

DUTY OF CARE AND DIGNITY OF RISK PROCEDURE

Expected Outcome

The Service Stakeholders will be aware of their responsibilities under Duty of Care and Dignity of Risk

Training Requirements

All Team Members

Procedure

Team Members should ensure that they consider the following procedure carefully as Duty of Care is a legal issue and how Team Members respond to situations could be used in legal proceeding.

Factors to be considered in situations of potential harm include:

- The risk and likelihood of harm including abuse;
- The sorts of injuries that could occur and an assessment of the seriousness of those injuries;
- Precautions that could be taken to minimise the risk or harm or seriousness of the injury; and
- Current professional standards about the issues.

Avoiding harm or injury involves:

- Determining when harm or injury is foreseeable;
- Taking account of the seriousness of the potential harm or injury;
- Assessing risks from the other person's perspective;
- Recognising that some risks are reasonable;
- Not actively harming or injuring the other person;
- Avoiding discrimination and overly restrictive options;
- Avoiding compromises to the rights of others;
- Noticing risks that the person alerts you to;
- Recognising when people are at risk of injury from others;
- Supporting people to confront risks safely; and
- Safeguarding others from harm or injury.

Maintaining Duty of Care will be greatest to those who are relying on the Team Member the most.

The Service will ensure that all Team Members provide a standard of care commensurate with their position and the Service ensures the best outcome for each Service User whilst respecting the person's right to choose to take risks.

The Service believes that all Service Users have the same rights as other members of society to take risks and will assist the Service User to enjoy the broadest range of life opportunities and experiences, in an environment of care, support, information and education.

The Service provides clear job descriptions, Team Member orientation and ongoing training to ensure that all Team Members are aware of:

- Their roles and its limitations;
- Their accountability to their supervisor;
- The extent to which they can support Service Users within their role; and
- How to report concerns and issues to the Service.

Being aware of the above supports the Service in ensuring Duty of Care is taken into account when providing service.

The Service maintains their Vehicles, Registration and Green slip Insurance to ensure the protection of the Service User's compensation in the event of an accident causing injury to Service Users or Team Members. (Green slip insurance does not cover the driver at fault). The Service holds Public Liability Insurance, Workers Compensation Insurance and Motor Vehicle Insurance. All Team Members are made aware that their Duty of Care includes complying with standard road rules when driving Service Users or anyone else while working at the Service.

Confidentiality -v- Duty of Care

Confidentiality is between the Service and the Service User - not individuals within the Service. Therefore should a Service User tell a Team Member anything that could have an impact on how the service is provided the Team Member is obligated to pass that information onto the Manager. The Team Member will inform the Service User of this obligation.

The Service duty of care could affect Service User confidentiality in two different ways:

Duty to disclose.

If someone tells a Team Member in confidence that someone else may be at risk of harm, that Team Member has a Duty of Care to that other person that might override your duty of confidentiality to the person who told you.

Duty NOT to disclose.

If disclosing confidential information could lead to someone suffering harm, then Team Member Duty of Care to that person suggests that Team Member should not disclose the information.

However there are exceptions to the above and where specific legislation applies to the situation the specific provisions of the legislation should be followed.

Anti discrimination laws ensure that Duty of Care is not applied in a way that is discriminatory. (e.g. by denying a service to someone because of a certain disability or health status). Examples include:

- The Public Health Act prohibits service providers from disclosing a Service User's HIV status to anyone with the Service Users expressed permission. For example: You believe that a man who is HIV + is having unsafe sex with someone else. The Public Health Act says that you mustn't tell the other person that the man is HIV+ without his permission. (The Public Health Act does, however, allow you to notify the Health Department if you think someone's health is at risk through someone else's health status. This may be one way of addressing your duty of care in this situation). The Service promotes health and hygiene training and procedures to ensure all Team Members are aware of the proper procedures to ensure their own health and safety from communicable diseases; or
- The NSW Crimes Act makes it an offence to withhold information from police in the course of their investigations.

Subpoena.

If a person is subpoenaed from work it may require the person to give the court the services files on a particular Service User. It is therefore important that all Service User notes are recorded in a factual way, noting exactly what occurred, what was witnessed etc without judgement statements such as "I think" etc. Judgement statements can be questioned in court "did the person have the proper education to make a judgement" "was a persons judgement influenced by their own opinions" etc. There are ways to try to limit the disclosure required by a subpoena. Legal advice should be sort immediately.

Giving Advice/Information

Advice involves using personal judgement to formulate what the individual believes to be the appropriate action for the Service User to take. **NO TEAM MEMBER WILL GIVE ADVICE TO A SERVICE USER OR WITNESS A LEGAL DOCUMENT FOR THE SERVICE USER.**

It is the role of every Team Member to ensure that Service Users are given correct, up to date information to allow them to make informed choices regarding their own lives and care. Some ways you can ensure you are able to provide correct information are to:

- Keep your skills and knowledge up to date by participating in training;
- Avoid conflicts of interest. If you can't avoid them, disclose them. Only give information you know to be correct;
- Always encourage Service Users to seek out other information before making their decisions;
- Always encourage Service Users to seek professional advice;
- Use Active Listening techniques to ensure that the Service User understands the information you are providing; and
- Follow up verbal information given with written information to confirm.

When Service Users are making decisions the Service can assist by:

- helping identify issues for Team Members, the Service User and her/his family, other Service Users and the community;
- Providing information to Service Users, Team Members and family about considerations involved in evaluating the issues. This is to include information identifying duty of care obligations and the Service User's right to experience and learn from risk taking;
- Developing Individual Service Plans in consultation with the Service User, family/advocate and Team Members starting with the least restrictive option for the Service User;
- Making sure all alternatives that maintain a positive outcome for the Service User while reducing the risk are to be considered during the development of Individual Service Plans;
- Continuing to offer support to Service Users to assist them to meet their goals;
- Providing education to Service Users about risks associated with actions and risk minimisation;
- Documenting the decision-making processes and implementation of each stage of this process;
- Where those specific practices outlined in the 'Positive Approach to Challenging Behaviour' are proposed, written consent is required from the Service User or a legally appointed guardian with authority before the practices are carried out;
- Ensuring that if, at the end of this process, the risk cannot be minimized to an acceptable level then the duty of care is paramount and outweighs the dignity of risk;
- Ensuring that referrals are made to either ACAT/ Risk Assessment Team or Community Option as appropriate if the Service User may benefit from involvement from the Guardianship Board; and
- Refer to Ascertaining Capacity for Making Informed Decisions procedure.

To give support to Team Members to comply with their Duty of Care the Duty of Care Checklist has been developed as a quick tool to assist in assessing Duty of Care compliance.

Documents to be completed and/or related to this procedure

- Duty of Care Checklist

Corresponding Policy

- Duty of Care & Dignity of Risk _doc_135
- Code of Behaviour and Confidentiality Procedure _ doc_008
- Abuse Identification Procedure _doc_277
- Privacy and Confidentiality Procedure _doc_280

- Conflict of Interest Procedure_doc_031
- Ascertaining Capacity for Making Informed Decisions Procedure

Relevant Standards

CHSP/HACC Standards

1. Effective Management
2. Appropriate Access & Service Delivery
3. Service User Rights & Responsibilities

Disability Service Standards

1. Rights
2. Participation & Inclusion
3. Individual Outcomes
4. Feedback & Complaints

NDIS Practice Standards

1. Rights and Responsibilities