
  4. An employee of an institution or agency specified within this Code.
- D. "Consent" is agreement, given without intimidation or coercion, by a Seneca elder with the capacity to make an agreement.
- E. "Direct Benefits" include annuity payments, elder benefits, disability benefits, any direct health and welfare payments, and any benefits or payments made from the Seneca Nation's General Fund.
- F. "Emergency" is a situation in which a Seneca elder is immediately at risk of death or injury and is unable to consent to services which would remove the risk.
- G. "Emotional abuse" is the intentional or reckless infliction of threats, humiliation, intimidation, or any other demeaning behavior towards a Seneca elder.
- H. "Exclusion" means the inherent sovereign power of the Seneca Nation to permanently or temporarily prohibit any person that is not an enrolled member of the Seneca Nation from entering, residing, or remaining on lands under the sovereign jurisdiction of the Seneca Nation.
- I. "Exploitation" is the unauthorized or improper use of funds, property, or other resources of a Seneca elder; or the unauthorized or improper use of a Seneca elder by a caregiver or by any other person for personal gain or profit; or the failure to use the funds, property, or other resources of a Seneca elder to the Seneca elder's benefit or according to the Seneca elder's desires.
- J. "Family" means the parents, children (21 years of age or older), grandchildren (21 years of age or older), or siblings (21 years of age or older) of a Seneca elder.
- K. "Good faith" is a reasonable person's honest belief or purpose and the lack of intent to defraud.
- L. "Guardian ad litem" means a person appointed by the Court to look after and protect the interests of a Seneca elder determined to be legally incompetent. The Guardian ad litem shall protect the interests of a Seneca elder in Court.

- M. “Incapacity” or “Incompetency” is a legal determination made by a court of the Seneca Nation or a court of competent jurisdiction regarding the current inability (functional inability) of a person to sufficiently understand, make, and communicate responsible decisions about themselves as a result of mental illness, mental deficiency, physical illness or disability, or chronic use of drugs or alcohol, and to understand the consequences of any such decision. Incapacity or incompetency may vary in degree and duration and shall not be determined solely on the basis of age.
- N. “Investigator” means an employee or independent contractor utilized by Elder Protective Services to perform the investigative functions required by this Code. The duties and qualifications of the Investigator shall be as determined by the Elder Protective Services in the Standard Operating Procedures or by Seneca Nation law.
- O. “Least restrictive alternative” is an approach which allows a Seneca elder independence and freedom from intrusion consistent with the Seneca elder’s needs by requiring that the least intrusive method of intervention be used when intervention is necessary to protect the Seneca elder from harm. Caregivers, Seneca Nation courts and any other person/entity providing services to Seneca elders will be controlled by this standard.
- P. “Legal Guardian” means a legal representative appointed by a court to take care of an individual who is unable to take care of themselves. Legal Guardians are subject to continuing court supervision, as they may have control over an individual’s life or assets. In all cases a Legal Guardian has a fiduciary responsibility to a Seneca elder.
- Q. “Neglect” is the wanton, reckless, and grossly negligent:
1. Failure of a caregiver to provide for the basic needs of a Seneca elder by not supplying resources, services, or supervision necessary to maintain a Seneca elder’s physical and mental health;
  2. Interference with the delivery of necessary services and resources;
  3. Failure to report abuse, exploitation, self-neglect, or neglect of a Seneca elder by any person;
  4. Failure to provide services or resources essential to the Seneca elder’s practice of their customs, traditions, or religion; or
  5. Abandonment of a Seneca elder.
- R. “Peacemakers’ Court” or “Court” means the Peacemakers’ Court of the Seneca Nation established pursuant to Section IV of the Constitution, unless the context indicates otherwise.
- S. “Physical abuse” is any intentional, reckless, or negligent infliction of bodily injury, unreasonable confinement, intimidation, or cruel punishment of a

Seneca elder, by any person, with resulting physical harm or pain or mental anguish.

- T. "Power of Attorney" is a written document signed by a Seneca elder and notarized providing another person with the legal authority to conduct business on behalf of the Seneca elder in the name of the Seneca elder. There are two main types of power of attorney:
  - 1. A General Power of Attorney covers all the Seneca elder's business activities, including signing papers, title documents, contracts, bank accounts, etc.
  - 2. A Special Power of Attorney grants powers limited to specific areas set forth in the document.
  
