

CHL Open Disclosure Policy

Purpose

Mission and Values

Catholic Healthcare is a values-based, for purpose provider of quality aged and health care services. Our mission, to promote life in all its fullness, informs all that we do.

Consistent with our mission, Catholic Healthcare is enacting this Policy with the aim of promoting trust, transparency, and greater collaboration in our relationships with our residents, clients, and families. This includes, in circumstances where a person may have suffered harm, and in line with Government policy, consultation with those impacted, the rendering an apology in line with this policy where needed, and diligently working to improve practices and prevent reoccurrence.

Under the Aged Care Quality Standards, in particular Standard 6 (feedback and complaints) and Standard 8 (organisational governance), Catholic Healthcare Limited (**CHL**) is expected to demonstrate open disclosure when adverse events occur. It is intended to create an environment:

- that reduces harm to consumers.
- where consumers feel supported and are encouraged to identify and report adverse events.
- where consumers are given an opportunity to express their concerns and ask questions.
- where CHL has opportunities to find and act on things that can improve its systems.
- where CHL will explain to consumers what has happened, why it happened, what is being done to prevent it from happening again; and
- where CHL will apologise or express regret for adverse events.

Applicability / Scope

This policy applies to Residential Aged Care (including National Disability Insurance Scheme Participants) and Home and Community Services. The Australian Open Disclosure Framework, *Implementing the Australian Open Disclosure Framework* (Australian Commission on Safety and Quality in Healthcare, 2014) (the **Framework**) defines open disclosure to mean open discussion with the consumer, and their family and carer(s) about adverse events that result in harm to the consumer while receiving aged care.

The elements of open disclosure are:

- an apology or expression of regret, which should include the words “I am sorry” or “we are sorry”.
- a factual explanation of what happened.
- an opportunity for the consumer to relate their experience.
- a discussion of the potential consequences of the adverse event.
- an explanation of the steps being taken to manage the adverse event and prevent recurrence.

Open disclosure is consistent with current practices of open communication, honesty, and transparent processes.

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There are eight general principles for open disclosure adapted from the Framework.

1. Open and timely communication	If care doesn't go to plan, the consumer should be provided with information about what happened in a timely, open, and honest manner. The open disclosure process is fluid and will often involve the provision of ongoing information.
2. Acknowledgement	All adverse events should be acknowledged to the consumer as soon as practicable, and open disclosure initiated. Indemnity insurers should be notified.
3. Apology or expression of regret	As early as possible, the consumer should receive an apology or expression of regret for any harm that resulted from an adverse event. An apology or expression of regret should include the words 'I am sorry' or 'we are sorry', but must not contain speculative statements, admission of liability or apportioning of blame.
4. Supporting, and meeting the needs and expectations of consumers	The consumer can expect to be: <ul style="list-style-type: none"> • fully informed of the facts surrounding an adverse event and its consequences. • treated with empathy, respect, and consideration. • supported in a manner appropriate to their needs.
5. Supporting, and meeting the needs and expectations of those providing care	Staff should be: <ul style="list-style-type: none"> • encouraged and able to recognise and report adverse events. • prepared through training and education to participate in open disclosure. • supported through the open disclosure process.
6. Integrated clinical risk management and systems improvement	Organisations should have a process enabling the review of adverse events to prevent recurrence and facilitate learning and development to improve the quality of care provided. The information attained about incidents from open disclosure should be incorporated into these processes.
7. Good governance	Organisations should have appropriate governance and accountability. Good governance includes internal performance monitoring and feedback.
8. Confidentiality	Full consideration should be given to consumer and staff privacy and confidentiality in compliance with relevant privacy and health records legislation. This principle needs to be considered in the context of Principle 1: Open and timely communication.

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Definitions

The following definitions are adapted from the Framework.

