

TITLE 44
LUMMI NATION CODE OF LAWS
EMERGENCY HEALTH POWERS CODE

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TITLE 44
LUMMI NATION CODE OF LAWS
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Chapter 44.01 Purpose and Scope

44.01.001 Title

This Title shall be known as the Emergency Health Powers Code.

44.01.002 Authority

This Title is promulgated pursuant to Article VI §§(a), (e), (i) and (l) of the Constitution and Bylaws of the Lummi Tribe of the Lummi Reservation, Washington as Amended.

This Title is necessary to protect the health, safety and wellbeing of the Lummi Nation and all persons within the Lummi Reservation or on lands held in trust for the Lummi Nation by the United States regardless of location.

44.01.003 Purpose

The purposes of this Title are:

(a) To grant the Lummi Nation, Lummi Indian Business Council (LIBC) and LIBC’s officials the authority to provide care, treatment, and vaccination to persons who are ill or who have been exposed to contagious diseases, and to separate affected individuals from the reservation population at large to interrupt disease transmission;

(b) To ensure that the needs of infected or exposed persons are properly addressed to the fullest extent possible, given the primary goal of controlling serious health threats; and

(c) To provide Lummi Nation officials with the ability to prevent, detect, manage, and contain emergency health threats.

44.01.004 Jurisdiction

(a) Lummi Tribal Court.

The Tribal Court shall exercise civil jurisdiction to carry out the purposes of this Title. The Tribal Court may issue an order for involuntary detention for purposes of isolation or quarantine in accordance with this Title to interrupt disease transmission within the exterior boundaries of the Lummi Reservation

or on lands held in trust for the Lummi Nation by the United States regardless of location, when:

(1) the respondent is an enrolled member of the Lummi Nation;

(2) the respondent is an enrolled member of a federally recognized Indian tribe who resides within the Lummi Reservation or on lands held in trust for the Lummi Nation by the United States outside the boundaries of the Reservation; or

(3) the Court otherwise has personal, subject matter, and territorial jurisdiction over the respondent pursuant to §1.02.010 of the Lummi Code of Laws and subject to any federal laws restricting civil jurisdiction.

(b) Lummi Nation Health Center Executive Medical Director.

The Executive Medical Director shall exercise enumerated authority to carry out the purposes of this Title within the Lummi Reservation or within the Lummi Reservation or on lands held in trust for the Lummi Nation by the United States regardless of location.

Chapter 44.02 Definitions

44.02.001 Definitions

Where a term is not defined in this Title, it shall be given its ordinary meaning. Terms used in this Title, and in regulations adopted under it, shall have the following meaning, except where otherwise defined within this Title or where the context clearly indicates otherwise:

(a) “Alternate Care Sites” shall mean any building or premises designated as a shelter or mass care center, first aid station, temporary hospital, or any other necessary facility for mitigating the effects of a declared public health emergency under Title 44 of the Lummi Code of Laws.

(ba) “Contagious Disease” is an infectious disease that can be transmitted from person to person, animal to person, or insect to person.

(cb) “Executive Medical Director” means the Lummi Tribal Health Center Executive Director unless otherwise designated by duly enacted LIBC Resolution.

(de) “Health Care Provider” means any person or entity who provides health care services to Lummi Nation members and others, including, but not limited to, behavioral health providers, hospitals, medical Centers and offices, special care facilities, physicians, pharmacists, dentists, physician assistants, nurse practitioners, paramedics and emergency medical workers.

(ee) “Infectious Disease” is a disease caused by a living organism or other pathogen, including a fungus, bacteria, parasite, protozoan, or virus. An infectious disease may, or may not, be transmissible from person to person, animal to person, or insect to person.

(fe) “Isolation” means the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected with a contagious or possibly contagious disease from non-isolated individuals, to prevent or limit the transmission of the disease to non-isolated individuals.

(gf) “LIBC” shall mean the governing body of the Lummi Nation pursuant to the Constitution and Bylaws of the Lummi Tribe of the Lummi Reservation, Washington as amended.

(hg) “Protected Health Information” is any information, whether oral, written, electronic, visual, or any other form, that relates to an individual’s past, present or future physical or mental health status, condition, treatment, service, products purchased or provision of care, and that reveals the identity of the individual whose health care is the subject of the information, or where there is a reasonable basis to believe such information could be utilized to reveal the identity of that individual.

