

E.14 Duty of Care

1.0 INTRODUCTION/BACKGROUND

The concept of a “Duty of Care” is derived from laws about negligence. Mercy Services may be considered to have acted negligently if the following situation occurred:

1. A duty of care was owed by Mercy Services to another person ‘B’; and
2. Harm has occurred to B or B’s property; and
3. The harm was a result of an act or failure to act by Mercy Services; and
4. The harm was ‘reasonably foreseeable’ and Mercy Services failed to take ‘reasonable’ steps to prevent it.

Mercy Services fulfils its duty of care by ensuring that: (1) our staff and venues are as safe as reasonably possible; (2) when a client wants to undertake a higher risk activity, that we are sure they have the mental capacity to make that decision; and (3) that where they have mental capacity that they have all the necessary information to make an informed decision.

NSW Government Disability Policy (Stronger Together) and NDIS enable people with a disability and their family/carers to be at the centre of decision making about how they live their lives. Everyday choices involve a level of risk which can be positive or negative. When a person with a disability who has capacity can choose to live with a level of risk is entitled to do so. That person will be treated as having consented to the risk so there will be no breach of duty of care by staff.

The need to protect clients from harm is balanced by a recognition that those with mental capacity must be given the dignity of risk i.e. the ability to follow through on their plans even if others think it is the wrong decision. Mercy Services will work closely with the client, especially people with a disability, in order to negotiate the level of risk enablement, that is appropriate to that person (safeguarding-risk management vs client choice). This is particularly the case with self directed individualised packaged support such as in Consumer Directed (Aged) Care Packages and NDIS.

As Mercy Services continues to diversify its programs and extend its reach, Mercy Services remains firm in its commitment to ensure reasonable and practicable actions are taken to promote the health, safety and well-being of Mercy Services clients, visitors, staff, volunteers and anyone entering Mercy Services premises. Mercy Services has many Work Health Safety (WHS) Policies that address Duty of Care as it applies to workers and workplaces.

2.0 SCOPE

The purpose of this policy is to broadly outline to Mercy Services staff/volunteers the reasonable steps Mercy Services will take to promote the health, safety and well-being of Mercy Services clients participating in services run by Mercy Services.

3.0 POLICY STATEMENT

Mercy Services will ensure that systems are in place to minimise the risk of harm to Mercy Services clients by:

1. Ensuring client risks are identified, recorded and acted upon promptly;
2. Ensuring that credible, current evidence informs client service provision;
3. Ensure correct intervention is provided to the correct person, at the correct time and in the correct manner;
4. Developing and maintaining levels of service provision that deliver the supervision and support needed by clients at Mercy Services activities;
5. Ensuring that systems are in place, and utilised, so that incidents are reported, acted upon, and analysed promptly, and contributing factors to critical incidents are examined in order to prevent recurrence; and
6. Ensuring that all Mercy Services employees and volunteers are aware of their duty of care responsibilities, and take action in accordance with, and within the limitations of, applicable laws, policies and guidelines.

4.0 PROCEDURES

4.1 *Ensuring client risks are identified, recorded and acted upon promptly;*

The Mercy Services Access and Equity Policy and Meeting Individual Needs Policy set out the importance of and processes for assessing client risks. This is initially the Coordinator's responsibility. Once a client has started with Mercy Services all staff/volunteers who interact with the client are to inform the Coordinator of any new risk factors that become apparent.

The Coordinator is responsible for ensuring that all staff/volunteers who are working with the client receive clear information and notice of the identified risks and the controls for these risks. In most services this is usually done via Roster Notes and the Emergency Summary in the Carelink+ software program.

4.2 *Ensuring that credible, current evidence informs client service provision;*

Each Mercy Services program is required to maintain a reference document(s) of evidence based practice. The Coordinator is to update this document with new evidence obtained either from service provision or literature.

4.3 *Developing and maintaining levels of service provision that deliver the supervision and support needed by clients at Mercy Services activities;*

Coordinators will ensure the best match between client needs and available resources.