- U. "Protective placement" is placement of a Seneca elder in a hospital, nursing home, residential care facility, temporary housing, emergency housing, or the transfer of a Seneca elder from one such institution to another by a Seneca Nation, or state, court with the Seneca elder's consent or appropriate legal authority.
  
- V. "Protective services" are services provided to a Seneca elder with the Seneca elder's consent or with appropriate legal authority and include, but are not limited to: social case work, psychiatric and health evaluation, home care, day care, legal assistance, social services, health care, case management, guardianship and other services consistent with this Code. Protective services include protective supervision, but they do not include protective placement.
  
- W. "Restitution" is compensation to a victim for the victim's injury or loss. Restitution shall be construed to only permit compensation for actual damages and out-of-pocket expenses.
  
- X. "Retaliation" is the threatening of a reporter, mandatory or otherwise, of elder abuse, neglect, self-neglect, or exploitation or threatening such reporter's family in any way; causing bodily harm to the reporter or the reporter's family; causing the reporter or any of the reporter's family to be terminated, suspended from employment, or reprimanded by an employer for the act of reporting; or damaging the reporter's or the reporter's family's real or personal property in any way.
  
- Y. "Self-neglect" means the behavior of a Seneca elder that threatens his or her own health or safety. Self-neglect generally manifests itself in a Seneca elder as a refusal or failure to provide himself or herself with adequate food, water, clothing, shelter, personal hygiene, medication (when indicated), and safety precautions. The definition of self-neglect excludes a situation in which a mentally competent Seneca elder, who understands the consequences of his or her decisions, makes a conscious and voluntary decision to engage in acts that threaten his or her health or safety as a matter of personal choice.

- Z. "Seneca elder" is an enrolled Seneca subject to the jurisdiction of the Seneca Nation who is at least sixty (60) years of age.
- AA. "Sexual abuse" is any physical contact which is not consented to by the Seneca elder intended for sexual gratification of any person making such contact or to abuse, humiliate, or degrade the Seneca elder.

## **6. PROHIBITION ON SENECA ELDER ABUSE, NEGLECT, AND EXPLOITATION**

- A. A person is guilty of elder abuse if they commit any of the following:
  - 1. Physical abuse of a Seneca elder;
  - 2. Sexual abuse of a Seneca elder;
  - 3. Emotional abuse of a Seneca elder;
  - 4. Exploitation of a Seneca elder; or
  - 5. Neglect of a Seneca elder.
- B. A person found to be in violation of any of the provisions of § 6(A)(1)-(5) shall be subject to one or more of the following penalties:
  - 1. Suspension of Direct Benefits for a duration to be determined by the court based upon all of the circumstances and consistent with the provisions of this Code;
  - 2. Recommendation to Council or the President for the exclusion of a non-member Indian or non-Indian in accordance with the laws of the Seneca Nation;
  - 3. Referral to a restorative justice program;
  - 4. Community service;
  - 5. Restitution;
  - 6. Temporary restraining order or stay away order;
  - 7. Any other penalty in the Court's discretion.
- C. Any action initiated pursuant to this Section shall be brought in the Peacemakers' Court and may be prosecuted by the Seneca elder or, at the request of the Seneca elder, the Seneca elder's family, or caregiver, may be brought by an attorney or lay advocate provided by, and at the expense of, Elder Protective Services. The request of a Seneca elder, a Seneca elder's family or caregiver to bring an action on the Seneca elder's behalf shall be made to Elder Protective Services. Once a request is made, an Advocate shall review the Investigator's report and rely upon the Advocate's own knowledge and experience to make a determination as to whether an action should, or should not, be initiated on behalf of the Seneca elder. Elder Protective Services shall have sole discretion to determine whether an action should be brought on behalf of a Seneca elder at the expense of Elder Protective Services.
- D. The Courts of the Seneca Nation shall assess a penalty authorized by this Section only after petition, notice, an opportunity for a hearing, and a

determination that a Seneca elder has suffered abuse, neglect, or exploitation by the person subject to such penalty.

- E. The penalties authorized by this law may be imposed independently or concurrently depending upon the nature and severity of the abuse, neglect, or exploitation.
- F. Direct Benefits may be suspended for up to one year for a first-time offender. Direct Benefits may be suspended for more than one year for habitual, or repeat, offenders. Nothing contained herein shall limit the duration of the suspension of Direct Benefits in the event that serious injury or death is inflicted upon a Seneca elder.
- G. The court may condition the return of Direct Benefits upon the satisfactory completion of any other penalties imposed hereunder.
- H. If restitution is ordered by the Court, the Court may also order that the offender's annuity be garnished until full restitution is made. The authority to garnish an offender's annuity shall be limited to actions arising under this Code.

