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# TITLE 14: MAKAH COMMUNICABLE DISEASE CODE

## Chapter 1: Intent and Purposes

### § 14.1.01 Intent

It is the intent of the Makah Tribe to protect and promote the health of our elders, our children, and all community members to the greatest extent possible through the Makah Tribe's public health capabilities while respecting individual rights to dignity, health information privacy, due process, and other legally-protected interests.

### § 14.1.02 Purposes

The purposes of this Title are to:

- (1) Strengthen tribal sovereignty by exercising the Makah Tribal Council's constitutional powers to prevent and control communicable disease;
- (2) Protect the Tribe from any unwanted and illegal encroachment of state and local jurisdiction and/or authority on tribal land;
- (3) Respond to potential public health emergencies through triggering special public health powers during an emergency;
- (4) Establish procedures for protecting fundamental rights; and
- (5) Provide fair and appropriate fines for violations of the provisions of this Title, as well as declare immunities of specific actors where justified.

## Chapter 2: Definitions

§ 14.2.01 "Case" means a person, alive or dead, having been diagnosed with a particular disease or condition by a health care provider with a diagnosis based on clinical or laboratory criteria or both.

§ 14.2.02 "Child day care facility" means an entity regularly providing care for a group of children for less than twenty-four hours a day and subject to tribal, state or federal regulation.

§ 14.2.03 "Communicable disease" means an illness caused by an infectious agent which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air.

§ 14.2.04 "Contact" means a person exposed to an infected person, animal, or contaminated environment that may lead to infection.

§ 14.2.05 "Contaminated" or "contamination" means containing or having contact with infectious agents or chemical or radiological materials that pose an immediate threat to present or future public health.

§ 14.2.06 "Contamination control measures" means the management of persons, animals, goods, and facilities that are contaminated, or suspected to be contaminated, in a manner to avoid human exposure to the contaminant, prevent the contaminant from spreading, and/or effect decontamination.

§ 14.2.07 "Disease of suspected bioterrorism origin" means a disease caused by viruses, bacteria, fungi, or toxins from living organisms that are used by man to intentionally produce

death or disease in humans, animals, or plants. Many of these diseases may have nonspecific presenting symptoms.

§ 14.2.08 **"Disease control measures"** means the management of persons, animals, goods, and facilities that are infected with, suspected to be infected with, exposed to, or suspected to be exposed to an infectious agent in a manner to prevent transmission of the infectious agent to humans.

§ 14.2.09 **"Health care provider"** means any person having direct or supervisory responsibility for the delivery of health care who is licensed or certified in Washington State or another state.

§ 14.2.10 **"Health care facility"** means any building that is used, operated, or designed to provide health services, medical treatment, behavioral health services, dental services, nursing, rehabilitative, or preventive care to any individual.

§ 14.2.11 **"Health care worker"** means any person who is not a health care provider but who is within the chain of command of the Health Director. Such definition includes, but is not limited to community health representatives, maintenance and laundry workers, and administrative staff.

§ 14.2.12 **"Incubation period"** means the time between being exposed to a disease and when the symptoms start.

§ 14.2.13 **"Isolation"** means the separation, for the period of communicability or contamination, of infected or contaminated persons or animals from others in such places and under such conditions as to prevent or limit the direct or indirect transmission of the infectious agent or contaminant from those infected or contaminated to those who are susceptible or who may spread the agent or contaminant to others.

§ 14.2.14 **"Outbreak"** means the occurrence of cases of a disease or condition in any area over a given period of time in excess of the expected number of cases.

§ 14.2.15 **"Public health emergency"** means an occurrence or imminent threat of an illness or health condition that:

(1) is believed to be caused by any of the following:

- (a) bioterrorism;
  - (b) the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin; or
  - (c) natural disaster, chemical attack or accidental release, or nuclear attack or accident;
- and

(2) poses a high probability of any of the following harms:

- (a) a large number of deaths in the affected population;
- (b) a large number of serious or long-term disabilities in the affected population;

- (c) widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population; or
- (d) otherwise exceeding the capability or capacity of the public health and/or healthcare systems.

**§ 14.2.16** "Quarantine" means the limitation of freedom of movement of such well persons or domestic animals as have been exposed to, or are suspected to have been exposed to, an infectious agent, for a period of time not longer than the longest usual incubation period of the infectious agent, in such manner as to prevent effective contact with those not so exposed.

**§ 14.2.17** "Tribal Health Officer" means the individual appointed under this Title as the public health officer for the Makah Tribe and any person or persons to whom the Tribal Health Officer duly delegates authority hereunder.

### **Chapter 3: General Authority and Jurisdiction**

The following laws are adopted under the authority of the Makah Constitution, art. VI, § 1(i), (j). The effective area of this Title and the jurisdiction of the Tribal Court with respect to this Title is defined under the Makah Law and Order Code, § 1.3.01.