There are five significant Duty of Care situations that can be predicted to occur at sometime at Mercy Services:

1. A client missing from Mercy Services Centre-based activities,
2. A client missing when a Mercy Services home-based service is scheduled,
3. A client discloses thoughts of harming her/himself,
4. A suspicion of abuse or neglect of a client, or
5. Incorrect intervention.

1. Missing Client from Centre-Based Activities

All clients should be observed regularly (preferably half-hourly) by the Day Centre staff during their time in respite. If a client is not in his/her area, their whereabouts should be established (e.g. client is in the toilet).

If a client's whereabouts cannot be established by the staff members on duty the following procedure is to be initiated.

a) Initial Action

- i. Where the client is assumed to be missing, the Coordinator will notify the Day Care staff and volunteers.
- ii. The Coordinator will initiate a search by staff and available volunteers.
- iii. If the client is found, the situation is resolved. The Coordinator will decide whether the client's carer should be informed immediately.
- iv. If the client remains missing, the Coordinator will notify the General Manager.
- v. An assessment is then made of the client's history and current illness to determine the next course of action. This is the responsibility of the General Manager in consultation with the Coordinator.

b) Foreseeable or Regular Events of the Client Being Missing

If it is foreseeable that the client will leave, or if the client regularly leaves the Mercy Services Centre without notifying Mercy Services staff, a documented plan is developed by the Coordinator, detailing Mercy Services staff responses, which may include any one or more of the following actions:

- i. Decision not to search for the missing client: Where a decision is made not to initiate a local search for the client, the next of kin as documented in the client's file, will be notified by the Coordinator, that the client has left the Mercy Services Centre without notifying Mercy Services staff.
- ii. Local search for missing client: When a decision is made to search the grounds and local area, (streets and within the line of sight), the Coordinator will conduct the search and direct the staff/volunteers that are available and appropriate.
- iii. Broader search for missing client: If the local area search is unsuccessful and/or the decision is made to broaden the search for the client, the client's next of kin, as documented in the client's file and the police are to be notified.

c) Supporting the missing client to return to the Mercy Services centre:

- i. When the client is located, Mercy Services employees and staff will speak in a respectful, courteous tone and inform the client that it is time to go to the Mercy Services Centre.
- ii. If the client refuses to return to the Mercy Services Centre, staff will notify the Coordinator who will notify the General Manager. A team member should, if possible, remain with the client and await further instructions.

- iii. Upon returning to the Mercy Services Centre, the Coordinator will ascertain whether the client wants to remain at the Centre or go elsewhere. The Coordinator will support the client to make arrangements to go elsewhere if required.
 - iv. When a decision is made that the client is at risk to him/herself or at risk to the Day Care members or volunteers, the Coordinator may arrange for them to be transferred home or to their next of kin's. The Coordinator will notify the next of kin as documented in the client's file, that the client has been found and advise them of the client's current management plan.
 - d) A Missing Client Remains Missing or Declines Invitation to Return to the Mercy Services Centre After Being Located:
In these circumstances, the Coordinator will notify the next of kin and ascertain if they are able to take responsibility for the client. If the next of kin are unable to assist the General Manager will notify the police and request they assume the responsibility for locating the client and for the client's transfer home or to hospital. When a missing client who is considered to be at risk is unable to be located the following should be notified:
 - The Chairperson of the Mercy Services Board;
 - The Institute of Sisters of Mercy Australia and Papua New Guinea's Community Liaison Officer; and
 - the funding body.
2. Clients Not at Home for Scheduled Mercy Services Home-Based Services
See E.19 No Response From Client to Scheduled Visit policy
3. A client discloses thoughts of harming her/himself
Most Mercy Services staff are not expected to have advanced counselling and mental health skills. In most cases a client disclosing self harming ideas should be supported to contact Lifeline (Phone: 13 1114) or a mental health professional.