(ih) “Public Health Authority” means the Lummi Tribal Health Center Executive Medical Director unless otherwise designated by duly enacted LIBC Resolution.

(ji) “Public Health Emergency” is 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 biological agent.

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

(A) widespread illness or a large number of deaths or serious or long-term disability among humans

(B) a high probability of widespread exposure to a biological or chemical agent that creates a significant risk of substantial future harm to a large number of people.

(kj) “Community Members” means all persons residing, working, traversing or within the Lummi Reservation or the lands held in trust for the Lummi Nation by the United States regardless of location.

(lk) “Public Safety Authority” means the Lummi Nation Tribal Police or any local government agency that acts principally to protect and preserve the public safety or any other person directly authorized to act on behalf of the Lummi Nation Tribal Police.

(ml) “Quarantine” is the physical separation and confinement of an individual or groups of individuals, who are or may have been exposed to a contagious or possibly contagious disease and who do not show signs or symptoms of a contagious disease, from non-quarantined individuals, to prevent or limit transmission of the disease to non-quarantined individuals.

(nm) “Quarantine authority” means the authority to issue an order to limit the freedom of movement or action of persons or animals which have been exposed to or are reasonably suspected of having been exposed to a communicable disease or communicable condition for a period of time as may be necessary to prevent the spread of that disease. Quarantine authority also means the authority to issue an order to limit access by any person

or animal to an area or facility that may be contaminated with an infectious agent. The term also means the authority to issue an order to limit the freedom of movement or action of persons who have not received immunizations against a communicable disease when the State Health Director or a local health director determines that the immunizations are required to control an outbreak of that disease.

(~~o~~) “Temporary Reporting Order” means an order requiring health care providers to report cases or suspected cases of contagious or infectious diseases as defined in this Chapter.

(~~p~~) “Tribal Court” means the Lummi Tribal Court established under Title 1 of the Lummi Code of Laws (LCL).

(~~q~~) “Chairperson” means the Chairperson of the Lummi Indian Business Council.

Chapter 44.03 Public Health Emergency

44.03.001 Declaration

The LIBC may declare a State of Public Health Emergency. Prior to such declaration the LIBC may consult with the Lummi Tribal Health Center Executive Director, Whatcom County Health Officer, and any other additional public health or other experts as needed.

44.03.002 Lummi Health Center Executive Medical Director’s Authority

The Executive Medical Director is empowered to:

(a) receive reports of any events that may indicate the existence of a case or outbreak of an illness, condition, or health hazard that may have been caused by biological or chemical agents;

(b) investigate, or invite appropriate health officials in to investigate known, discovered or suspected communicable diseases and communicable conditions;

(c) issue a Temporary Reporting Order requiring health care providers to report symptoms, diseases, conditions, trends in use of health care services, or other health-related information when necessary to conduct a public health investigation or surveillance of an

illness, condition, or health hazard that may have been caused by biological or chemical agents. The order shall specify which health care providers must report, what information is to be reported, and the period of time for which reporting is required. The period of time for which reporting is required pursuant to a temporary order shall not exceed 90 days;

(d) examine, review, and obtain a copy of records containing confidential or protected health information, or a summary of pertinent portions of those records, that pertain to a report authorized by or required in this Title;

(e) exercise quarantine and isolation authority within the Lummi Reservation or on lands held in trust for the Lummi Nation by the United States regardless of location under the following conditions:

(1) only when and so long as the public health is endangered,

(2) all other reasonable means for correcting the problem have been exhausted, and

(3) no less restrictive alternative exists;

(f) inform the Community Members when a state of public health emergency has been declared or terminated, how to protect themselves during a state of public health emergency, and what actions are being taken to control the emergency. The Executive Medical Director shall provide information by all available and reasonable means calculated to bring the information promptly to the attention of Community Members; and

(g) Invoke the powers of Lummi Nation Police Department, and all other officers and employees within the jurisdiction of the LIBC to enforce immediately orders given to effectuate the purposes of this Title-

(h) designate and operate an alternate care site during a public health emergency declared under LCL 44.03.001.

44.03.003 Access to Health Information

(a) Notwithstanding any other provision of law, a health care provider, a person in charge of a health care facility, or a unit of government may report to the Executive Medical Director any events that may indicate the existence of a

case or outbreak of an illness, condition, or health hazard that may have been caused by biological or chemical agents. Events that may be reported include unusual types or numbers of symptoms or illnesses presented to the Lummi Tribal Health Center, unusual trends in health care visits, or unusual trends in prescriptions or purchases of over-the-counter pharmaceuticals.

