Restrictive Practices and Restraints

Legislation update

Following the **Royal Commission into Aged Care Quality and Safety**, the Aged Care and Other Legislation Amendment (Royal Commission Response No.1) Bill 2021 was introduced into Parliament on 27 May 2021, making changes to current aged care legislation.

This legislation amends the **Aged Care Act 1997** to insert a definition of 'restrictive practice' and provide for the **Quality of Care Principles** to specify certain requirements in relation to the use of a restrictive practice.

We have summarised the key changes below. For further information, please refer to the Regulatory Bulletin provided by the Aged Care Quality and Safety Commission.

Schedule 1 of these legislative amendments will be coming into effect from **1 July 2021**. This will require providers to satisfy a number of conditions *before* and *during* the use of any restrictive practice, including:

- Documenting the **alternatives** to restrictive practices that have been considered and used, and why they have not been successful.
- Having a clinical governance framework in place to minimise the use of restrictive practices. Where a restrictive practice is used, this framework must ensure that **informed consent** for the restrictive practice has been obtained from the consumer or the **restrictive practices substitute decision maker** (*see definition below*).
- Where any restrictive practices are used, the consumer must be regularly **monitored** for signs of distress or harm, side effects and adverse events, changes in wellbeing, as well as independent functions or ability to undertake activities of daily living.
- The use of the restrictive practice must be **regularly reviewed** by the provider with a view to removing it as soon as possible or practicable.

Other key changes include:

- An updated definition of **restrictive practice**, including practices or interventions that are considered restrictive practices, i.e. **chemical restraint, environmental restraint, mechanical restraint, physical restraint** and **seclusion** *(see definitions below).*
- The inclusion of the term **restrictive practices substitute decision-maker,** i.e. a person or body that, under the law of the State or Territory in which the care recipient is provided with aged care, can give informed consent to:

  (a) the use of the restrictive practice in relation to the care recipient; and

  (b) if the restrictive practice is chemical restraint—the prescribing of medication for the purpose of using the chemical restraint;

  if the care recipient lacks the capacity to give that consent.

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Schedule 2 of these legislative amendments will be coming into effect from **1 September 2021**. This will require providers to have a **behaviour support plan** in place for every consumer who exhibits behaviours of concern or changed behaviours, or who has restrictive practices considered, applied or used as part of their care.

Other key changes include:

- Substituting the term *care and services plan* for **behaviour support plan**
- Updating guidance on the:
    - **Responsibilities** relating to behaviour support plans
    - Matters to be set out in behaviour support plans, including:
        - **Alternative strategies** for addressing behaviours of concern
        - If the use of restrictive practice is **assessed as necessary**, how it will be monitored and reviewed
        - That **consent** has been provided, regarding the use of the restrictive practice
        - If restrictive practice is used, outlining **when** it commenced, the **duration** and **frequency** of its use, the **outcome** of its use and whether the intended outcome was achieved
        - If the need for **ongoing use** of restrictive practice is indicated, how it will be monitored and reviewed, including the consultation process involved
    - Reviewing and revising of behaviour support plans
    - Consulting on behaviour support plans

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When can a restrictive practice be used?

The **Quality of Care Principles** outline requirements that apply to the use of any restrictive practice in relation to a care recipient.

- The restrictive practice is used only:
  - as a **last resort** to prevent harm to the care recipient or other persons; and
  - after consideration of the **likely impact** of the use of the restrictive practice on the care recipient;
- wherever possible, **best practice alternative strategies** have been used before the restrictive practice is used;
- the alternative strategies that have been considered or used have been **documented**;
- the restrictive practice is used only to the extent that it is **necessary** and in proportion to the **risk of harm** to the care recipient or other persons;
- the restrictive practice is used in the **least restrictive form**, and for the **shortest time**~~,~~ necessary to prevent harm to the care recipient or other persons;
- **informed consent** of the use of the restrictive practice has been given by:
  - the care recipient; or
  - if the care recipient lacks the capacity to give that consent, the restrictive practices substitute decision-maker;
- the use of the restrictive practice **complies** with any relevant provisions of the **care and services plan** for the care recipient (or Behaviour Support Plan after 1 September 2021);
- the use of the restrictive practice **complies** with the Aged Care Quality Standards set out in Schedule 2;
- the use of the restrictive practice is **not inconsistent** with the Charter of Aged Care Rights set out in Schedule 1 to the User Rights Principles 2014;
- the use of the restrictive practice meets the **requirements (if any) of the law** of the State or Territory in which the restrictive practice is used.