### **Chapter 4: Public Health Powers**

#### **§ 14.4.1 Responsibilities and Duties of Tribal Health Officer**

- (1) The Tribal Health Officer is authorized to use the powers and procedures established under this Title to prevent the spread of disease and protect the health and safety of the public within the boundaries of the Makah Reservation.
- (2) The Tribal Health Officer shall notify health care providers of their duties under this Title.
- (3) The Tribal Health Officer shall, when necessary, conduct and/or delegate and direct investigations and institute disease control and contamination control measures, including medical examination, testing, counseling, treatment, vaccination, decontamination of persons or animals, isolation, quarantine, vector control, condemnation of food supplies, and inspection and closure of facilities, consistent with those indicated by current evidence-based methods, or other measures they deem necessary based on their professional judgment, current standards of practice, and the best available medical and scientific information.
- (4) The Tribal Health Officer, with Tribal Council approval, may seek agreements as necessary with local governments, federal authorities, tribal organizations, private entities, state agencies, or institutions of higher education to coordinate or provide public health activities provided in this plan. In consultation with the Tribal Council, health care providers, health facilities, emergency management personnel, tribal law enforcement, and any other entity they deem necessary, the Tribal Health Officer is authorized to establish plans, policies, and procedures for instituting emergency public health measures necessary to prevent the spread of communicable disease or contamination.

(5) In order to carry out responsibilities under this Title, the Tribal Health Officer may delegate authority hereunder to any qualified persons.

#### **§ 14.4.2 Responsibilities and Duties – Health Care Providers and Health Director**

Health care providers and the Health Director shall:

- (1) Provide adequate, understandable instruction in control measures designed to prevent the spread of disease to:
  - (a) Each patient or client under their care with a communicable disease; and
  - (b) Others, as appropriate, to prevent spread of disease.
- (2) Cooperate with Tribal Health Officer and/or their designees during investigation of:
  - (a) Circumstances of a case or suspected case of a notifiable condition or other communicable disease; and
  - (b) An outbreak or suspected outbreak of illness.
- (3) Comply with requirements in this Title, including but not limited to, communicable disease screening and control.

The Health Director shall:

- (1) Adopt written policy and procedures restricting work of employees, staff, students, and volunteers diagnosed to have a communicable disease from having direct contact with patients, clients, residents, and recipients of care during the period of communicability when:
  - (a) Transmission of the disease to recipients of care or other employees can occur in that particular job environment, and
  - (b) The disease can cause serious illness.
- (2) Permit employees, staff, students, and volunteers to return to work when measures have been taken to prevent transmission of disease, if measures are consistent with recommendations of Tribal Health Officer.

### **Chapter 5: Notifiable Conditions**

#### **§ 14.5.1 Purpose of Notifiable Conditions Reporting**

The purpose of notifiable conditions reporting is to provide the information necessary for the Makah Tribe, Washington State and local jurisdictions to protect the community's health by tracking communicable diseases and other conditions.

#### **§ 14.5.2 Notifiable Conditions List**

The Tribal Health Officer shall establish a list of reportable diseases or other conditions of public health importance. The list may include diseases or conditions of humans or animals caused by exposure to toxic substances, microorganisms, or any other pathogens. The Tribal Health Officer

may rely upon the Washington State Department of Health official list of notifiable conditions in meeting this requirement.

### **§ 14.5.3 Information Sharing**

- (1) The Tribal Health Officer is authorized to report to the local health department, Washington State Department of Health, and/or the Indian Health Service any information concerning a reportable disease or condition, an unusual cluster, or a suspicious event that they reasonably believe has the potential to be caused by or an indicator or bioterrorism. These may include the following:
  - (a) A single diagnosed or strongly suspected case of disease caused by an uncommon agent or a potential agent of bioterrorism occurring in a patient with no known risk factors;
  - (b) A cluster of patients presenting with a similar syndrome that includes unusual disease characteristics or unusually high morbidity or mortality without obvious etiology; or
  - (c) Unexplained increase in a common syndrome above expected levels.
- (2) Sharing of information on reportable conditions, unusual clusters, or suspicious events with state and local public health authorities shall be restricted to the information necessary for the treatment, control, investigation, and prevention of a public health emergency.

### **§ 14.5.4 Persons Required to Report**

Health care providers, laboratories, coroners, medical examiners, veterinarians, and school officials are hereby required to report all known or suspected cases of individuals on the Makah Indian Reservation or having close social ties to the Makah Indian Reservation having a notifiable condition to the Tribal Health Officer. Any other person who knows or suspects a case of a reportable disease or condition may provide available information concerning a case to the Tribal Health Officer especially where the case has not been previously reported as required by this Title. The Tribal Health Officer shall establish a written form for reporting under this section and shall maintain a record of all such reports in accordance with the Makah Tribe's document retention policies.

### **§ 14.5.5 Responsibilities of the Health Care Provider or Health Director**

- (1) Health care providers and the Health Director shall:
  - (a) Notify the Tribal Health Officer by phone regarding:
    - (i) Cases or suspected cases of notifiable conditions listed by the Tribal Health Officer or the Washington State Department of Health;
    - (ii) Outbreaks or suspected outbreaks of all notifiable conditions that occur or are treated in the health care facility; and
    - (iii) Known barriers which might impede or prevent compliance with orders for infection control or quarantine.

- (b) Immediately upon becoming aware of a clinically possible case of a condition designated as “immediately notifiable” on the notifiable conditions list, notify the Tribal Health Officer in person or by phone. This requirement is effective twenty-four hours a day, seven days a week. A party sending a report by secure facsimile copy or secure electronic transmission during normal business hours must confirm immediate receipt by a live person.
- (c) Cooperate with the Tribal Health Officer during investigation of:
  - (i) Circumstances of a case or suspected case of a notifiable condition or other communicable disease; and
  - (ii) An outbreak or suspected outbreak of disease.
- (d) When appropriate, provide adequate and understandable instruction in disease control measures to each patient who has been diagnosed with a case of a communicable disease, and to other persons who may have been exposed to the communicable disease.

