

MEMORANDUM OF UNDERSTANDING FOR ADULT PROTECTIVE SERVICES

BETWEEN THE

NOOKSACK HOUSE OF CHILDREN AND FAMILY SERVICES DEPARTMENT

AND

THE WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

AGING & DISABILITY SERVICES ADMINISTRATION, HOME AND

COMMUNITY SERVICES DIVISION, ADULT PROTECTIVE SERVICES

I. Recitals

1. The Nooksack Indian Tribe (Tribe) is a Federally Recognized Indian Tribe with jurisdiction over Nooksack Tribal Lands. The Nooksack House of Children and Family Services Department (NHOCFS) is responsible for providing services to children, elders and families for the Nooksack Indian Tribe. The Department of Social and Health Services (DSHS) respects the sovereignty of the Nooksack Indian Tribe and those laws enacted by its tribal council governing its membership and those residing on the Nooksack Tribal Lands.
2. Under Chapter 74.34 of the Revised Code of Washington ("RCW"), the DSHS, Aging & Disability Services Administration ("ADSA"), Home and Community Services Division, Adult Protective Services ("APS") is responsible for investigating allegations of abandonment, abuse, neglect, self-neglect and exploitation of vulnerable adults and providing protective and other services as those terms are defined in the Chapter.
3. The Tribe and DSHS have worked to establish a strong, trusting relationship. The Tribe and DSHS are working closely to serve vulnerable adult members of the Tribe and are committed to maintaining a mutually supportive working relationship that will facilitate timely investigation and provision of appropriate protective services for vulnerable adults. This agreement provides direction for the protection of vulnerable adults and supersedes any previous APS agreements between the Tribe and DSHS.

II. Definitions

1. "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care. (RCW 74.34.020)
2. "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain or mental anguish, the abuse is presumed to cause physical harm, pain,

or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

- a. "Sexual abuse" means any form of nonconsensual sexual contact including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under Chapter 71A. 12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under 71A.12RCW, whether or not it is consensual.
 - b. "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.
 - c. "Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.
3. "Allegation(s)" mean allegation(s) of abandonment, abuse, mental abuse, physical abuse, sexual abuse, exploitation, financial exploitation, neglect and self-neglect of a vulnerable adult as those terms are defined in this section, consistent with Chapter 74.34 RCW.
 4. "APSAS System" means the Adult Protective Services Automated System. This is the computer program that compiles APS reports and stores case material electronically. This computer system stores investigative data, generates reports and creates referrals.
 5. "Exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another. (RCW 74.34.020)
 6. "Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage. (RCW 74.34.020)
 7. "Intake" means establishing a system to receive allegations.
 8. "Investigation" means investigating allegations to determine their validity and preparing a report of the investigation results consistent with and pursuant to RCW 74.34.067 and 74.34.068.
 9. "Neglect" means:

- a. A pattern of conduct or inaction by a person or entity with a duty to care to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that avoids or prevents physical or mental harm or pain to a vulnerable adult; or
 - b. An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety. (RCW 74.34.020)
10. "Protective Services": means any services provided by ADSA to a vulnerable adult who has been abandoned, abused, financially exploited, neglected or in a state of self-neglect, with the consent of the vulnerable adult or that person's legal representative and consistent with specify chapter 74.34 RCW. Services may include, but are not limited to case management, home care, and options for placement, or referral for legal assistance (protection order or guardianship).
11. "RCW" means the Revised Code of Washington as now existing or hereafter amended.
12. "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual. (RCW 74.34.020) However, it excludes a situation in which a mentally competent older person, who understands the consequences of his/her decisions, makes a conscious and voluntary decision to engage in acts that threaten his /her health or safety as a matter of personal choice.

Vulnerable adult target population includes an adult:

1. 60 years of age or older who has the functional, mental, or physical inability to care for himself or herself; or
2. Who has a guardian appointed through superior court as per chapter 11.88 RCW; or
3. Who has a developmental disability, such as mental retardation, cerebral palsy, epilepsy, autism, or a condition similar to mental retardation which originated prior to age eighteen; or
4. Living in a facility (adult family home, boarding home, nursing home, soldier's home or residential rehabilitation center) when the alleged perpetrator is not owner, employee, or volunteer of that facility; or
5. Receiving services from an individual provider as defined in Chapter 74.34.020 RCW; or
6. Receiving in home services through a licensed health care agency, hospice, or in home agency; or

7. Who self directs his or her own care to a personal care aide who performs that care for compensation.

III. Investigative Processes and Procedures

A. Intake

1. Intake is the initial gathering of report information regarding an allegation of abandonment, abuse, financial exploitation, neglect, or self-neglect of a vulnerable adult.
2. Adult Protective Services is responsible for taking APS Intake reports and entering these reports into the "APSAS System". Intake information is received via the telephone, through written reports and in person Monday through Friday 8:00 A.M. to 5:00 P.M.