(b) Notwithstanding any other provision of law, a health care provider, a person in charge of a health care facility, or a unit of government shall report to the Executive Medical Director when a Temporary Reporting Order is in effect.

(c) A person who makes a report pursuant to this Title or permits examination, review, or copying of medical records is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of complying with those subsections.

44.03.004 Confidential Information

(a) All information and records, whether publicly or privately maintained, that identifies a person who has or may have a disease or condition required to be reported as a communicable disease shall be strictly confidential. This information shall not be released or made public except under the following circumstances:

- (1) Release is made of all or part of the medical record with the written consent of the person or persons identified or their guardian;
- (2) Release is made to health care personnel providing medical care to the patient;
- (3) Release is necessary to protect the public health;
- (4) Release is made pursuant to subpoena or court order. Upon request of the person identified in the record, the record shall be reviewed in camera. In the hearing, the judge may, during the taking of testimony concerning such information, exclude from the courtroom all persons except the officers of the court, the parties and those engaged in the trial of the case;
- (5) Release is made by the Lummi Tribal Health Center, health care provider, or

health care facility, to a court or a law enforcement official for the purpose of enforcing communicable disease laws. A law enforcement official who receives the information shall not disclose it further, except

(A) when necessary to enforce communicable disease laws, or

(B) when the Lummi Tribal Health Center, health care provider, or health care facility, seeks the assistance of the law enforcement official in preventing or controlling the spread of the disease or condition and expressly authorizes the disclosure as necessary for that purpose;

(6) Release is made by the Lummi Tribal Health Center, health care provider, or health care facility, to another tribal, federal, state or local public health agency for the purpose of preventing or controlling the spread of a communicable disease or communicable condition.

(b) Confidential or protected health information received by the Executive Medical Director pursuant to this Title shall be confidential and shall not be released, except when the release is:

- (1) Made pursuant to any other provision of law;
- (2) To another tribal, federal, state, or local public health agency for the purpose of preventing or controlling a public health threat; or
- (3) To a court or law enforcement official or law enforcement officer for the purpose of enforcing the provisions of this Title or for the purpose of investigating a incident, biological, or chemical agents.

(c) A Tribal Court official or Lummi law enforcement officer who receives the information shall not disclose it further, except:

- (1) when necessary to conduct an investigation of a terrorist incident using biological, or chemical agents, or
- (2) when the Executive Medical Director seeks the assistance of the court or law enforcement official or law enforcement officer in preventing or controlling the

public health threat and expressly authorizes the disclosure as necessary for that purpose.

44.03.005 Qualified Immunities

The following qualified immunities shall apply during the declared public health emergency under this Title:

(1) During the public health emergency, the Executive Medical Director has the authority to designate and operate alternate care sites. No person who enters a designated building or premises for refuge, treatment, care or assistance during a public health emergency has a cause of action for personal injuries against the Lummi Nation, its agents, officers, or employees, or an individual who owns or maintains any building or premises designated as an alternate care site, for any harm or loss caused, arising out of or related to such person's entry.

(2) No health care provider who renders services during a state of emergency declared under this Title at the express or implied request of any responsible LIBC official, entity, department, or program shall be liable for any harm or loss caused, arising out of or related to the provision of such services, regardless of how or under what circumstances or by what cause such harm or loss occurred.

(3) No LIBC agent, officer, employee, volunteer, program, entity, department, or person shall be liable for any civil damages, or prosecuted for violation of any Lummi Code of Law or regulation, where an act or omission involved was required in order to comply with any Lummi Code of Law, regulation, resolution, or under this Title.

Chapter 44.04 Isolation and Quarantine

44.04.001 Isolation and Quarantine

(a) During the public health emergency, the Executive Medical Director may isolate or quarantine an individual or group of individuals. The Executive Medical Director may also establish and maintain places of

isolation and quarantine, set rules and make orders subject to LCL §44.04.002.

(b) The Executive Medical Director may authorize health care providers or others access to individuals in isolation or quarantine as necessary to meet the needs of isolated or quarantined individuals. No person, other than a person authorized by the Executive Medical Director, shall enter isolation or quarantine premises. Any person entering an isolation or quarantine premises with or without authorization may also be isolated or quarantined by the Executive Medical Director.