**§ 14.5.6 Handling of Case Reports and Medical Information**

- (1) All records and specimens containing or accompanied by patient-identifying information are confidential.
- (2) The Health Director shall establish and implement policies and procedures to maintain confidentiality related to a patient's medical information.
- (3) Personnel in health care facilities who know of a person with a notifiable condition, other than a sexually transmitted disease, shall release identifying information only to other individuals responsible for protecting the health and well-being of the public through control of disease.
- (4) Personnel in health care facilities who know of a person with a notifiable sexually transmitted disease shall release identifying information only to the Tribal Health Officer. The Tribal Health Officer may follow Washington State Department of Health guidance on reporting and follow-up, as appropriate.
- (5) The Health Director is authorized to permit access to medical information as necessary to fulfill professional duties. The Health Director shall advise those persons permitted access under this section of the requirement to maintain confidentiality of such information as defined under this section. “Professional duties” means the following activities or activities that are functionally similar:
  - (a) Medical record or chart audits;
  - (b) Peer reviews;
  - (c) Quality assurance;
  - (d) Utilization review purposes;
  - (e) Research as authorized under federal law;
  - (f) Risk management; and

- (g) Reviews required under federal law or regulations.
- (6) The Health Director is authorized to permit access to a patient's medical information and medical record by medical staff or health care facility staff to carry out duties required for care and treatment of a patient and the management of medical information and the patient's medical record.

**§ 14.5.7 Responsibilities of Food Service Establishments**

The person in charge of a food service establishment shall:

- (1) Notify the Tribal Health Officer of an indication of potential foodborne disease.
- (2) Cooperate with the Tribal Health Officer in the investigation of cases, suspected cases, outbreaks, and suspected outbreaks of foodborne or waterborne disease. This includes the release of the name and other pertinent information about food handlers diagnosed with a communicable disease as it relates to a foodborne or waterborne disease investigation.
- (3) Not release information about food handlers with a communicable disease to anyone other than the Tribal Health Officer.

**§ 14.5.8 Responsibilities of Schools and Child Day Care Facilities to Report**

The person responsible for health issues in a school or child day care facility under the Tribe's jurisdiction shall:

- (a) Notify the Tribal Health Officer of cases, suspected cases, outbreaks, and suspected outbreaks of notifiable conditions that may be associated with the child day care facility.
- (b) Consult with the Tribal Health Officer about the control and prevention of infectious disease or communicable disease.
- (c) Cooperate with the Tribal Health Officer in the investigation of cases, suspected cases, outbreaks, and suspected outbreaks of disease that may be associated with the child day care facility.
- (d) Release identifying information only to other individuals responsible for protecting the health and well-being of the public through control of disease.
- (e) Establish and implement policies and procedures to maintain confidentiality related to medical information in their possession.
- (f) Establish and implement infection control and safety measures.

**§ 14.5.9 Responsibilities of Individuals**

All persons within the Makah Reservation shall have the following responsibilities under this Title:

- (1) Cooperate with the Tribal Health Officer in the investigation of cases, suspected cases, outbreaks, and suspected outbreaks of notifiable conditions or other communicable disease; and
- (2) Cooperate with the implementation of infection control measures, including isolation and quarantine.
- (3) Notify the Tribal Health Officer of any case, suspected case, outbreak, or potential outbreak of communicable disease.

#### **§ 14.5.10 Duties of the Tribal Health Officer**

- (1) The Tribal Health Officer shall:
  - (a) Review and determine appropriate action for:
    - (i) Each reported case or suspected case of a notifiable condition;
    - (ii) Any disease or condition considered a threat to public health; and
    - (iii) Each reported outbreak or suspected outbreak of disease, requesting assistance from local, state, and federal agencies in carrying out investigations when necessary.
  - (b) Establish a system for maintaining confidentiality of written records and written and telephoned notifiable conditions case reports;
  - (c) Notify health care providers, laboratories, the Health Director and, where circumstances indicate, schools and child care facilities, within the Makah Reservation;
- (2) The Tribal Health Officer may adopt alternative arrangements for meeting the reporting requirements under this Title through coordination with local, state, and federal partners.
- (3) The Tribal Health Officer has the authority to:
  - (a) Carry out additional steps necessary to verify a diagnosis reported by a health care provider;
  - (b) Subject to the requirements of § 14.6.3, require any person suspected of having a notifiable condition to submit to examination and testing to determine the presence of the condition;
  - (c) Subject to the requirements of § 14.6.3, require any person to submit to examination and testing required to determine the presence of bloodborne pathogens or pathogens transmitted by other bodily fluids, if another person has been exposed to their blood or other bodily fluids;
  - (d) Subject to the requirements of § 14.6.3, require testing or medical examination of any individual who has or may have been exposed to a communicable disease that poses a significant risk or public's health;
  - (e) Investigate any case or suspected case of a reportable disease or condition or other illness, communicable or otherwise, if deemed necessary;

- (f) Require the notification of additional conditions of public health importance occurring within the Tribe's jurisdiction;
- (g) Request voluntary quarantine or isolation or impose involuntary quarantine or isolation, subject to the requirements of § 14.6.3;
- (h) Conduct investigations and institute control measures, including isolation and quarantine; and
- (i) Coordinate with and report to local, state, or federal agencies or tribal organizations providing epidemiological services regarding any notifiable conditions.

