

## Assumption of Care Order by Community Services on Health Premises

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**Functional Sub group** Clinical/ Patient Services - Baby and child  
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**Summary** The Policy and Protocol for Health Staff When Assumption of Care by Community Services Officers Occurs on Health Premises outlines processes agreed between NSW Health and NSW Department of Family and Community Services, Community Services. Community Services can assume care of a child or young person suspected to be at significant risk of harm if they are satisfied it is not in their best interests to be removed from the hospital or other premises by their parents. This Protocol is to ensure that Assumption of Care occurs in a way that the safety and wellbeing of the child or young person, parents/carers and staff is maximised.

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**Applies to** Local Health Districts, Speciality Network Governed Statutory Health Corporations, Board Governed Statutory Health Corporations, Chief Executive Governed Statutory Health Corporations, Affiliated Health Organisations, Community Health Centres, Dental Schools and Clinics, Government Medical Officers, NSW Ambulance Service, Public Hospitals

**Audience** All Staff

**Distributed to** Public Health System, Divisions of General Practice, Government Medical Officers, Health Associations Unions, NSW Ambulance Service, Ministry of Health, Private Hospitals and Day Procedure Centres

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**Director-General**

This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is **mandatory** for NSW Health and is a condition of subsidy for public health organisations.

## ASSUMPTION OF CARE RESPONSIBILITY OF A CHILD OR YOUNG PERSON BY COMMUNITY SERVICES ON HEALTH PREMISES

### PURPOSE

The policy provides the Protocol to be followed by NSW Health staff when the Chief Executive, Department of Family and Community Services, Community Services (CS) assumes care responsibility of a child or young person on NSW Health premises.

Section 44 of the *Children and Young Persons (Care and Protection) Act 1998* provides for the assumption of care responsibility of a child or young person (0-17 years) on hospital or other premises where CS suspects on reasonable grounds that a child (including a newborn child) or young person is at risk of serious harm and is satisfied that it is not in the best interests of the child or young person to be removed from the hospital or other premises by their parents/carers.

Health workers have no legal authority to detain a child or young person. CS does have the statutory authority to assume care responsibility and protection of a child or young person in hospital or any other premises under an order issued pursuant to section 44 of the *Children and Young Persons (Care and Protection) Act 1998*.

A care order is made in writing and is served on the person who appears to be in charge of the Health premises, such as the Facility Manager, After Hours Facility Manager, Nursing Unit Manager or Maternity Unit Manager. Care orders signed by the Chief Executive of CS (or his or her delegate) may include an emergency care and protection order, an examination and assessment order or any other care order.

### MANDATORY REQUIREMENTS

The NSW Health staff member in charge of the premises will:

1. Make preparations to ensure that Assumption of Care Orders are served in an environment that maximises safety for the child or young person, parent(s)/ carer(s) and staff.

This may include if available and appropriate moving to a more secure location within the Health premises. It is not the responsibility of Health staff to remove the child or young person to a location outside the Health premises or to facilitate the removal of a child or young person.

2. Provide a safe and secure environment for the child or young person, parent(s)/ carer(s) and staff in accordance with NSW Health Policy Directive *PD2005\_339 Protecting People/Property: NSW Health Policy/Guidelines for Security Risk Management in Health Facilities* and Local Health District security procedures.
3. Provide ongoing health care and treatment for the child or young person, as necessary, from the time the Assumption of Care Order takes effect until CS removes the child or young person from the Health premises.

NSW Health recognises that it may take some time for CS to arrange alternate care for the child or young person. The need for a period longer than 3 days is to be negotiated between the senior staff of Health and CS.

## IMPLEMENTATION

Local Health District Chief Executives are to ensure that this policy directive is implemented in accordance with the *“Protocol for NSW Health Staff when an Assumption of Care Order of a Child or Young Person by Community Services Occurs on NSW Health Premises”*. Any local protocols in place must be consistent with the principles contained in this Protocol. (Sections 3.1 – 3.5)

## REVISION HISTORY

Version	Approved by	Amendment notes
October 2011 (PD2011_065)	Deputy Director-General Strategic Development	New policy

## ATTACHMENTS

1. Protocol for Health Staff when an Assumption of a Care Order for a Child or Young Person by Community Services occurs on Health Premises.