Mercy Services McAuley Outreach Service has a Safe Work Practice on Suicide Prevention due to the greater likelihood of those staff encountering clients with self-harming ideas.
4. A suspicion of abuse or neglect of a client
See:
E.16 Protection and Vulnerable Adults from Abuse and Neglect Policy; or
E.17 Protection of Children from Abuse and Neglect Policy
5. Incorrect Intervention
Mercy Services has a number of Safe Work Practices especially regarding medical interventions that set out steps to be taken to ensure the intervention is provided to the correct person, at the correct time and in the correct manner.

4.4 Ensuring that systems are in place, and utilised, so that incidents are reported, acted upon, and analysed promptly, and contributing factors to critical incidents are examined in order to prevent recurrence;

Mercy Services WHS Policy requires that Incident Report Forms be completed on all injuries and near hits/identification of obvious risks to safety. These Forms are to be investigated, responded to and reported in accordance with relevant Mercy Services WHS Policy.

4.5 Ensuring that all Mercy Services employees and volunteers are aware of their duty of care responsibilities, and take action in accordance with, and within the limitations of, applicable laws, policies and guidelines.

- a) Staff and Volunteer orientation will explain how a Duty of Care applies to the special relationship which exists between:
1. a Mercy Services employee and a client;
 2. a Mercy Services program and its clients;
 3. Mercy Services volunteers and clients.

Coordinators will ensure their staff and volunteers are aware of the requirements on them in their role relating to:

1. Workplace procedures on health, safety and security
2. Mercy Services Policies,
3. Safe Work Practices,
4. Evacuation plans,
5. Emergency plans, and
6. Client Care Plans.

All Mercy Services staff are to identify and report hazards and breaches of health, safety and security procedures accurately and promptly.

- b) Work safely: ensuring that all activities are undertaken in a safe manner and do not present a hazard to other employees, volunteers, clients or the public.
- c) Respond appropriately to actual and potential emergency situations:
1. Recognise emergency and potential emergency situations, and, within the scope of individual responsibility, take required action.
 2. Follow Mercy Services emergency procedures.
 3. Seek appropriate assistance as required.
 4. Report details of emergency situations in accordance with Mercy Services Policy.
- e) Maintain personal safety standards:
1. Wear appropriate safety clothing, footwear and protection equipment;
 2. Act to control workplace hazards and prevent injury or impairment related to workplace activities;
 3. Carry out safe manual handling in accordance with legal requirements, Mercy Services policies and national health and safety guidelines; and

4. Contribute to maintaining the Mercy Services workplace in a safe condition.

f) Participate in regular employee support/supervision sessions.

g) Provide feedback to Mercy Services on health, safety and security:

1. Identify work health & safety issues requiring attention; and
2. Raise work health & safety issues with the designated person in accordance with Mercy Services procedures.

4.6 Documentation on missing clients

When a Mercy Services client is missing, employees will ensure events related to a missing client are sequentially recorded with specific times, details and outcomes.

Once the situation is finalised an Incident Form will be completed. All decisions regarding actions taken are to be recorded on the Incident Form and on attached papers if necessary.

4.7 Compliance

Compliance with this policy is being measured by:

- a) Manager is to check adequacy of client file notes in file audit record.

4.8 Evaluation

The performance indicators for the evaluation of this policy is:

- a) No person is seriously harmed while participating in a Mercy Services activity or at a Mercy Services venue.