**§ 14.5.11 Handling of Case Reports and Medical Information**

- (1) The Tribal Health Officer shall establish and maintain confidentiality procedures related to handling of all reports of cases and suspected cases, which shall prohibit disclosure of report information identifying an individual case or suspected cases except:
  - (a) To employees of the tribal health clinic, another local health department or state health department, or other official agencies needing to know for the purpose of administering the requirements under this Title; and
  - (b) To health care providers, specific designees of health care facilities, laboratory directors, and others for the purpose of collecting additional information about a case or suspected case as required for disease prevention and control.
- (2) The Tribal Health Officer may release statistical summaries and epidemiological studies based on individual case reports if no individual is identified or identifiable.
- (3) The Tribal Health Officer may share information with the Washington Disease Reporting System for purposes of controlling or eliminating communicable diseases within the Makah Reservation.

**Chapter 6: Isolation and Quarantine**

**§ 14.6.1 Conditions and Principles for Voluntary and Involuntary Isolation and Quarantine**

The Tribal Health Officer shall adhere to the following conditions and principles when quarantining or isolating a person or group of persons.

- (1) Isolation or quarantine must be by the least restrictive means necessary to prevent the spread of a communicable or possibly communicable disease to others and may include, but is not limited to, confinement to private homes or other public or private premises.
- (2) The Tribal Health Officer or a designee shall monitor the health status of isolated and quarantined individuals regularly to determine if such individuals require continued isolation or quarantine.
- (3) If a quarantined individual subsequently develops symptoms or is reasonably believed to have become infected with a communicable or possibly communicable disease that the Tribal Health Officer believes poses a significant threat to the health and safety of other

individuals, the Tribal Health Officer shall promptly place the quarantined individual in isolation. This placement may include but is not limited to removal to an isolation facility outside the Makah Reservation.

- (4) The Tribal Health Officer must release an isolated or quarantined person as soon as the Tribal Health Officer determines that the individual poses no substantial risk of transmitting a communicable or possibly communicable disease that would constitute a serious or imminent threat to the health and safety of others;
- (5) Where a person is isolated or quarantined, the Tribal Health Officer shall ensure that the person's basic needs are addressed in a written plan identifying persons responsible for providing adequate groceries, clothing, shelter, means of communication, medication, and access to medical care. When the Tribal Officer has a reasonable belief that an isolated or quarantined person needs additional support in isolation or quarantine, the Tribal Health Officer shall make a referral to the appropriate tribal program;
- (6) The Tribal Health Officer shall ensure that tribally provided premises used for isolation and quarantine are maintained in a safe and hygienic manner to minimize the likelihood of further transmission of infection or other harm to an isolated or quarantined person. When a person is isolated or quarantined in a residence, the Tribal Health Officer shall provide information to such persons and their immediate households regarding maintaining a safe environment;
- (7) To the extent possible, cultural and religious beliefs should be considered in addressing the needs of individuals in isolation or quarantine and establishing and maintaining isolation and quarantine premises;
- (8) Isolation and quarantine shall not interfere with the right of any person to rely exclusively on spiritual means to treat a communicable or possibly communicable disease in accordance with their religious beliefs and practices nor shall anything in this Title be deemed to prohibit a person so relying who is infected with a contagious or communicable disease from being isolated or quarantined in a private place of their own choice, provided, that the Tribal Health Officer concurs that isolation and quarantine conditions can be achieved in such place, and that the isolated or quarantined person comply with all laws, rules, regulations, and orders governing control, sanitation, and quarantine.
- (9) When the Tribal Health Officer reasonably believes a person is infected with a communicable disease and the person declines treatment, the Tribal Health Officer has sole discretion to isolate the individual for the duration of their communicable infection, if the Tribal Health Officer reasonably believes such isolation is necessary to protect the health and safety of the person or the public, provided that any involuntary isolation is subject to the requirements of § 14.6.3.

#### **§ 14.6.2 Voluntary Isolation and Quarantine Preferred**

- (1) The Tribal Health Officer shall always use voluntary isolation and quarantine as a first option unless the conditions in § 14.6.3 are met. Makah Reservation. The Tribal Health Officer shall

memorialize the conditions of each voluntary isolation and quarantine and provide a copy to each person voluntarily isolated or quarantined.

### **§ 14.6.3 Involuntary Isolation, Quarantine, and Medical Examination**

#### **(1) Standards and Procedure for Order of Involuntary Isolation, Quarantine, or Medical Examination**

(a) The Tribal Health Officer may petition for issuance of an order to detain involuntarily a person or group of persons for purposes of isolation, quarantine, or medical examination when such person or group of persons has either (1) refused to enter voluntary isolation or quarantine or a medical examination, or (2) violated a voluntary isolation or quarantine agreement or refused to appear for a voluntary medical examination, or (3) by their actions given the Tribal Health Officer reasonable belief that they will not comply with voluntary isolation, quarantine, or medical examination, and such noncompliance will create immediate and irreparable injury to the Makah Tribe and the public within the Makah Reservation.