44.04.002 Conditions and Principles

The Executive Medical Director shall adhere to the following conditions and principles when isolating or quarantining individuals or groups of individuals:

(1) Isolation and quarantine must be by the least restrictive means necessary to prevent the spread of a contagious disease to others and may include, but are not limited to, confinement to private homes or other private and public premises.

(2) Isolated individuals must be confined separately from quarantined individuals.

(3) The health status of isolated and quarantined individuals must be monitored regularly to determine if they require isolation or quarantine.

(4) If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a contagious or possibly contagious disease he or she must promptly be removed to isolation.

(5) Isolated and quarantined individuals must be immediately released when they pose no substantial risk of transmitting a contagious or possibly contagious disease to others.

(6) The needs of persons isolated and quarantined shall be addressed in a systematic and competent fashion, including but not limited to, providing adequate food, clothing, shelter, means of communication with those in isolation or quarantine and outside these settings, medication, and competent medical care.

(7) Premises used for isolation and quarantine shall be maintained in a safe and hygienic manner and be designed to minimize the likelihood of further transmission of infection or other harms to persons isolated or quarantined.

44.04.003 Procedures for Emergency Detention Order for Isolation and Quarantine

(a) The Executive Medical Director may petition the Tribal Court ex parte for an order to take the person or group of persons into involuntary detention for purposes of isolation or quarantine in accordance with this Title.

(1) Emergency Detention Order. Prior to seeking an Emergency Detention Order, the Executive Medical Director shall have:

(A) made reasonable efforts, which shall be documented, to obtain voluntary compliance with requests for medical examination, testing, treatment, counseling, vaccination, decontamination, isolation, or quarantine; or

(B) determined in his or her professional judgment that seeking voluntary compliance would create a risk of serious harm.

(C) documentation gathered by Whatcom County may be accepted and considered by the Tribal Court to show that reasonable efforts have been made.

(b) Tribal Court

(1) Ex Parte Order for Detention. The Tribal Court may issue ex parte orders requiring individuals to comply with the Emergency Detention Order of the Executive Medical Director, order the LNPd to transport the individual to a designated facility for isolation, quarantine, treatment and care until such time as the Executive Medical Director determines that the individual's condition is such that it is safe for the individual to be discharged from the facility or issue other relief as necessary to protect the public health.

(2) 72-Hour Hearing. A hearing on the Ex Parte Order for Detention shall be conducted

in the Tribal Court within seventy-two (72) hours of issuance.

(A) The Executive Medical Director shall have the burden of proving the allegations set forth in the petition by a preponderance of the evidence. The person named in the petition (respondent) shall have the right to an attorney at any hearing held on the petition, cross-examine witnesses, and present evidence.

(B) At the conclusion of the 72-hour hearing, the Tribal Court shall consider the evidence, the action taken by the Executive Medical Director to secure voluntary compliance by the respondent, and the purpose and intent of this Title, and may take one of the following actions:

(i) If the Tribal Court finds that the respondent is a suspected case, the Court may enter an order requiring that the person be subjected to further examination, testing, and treatment as specified in the Court's order. If the court finds that further detention of the respondent is necessary in order to assure that the examination, testing, and treatment occurs, or to protect the public health the court may order that the respondent be detained for an additional period not to exceed forty-five (45) days.

The results of testing conducted under this Chapter shall be provided to the court and the respondent detained or his or her legal counsel as soon as they are available to the local Executive Medical Director. The Court may then conduct an additional hearing to determine whether the respondent is a confirmed case and, if so, whether further measures are necessary to protect the public health pursuant to ii) or (iii) of this Subsection.

(ii) If the Tribal Court finds that the respondent is a confirmed case, that further measures less restrictive than detention of the respondent are necessary to assure that appropriate treatment is implemented and that imposition of less restrictive measures

will be sufficient to protect the public health, the Court may enter an order setting forth such measures and ordering the respondent to comply with the measures.

(iii) If the Tribal Court finds that the respondent is a confirmed case, that further detention of the respondent is necessary to protect the public health, and that imposition of less restrictive measures will not be sufficient to protect the public health, the Court may order that the respondent be detained and treated for an additional period not to exceed forty-five (45) days.

(iv) If the Tribal Court finds that there is insufficient evidence to support the petition for detention, then the Court shall immediately release the respondent detained.