Admission of Liability	A statement by a person that admits, or tends to admit, a person's or organisation's liability in negligence for harm or damage caused by another.
Adverse Event	An incident in which unintended harm results in a person receiving care. Note: This term is used interchangeably with 'harmful incident'. See also Harm.
Adverse Outcome	An outcome of an illness or its treatment that has not met staff or consumer expectations for improvement or cure.
Apology	An expression of sympathy or regret, or of a general sense of benevolence or compassion by an individual, group or institution for a harm or grievance. It should include the words 'I am sorry' or 'we are sorry'. An apology may also include an acknowledgment of responsibility, which is not an admission of liability. See also Admission of liability, Expression of regret.
Carer	A person who provides unpaid care and support to family members and friends who receive aged care services from CHL. Carers, include children and spouses. They do not include CHL's staff, contractors and volunteers who are employed or engaged to provide care to the Consumer.
Consumer	A person receiving care. Synonyms for consumer include 'client', 'care recipient' or 'resident'. In this document, consumers can also refer to support persons such as family members, representatives, and carers.
Continuous Improvement	The continuous study, review and adaptation of a care organisation's functions and processes to increase the probability of achieving desired outcomes and better meet the needs of consumers and other users of services.
Error	Failure to carry out a planned action as intended; or application of an incorrect plan through either doing the wrong thing (commission) or failing to do the right thing (omission) at either the planning or execution phase of care intervention.
Expression of Regret	An expression of sorrow, sympathy and (where applicable) remorse by an individual, group or institution for a harm or grievance. It should include the words "I am sorry" or "we are sorry". An expression of regret should not include an acknowledgment or apportionment of responsibility. See also Admission of liability.

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Harm	Impairment of structure or function of the body and/or any deleterious effect arising therefrom, including disease, injury, suffering, disability, and death. Harm may be physical, social, or psychological.
Harmful incident	An incident that led to consumer harm. Such incidents can either be part of the care process or occur in the care setting. An example of a harmful incident is where medication errors result in the consumer suffering adverse drug reactions.
Incident	See Adverse event.
Liability	The legal responsibility for an action.
Near miss	An error or system failure that is intercepted before reaching the consumer. It is important to ensure that harm did not occur.
No-harm incident	An error or system failure that reaches the consumer but does not result in consumer harm.
Open disclosure	An open discussion with a consumer about an incident or incidents that resulted in harm to that consumer while they were receiving aged care services. The elements of open disclosure are an apology or expression of regret (which must include the word sorry), a factual explanation of what happened, an opportunity for the consumer to relate their experience, and an explanation of the steps being taken to manage the event and prevent recurrence. Open disclosure is a discussion and an exchange of information that may take place over several meetings.
Outcome	The effect on a consumer that is wholly or partially attributable to an incident. The status of an individual, a group of people or a population that is wholly or partially attributable to an action, omission, agent (i.e., one who/which acts to produce a change) or circumstance (i.e., all factors connected with influencing an event, agent, or person).
Risk	The chance of something happening that will have an adverse effect. It is measured by the significance of its consequences and its likelihood.
Suffering:	Any subjectively unpleasant experience, such as pain, malaise, nausea, vomiting, loss, depression, isolation, agitation, anxiety, alarm, fear, grief, humiliation, or loss of autonomy.

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1 Application of Key Principles

1.1. Apology (not an admission of liability)

Under section 69 of the Civil Liability Act 2002 (NSW), in a civil proceeding, an apology by CHL or its personnel does not constitute an express or implied admission of fault or liability for the death or injury. Further, evidence of such an apology is not admissible in any civil proceeding as evidence of fault or liability of the person in connection with that matter.

However, if an apology contains factual statements, that material can be used in a civil proceeding to prove or disprove a fact.

For this reason, this policy encourages apologies to be given, as long as the apologies do not include an admission of liability.

1.2. Admission of Liability

This policy does not authorise CHL or its personnel to admit liability or pay compensation in relation to any adverse event or suggest that compensation should be paid. Under the insurance policies held by CHL, it is the insurer's right to decide whether to admit liability (including causation), pay compensation, or settle a claim made by the affected consumer.

The References include detailed examples of statements which are "apologies" and statements which are "admissions of liability". For example:

Apology with no admission of liability	Admission of liability
<ul style="list-style-type: none"> I am/we are sorry for what has occurred I am very sorry that this has happened to you I apologise for the experience you have had this incident occurred because (factual explanation of how the incident occurred) we are currently investigating exactly what caused this breakdown in the process and will inform you of the findings, and steps taken to try to prevent recurrence, as soon as we know 	<ul style="list-style-type: none"> It's all my/our/his/her fault... I am liable I apologise that my error resulted in your injury I was/we were negligent... This incident occurred because of my act/omission (or the act/omission of one of my colleagues)

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1.3. Legal Professional Privilege

During the course of investigating adverse events, CHL may need to seek legal advice. Legal advice given to CHL will usually be protected by legal professional privilege. This means that the consumer will not be entitled to see such advice in the course of court proceedings.

