

# GUIDE TO OPEN DISCLOSURE FOR MANAGERS RESPONSIBLE FOR INSURABLE RISK

## 1. Introduction:

Open disclosure is defined in the *Australian Open Disclosure Framework*<sup>1</sup> as

“an open discussion with a patient (and/or their support person(s)) about a patient safety incident which could have resulted, or did result in harm to that patient while they were receiving health care. Essential elements of open disclosure are:

- an apology
- a factual explanation of what happened
- an opportunity for the patient to relate their experience
- a discussion of the potential consequences
- an explanation of the steps being taken to manage the event and prevent recurrence.

The open disclosure process is a discussion between two parties and may include a series of discussions and exchanges of information that take place over several meetings.”

A patient safety incident is any unplanned or unintended event or circumstance which could have resulted, or did result in harm to a patient. This includes harm from an outcome of an illness or its treatment that did not meet the patient’s or the clinician’s expectation for improvement or cure<sup>2</sup>.

Following a patient safety incident, patients and families have indicated that they would like:

- a sincere apology soon after the incident which shows respect for the patient and family
- involvement of clinicians involved in the patient’s care
- involvement of a support person if the patient wants one
- opportunities to ask questions and prioritise information needed
- **offers of assistance with difficulties arising from the incident e.g. travel, temporary accommodation, meals, phone calls, parking etc.**

The [NSW Health Open Disclosure Policy PD2014\\_028](#) Section 4.6 addresses the early offer of reimbursement of out of pocket expenses to a patient who has been harmed or potentially harmed as result of a patient safety incident and/or their support persons(s).

## 2. PD2014\_028 NSW Health Open Disclosure Policy: Section 4.6 Processes for reimbursement of out-of-pocket expenses

Open disclosure is most effective if it is coupled with restorative action where appropriate. Early recognition and approval for reimbursement for out-of-pocket expenses incurred as a direct result of a patient safety incident sends a strong signal of sincerity. Evidence suggests that restorative action can be a determining factor in a person’s decision not to litigate. Practical support offered through reimbursement does not imply responsibility or liability. Out-of-pocket expenses may include, but are not limited to, accommodation, meals, travel and childcare.

Offers of reimbursement are made at the discretion of the Local Health District/Specialty Network (LHD/SN) and on a case-by-case basis. It is important to note some of these expenses may not be recoverable from Treasury Managed Fund (TMF). Reimbursement of any out-of-pocket expenses must be documented in the open disclosure records.

If the amount requested is likely to exceed \$5,000 and/or the LHD/SN intends to seek reimbursement from TMF, then the LHD/SN must contact its manager responsible for insurable risk who will liaise with TMF prior to any agreement with the patient and their support person(s) for reimbursement for out-of-pocket expenses.

<sup>1</sup> Australian Commission on Safety and Quality in Health Care (ACSQHC) *Australian Open Disclosure Framework*, Sydney, 2013

<sup>2</sup> NSW Health Open Disclosure Policy PD2014\_028

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If the patient or support person(s) requests reimbursement for a significant amount, the patient or support person(s) should be advised to put their request in writing so the LHD/SN can refer the matter to TMF. In some circumstances, the LHD/SN may assist the patient and/or their support person(s) to write to the TMF in order to initiate the reimbursement process.

### 3. Local processes to support reimbursement of out of pocket expenses

An early offer of reimbursement of out of pocket expenses as part of the open disclosure process is acknowledged by the Ministry of Health as a gesture of goodwill – a ‘small act of kindness’ – and goes part way to rebuilding the relationship of trust that has been disrupted by the patient safety incident.

An offer of reimbursement is

- independent from and not associated with a Claim for compensation which may be lodged by the patient and/or their support person
- not a direct or implied acknowledgement of liability in relation to the patient safety incident.

To support implementation of the Open Disclosure Policy, the Chief Finance Officer at the Ministry of Health has requested that each LHD/SN should have clear local processes in place to facilitate early offers of reimbursement of the immediate and/or ongoing out of pocket expenses of a patient and/or their support person(s).