## **7. DUTY TO REPORT ABUSE, NEGLECT, SELF-NEGLECT, OR EXPLOITATION OF A SENECA ELDER**

- A. Any person who has reasonable cause to suspect that a Seneca elder has been abused, neglected, self-neglected, or exploited shall immediately report the abuse, neglect, self-neglect, or exploitation to an Advocate unless such person shall have a privileged relationship with the Seneca elder as attorney-client.
- B. The following individuals who are residing, employed, or doing business within the jurisdiction of the Seneca Nation have a special duty in reporting abuse, neglect, self-neglect, or exploitation of a Seneca elder:
  1. The Seneca elder's family, 21 years of age or older, or caregiver, 21 years of age or older, as defined in this Code;
  2. Any employee or elected official of the Seneca Nation;
  3. A physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or other health care provider;
  4. A psychiatrist, psychologist, or psychological assistant;
  5. Any licensed or unlicensed social worker, professional counselor, or marriage and family therapist;
  6. A Seneca elder and adult program services case/social worker, or Seneca elder services provider;
  7. Any person employed in the mental or behavioral health profession;
  8. Any law enforcement officer including but not limited to the Marshals; or
  9. Any person with a fiduciary responsibility to the Seneca elder, including but not limited to a legal guardian or an employee of elder/nursing home.

- C. The identity of any person who in good faith reports suspected Seneca elder abuse, neglect, self-neglect, or exploitation is confidential and shall not be released unless the reporter consents or the Court orders the release because it finds, after notice to the reporter and an opportunity to be heard, that the need to protect the Seneca elder outweighs the reporter's interest in confidentiality.
- D. A person who in good faith reports suspected abuse, neglect, self-neglect, or exploitation of a Seneca elder is immune from any civil or criminal suit in the courts of the Seneca Nation based on that person's report, except in cases in which such good faith reporter is alleged to have committed or aided in a violation of this Code.
- E. Any person who makes a report of suspected abuse, neglect, self-neglect, or exploitation of a Seneca elder knowing it to be false is subject to a civil penalty of up to \$5,000.00. The Court shall assess the penalty only after petition, notice, an opportunity for a hearing, and a determination that the reporter made the report knowing it to be false. Further, the reporter is subject to any civil suit brought by or on behalf of the person(s) named as suspected abusers in the false report for damages suffered as a result of the false report, including reasonable attorney fees, and to any other penalties permitted by this Code.
- F. No evidentiary privilege, except for the attorney-client privilege, may be raised as a justifiable defense or reason for failing to report suspected abuse, neglect, self-neglect, or exploitation of a Seneca elder or for testifying as required by this Code.

## **8. REPORTS**

- A. The identity of a good faith reporter of suspected Seneca elder abuse, neglect, self-neglect, or exploitation shall be kept confidential and shall not be publicly released unless the reporter consents or the Court orders the release as provided in Section 7(C).
- B. Reports of suspected Seneca elder abuse, neglect, self-neglect, or exploitation shall be made to an Advocate. The Advocate taking an oral report shall immediately complete a written incident report. The Advocate shall then cause an investigation to be commenced by an Investigator, as provided for in Section 9 of this Code. Unless anonymously made, the incident report should contain the name of the reporter and, if possible, the reporter should sign the report. Anonymous reports shall be investigated as required by this Code.
- C. The following information, if possible, shall be part of the incident report:
  - 1. The Seneca elder's name, address and/or location, and telephone number;

2. The name, address or location, and telephone number of the person(s) or agency who is suspected of abusing, neglecting, or exploiting the Seneca elder;
3. The current general condition of the Seneca elder, including the suspected nature and degree of incapacity of the Seneca elder, if any;
4. The name, address or location, and telephone number of any witnesses;
5. The name, address or location, and telephone number of the Seneca elder's family or caregiver;
6. A description of the acts which are complained of as abusive, neglectful, self-neglectful, or exploitative; and
7. Any other information that the Advocate believes might be helpful in establishing abuse, neglect, self-neglect, or exploitation.