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## PROTOCOL FOR HEALTH STAFF WHEN AN ASSUMPTION OF CARE ORDER FOR A CHILD OR YOUNG PERSON BY COMMUNITY SERVICES OCCURS ON HEALTH PREMISES

### 1 INTRODUCTION

- 1.1 This document describes the Assumption of Care Order, outlines the principles to guide NSW Health response actions and the roles and responsibilities and processes to be followed by Health staff when the Department of Family and Community Services, Community Services (CS) assumes the care responsibility of a child or young person on NSW Health premises under section 44 of the *Children and Young Persons (Care and Protection) Act 1998* (the Act).
- 1.2 An Assumption of Care Order may be issued where CS suspects, on reasonable grounds, that the child or young person is at risk of serious harm and is satisfied that it is not in the best interests of the child or young person to be removed from the Health premises by their parent(s)/carer(s). In these circumstances the Chief Executive CS may assume the care responsibility of a child or young person by means of an order in writing served on the person who can reasonably be assumed to be in charge of the Health premises at the time.

### 2 ASSUMPTION OF CARE ORDER

- 2.1 An Assumption of Care Order:
- i. Must be served in writing on the person whom the Chief Executive of CS or his/her delegate (usually a caseworker) determines to be in charge of the NSW Health premises at the time the order will be served (e.g. health premises manager/after hours manager/nursing unit manager);
  - ii. Must specify the child or young person for whom the order is made; and
  - iii. Must specify the premises on which the child or young person is located at the time of serving the order.
- 2.1.1 The following conditions apply once an Assumption of Care Order has been served:
- i. Legal care responsibility for the child or young person is removed from his or her parent(s)/carer(s) and given to CS pending care proceedings in the Children's Court;
  - ii. It is unlawful for the parent(s)/carer(s) to remove the child or young person from the premises specified in the order without the consent of CS. Any attempt to remove the child or young person from the premises may constitute an offence under section 229 of the Act.

### 3 PRINCIPLES TO GUIDE NSW HEALTH RESPONSE ACTIONS

- 3.1 NSW Health has a strong commitment to ensuring the safety, welfare and wellbeing of children and young people. The provision of universal and targeted health services to children, young people and their families and carers is essential to ensure the wellbeing and protection of all children and young people in NSW.
- 3.2 The reforms to the NSW Child Protection system under *Keep Them Safe: A Shared Approach to Child Wellbeing 2009 – 2014* provide an important step towards an integrated system that is concerned both with child safety and the promotion of child wellbeing.
- 3.3 Central to these reforms is the understanding that child wellbeing and child protection is a collective or shared responsibility. All stakeholders – government, non-government, community, families and parents/carers are expected to work together to support vulnerable children and young people.
- 3.4 Child protection and wellbeing is a whole of government responsibility and changes to legislation and the *Keep Them Safe* reforms have changed the way that child abuse and neglect concerns are reported and responded to in NSW. NSW Health plays an important role in this system collaborating with other government and non government agencies to ensure that vulnerable families are provided with appropriate supports earlier, to prevent children and young people requiring a statutory child protection intervention.
- 3.5 All Health workers have a responsibility to recognise and respond to wellbeing concerns and where appropriate provide services for those children, young people and their families. Health workers are also required to identify and report children in need of care and protection.

### 4 NSW HEALTH ROLES AND RESPONSIBILITIES

#### Local Health Districts:

- 4.1 The factors leading to a decision by CS to assume care responsibility of a child (including a new born child) or young person are most often complex. A range of reactions can be expected from the child or young person and/or the child or young person's parent(s)/carer(s) to an impending or served Assumption of Care Order. Safety and security of children, young people, carers and health workers are paramount in all situations.
- 4.2 Children and Adolescents – Safety and Security in NSW Acute Health Facilities PD2010\_033 also provides policy direction to assist the development of local

policies/procedures by Local Health Districts to address the safety and security of children (including new born children) and young people whilst in NSW Health acute facilities.

**The Person in charge of the Health premises will:**

- 4.3 Accept all reasonable direction by CS in relation to the care of the child or young person and/or contact between the child or young person and his or her parent(s)/carer(s). This may include, resources permitting, a direction from CS that the parent(s)/carer(s) are to have limited or no contact for an interim period until the matter is brought before a magistrate and interim orders are obtained. Contact by the parent(s)/carer(s) is dependent on CS being satisfied that issues of safety, welfare and wellbeing are adequately addressed.
- 4.3 Have local procedures in place to address how the Health premises will comply with Assumption of Care Orders. These should take into account the specific circumstances of the case such as the child or young person, their state of health, age, breastfeeding/feeding arrangements for a newborn child, attitude of parent(s)/carer(s), other family members, nature of the premises, its isolation and staffing levels and levels of risk arising in the case.
- 4.4 Provide procedures for appropriate cultural responses for the protection and safety of Aboriginal children where assumption of care responsibility involves Aboriginal children and parent(s)/carer(s). In the absence of an Aboriginal Health Unit in the Local Health District, contact should be made with the Centre for Aboriginal Health at the Ministry of Health for advice on development of procedures.
- 4.5 Provide access, if required, to a Multicultural Care Interpreter in accordance with PD2006\_053 Interpreters – Standard Procedures for Working with Health Care Interpreters.
- 4.6 Involve Local Health District security staff, where available and appropriate, to ensure the protection of Health staff. Security staff are to be guided by existing Local Health District security policies and procedures.
- 4.7 Place a copy of the Assumption of Care Order in the child or young person's Health Record and document information identified at 5.5 in this protocol.