Points to consider for local processes include<sup>3</sup>:

- Nominating key contact people in each LHD/SN who are able to advise on and facilitate the reimbursement process
- Establishing clear lines of delegation/responsibility at site level in relation to authorising out of pocket expenses
- Linking the reimbursement process to the patient’s identification number and the incident identification number
- Requiring any requests for reimbursement to be accompanied by a receipt or statutory declaration
- Facilitating the tracking of expenses by providing a Purchasing card (P Card)<sup>4</sup> or debit card with a pre-set limit. *(A policy is in development for the use of a new Health Credit card called the Purchase Card (P card))*
- Ensuring local staff are aware of the processes in place for reimbursement, through education and training.

### 4. Roles and Responsibilities

**The Open Disclosure Coordinator** has responsibility for:

- being aware of local facility or LHD/SN delegations of authority for making an offer of reimbursement of out of pocket expenses
- advising the open disclosure team leader of local processes for offers of reimbursement when preparing for the formal open disclosure discussion
- ensuring the Manager responsible for insurable risk is notified when an offer of reimbursement has been made, the amount offered and the what the response from the patient/support person was.

<sup>3</sup> Open Disclosure Handbook, Clinical Excellence Commission 2014

<sup>4</sup> NSW Treasury Circular 11/15 13 December 2011

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**Clinical staff and senior managers** who may be the lead in formal open disclosure discussions with a patient and/or their support person have responsibility for:

- seeking advice from the open disclosure coordinator or facility/executive management on the local delegations of authority for making an offer of reimbursement
- recording in the Summary of the open disclosure discussion that an offer of reimbursement was made
- providing any evidence to support a request for reimbursement, e.g. receipts, to the manager responsible for insurable risk

**The manager responsible for insurable risk** has responsibility for:

- being aware of local facility or LHD/SN processes and delegations of authority for making an offer of reimbursement of out of pocket expenses as part of open disclosure
- advising clinical staff and senior managers on the process for lodging a notification to TMF if the patient and/or their support person are seeking reimbursement of an excess amount OR wish to lodge a claim.
- facilitating notification to TMF where appropriate

## 5. When reimbursement of out of pocket expenses is not appropriate

Offers of reimbursement are for those out of pocket expenses incurred by a patient and/or their support persons as a direct result of a patient safety incident. Offers of reimbursement are made at the discretion of the Local Health District/Specialty Network (LHD/SN) and on a case-by-case basis.

### Expenses incurred as a result of the incident but not related to the disclosure process

Patients and/or their support person(s) may ask about expenses incurred because of the patient safety incident that are not related to out of pocket expenses, such as those related to funeral costs, long term placement, continuing care expenses or expenses not covered by an insurance program. Health Services should anticipate these types of questions and be prepared to respond with appropriate information.

### Requests for reimbursement of expenses not associated with a patient safety incident

Consideration of requests for reimbursement of expenses not associated with a patient safety incident should be at the discretion of the LHD/SN and according to local processes. For example, the health service has lost an item belonging to a patient, or a visitor to the site sustains an injury and seeks reimbursement of medical costs for treatment.

## 6. For further information:

For further information about the process for reimbursement of out of pocket expenses associated with open disclosure, please contact the manager who has responsibility for insurable risk in your local health district/specialty network.

Name:

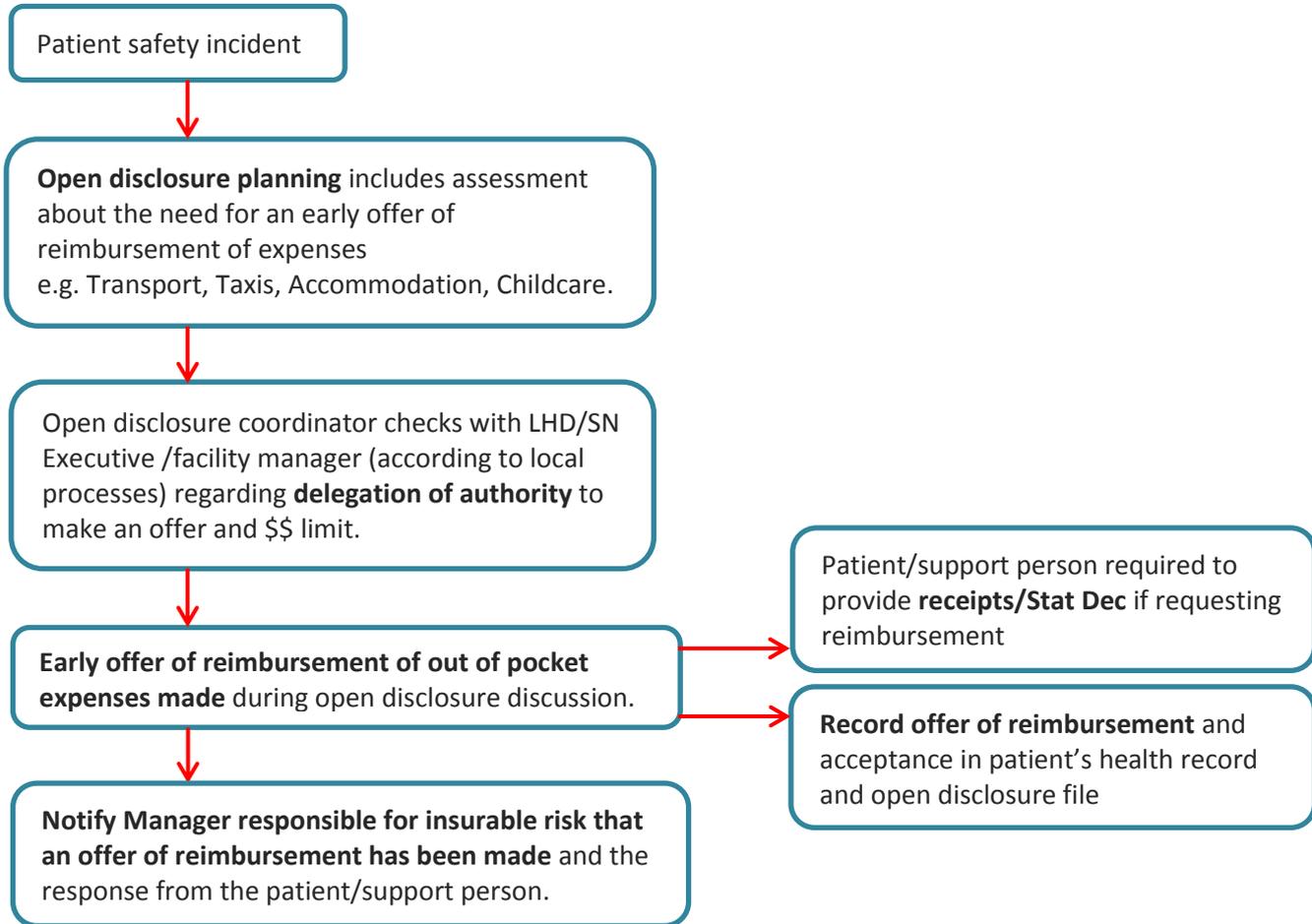
Email:

Phone:

For further information about open disclosure in NSW Health Services, please see [www.cec.health.nsw.gov.au/programs/open-disclosure](http://www.cec.health.nsw.gov.au/programs/open-disclosure)

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## PROCESSES FOR REIMBURSEMENT OF OUT OF POCKET EXPENSES



### Important points to consider:

- The reimbursement process must be timely and must not delay open disclosure discussions
- **If the amount requested is likely to exceed \$5,000 and/or the LHD/SN intends to seek reimbursement from TMF**, evidence to support this assessment must be collected. Examples include receipts or documentation of discussions held about what has been offered and or provided.
- The LHD/SN may contact its manager responsible for insurable risk to commence the TMF claims lodgement process. The evidence gathered will be used to support the submission.
- **If the patient or support person(s) requests reimbursement for a significant amount**, they should be advised to put their request in writing so the LHD/SN can refer the matter to TMF. In some circumstances, the LHD/SN may assist the patient and/or their support person(s) to write to the TMF in order to initiate the reimbursement process.
- If and when there is an indication for a claim, the open disclosure coordinator must consult with the manager for insurable risk. e.g. When it is evident that patient will require ongoing treatment and or care as a result of the patient safety incident or when the patient / family have indicated that they intend to seek legal advice and or lodge a claim.