Regulatory Bulletin

Regulation of restrictive practices and the role of the Senior Practitioner, Restrictive Practices

RB 2021-13

From 1 July 2021, approved providers have updated and specific responsibilities under the *Aged Care Act 1997* (the Aged Care Act) and the *Quality of Care Principles 2014* (the Principles) relating to the use of any restrictive practice in residential aged care and short-term restorative care in a residential care setting.

The Aged Care Quality and Safety Commission (the Commission) continues to monitor providers' use of restrictive practices through complaint handling processes, responding to notifications made under the Serious Incident Response Scheme, and as part of quality assessment and monitoring activities, including accreditation.

During these processes, Commission officers seek evidence of the actions taken by providers to minimise the use of restrictive practices, and where a restrictive practice is used, to ensure that it is in accordance with legislative obligations. This evidence is gathered through observation, reviewing records of care, interviews with consumers and their representatives, and enquiries of management, staff, health professionals and others at the service.

This Regulatory Bulletin outlines the requirements that must be met before and during the use of any restrictive practice and the resources to support providers to meet these requirements. It outlines how the Commission will monitor compliance and manage any identified non-compliance with these requirements, as well as a provider's performance against the Aged Care Quality Standards (Quality Standards).

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Information in this bulletin applies to:

All residential aged care services and flexible care services through which short-term restorative care is provided in a residential care setting.

Attachment: N/A

Notes

This Regulatory Bulletin includes:

- revised legislative requirements for use of restrictive practices, including new and revised definitions of types of restrictive practices
- introduction of a Restrictive Practices Compliance Notice and potential for civil penalties
- reference to requirement to develop Behaviour Support Plans for consumers to be in place for 1 September 2021
- reference to the role of the Senior Practitioner, Restrictive Practices
- reference to risk based monitoring of providers' performance against the Quality of Care Principles and Quality Standards; and
- links to the restrictive practices and consent resources available on the Commission website.

To be reviewed: 31 December 2022

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In this Bulletin:

- **Provider** means both approved provider of residential aged care services and approved provider of flexible care services through which short-term restorative care is provided in a residential setting.
- **Approved health practitioner** means a medical practitioner, nurse practitioner or registered nurse.
- **Behaviour Support Plan** refers to a plan for a consumer, made in accordance with the Principles, that sets out information regarding any changed behaviours (also known as 'behaviours of concern') for that consumer, including all alternative strategies which have been tried prior to the use of any restrictive practice for that consumer. The Principles set out the responsibilities of the provider relating to Behaviour Support Plans, including assessments and documentation which should be prepared and included.
- **Care and services plan** refers to the care and services plan required by the Quality Standards.
- **Informed consent** means the consumer, or a substitute decision maker, has been provided with all relevant information regarding a practice, including the use of any restrictive practice, in order to make a decision about its use, has agreed to its use and this consent is documented.
- **The Principles** refers to the Quality of Care Principles 2014.
- **Restrictive practices** mean any practice or intervention that has the effect of restricting the rights or freedom of movement of the care recipient.
- **Restrictive practices substitute decision maker** means a person or body, under the law of the state or territory in which the care recipient is provided with aged care, who can give informed consent to the use of the restrictive practice in relation to the care recipient and, 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.

Refer to the Commission's glossary for definitions of key terms.

Key points

- The Commission's focus continues to be on ensuring that risks to consumers' safety, health and well-being through the use of restrictive practices are minimised, and consumers are treated with dignity and respect.
- Restrictive practices must only be used as a last resort and in the least restrictive form.
- The Principles require providers to satisfy a number of conditions before and during the use of any restrictive practice.

- From 1 July 2021, restrictive practices must only be used where the provider has documented changed behaviours (or behaviours of concern) for the consumer, where these changed behaviours have been assessed by an approved health practitioner who has day to day knowledge of the consumer, or a behaviour support specialist, alternative strategies have been used prior to the use of any restrictive practice, and consent to the use of any restrictive practice if required. This process builds on existing strategies a provider should already have in place under the Principles (as expired on 30 June 2021).
- The provider is required to document the alternatives to restrictive practices that have been considered and used, and why they have not been successful.
- The provider is required to have a clinical governance framework in place to minimise the use of restrictive practices. The Commission expects that where a restrictive practice is used, such a framework will ensure that informed consent for the restrictive practice has been obtained from the consumer or their restrictive practices substitute decision maker.
- 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 (ADLs).
- 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.
- From 1 September 2021, providers are required under the Principles 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. The Behaviour Support Plan forms part of the care and services plan, and does not replace it.
- The Commission may issue a Restrictive Practices Compliance Notice where a provider is not, or may not be, complying with its responsibilities on the use of restrictive practice. The Commission's existing regulatory powers to respond to non-compliance also continue to apply and are detailed in the Commission's Compliance and Enforcement Policy.
- Providers should familiarise themselves with the amended requirements in the Aged Care Act and Principles.