**Prior to the Assumption of Care Order being served Health staff will:**

- 4.8 Make preparations to ensure that the Assumption of Care Order may be served in an environment that maximises the safety and wellbeing of the child or young person, parent(s)/carer(s) and staff. This may include arranging a private location within the Health premises for CS to serve the order on the parent(s)/carer(s); arranging for Health staff such as a social worker, Aboriginal health worker or multi-cultural care interpreter to be present where appropriate and possible; and organising appropriate security procedures if required.

- 4.9 Make all reasonable efforts to retain a child or young person on the Health premises prior to CS arrival to serve the Assumption of Care Order. Where a parent plans/attempts to remove the child or young person from the Health premises, Health staff must immediately contact CS:
- i. If a CS officer is not expected to arrive for some time and it would be difficult to keep the child or young person on the Health premises, Health staff should ask the CS officer for advice about managing the situation.
  - ii. If there are concerns about the immediate safety of the child or young person or a Health worker, Local Health District security procedures are to be applied.
- 4.10 Where a parent/carer removes the child or young person from the Health premises, Health staff must immediately report the child or young person to the Child Protection Helpline Number (13 3627) and as a 'Missing Person' to the NSW Police Force. Health staff cannot prevent parent(s)/carer(s) from removing the child or young person from the Health premises even if this is contrary to medical advice.
- 4.11 Where the child or young person leaves the Health premises voluntarily or otherwise, Health staff must immediately inform the Child Protection Helpline Number (13 3627) and also contact the NSW Police Force in accordance with Local Health District procedures regarding absconding children and young people.
- 4.12 Provide ongoing health care and treatment for the child or young person, as may be necessary, from the time an Assumption of Care Order takes effect until CS removes the child or young person to other premises.
- 4.13 Provide ongoing health care and treatment to the parent(s)/carer(s) and/or other family members, if appropriate.

**Following the Assumption of Care order being served Health staff will:**

- 4.14 Maintain a child or young person on Health premises, and provide a safe environment for the child or young person, parent(s)/carer(s) and staff. This may include, if available and appropriate, moving to a more secure location within the NSW Health premises.
- 4.15 At all times exchange information with CS as necessary to ensure proper actions and compliance in relation to the Assumption of Care Order given the circumstances of each case, including known risks of harm or the need for an interpreter.

**NSW Health does not have responsibility to:**

- 4.16 Remove the child or young person to a location outside the NSW Health premises.
- 4.17 Continue to admit, without clinical justification, a child or young person as a patient for a lengthy period of time. The periods of time should not exceed:
  - i) 24 hours for CS to serve an Assumption of Care Order; and
  - ii) Three days following the serving of the order to allow CS to arrange alternate care. Retaining a child or young person, who is the subject of an assumption of care order beyond three days should be negotiated between the Health premises manager and a senior staff member of CS.

**PROCESS FOR SERVING ASSUMPTION OF CARE ORDERS**

- 5.1 CS will determine if a child or young person is at risk of serious harm and whether or not it is in the best interests of the child or young person to be removed from the Health premises in which he or she is currently located.
- 5.2 CS will inform the person in charge of the NSW Health premises by telephone that a CS worker will attend the facility to assume the care responsibility of the child or young person, and the time and place that the CS worker will serve the Assumption of Care Order including:
  - The decision to assume responsibility and the reasons for this decision;
  - The effects of the order;
  - The time and place for serving the Assumption of Care Order;
  - Any special provisions relating to contact between the parent(s)/carer and the child or young person;
  - Any safety issues for the child or young person, hospital staff and/or other patients; and
  - Name and contact numbers of CS staff who can provide information to the parent(s)/carer(s) and health staff. (In some cases the person who calls to notify of the intention to serve an Assumption of Care Order may be different to the person who will have continued carriage of the matter. For example, the Child Protection Helpline may arrange assumption of but the Community Service Centre may be responsible for follow-up actions.)
- 5.3 The person in charge of the Health premises will advise CS of any arrangements the Health facility will make to ensure the safety and wellbeing of the child or young person, parent(s) and staff during the assumption of care, such as the provision if available and appropriate, of a private location on health premises and appropriate staff.
- 5.4 The CS Caseworker will attend the Health facility at the agreed time to serve the signed Assumption of Care Order in person on the person in charge of the Health premises, and:

- Provide a copy of the order to the parent(s)/carer(s) and the child (if 10 years or over) or young person;
- Inform all parties including the person in charge of the Health premises, parent(s)/carer(s) and child or young person of the effects of the order. The information presented to the child or young person must be in a manner appropriate for their age and developmental capacity, particularly where the child is aged under 10 years;
- Provide all parties with their contact details and information sheets *Information for parents and carers: When your child is removed from your care* to parent(s) and “*Information for children and young people: When you can’t stay with your parents*” to the child (if aged 10 years or over) or young person;
- Advise the parent(s)/carer(s) and the child (if aged 10 years or over) or young person of the right to apply to the Chief Executive of CS for the discharge of the child or young person from the Chief Executive’s care; and
- Advise the child (if aged 10 years or over) or young person that he or she may choose to contact any person and ensure that he or she is given a reasonable opportunity and appropriate assistance to do so.
- Assume care responsibility for the child or young person in accordance with an Assumption of Care Order pending care proceedings in the Children’s Court.
- Attempt to locate the child or young person’s parent(s)/carer(s) as soon as practicable if they are not present at the time the order is served.
- Advise the child or young person’s parent(s)/carer(s) or the child or young person if they are of an age where this is appropriate, that an Assumption of Care Order has been served on the Health premises and explain to the parent(s)/carer(s)/child or young person, that the child or young person is under the care responsibility of the Chief Executive CS, the effects of this order; and advise the person in charge of the Health premises that this has occurred.
- Make any decision in regard to the child or young person that can be classified as an everyday decision, such as removing the child or young person to another premises or consenting to medical or dental treatment. (Note that consent is not required for medical or dental treatment involving surgery that a medical practitioner or dentist certifies in writing is required as a matter of urgency in the child or young person’s best interest.)

5.5 The person in charge of the Health premises will place a copy of the Assumption of Care Order in the child or young person’s Health Record, and document the following information:

- That the Assumption of Care Order was served, the time and date this was done and by whom (include the CS worker’s name and CS office);
- The contact name and details for any further action or issue in relation the matter;

- That the parent(s)/carer(s) and child or young person have been informed of the order and its effects, the time and date this was done and by whom;
- If interpreter services were organised;
- That protocols regarding the care and treatment of Aboriginal children and young people were followed;
- Any special provisions or instructions from CS, such as conditions regarding parental/carer contact with the child or young person;
- Any observations, including remarks made by the parent(s)/carer(s), that give them cause to be concerned for the safety, welfare and wellbeing of the child or young person. This information must also be provided immediately to CS; and
- The manager of a maternity unit must also document the above information in the mother's Health Record.

5.6 CS must apply to the Children's Court at the first available opportunity, but no later than 72 hours after the removal or assumption of care responsibility for one or more of the following:

- An Emergency Care and Protection order;
- An Examination and Assessment order; and/or
- Any other care order under Chapter 5 of the Act.

If no care application is made, CS must explain the reason to the Children's Court at the first available opportunity.

## 5 GLOSSARY

### **The Act**

The *Children and Young Persons (Care and Protection) Act 1998*

### **Care Responsibility**

Authority to exercise the functions specified in section 157 of the Act.

### **Child**

A person who is under the age of 16 years, as per section 3 of the Act. This includes a newborn child.

### **Health Premises**

Any public hospital or non-inpatient public health facility in NSW such as Accident and Emergency Departments, Mental Health Centres and Community Health Centres.

### **Parent or Carer**

A person who has parental responsibility for a child or young person.

### **Parental Responsibility**

All duties, powers, responsibilities and authority that parents have by law in relation to their children.

### **Person in Charge of NSW Health Premises**

The person in charge of the health service, or their delegate, in which the child or young person is located at the time Community Services serves the Assumption of Care Order. There is some variation between hospitals statewide, but this will usually be the Nurse Unit Manager (NUM), Maternity Unit Manager (MUM), Nurse in Charge or After Hours Director of Nursing (ADON) who is in charge of a hospital ward. It can also be the shift manager of a non-inpatient health service or facility.

### **Young Person**

A person who is aged 16 years or above but who is under the age of 18 years, as per section 3 of the Act.