Use of restrictive practices in an emergency

- The **Quality of Care Principles** enable the **temporary use** of restrictive practices in the event of an **emergency** without regard to some of the requirements listed above, including the provision of the consumer's, or their substitute decision maker's, consent.
- The exemption from requirements, as outlined in the Principles, is intended to ensure that a provider can appropriately and rapidly respond to an emergency to ensure the protection of a consumer or other person from immediate harm.

For further information, please refer to the ACQSC's Regulatory Bulletin.

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Schedule 1 – Practice or interventions that are restrictive practices

A **restrictive practice** is any practice or intervention that has the effect of restricting the rights or freedom of movement of the care recipient.

Chemical restraint	A practice or intervention that is, or that involves, the use of medication or a chemical substance for the primary purpose of influencing a care recipient's behaviour. It does not include the use of medication prescribed for the treatment of, or to enable the treatment of, a diagnosed mental disorder, physical illness or condition or end of life care, for a care recipient. Examples of chemical restraint are administration of any medication (including prescribed, PRN and over the counter medication) to a care recipient, which influences, moderates or controls their behaviour.
Environmental restraint	A practice or intervention that restricts, or that involves restricting, a care recipient's free access to all parts of the care recipient's environment (including items and activities) for the primary purpose of influencing the care recipient's behaviour. Examples of environmental restraint are restricting a care recipient's access to an outside space, removing or restricting access to an activity or outside, or limiting or removing access to a wanted item, such as a walking frame, by putting it out of reach.
Mechanical restraint	A practice or intervention that is, or that involves, the use of a device to prevent, restrict or subdue a care recipient's movement, for the primary purpose of influencing the care recipient's behaviour. It does not include the use of a device for therapeutic or non-behavioural purposes in relation to the care recipient. Examples of mechanical restraint include use of a lap belt or princess chair, bed rails, low beds or use of clothing which limits movement and is unable to be removed by the consumer.
Physical restraint	A practice or intervention that is, or involves the use of, physical force to prevent, restrict or subdue movement of a care recipient's body, or part of a care recipient's body, for the primary purpose of influencing the care recipient's behaviour. It does not include the use of a hands-on technique in a reflexive way to guide or redirect the care recipient away from potential harm or injury, if it is consistent with what could reasonably be considered to be the exercise of care towards the care recipient. Examples of physical restraint are physically holding a care recipient in a specific position to enable personal care issues such as showering to be attended to, pinning a care recipient down, or physically moving a care recipient to stop them moving into a specified area where they may wish to go.

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Seclusion	A practice or intervention that is, or that involves, the solitary confinement of a care recipient in a room or a physical space at any hour of the day or night, where voluntary exit is prevented or not facilitated, or it is implied that voluntary exit is not permitted, for the primary purpose of influencing the care recipient's behaviour. Examples of seclusion are placing a care recipient alone in a space or room from which they cannot exit, including in a space by themselves where their access to a call bell or walker is limited, or imposing a 'time out'.

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Schedule 2 – Behaviour Support Plans

If behavioural support is required as part of the care of a care recipient, a **behaviour support plan** must be included in their care and services plan.

The behaviour support plan must include:

- Information about the care recipient that helps the approved provider to **understand** the care recipient and the care recipient's behaviour (such as information about the care recipient's **past experience** and **background**)
- Any **assessment** of the care recipient that is relevant to understanding the care recipient's behaviour
- Information about **behaviours of concern** for which the care recipient may need support
- The following information about each **occurrence of behaviours** of concern for which the care recipient has needed support:
    - The **date, time** and **duration** of the occurrence
    - Any **adverse consequences** for the care recipient or other persons
    - Any related **incidents**
    - Any **warning signs**, **triggers** or **causes** of the occurrence (including trauma, injury, illness or unmet needs such as pain, boredom or loneliness)
    - **Alternative strategies** for addressing the behaviours of concern that are best practice alternatives to the use of restrictive practices, taking into account the care recipient's **preferences** (including preferences in relation to care delivery), matters that might be **meaningful** or of interest to the care recipient and aim to improve the care recipient's **quality of life** and **engagement**
    - Any **alternative strategies** that have been considered for use, or have been used, in relation to the care recipient
    - For any alternative strategy that has been used in relation to the care recipient:
        - the **effectiveness** of the strategy in addressing the behaviours of concern
        - records of the **monitoring** and **evaluation** of the strategies
    - A description of the approved provider's **consultation** about the use of alternative strategies in relation to the care recipient with the care recipient or the care recipient's representative

Source: Department of Health