

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

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, harm or seriousness of the injury;

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.

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 consumer whilst respecting the person's right to choose to take risks.

The Service believes that all consumers have the same rights as other members of society to take risks and will assist the consumers 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 consumers within their role; and
- How to report concerns and issues to the Service.

The Service maintains their vehicles, registration and insurance to ensure the protection of the consumer in the event of an accident causing injury to the consumer or Team Member. 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 consumers or anyone else while working at the Service.

Confidentiality -v- Duty of Care

Confidentiality is between the Service and the consumer - not individuals within the Service. Therefore, if a consumer tells 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 consumer of this obligation.

The Service duty of care could affect consumer 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 consumer's HIV status to anyone with the consumers expressed permission. However, if the Service believes that a third party is at risk, they can notify the Health Department.
- 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 consumer's file. It is therefore important that all consumer notes are recorded in a factual way, noting exactly what occurred and what was witnessed. There are ways to try to limit the disclosure required by a subpoena. Legal advice should be sought immediately.

Giving Advice/Information

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

It is the role of every Team Member to ensure that consumers 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 consumers to seek out other information before making their decisions;
- Always encourage consumers to seek professional advice;
- Use active listening techniques to ensure that the consumer understands the information you are providing; and
- Follow up verbal information given with written information to confirm.

When consumers are making decisions, the Service can assist by:

- helping identify issues for Team Members, the consumer and her/his family, other consumers and the community;
- Providing information to consumers, Team Members and family about considerations involved in evaluating the issues. This is to include information identifying duty of care obligations and the consumer's right to experience and learn from risk taking;
- Developing Individual Service Care Plans in consultation with the consumer, family/advocate and Team Members, starting with the least restrictive option for the consumer;
- Making sure all alternatives that maintain a positive outcome for the consumer while reducing the risk are to be considered during the development of Service Care Plan;
- Continuing to offer support to consumers to assist them to meet their goals;
- Providing education to consumers about risks associated with actions and risk minimisation;
- Documenting the decision-making processes and implementation of each stage of this process;
- Ensuring that if, at the end of this process, the risk cannot be minimised to an acceptable level then the duty of care is paramount and outweighs the dignity of risk;
- Ensuring that referrals are made to either the Aged Care Assessment Team/ Risk Assessment Team or Community Options as appropriate, if the consumer may benefit from involvement from the Guardianship Board; and
- Refer to Ascertaining Capacity for Making Informed Decisions Procedure.

Related Policies, Procedures and Other Documentation

- doc_135 Duty of Care & Dignity of Risk Policy
- doc_008 Code of Behaviour and Confidentiality Policy & Procedure
- doc_020 Code of Behaviour and Confidentiality Agreement
- doc_277 Abuse Identification Procedure
- doc_130 Privacy and Confidentiality Policy

- doc_280 Privacy and Confidentiality Procedure
- doc_031 Conflict of Interest Procedure
- doc_293 Ascertaining Capacity for Making Informed Decisions Procedure
- doc_291 Ascertaining Capacity for Making Informed Decisions Flowchart
- doc_431 Consumer Security and Safety Policy and Procedure

Relevant Standards

Aged Care Quality Standards

1. Consumer dignity and choice
2. Ongoing assessment and planning with consumers

NDIS Practice Standards

1. Rights and responsibilities
2. Provider Governance and Operational Management
3. Provisions of Supports
4. Provisions of Supports (environment)