5.0 REFERENCES

1. Australian Standards	nil
2. Legislation	<ol style="list-style-type: none"> a) NSW Disability Services Act 1993 b) Work Health Safety Act 2011 (NSW) c) Disability Discrimination Act 1992 (Cwth) d) Racial Discrimination Act 1975 e) NSW Anti-Discrimination Act 1977
3. Professional guidelines	nil
4. Codes of Practice	nil
5. Codes of Ethics	<ol style="list-style-type: none"> a) Australian Association of Social Workers Code of Ethics http://www.aasw.asn.au/document/item/1201 b) Australian Psychological Association Code of Ethics http://www.psychology.org.au/Assets/Files/Code_Ethics_2007.pdf c) The Nursing and Midwifery Board of Australia. Registration Requirements http://www.nursingmidwiferyboard.gov.au/Registration-Standards.aspx d) Integrity in the Service of the Church https://www.catholic.org.au/media-centre/media-releases/cat_view/10-organisations/38-national-committee-for-professional-standards e) Mercy Services Code of Conduct

6. Evidence	a) ADHC "Standards in Action" (2012) b) Home Care Packages Guidelines (2013) c) Commonwealth HACC Guidelines (2012-15)
7. Mercy Services Values	Justice, Respect, Care, Unity, Service

6.0 OTHER RELATED POLICIES AND PROCEDURES

- A.01 Mission and Philosophy
- A.03 Code of Conduct (staff and volunteers)
- A.05 Reconciliation
- C.01 Management Roles and responsibilities
- C.03 Operational Planning
- C.05 Quality Improvement
- E.01 Service Guarantee
- E.02 Service Access and Equity
- E.03 Meeting Individual Needs
- E.04 Client Fees
- E.05 Client Participation, Decision Making & Advocacy
- E.06 Involvement of Families and Friends
- E.08 Complaints
- E.11 Coordination with other services
- E.13 Cultural Awareness
- E.15 Privacy Policy
- E.16 Protection and Vulnerable Adults from Abuse and Neglect Policy; or
- E.17 Protection of Children from Abuse and Neglect Policy
- E.19 No Response From Client to Scheduled Visit policy
- G.06 Safe Home Visiting Policy & Procedure

7.0 RELATIONSHIP WITH STANDARDS

<i>Aged Care Accreditation Standards</i>	<i>Home Care Standards</i>	<i>NSW Disability Standards</i>	<i>EQulP Standards</i>
1.1, 1.2, 2.1, 2.2, 2.3, 2.4, 3.1, 3.2, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 4.1, 4.2, 4.4, 4.5, 4.6	2.1, 2.2, 2.3, 2.4, 2.5	1.1, 1.2, 1.3, 1.4, 1.4, 1.7, 1.8, 1.9, 2.1, 3.1, 4.5, 5.1,	1.1.1, 1.1.4, 1.1.5, 1.2.2

8.0 DOCUMENT CHANGES RECORD

<i>Dates of change</i>	<i>Section altered</i>	<i>Natures of changes made</i>
01/01/2005	All	First record of document
09/02/2010	All	Update format and content
25/03/2011	7.0 Relationship to Standards	Replace HACC Standards and CACP Standards with Community Care Common Standards and update to EQulP 5 Standards
27/11/2012	All Sections	Organisation name updated
28/04/2014	a) 4.1 Ensuring client risks are identified, recorded and acted upon promptly b) 4.3.2 Clients Not at Home for Scheduled Mercy	a) Change procedure as Carelink+ is now software used b) Now refers to the Policy specifically developed for these circumstances c) Now refers to the Policies specifically developed for these circumstances

	<p>Services Home-Based Services</p> <p>c) 4.3.4 A suspicion of abuse or neglect of a client</p> <p>d) 4.3.5 Correct Intervention</p> <p>e) 4.6 Documentation on missing client</p> <p>f) 4.7 Compliance and 4.8 Evaluation</p> <p>g) 7.0 Relationship to Standards</p>	<p>d) New section</p> <p>e) Section simplified and reworded</p> <p>f) New sections to Policy</p> <p>g) Replace CCC Standards with Home Care Standards. Also add Aged Care Standards</p>
07/07/2014	<p>a) 1.0 Introduction</p> <p>b) 5.0 References</p>	<p>a) Reworded to better cover the complexity of situations for people with a disability</p> <p>b) Update Codes of Ethics</p>
Review due 07/07/2017		