## **9. INVESTIGATION**

- A. An Investigator shall begin an investigation of a report of suspected Seneca elder abuse, neglect, self-neglect, or exploitation within 48-hours of receipt of the written incident report required by Section 8 and shall prepare a written report of the investigation which shall include the information set forth in Section 8, as well as the results of any interview, observations, photographs necessary to document the injuries or conditions, assessments, and other fact finding.
- B. The Investigator shall conduct in-person interviews with the Seneca elder, the Seneca elder's family and caregivers, the person or persons suspected of having committed the acts complained of, employees of agencies or institutions with knowledge of the Seneca elder's circumstances, and any other person the Investigator believes has pertinent information. The existence and contents of medical records and other reports of abuse and neglect shall be ascertained. The Investigator shall personally assess the Seneca elder's living conditions including the Seneca elder's sleeping quarters, using the Elder Protective Service's general housing standards.
- C. The Investigator's report shall include a recommendation as to whether the report of suspected Seneca elder abuse, neglect, self-neglect, or exploitation is founded and the reasons for such conclusion.
- D. The Courts of the Seneca Nation may issue subpoenas for the release of medical records or financial records upon request of the President's Office or the Legal Department, so long as there is an active investigation, pursuant to this Code, as attested by the Investigator.
- E. The Investigator's report shall be filed within thirty (30) calendar days from the date of receipt of the Advocate's written incident report and remain on file and not be destroyed for a period of seven (7) years, even if it is determined that there is insufficient evidence to pursue any legal action. However, if the

investigating agency determines that the investigation was made in bad faith, it shall be held and maintained as an inactive file for possible use in a civil violation or proceeding pursuant to this Code.

- F. No person shall intentionally interfere with a lawful investigation of suspected Seneca elder abuse, neglect, self-neglect, or exploitation.
- G. No person shall retaliate by any means against any person who has made a good faith report of suspected Seneca elder abuse, neglect, self-neglect, or exploitation or who cooperates with an investigation of suspected Seneca elder abuse.
- H. Any person who violates the provisions of Paragraphs F or G of this Section shall be enjoined from such activity and shall be subject to a civil penalty of up to \$5,000.00 per occurrence and, if a Seneca Nation employee, to appropriate disciplinary action as allowed by the Seneca Nation's Human Resource Policy and Procedure. The penalty shall be assessed by the Courts of the Seneca Nation only after petition, notice, an opportunity to be heard, and a determination that either interference or retaliation as set out in this Section occurred. Further, notice of such determination shall be provided to the person's employer and appropriate licensing agencies.
- I. The investigation and any other procedures permitted by this Code may continue regardless of any criminal investigation that might be instigated or pursued by the Seneca Nation or outside law enforcement agencies, so long as such investigation does not unduly interfere with the criminal investigation of the same or similar incident. In all instances, the safety and welfare of the Seneca elder shall be paramount regardless of the nature and status of the investigation.

## **10. ELDER PROTECTIVE SERVICES AND PROTECTIVE PLACEMENT**

- A. Elder Protective Services ("EPS")
  - 1. Advocates shall be employed by EPS and shall execute the duties and powers enumerated in this Code.
  - 2. EPS may cooperate with such state and community agencies as necessary to achieve the purposes of this Code. EPS, in coordination with the Legal Department, may negotiate working agreements with other jurisdictions, subject to approval by Council.
  - 3. EPS shall maintain Standard Operating Procedures (SOPs), approved by Council, which implement this Code. The SOPs may be amended from time to time to keep up with changes in best practices and the laws of the Seneca Nation. The SOPs shall be submitted to, and kept on file with, the Legal Department, the Council, and the President's Office.
  - 4. EPS operations shall be supervised by the EPS Director whose duties and responsibilities are to be defined by the EPS SOPs.

5. An Advocate:
  - a. Shall receive a case from an assigning supervisor;
  - b. Shall prepare a written incident report of all reported cases of Seneca elder abuse, neglect, self-neglect, or exploitation within twenty-four (24) hours of the case assignment;
  - c. Shall cause an investigation to be commenced;
  - d. Shall offer services to a Seneca elder;
  - e. Shall prepare with the Seneca elder, and in coordination with appropriate Seneca Nation Departments, a safety plan and a plan for the delivery of services which provide the least restrictive alternatives consistent with the Seneca elder's needs and desires;
  - f. Shall inform the Seneca elder of the following:
    - i. Details of the investigation;
    - ii. That before seeking entry into their home, the Seneca elder has the right to refuse to allow an Advocate into their home; the Advocate shall also inform the Seneca elder of the right of the Advocate to seek a Court order to gain access;
    - iii. That the Seneca elder has the right to refuse services; and
    - iv. That the Seneca elder or the Advocate can contact the local jurisdiction where the suspected abuse, neglect, or exploitation of a Seneca elder occurred about a possible criminal offense.