(b) A petition filed under subsection (a) must specify:

(i) The identity of all persons or groups subject to the involuntary isolation, quarantine, or medical examination;

(ii) (a) the measures taken by the Tribal Health Officer to obtain voluntary isolation, quarantine, or medical examination or (b) the actions of the person or group of persons that violated a voluntary isolation, quarantine, or medical examination or (c) the factual basis on which the Tribal Health Officer believes that the person or group of persons will not comply with voluntary isolation, quarantine, or medical examination.

(iii) The premises where the involuntary isolation, quarantine, or medical examination will occur;

(iv) The date and time at which the isolation, quarantine, or examination will begin;

(v) The suspected communicable disease or infectious agent if known;

(vi) Specify a maximum duration for involuntary isolation, quarantine, or medical examination, which shall be no longer than 10 days or the incubation period of the suspected communicable disease or infectious agent in cases of quarantine or until a health care provider has certified that the case's symptoms have resolved in cases of isolation, whichever is shorter; and

(vii) The medical basis, including an individualized risk assessment, on which isolation, quarantine, or medical examination is justified.

(viii) Why the requested isolation, quarantine, or medical examination is the least restrictive means to achieve the Makah Tribe's interest in controlling or preventing a communicable disease.

(ix) The following certification by the Tribal Health Officer:

Under penalty of perjury under the law of the Makah Tribe and the United States, I hereby certify that the facts and information alleged in this Petition are true, complete, and accurate to the best of my knowledge.

- (c) Notice to the persons or groups identified in the petition shall be accomplished in accordance with the rules of civil procedure and by such manner so as to ensure that the person or groups identified in the petition have notice of the proceeding.
- (d) The Tribal Court shall hold a hearing on a petition for involuntary isolation, quarantine, or medical examination within 72 hours of filing, exclusive of Saturdays, Sundays, and days designated as holidays by the Makah Tribe. The Tribal Court shall issue the order if it finds by a preponderance of the evidence that the involuntary isolation, quarantine, or medical examination is necessary to prevent a serious and imminent risk to the public health and safety within the Makah Reservation.
- (e) An order authorizing involuntary isolation, quarantine, or medical examination shall:
  - (i) Identify the person or persons subject to the order by name or shared or similar characteristics or circumstances;
  - (ii) Identify factual findings warranting involuntary isolation, quarantine, or medical examination;
  - (iii) Specify the premises where and conditions under which the isolation, quarantine, or examination will take place; and
  - (iv) Specify a maximum duration for involuntary isolation or quarantine, which shall be no longer than 10 days or the incubation period of the suspected communicable disease or infectious agent in cases of quarantine or until a health care provider has certified that the case's symptoms have resolved in cases of isolation, whichever is shorter;
  - (v) Include any conditions necessary to ensure that the involuntary isolation, quarantine, or medical examination is carried out for the stated purposes of this Title; and
  - (vi) Be served on all affected persons or groups in accordance with the rules of civil procedure.

**(2) Standards and Procedure for Ex Parte Order Imposing Involuntary Isolation or Quarantine**

(a) The Tribal Health Officer may seek an ex parte order of involuntary isolation or quarantine of a person or group of persons by contacting the Makah Tribal Court and establishing facts that a person or group of persons has either (1) refused to enter voluntary isolation or quarantine, or (2) violated a voluntary isolation or quarantine agreement or (3) by their actions given the Tribal Health Officer reasonable belief that they will not comply with voluntary isolation or quarantine and such noncompliance will create serious, immediate and irreparable injury to the public health and safety within the Makah Reservation. The Makah Tribal Court may grant such order if it determines that clear and compelling evidence exists

that such person or group of persons will cause serious, immediate and irreparable injury to the health and safety of the public within the Makah Reservation if such order is not issued.

(b) Within 24 hours of issuance of an ex parte order under section 2(a) above, the Tribal Health Officer shall file with the Makah Tribal Court a petition that states:

- (i) The identity of all persons or groups subject to the involuntary isolation or quarantine;
- (ii) (a) the measures taken by the Tribal Health Officer to obtain voluntary isolation or quarantine or (b) the actions of the person or group of persons that violated a voluntary isolation or quarantine or (c) the factual basis on which the Tribal Health Officer believes that the person or group of persons will not comply with voluntary isolation or quarantine.
- (iii) The premises where the involuntary isolation or quarantine will occur;
- (iv) The date and time at which the quarantine or isolation will begin;
- (v) The suspected communicable disease or infectious agent if known;
- (vi) The anticipated duration of the isolation or quarantine based on the suspected communicable disease or infectious agent if known; and
- (vii) The medical basis, including an individualized risk assessment, on which isolation or quarantine is justified.
- (viii) Why the requested isolation or quarantine is the least restrictive means to achieve the Makah Tribe's interest in controlling or preventing a communicable disease.
- (ix) the following certification by the Tribal Health Officer:

Under penalty of perjury under the law of the Makah Tribe and the United States, I hereby certify that the facts and information alleged in this Petition are true, complete, and accurate to the best of my knowledge.

(c) The petition and all accompanying documents filed in accordance with subsection 2(b) shall be served upon the persons or groups subject to the ex parte order in accordance with the rules of civil procedure.