(3) A person detained under this Section may be released prior to the expiration of the court-ordered detention if the Executive Medical Director or the Tribal Court finds that less restrictive measures are sufficient to protect the public health. The Tribal Court may impose such conditions on the release of the person as the court finds necessary to protect the public health. A person detained under this Chapter may also petition the court for release based upon new evidence or a change in circumstances.

(4) The Tribal Court may extend a period of court-ordered detention for additional periods not to exceed one hundred-eighty (180) days each following a hearing, if the court finds that the requirements of subsection have been met and if the court finds that further detention is necessary to assure that appropriate treatment is implemented, and that imposition of less restrictive measures are not sufficient to protect the public health. As an alternative to extending the period of detention, if the court finds after hearing that further measures less restrictive than detention are necessary to assure that appropriate treatment is continued, and that imposition of less restrictive measures will be sufficient to protect the public health, the court may

enter an order setting forth the measures and ordering the respondent to comply.

(5) In the event that a person has been released from detention prior to completion of the prescribed course of treatment and fails to comply with the prescribed course of treatment, the Executive Medical Director may detain that person, and the Tribal Court may order the person detained for an additional period or periods, not to exceed one hundred-eighty (180) days each, as the court finds necessary to protect the public health. Court orders entered under this Section shall be entered only after a hearing at which the respondent is accorded the same rights as at the initial hearing on the petition for detention.

(6) When a Court order for detention is issued, the transporting law enforcement officer and the receiving facility shall be informed of the infectious status of the person for disease control and the protection of the health of the staff, other offenders and the public. Such information shall be made available prior to the transport.

(A) Whenever disclosure is made pursuant to this subsection, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by tribal law. Tribal law prohibits you from making any further disclosure of it except as authorized by Tribal law."

(B) LNPD shall establish and implement policies and procedures that maintain confidentiality related to the detained person's medical information as defined in this subsection and federal and state law.

(c) Service on Respondent.

The Executive Medical Director or designee shall serve a copy of the emergency detention order on the individual named at the time of the detention. The Executive Medical Director shall serve copies of the Tribal Court Order of involuntary detention for purposes of isolation or quarantine as soon as possible after issuance.

If the person informs the Executive Medical Director that he or she is represented by legal counsel, service on such counsel shall be made by delivering a copy of the order to the attorney's office.

Chapter 44.05 Enforcement

44.05.001 Refusal to Obey Executive Medical Director Order

(a) Persons subject to isolation or quarantine for the protection of the public health shall obey the Executive Medical Director's rules and directives and shall not go beyond the isolation or quarantine premises.

(b) Any person who, after service upon him or her, violates or fails to comply with the terms of an Emergency Detention Order issued by the Executive Medical Director pursuant to LCL §44.04.003, is guilty of a Class B criminal offense as set forth in LCL §5.11.015, and, upon conviction thereof, in addition to any and all other penalties which may be imposed by law upon such conviction, may be ordered by the court confined until such order of Executive Medical Director shall have been fully complied with or terminated by such Executive Medical Director, but not exceeding six months from the date of passing judgment upon such conviction.

Chapter 44.06 General Provisions

44.06.001 Sovereign Immunity

(a) Neither the Lummi Nation, the LIBC, the Lummi Nation Health Center, the Executive Medical Director, or any Lummi official, program, department, or entity are liable for the death of or any injury to persons, or damage to property, as a result of complying or attempting to comply with this Title.

(b) Nothing in this Title shall be deemed, construed, interpreted or implied to have waived, or authorized the waiver of, the sovereign immunity of the Nation or any of its entities, enterprises, instrumentalities,

agencies, organizations, departments, tribally owned corporations, or political subdivisions, officers, agents, or employees unless such waiver is explicitly granted in writing by the Nation in accordance with LCL §1.02.050.

44.06.002 Remedies Outside of this Title

(a) Nothing in this Title precludes a prosecutor from filing criminal charges arising from the same act alleged under this Title.

(b) A petition for an order of involuntary detention for purposes of isolation or quarantine under this Title may be made regardless of whether or not there is a similar pending action by another jurisdiction.

44.06.003 Severability

If any paragraph, section, or provision of this Title shall be declared invalid by a court of competent jurisdiction for any reason, that paragraph, section, or provision shall be severed from the remainder of this Title and the validity of the remainder of this Title shall not be affected by such decision.

44.06.004 Effective Date

This Title shall take effect after its adoption by the Nation in a duly enacted resolution.

Title44.Res2017-084