This policy does not authorise CHL or its personnel to waive legal professional privilege. It also does not authorise the essence of that legal advice to be disclosed to the consumer or third parties.

CHL discourages its personnel from informing consumers whether legal advice has been sought. This is not a necessary part of the open disclosure process and creates the wrong environment for open disclosure to be practised.

1.4. Defamation

When participating in open disclosure processes, consumers (or their family and carers) may be tempted to make accusations against CHL personnel. Consumers should be reminded that the objective of open disclosure is to ascertain what factually happened.

The making of unsubstantiated allegations, particularly in public, does not help this process. If the allegations or statements are untrue, CHL personnel may be defamed and may have rights to sue under defamation law. This further discourages proper participation under this open disclosure policy.

Similarly, CHL needs to take care when one member of its personnel seeks to blame another for an adverse event.

1.5. Consumer Confidentiality

Where a consumer's family or carers (who are not the consumer's legally appointed representative) wish to participate in an open disclosure process, CHL will need to be satisfied that the consumer has consented to the disclosure of the consumer's personal information to those participants, or that disclosure is otherwise authorised by law.

For example, CHL must ensure that it only persons who are authorised in accordance with the Health Records and Information Privacy Act 2002 (NSW) are able to access consumers' health information.

1.6. Access to Records Arising from this Policy

When participating in open disclosure, CHL may create reports, notes or other records. CHL and its personnel are reminded that consumers and their representatives may be entitled to access these documents through the Health Records and Information Privacy Act 2002 (NSW) or in response to a court subpoena. All documents should be limited to factual matters. They should not contain speculation or comments which CHL would not want the consumer or any other person to see. These documents should be prepared with care and use language which is respectful of all persons involved in the adverse event.

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1.7. Media Statements

This policy does not authorise CHL or its personnel to make any media statements in relation to a consumer or any adverse event. Media statements might need to be made to correct the public record in accordance with CHL's other communications policies.

2 Key Steps

The following key steps are adapted from the Australian Commission on Safety and Quality in Healthcare – The Australian Open Disclosure Framework, Implementing the Australian Open Disclosure Framework in small practices (2013).

Note that the steps below assume that the consumer (or their carers and family) have not submitted any complaint to CHL or a regulator (e.g., the Aged Care Quality & Safety Commission) or made any claim against CHL. If a complaint has been submitted, the complaint management procedure (or the regulator's procedures) should be followed in priority to this policy.

Steps		Role Responsibility
1. Incident detection	<ul style="list-style-type: none"> • Detect incidents through a variety of mechanisms. • Provide prompt care to the consumer to prevent further harm. • Assess the incident and establish facts on what occurred. • Notify relevant individuals, authorities, and organisations (e.g., insurer, Department of Health, and police for mandatory reporting incidents). 	Residential Manager Staff
2. Signalling the need for open disclosure	<ul style="list-style-type: none"> • Acknowledge the adverse event to the consumer including an apology or expression of regret. • Note any comments and observations by the consumer and answer any questions the consumer may have. • Signal the need for open disclosure. • Avoid speculation and blame. 	All CHL Staff

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Steps		Role Responsibility
3. Preparing for open disclosure	<ul style="list-style-type: none"> • Gather all necessary information. • Notify, and consult with, professional indemnity insurer (Legal). • Ensure consumer record is up to date. • Identify appropriate participants (offer the consumer an opportunity to invite a support person if appropriate). • Arrange the first meeting in consultation with the consumer (but consider deferring the meeting if open disclosure might have an adverse impact on the consumer's mental health). • Consider how practical support of the consumer for expenses and ongoing care will be addressed. • Provide support if appropriate. • Note: The scale of the response will depend on whether the adverse event is serious (e.g., caused permanent and significant harm) or whether the adverse event was a near miss or no-harm incident. 	Legal Care Excellence Regional Managers
4. Engaging in open disclosure	<ul style="list-style-type: none"> • Acknowledge the adverse event. • Provide a sincere and unprompted apology or expression regret including the words "I am sorry". • Clearly explain the incident. • Give the consumer the opportunity to provide their observations about the incident and ask questions. • Encourage the consumer to describe the personal effects of the adverse event. • Assure the consumer that they will be informed of further findings. • Discuss and agree on future actions or steps if required. • Offer practical and emotional support to the consumer. • If necessary, hold several meetings with the consumer and if they wish, their family and carers. • If further meetings are required, a plan for those meetings should be agreed upon, recorded, and signed. 	Legal Care Excellence Regional Managers Residential Manager