B. Seneca Elder Protective Placement

1. Elder Protective Services shall adopt and issue regulations establishing criteria and procedures which comply with the policy and requirements of this Code.
2. Protective services or protective placement are provided either on a voluntary or involuntary basis. Such services or placement may be provided on a voluntary basis by EPS when requested by any abused, neglected, exploited or self-neglected Seneca elder and the Seneca elder is found by the EPS to be in need of such services or placement. Such services or placement shall be provided on an involuntary basis only if the Peacemakers' Court determines they are necessary. Such services or placement may be provided on an emergency basis or, if necessary, on a permanent basis through a guardian appointed pursuant to Seneca Nation law and shall be provided in a manner least restrictive of the Seneca elder's liberty and rights consistent with the Seneca elder's welfare and needs. Seneca Nation law and the Peacemakers' Court determination of the degree of incapacity, if any, as well as whether Seneca elder abuse, neglect, self-neglect, or exploitation has occurred is the standard EPS shall use to develop a plan for the delivery of Seneca elder protective services.
3. Voluntary protective services or protective placement are provided subject to available appropriations and resources and only as determined necessary

by EPS. If the Seneca elder's consent to such services or placement is withdrawn, the services or placement shall cease. Such protective services or protective placement shall be provided for a period of no more than five (5) days for each occurrence. At the end of each period, EPS shall reassess the Seneca elder's needs before agreeing to continue providing services and placement. Voluntary placement shall not be continued without a Peacemakers' Court order permitting continued voluntary placement after the Seneca elder has been in such placement for five (5) days unless emergent circumstances exist.

4. Involuntary protective services or protective placement shall be provided to any Seneca elder who is incapacitated or who is abused, neglected, self-neglected, or exploited and incapacitated and only upon Peacemakers' Court order, as required by this Code or Seneca Nation law.
5. Services as determined necessary by EPS may be delivered to the Seneca elder's family or caregiver in order to protect the Seneca elder.
6. EPS shall establish a process for conducting a comprehensive physical, mental, and social assessment, evaluation, or study of a Seneca elder when a petition for a protection order has been filed.
7. The Seneca elder, and, where appropriate, the Seneca elder's family and caregiver shall be informed by EPS of rights as allowed under this Code and other Seneca Nation laws, including the right to refuse voluntary services and placement and the right to have the Peacemakers' Court determine the necessity of involuntary services and placement.

## **11. RIGHTS OF SENECA ELDERS AND THEIR FAMILIES AND CAREGIVERS**

- A. A Seneca elder, the Seneca elder's family and caregiver, if any, shall be informed about a Seneca elder abuse investigation before it begins unless an emergency exists, in which case, they shall be informed as soon as possible but no later than twenty-four (24) hours after the investigation begins.
- B. A Seneca elder may refuse to accept assistance from Elder Protective Services even if there is good cause to believe that the Seneca elder has been or is being abused, neglected, self-neglected, or exploited provided that the Seneca elder is able to care for himself or herself and has the capacity to understand the nature of the services offered. In the event that a Seneca elder shall refuse services, then a safety plan and follow up shall be provided to the Seneca elder.
- C. The Seneca elder's family or caregiver may refuse for themselves, but not for the Seneca elder, those elder protection services offered provided that the Seneca elder is able to care for himself or herself and has the capacity to understand the nature of the services offered.
- D. A Seneca elder's family or caregiver may refuse to allow an Investigator into their home and the Investigator shall so inform the Seneca elder, the Seneca elder's family and caregiver of this right before seeking entry. The

investigator, or law enforcement officer, shall also inform them of the right of the investigator to seek a warrant or Court order to gain access.