(d) The Makah Tribal Court shall schedule a hearing to occur within 72 hours of issuance of an ex parte order under subsection 2(a) above. If the Tribal Court finds by a preponderance of the evidence that involuntary isolation or quarantine is necessary to prevent a serious and imminent risk to the health and safety of the public within the Makah Reservation, the Tribal Court shall issue a temporary injunction imposing involuntary isolation or quarantine.

(e) A temporary injunction issued under subsection 2(d) shall:

- (i) Identify the person or persons subject to the injunction by name or shared or similar characteristics or circumstances;
- (ii) Specify factual findings warranting involuntary isolation or quarantine;

- (iii) Specify the premises where involuntary isolation or quarantine will take place;
- (iv) Specify a maximum duration for involuntary isolation or quarantine, which shall be no longer than 10 days or the incubation period of the suspected communicable disease or infectious agent in cases of quarantine or until a health care provider has certified that the case's symptoms have resolved in cases of isolation, whichever is shorter;
- (v) Include any conditions necessary to ensure that the involuntary isolation or quarantine is carried out within the stated purposes and restrictions of this Title; and
- (vi) Be served on all affected persons or groups in accordance with the rules of civil procedure.

**(3) Extension of Involuntary Isolation or Quarantine**

By petition, the Tribal Health Officer may request extension of an involuntary isolation or quarantine order issued under § 14.6.3(1)(d) or § 14.6.3(2)(d). Any petition for extension of involuntary isolation or quarantine shall comply with the requirements for a petition in § 14.6.3(1)(a) and shall be accompanied by an independent licensed health care provider stating that continued involuntary isolation or quarantine is necessary to protect the public health.

- (a) Notice to the persons or groups for whom extended involuntary isolation or quarantine is sought shall be accomplished in accordance with the rules of civil procedure.
- (b) The Tribal Court shall hold a hearing on a petition for extension of involuntary isolation or quarantine within 72 hours of filing, exclusive of Saturdays, Sundays, and days designated as holidays by the Makah Tribe. In extraordinary circumstances and for good cause shown, the Tribal Health Officer may apply to continue the hearing date for up to ten days, which continuance the Tribal Court may grant at its discretion giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the public health threat, and the availability of necessary witnesses and evidence.
- (c) The Tribal Court shall grant a motion for extension of involuntary isolation or quarantine if it finds that there is clear, cogent, and convincing evidence that isolation or quarantine remains necessary to prevent a serious and imminent risk to the public health and safety within the Makah Reservation.
- (d) An order authorizing extension of involuntary isolation or quarantine shall comply with the requirements § 14.6.3(1)(d).
- (e) No involuntary isolation or quarantine may exceed a total of 30 days from the date of first isolation or quarantine, absent extraordinary circumstances, which the Tribal Health Officer must establish by an independent licensed health care provider certifying that involuntary isolation or quarantine exceeding 30 days total is necessary to prevent a serious and imminent risk to the public health and safety within the Makah Reservation.

**(5) Conduct of Hearings.** The Makah Tribal Court shall conduct all hearings under this Title in a manner that utilizes appropriate infection control precautions and minimizes the risk of

disease transmission including but not limited to digital or telephonic participation or limiting all argument to paper or electronic filings.

(6) **Tribal Council Emergency Declarations May Supersede This Section.** Emergency declarations issued by the Makah Tribal Council governing procedures for medical examinations, counseling, testing, treatment, vaccination, isolation, or quarantine for specified health emergencies or specified communicable diseases, including, but not limited to, tuberculosis and HIV, may supersede this section where so stated in the emergency declaration.

#### **§ 14.6.4 Tribal Health Officer Management of Quarantine and Isolation Premises**

(1) The Tribal Health Officer may restrict entry into quarantine or isolation premises under the following conditions:

- (a) The Tribal Health Officer may authorize health care providers, health care workers, or others access to individuals in isolation or quarantine as necessary to meet the needs of isolated or quarantined persons or the public;
- (b) No person, other than persons authorized by the Tribal Health Officer, shall enter isolation or quarantine premises;
- (c) Any person entering isolation or quarantine premises shall provide to the Tribal Health Officer evidence of infection control training and shall wear personal protective equipment and/or receive vaccination as appropriate;
- (d) Any person entering isolation or quarantine premises, whether with or without authorization of the Tribal Health Officer, may be subject to isolation or quarantine in accordance with this Title.

(2) Persons subject to isolation or quarantine and persons entering isolation or quarantine premises shall comply with this Title and orders issued by the Makah Tribal Court and the Tribal Health Officer. Each failure to do so shall constitute a basis for a civil fine consistent with § 14.6.7.

#### **§ 14.6.5 Relief from Involuntary Isolation, Quarantine, or Examination**

(1) By filing an application to the Makah Tribal Court for an order to show cause why they should be released, any person subject to an order of involuntary isolation, quarantine, or examination may seek relief from such order. Such applications must contain a clear statement of the facts upon which the request for release is based.

- (a) The Tribal Court shall, after determining that the Tribal Health Officer has been provided notice in accordance with the rules of civil procedure, issue a written ruling on the application within 48 hours of its filing, excluding Saturdays, Sundays, and days designated as holidays by the Makah Tribe.
- (b) If the Tribal Court grants the application, it shall schedule a hearing on the order to show cause within 48 hours, excluding Saturdays, Sundays, and days designated as holidays by the Makah Tribe.