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Steps		Role Responsibility
5. Completing the process	<ul style="list-style-type: none"> Assure the consumer that further information and follow-up care will be provided. Invite the consumer to submit complaints to regulators. Maintain contact if the investigation is ongoing and share outcomes and practice changes with the consumer. Where relevant, reach mutual agreement with the consumer about agreed actions or steps, or offer an alternative course of action. Where relevant, provide a final written and verbal communication to consumer. Communicate any relevant information to other care providers. 	Legal Care Excellence Regional Managers Residential Manager
6. Maintaining documentation	<ul style="list-style-type: none"> Keep the consumer record up to date. Maintain a record of the open disclosure process. File documents, e.g., any notes/ letters, in the consumer record. Provide the consumer with documentation throughout the process (verify contents with indemnity insurer beforehand). 	All CHL Staff

End of Policy

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Review History

Version Number	Date of update
Version 1	18 October 2021

Reference & Related Documents

References	<p>Resources and references from the Aged Care Quality and Safety Commission, Guidance and Resources for Providers to support the Aged Care Quality Standards</p> <ul style="list-style-type: none"> Aged Care Quality and Safety Commission: Fact Sheet – Resolving concerns about aged care https://www.agedcarequality.gov.au/sites/default/files/media/acqsc_resolving-concerns-factsheet_0.pdf Australian Commission on Safety and Quality in Healthcare – The Australian Open Disclosure Framework https://www.safetyandquality.gov.au/sites/default/files/migrated/Australian-Open-Disclosure-Framework-Feb-2014.pdf Australian Commission on Safety and Quality in Healthcare – Saying sorry, A guide to apologising and expressing regret during open disclosure https://www.safetyandquality.gov.au/publications-and-resources/resource-library/australian-open-disclosure-framework-saying-sorry-guide-apologising-and-expressing-regret-during-open-disclosure Better Practice Guide to Complaint Handling in Aged Care Services https://www.agedcarequality.gov.au/resources/better-practice-guide-complaints-handling-aged-care-services Commonwealth Ombudsman Better Practice Guide to Complaint Handling https://www.ombudsman.gov.au/publications/better-practice-guides Clinical Excellence Commission (NSW): Open Disclosure Handbook https://www.cec.health.nsw.gov.au/Review-incidents/open-disclosure The National Aged Care Advocacy Program https://www.health.gov.au/initiatives-and-programs/national-aged-care-advocacy-program-nacap
Related Policies, Procedures & Guidelines	<ul style="list-style-type: none"> CHL Human Resources Systems CHL Legal and Mission Systems Incident Definitions – SharePoint Incident Management System RAC Behaviours of Concern Management Policy RAC Clinical Information Management Policy RAC Clinical Risk Management Policy RAC Continuous Quality Improvement (CQI) Policy RAC Critical Assessment Scale (CAS) A3 Poster

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	<ul style="list-style-type: none"> • RAC_Documentation and Process Map for SIRS Incident_A3 Poster • RAC_Feedback & Complaints Management Policy
Related Documents & Forms	N/A
Aged Care Quality Standards	<p>This guideline may impact on the following Aged Care Quality Standards:</p> <ul style="list-style-type: none"> • Standard 6, Requirement (3)(c) Appropriate action is taken in response to complaints and an open disclosure process is used when things go wrong. • Standard 8, Requirement (3)(e)(iii) A clinical governance framework including open disclosure.
Legislation	<p>This guideline is guided by the following legislation:</p> <ul style="list-style-type: none"> • User Rights Principles 2014: Charter of Rights and Responsibilities for both Residential Care and Residential Care. • Civil Liability Act 2002 (NSW)– section 69 (Effect of apology on liability). • Privacy Act 1988 (Cth) and Australian Privacy Principles. • <i>Health Records (Privacy and Access) Act 1997 (ACT)</i>.

Key words for search

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