- E. A competent Seneca elder shall be personally served with a petition filed pursuant to this Code. If the Seneca elder is determined to be incapacitated or incompetent, then the Seneca elder's family, Legal Guardian, Guardian ad litem, and/or caregiver, if any, shall be personally served with a petition filed pursuant to this Code.
- F. The Seneca elder and the Seneca elder's family, Legal Guardian, Guardian ad litem, and/or caregiver, if any, shall have the right to attend any proceeding pertaining to the determination of the Seneca elder's capacity. The Seneca elder shall have the right to be present at all proceedings unless the Peacemakers' Court determines, in writing, the Seneca elder's health would be at risk at such proceeding.
- G. The Seneca elder shall have the right to be represented by counsel at all proceedings at the Seneca elder's own expense. A Seneca elder shall also have the right to request Elder Protective Services to provide counsel to initiate an action on the Seneca elder's behalf, subject to Elder Protective Services' review as provided in Section 6(C).
- H. The Seneca elder and the Seneca elder's family and/or caregiver, if any, shall have the right to seek independent medical, psychological, or psychiatric evaluation of the Seneca elder funding for which may be provided by Elder Protective Services, so long as funding is available. A Seneca elder or the Seneca elder's family and/or caregiver, if any, shall have the right to seek independent medical, psychological, or psychiatric evaluation of the Seneca elder at the Seneca elder's own expense if no funding is available.
- I. Funding for the rights granted by subsections (G) and (H) shall be provided by Elder Protective Services, so long as funding is available.

## **12. PROCEDURES FOR DETERMINING INCAPACITY, ABUSE, NEGLECT, SELF-NEGLECT, OR EXPLOITATION**

- A. The Peacemakers' Court shall determine whether a Seneca elder is incapacitated and the degree of incapacity, and, where necessary, whether Seneca elder abuse, neglect, self-neglect, or exploitation has occurred. The determination of incapacitation shall be in accordance with Seneca Nation law and shall be made only after petition, notice, and a hearing. The determination of incapacitation shall be based on documentary evidence including but not limited to medical or doctor's reports and diagnosis, law enforcement incident reports, and competent witness testimony.

- B. The Peacemakers' Court shall determine, based upon a preponderance of the evidence, whether a Seneca elder has been a victim of abuse, neglect, self-neglect, or exploitation as defined in this Code.

### **13. CONFIDENTIALITY OF REPORTER, RECORDS, HEARINGS; PENALTIES FOR VIOLATING CONFIDENTIALITY**

- A. The name of the person who reports abuse, neglect, self-neglect, or exploitation, as required by this Code, is confidential and shall not be released to any person unless the reporter consents to the release or release is ordered by the Peacemakers' Court. The Peacemakers' 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 Seneca elder is found to be greater than the reporter's right to confidentiality. The reporter's name shall be released only to the extent determined necessary to protect the Seneca elder.
- B. Records of an investigation of Seneca elder abuse or of a Peacemakers' Court hearing regarding Seneca elder abuse are confidential. Such records shall be open only to the Seneca elder and the Seneca elder's family and caregiver unless the family or caregiver is the suspected abuser, provided that the Peacemakers' Court and the Seneca elder's legal counsel, or lay advocate, shall have access to such records if an action is initiated pursuant to this Code. If the Marshals, President, or Legal Department, law enforcement officers, court officials, coroner and medical examiner, or any other person who has reason to believe that a Seneca elder died as a result of abuse, neglect, or exploitation, the Peacemakers' Court shall determine who has reasonable cause to have access to such records.
- C. A proceeding held pursuant to this Code shall, at the option of the Seneca elder who is not incapacitated, be closed and confidential. Persons who may attend are the Seneca elder, the Seneca elder's family and caregiver, if any, the person or entity accused of Seneca elder abuse, a representative of the Area Office of the Aging, necessary Peacemakers' Court officials, and attorneys or lay advocates for the parties. If the hearing is closed, other persons may appear only to testify. No person attending or testifying at such a proceeding shall reveal information about the proceeding unless ordered to do so by a Peacemakers' Court order.
- D. Any person who violates any paragraph of this section shall be subject to a civil penalty of up to \$5,000.00 per occurrence. The Peacemakers' Court shall assess the penalty after petition, notice, opportunity to be heard, and a determination that a violation occurred. In addition, if the violation is committed by an employee of the Seneca Nation, the employee shall also be subject to employment disciplinary action as allowed by Seneca Nation employment laws and policies.