(c) No action under subsection (1) shall stay or enjoin an order requiring involuntary isolation, quarantine, or examination.

(2) Any person subject to an order of involuntary isolation, quarantine, or examination may petition the Makah Tribal Court for an award of nonmonetary remedies for an alleged breach of the conditions of involuntary detention in § 14.6.1; provided, however, that any alleged breach of § 14.6.1(4) must be addressed by the procedure in subsection (1) above.

(a) No action under this subsection (2) shall stay or enjoin an order for involuntary isolation, quarantine, or examination.

(b) Upon filing of petition under this subsection (2) and determining that the Tribal Health Officer has been provided notice in accordance with the rules of civil procedure, the Tribal Court shall schedule a date for hearing on the matters alleged as soon as practicable.

(c) In any proceedings brought for relief under this subsection (2), in extraordinary circumstances and for good cause shown, the Tribal Health Officer may request the Tribal Court to extend the time for a hearing, which extension the Tribal Court in its discretion may grant giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the alleged breach of isolation or quarantine conditions, and the availability of necessary witnesses and evidence.

#### **§ 14.6.6 Right to Spokesperson**

A person or group of persons subject to an order of involuntary isolation, quarantine, or examination has a right to be represented by a spokesperson at their own expense.

#### **§ 14.6.7 Enforcement of Public Health Orders; Civil Penalties**

(1) Any order issued by the Makah Tribal Council Tribal Health Officer in accordance with this Title shall be enforced by tribal law enforcement officers and all other employees with enforcement authority within the Makah tribal government.

(2) Each violation of any provision of this Title, any lawful rule adopted by the Tribal Health Officer, or any order issued by the Makah Tribal Council, the Makah Tribal Court, or the Tribal Health Officer under authority of this Title is a civil violation subject to enforcement by any means not prohibited by Makah or federal law, including but not limited to the Tribal Court's issuance of a civil fine not to exceed \$1000.00 per violation, forfeiture, civil contempt, banishment, and/or, where applicable, exclusion under Title 9.

### **Chapter 7: Public Health Emergencies**

#### **§ 14.7.1 Public Health Emergency**

During a public health emergency, the Tribal Health Officer may request assistance in enforcing orders issued in accordance with this Title from the Makah Tribal Council, tribal law enforcement, and any other tribal departments with requisite training and expertise to aid in the protection of the public health.

## § 14.7.2 Management of Property

- (1) **Emergency Measures Concerning Facilities and Materials.** During a public health emergency, the Makah Tribal Council is authorized to:
  - (a) Close, direct, and compel the evacuation of, or decontaminate or cause to be decontaminated any facility or material of which it has reasonable cause to believe may endanger the public health.
  - (b) Procure, by condemnation or otherwise construct, lease, transport, store, maintain, renovate, or distribute materials and facilities as may be reasonable and necessary to respond to the public health emergency, with the right to take immediate possession thereof. Such materials and facilities include communication devices, carriers, real estate, fuels, food, and clothing.
  - (c) Require a health care facility to provide services or the use of its facility if such services or use are reasonable and necessary to respond to the public health emergency as a condition of the ability to continue operating as a health care facility.
  - (d) Inspect, control, restrict, and regulate by rationing and using quotas, prohibitions on shipments, allocation, or other means, the use, sale, dispensing, distribution, or transportation of food, fuel, clothing and other commodities, as may be reasonable and necessary to respond to the public health emergency.
- (2) **Control of Roads and Public Areas.** During a public health emergency, the Makah Tribal Council is authorized to:
  - (a) Prescribe routes, modes of transportation, and destinations in connection with evacuation of individuals or the provision of emergency services.
  - (b) Control or limit ingress and egress to and from any stricken or threatened public area, the movement of individuals within the area, and the occupancy of premises therein, if such action is reasonable and necessary to respond to the public health emergency.
  - (c) Exclude any person, except a person residing on the Makah Reservation, from entering the Reservation.
- (3) **Safe Disposal of Infectious Waste or Contaminated Material.** During a public health emergency, the Makah Tribal Council is authorized to:
  - (a) Adopt and enforce measures to provide for the safe disposal of infectious waste or contaminated material as may be reasonable and necessary to respond to the public health emergency. Such measures may include the collection, storage, handling, destruction, treatment, transportation, and disposal of infectious waste or contaminated material.
  - (b) Require any business or facility authorized to collect, store, handle, destroy, treat, transport, and dispose of infectious waste or contaminated material under the laws of this Tribe, and any landfill business or other such property, to accept infectious waste or contaminated material, or provide services or the use of the business, facility, or property if such action is reasonable and necessary to respond to the public health emergency as a

condition of licensure, authorization, or the ability to continue doing business in the Tribe as such a business or facility. The use of the business, facility, or property may include transferring the management and supervision of such business, facility, or property to the Tribe for a limited or unlimited period of time.