B. Communication

1. Adult Protective Services will contact the Director, or designated personnel, of the Nooksack House of Children and Family Services Department and the Nooksack Tribal Police Department when the vulnerable adult, who is the focus of the investigation, is a member of the Nooksack Indian Tribe. Adult Protective Services will fax a copy from the APSAS Law Enforcement Referral Report to the Nooksack Tribal Police Department regardless of whether the allegation involves criminal activity.
2. The above-mentioned tribal personnel, Nooksack House of Children and Family Services Department or the Nooksack Tribal Police Department, may contact the Adult Protective Service Program Manager, for information regarding ongoing APS investigations when they involve Nooksack Tribal Members. Nooksack tribal personnel may request information from The Home and Community Service Public Disclosure Officer if the requested case information is from a closed Adult Protective Service Case.

C. Investigation

1. Adult Protective Services will contact the Director, or designated personnel, of the Nooksack House of Children and Family Services Department prior to entering The Nooksack Indian Tribal Lands. The APS investigator will not proceed with the initial face-to-face interview with the alleged victim until permission has been granted by Nooksack tribal personnel.
2. The Adult Protective Service Program Manager/Investigator and the Director, or designated personnel, of the Nooksack House of Children and Family Services Department will decide what level of participation each party will have in the investigation. The Nooksack Tribal Police Department will be included in the investigative planning when elements of criminal activity are suspected.
3. The investigative process may include a coordinated procedure using personnel from APS and either The Nooksack Tribal Police Department or the Director, or

designated personnel, of the Nooksack House of Children and Family Services Department.

- 4. Adult Protective Service personnel will defer to the Nooksack Tribal personnel for investigative direction, unless that direction conflicts with APS scope of authority.
- 5. Adult Protective Service personnel will make themselves available to testify at Nooksack Tribal Court hearings at the request of the Nooksack House of Children and Family Services Department or the Nooksack Tribal Police.


D. Resolution of Disputes


- 1. Resolution of disputes should be handled at the lowest level possible. Any conflict regarding the policies and procedure outlined in this agreement should be brought to the attention of the Director of the Nooksack House of Children and Family Services Department and The Adult Protective Service Program Manager for resolution.
- 2. When resolution can not be found at the level described above, then it will be brought to the Nooksack Tribal Administrator and The Regional Administrator of Home and Community Services for final resolution.

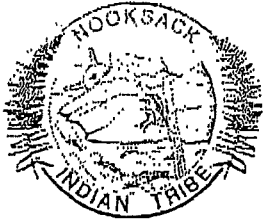
IV. Modifications and review of this agreement

- 1. The Nooksack Indian Tribe or Home and Community Services (ADSA) may request a modification of this agreement at any time. Modifications must be agreed to by both parties in writing.
- 2. This agreement will be reviewed during the annual 7.01 planning process and modified by the parties as necessary.

On this 18th day of October, 2005 the following parties in their representative capacities, hereby approve the Agreement.

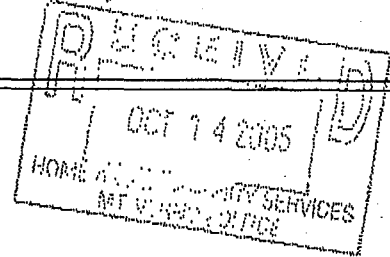

 _____, Chairman
 Narcisco Cunanan
 Nooksack Tribal Council
 Nooksack Indian Tribe


 _____, Regional Administrator, Region #3
 Torry Marker,
 Adult Protective Services
 DSHS



NOOKSACK INDIAN TRIBE

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Resolution No. 05- 80

Title: Memorandum of Understanding for Adult Protective Services Between the Nooksack House of Children and Family Services Department and the Washington State Department of Social and Health Services Aging & Disability Services Administration, Home and Community Services Division, Adult Protective Services

WHEREAS the Nooksack Tribal Council is the governing body of the Nooksack Tribe of Indians in accordance with its Constitution and By-Laws approved by the Deputy Assistant Secretary of Indian Affairs on September 23, 1973, and in accordance with the Indian Reorganization Act of June 18, 1934; and,

WHEREAS the Nooksack Tribal Council is charged with the responsibility for the protection of the health, safety, welfare and economic development of the Nooksack Tribe; and

WHEREAS the Nooksack Indian Tribe's House of Children and Family Services Department and the State of Washington, Department of Social and Health Services, seeks to coordinate services through a Memorandum of Understanding for Adult Protective Services,

NOW THEREFORE BE IT RESOLVED that the Chairman is authorized to sign the Memorandum of Understanding for Adult Protective Services.

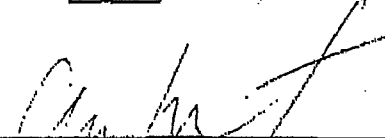
CERTIFICATION

I hereby certify that the above resolution was presented by telephonic vote of the Nooksack Tribal Council held on October 12, 2005, at which time a quorum was present and approved by a vote of:

6 FOR 0 AGAINST 0 ABSTENTIONS



Narcisco Cunanan, Tribal Chairman



Agripina Smith, Tribal Secretary