#### **14. SENECA ELDER PROTECTION ORDER; TIME LIMITS**

- A. If the Peacemakers' Court determines that a Seneca elder is incapacitated or incapacitated and abused, neglected, self-neglected, or exploited, the Peacemakers' Court shall issue a Seneca elder Protection Order which provides appropriate protection for the Seneca elder. Such protection may include, but is not limited to, the following:
1. Removing the Seneca elder from the place where the abuse, neglect, self-neglect, or exploitation has taken, or is taking, place for no longer than five (5) days;
  2. Removing the person who has abused, neglected, or exploited the Seneca elder from the Seneca elder's home, with the Seneca elder's consent;
  3. Restraining the person who has abused, neglected, or exploited a Seneca elder from continuing such acts;
  4. Placing the Seneca elder under protective supervision, wherein the Seneca elder is permitted to remain in the home provided the Advocate or an agent designated by EPS provides supervision and assistance to correct the abuse, neglect, self-neglect, or exploitation of the Seneca elder;
  5. Requiring a Seneca elder's family or caregiver or any other person with a fiduciary duty to the Seneca elder to account for the Seneca elder's funds and property;
  6. Requiring any person who has abused, neglected, or exploited a Seneca elder to pay restitution to the Seneca elder for damages resulting from that person's wrongdoing pursuant to § 6(H);
  7. If there is no Legal Guardian, then appointing a Guardian ad litem or other legal representative for the Seneca elder;
  8. Recommending that a representative payee be named; and
  9. Ordering EPS to prepare a plan for and deliver Seneca elder protective services which provide the least restrictive alternatives for service, care, treatment, or placement consistent with the Seneca elder's needs and wishes.
- B. No protection order shall be issued until after the petition is served on all parties, except for an emergency protection order.
- C. An initial non-emergency Seneca elder protection order shall be issued for a period not to exceed 364 days.
- D. The non-emergency protection order may be extended as many times as necessary to protect the Seneca elder. An extension of a protective order can only be issued after a petition is filed by the party seeking an extension and notice, opportunity for hearing, and a determination based on a preponderance of the evidence that such an extension is necessary for the protection of the Seneca elder. Each extension shall be for a period not to exceed 364 days.

- E. An *ex parte*, emergency protection order may be issued for a period not to exceed ten (10) days. Any such *ex parte*, emergency protection order may be extended one time for an additional period of ten (10) days.

## **15. PETITION; HEARING**

- A. The Peacemakers' Court shall have jurisdiction to hear a cause of action alleging a violation of this Code and for protection of a Seneca elder. The Peacemakers' Court shall also have jurisdiction to issue any orders authorized by, or necessary to achieve the purpose of, this Code if the petitioner resides within the territorial jurisdiction of the Peacemakers' Court.
- B. At the request of the Seneca elder, the Seneca elder's family or caregiver, Elder Protective Services may provide an attorney or lay advocate to prosecute an action authorized by this Code, subject to Section 6(C).
- C. A hearing on the petition authorized or required by this Code shall be conducted with the purpose of protecting the Seneca elder only where necessary and only to the extent shown by the facts and using the least restrictive alternatives. All rights as set out specifically in this Code, Nation law, or in the Constitution of the Seneca Nation shall be enforced strictly during proceedings. No hearing shall be held unless notice has been given to the Seneca elder, the person alleged to have violated a provision of this Code, and other interested parties, including the Seneca elder's family or caregivers, if any. A competent Seneca elder, or the Court, shall have the right to limit the parties in attendance at a hearing, except to the extent that it would deny a party their right to due process under this Code. The Seneca elder, the person alleged to have violated this Code, and all other indispensable parties shall have the right and opportunity to be heard fully and to present evidence. The Peacemakers' Court shall issue a written statement of its findings in support of any penalty permitted by this Code.

## **16. STANDARD OF PROOF IN ALL ACTIONS UNDER THIS CODE**

The standard of proof for any action brought under this Code is a preponderance of the evidence unless expressly stated otherwise in this Code or by Seneca Nation law.

## **17. SOVEREIGN IMMUNITY**

Notwithstanding anything to the contrary, the Seneca Nation does not waive its sovereign immunity and nothing herein shall be construed as a waiver of the Seneca Nation's sovereign immunity.

## **18. EFFECTIVE DATE**

- A. This Code shall take effect ninety (90) days after enactment by the Council in a duly convened Regular, or Special, Session of Council, provided, that the

ninety days shall not begin to run until the budget for the Seneca Elder Protective Services has been approved.

- B. The provisions, remedies, and penalties provided for in this Code shall not apply to acts which took place before the effective date of this Code as provided in Section 18(A).