- (c) Procure, by condemnation or otherwise, any business or facility authorized to collect, store, handle, destroy, treat, transport, and dispose of infectious waste or contaminated material under the laws of this Tribe and any landfill business or other such property as may be reasonable and necessary to respond to the public health emergency, with the right to take immediate possession thereof.
- (d) Require all bags, boxes, or other containers for infectious waste or contaminated material to be clearly identified as containing infectious waste or contaminated material, and if known, the type of infectious waste or contaminated material (consistent with tribal laws).

#### **(4) Control of Health Care Supplies.**

- (a) **Procurement.** During a public health emergency, the Tribe may procure vaccines, pharmaceuticals, dietary supplements and other medicines medical supplies, or personal protective equipment to prepare for or control a public health emergency.
  - (b) **Rationing.** Where a public health emergency results in a Reservation-wide shortage or threatened shortage of any product under subsection (a), whether or not such product has been purchased by the Tribe, the Tribe may control, restrict, and regulate by rationing and using quotas, prohibitions on shipments, allocation, or other means, the use, sale, dispensing, distribution, or transportation of the relevant product. In making rationing or other supply and distribution decisions, the Tribe may give preference to health care providers or disaster response personnel.
  - (c) **Distribution.** During a public health emergency, the Tribe may store or distribute any vaccines, pharmaceuticals, supplements and other medicines, personal protective equipment, or medical supplies located within the Tribe as may be reasonable and necessary to respond to the public health emergency, with the right to take immediate possession thereof.
- (5) **Civil Proceedings.** To the extent practicable consistent with the protection of public health, prior to the destruction of any private property under this Title, the Tribe shall institute appropriate civil proceedings concerning the property to be destroyed in accordance with existing tribal laws and rules of the Makah Tribal Court or any such rules that may be developed by the Tribal Court for use during a public health emergency. Any property acquired by the Tribe through such proceedings shall, after entry of the decree, be disposed of by destruction as the Tribal Court may direct.

## **Chapter 8: Schools and Child Care Centers**

### **§ 14.8.1 Purpose**

Certain communicable diseases may affect children and or other susceptible person in schools and child care centers within the jurisdiction of the Makah Tribe. This section identifies what such schools, child care centers, and the Tribal Health Officer may do to control or prevent a potential outbreak of the communicable disease. These requirements are in addition to requirements imposed by Chapter 5, Notifiable Conditions and do not require school or child care center personnel to diagnose or treat children.

### **§ 14.8.2 Control of Communicable Disease**

- (1) When a school or child care center becomes aware of the presence of a communicable disease at the facility, the officials at the school or child care center shall notify the Tribal Health Officer for guidance.
- (2) When there is an outbreak of a communicable disease, and there is the potential for a case or cases within a school or child care center, the Tribal Health Officer shall recommend all appropriate actions deemed to be necessary to control or eliminate the spread of the disease including, but not limited to:
  - (a) Closing part or all of the affected school(s) or child care center(s);
  - (b) Closing other schools or child care centers;
  - (c) Canceling activities or functions at schools or child care centers;
  - (d) Excluding from schools or child care centers any students, staff, and or other individuals who are infectious, or exposed and susceptible to the disease.
- (3) Prior to taking action the Makah Tribal Council shall:
  - (a) Consult with Tribal Health Officer;
  - (b) Consult with and discuss the ramifications of action with the superintendent of the school, or the chief administrator of the childcare center or their designees on the proposed action; and
  - (c) Provide the superintendent of the school or the chief administrator of the childcare center or their designees a written decision, in the form and substance of an order, directing them to take action. The order must set the terms and conditions permitting;
    - (i) Schools or childcare centers to reopen;
    - (ii) Activities and functions to resume; and
    - (iii) Excluded students, staff and volunteers to be readmitted.
  - (d) Pursue, in consultation with tribal school or childcare officials, the investigation of the source of disease, or those actions necessary to ultimately control the disease.

## **Chapter 9: Limitations of Liability During Public Health Emergencies**

### **§ 14.9.1 Tribal Sovereign Immunity Retained**

The Makah Tribe retains, without exception, its sovereign immunity to all claims for relief arising out of a public health emergency, and its elected officials, employees, including but not limited to the Tribal Health Officer, health care providers and health care workers, and agents shall be entitled to share in such immunity for all actions taken under this Title.

### **§ 14.9.2 Personnel from Other Jurisdictions**

Any personnel from another jurisdiction, including but not limited to health care providers and health care workers, providing assistance to the Tribe pursuant to this Title shall not be held liable for any monetary damages claimed as a result of medical care or treatment related to the response to the public health emergency unless such damages result from providing, or failing to provide, medical care or treatment at a level of gross negligence or willful misconduct.

### **§ 14.9.3 Third Party Liability**

- (1) During a public health emergency, any person owning or controlling real estate or other premises who voluntarily and without compensation permits the designation or use of the whole or any part of such real estate or premises for the purpose of sheltering individuals, together with that person's successors in interest, if any, shall not be civilly liable for negligently causing the death of, or injury to, any individual on or about such real estate or premises under permission, or for negligently causing loss of, or damage to, the property of such person.
- (2) During a public health emergency, any person and employees and agents of such person in the performance of a contract or an agreement with, and under the direction of, the Tribe or its political subdivisions, or who renders assistance or advice at the request of the Tribe or its political subdivisions under the provisions of this Title shall not be civilly liable for causing the death of, or injury to, any individual or damage to any property except in the event of gross negligence or willful misconduct.