Aged Care Act 1997

Providers have responsibilities under section 54-1(1)(f) of the Aged Care Act to ensure a restrictive practice is only used in the circumstances set out in the Quality of Care Principles 2014.

Quality of Care Principles 2014

Part 4A of the Principles:

- provides that certain practices or interventions are restrictive practices
- sets out circumstances for the use of restrictive practices
- specifies other responsibilities of approved providers relating to restrictive practices.

The Principles state that any form of restrictive practice cannot be used unless a number of specific conditions are met.

If any restrictive practice is used, the Principles require providers to document certain specified information in the consumer's care and services plan [1] and regularly monitor the consumer for signs of distress and harm.

From 1 September 2021, the Principles include other responsibilities of providers relating to Behaviour Support Plans. This includes a requirement for providers to have a Behaviour Support Plan in place for consumers who require behaviour supports, and who require or may require, the use of restrictive practices.

The Principles outline the requirements of the Behaviour Support Plan, and include information on assessments, monitoring, review, evaluation and provision of consent.

1 From 1 September 2021, this information will be documented in the consumer's Behaviour Support Plan.

Aged Care Quality Standards

The Quality Standards specifically require providers who deliver clinical care to have a clinical governance framework in place that includes minimising the use of restraint and organisational wide governance systems for regulatory compliance that includes compliance with the Principles on minimising the use of restrictive practices (Standard 8).

Several other Standards are also relevant, including:

- Standard 1: consumer dignity and choice, whereby the consumer is supported to take risks to live the best life they can
- Standard 2: ongoing assessment and planning with consumers
- Standard 3: personal care and clinical care which is best practice and responsive to consumers' changing needs
- Standard 5: a service environment that is safe and comfortable and promotes the consumer's independence, function and enjoyment
- Standard 8: organisational governance where the organisation's governing body is accountable for delivery of safe and quality care.

Restrictive Practices

Practices or interventions that are restrictive practices:

Chemical restraint is the practice or intervention that is, or that involves, the use of medication or a chemical substance for the primary purpose of influencing a consumer's behaviour, but does not include the use of medication prescribed for:

- the treatment of, or to enable the treatment of, the consumer for:
  - — a diagnosed mental disorder; or
  - — a physical illness; or
  - — a physical condition; or
- end of life care for the consumer.

Examples of chemical restraint are administration of any medication, including prescribed, pro re nata (prn or as required) and over the counter medication, to a consumer, which influences, moderates or controls their behaviour.

Environmental restraint is the practice or intervention that restricts, or that involves restricting, a consumer's free access to all parts of the consumer's environment, including items and activities, for the primary purpose of influencing a consumer's behaviour.

Examples of environmental restraint are restricting a consumer'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 is the practice or intervention that is, or that involves, the use of a device to prevent, restrict or subdue a consumer's movement for the primary purpose of influencing the consumer's behaviour. It does not include the use of a device for therapeutic or non-behavioural purposes in relation to the consumer.

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 is the practice or intervention that;

- is, or that involves, the use of physical force to prevent, restrict or subdue movement of a consumer's body, or part of a consumer's body, for the primary purpose of influencing the consumer's behaviour; but
- does not include the use of a hands-on technique in a reflexive way to guide or redirect the consumer away from potential harm or injury if it is consistent with what could reasonably be considered to be the exercise of care towards the consumer.

Examples of physical restraint are physically holding a consumer in a specific position to enable personal care issues such as showering to be attended to, pinning a consumer down, or physically moving a consumer to stop them moving into a specified area where they may wish to go.

Seclusion is a practice or intervention that is, or that involves, the solitary confinement of a consumer 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 a consumer's behaviour.

Examples of seclusion are placing a consumer 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'.

Seclusion significantly affects a consumer's dignity and rights and should only be used after all other forms of behaviour management or appropriate alternative restrictive practices have been exhausted.

Seclusion is an extreme form of restrictive practice and should never be used as a punishment.

Requirements for the use of any restrictive practice

The Principles outline certain requirements that apply to the use of any restrictive practice in relation to a care recipient:

(a) the restrictive practice is used only:

(i) as a last resort to prevent harm to the care recipient or other persons; and

(ii) after consideration of the likely impact of the use of the restrictive practice on the care recipient;

(b) to the extent possible, best practice alternative strategies have been used before the restrictive practice is used;

(c) the alternative strategies that have been considered or used have been documented;

(d) 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;

(e) 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;

(f) informed consent to the use of the restrictive practice has been given by:

(i) the care recipient; or

(ii) if the care recipient lacks the capacity to give that consent—the restrictive practices substitute decision-maker;

(g) 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);

(h) the use of the restrictive practice complies with the Aged Care Quality Standards set out in Schedule 2;

(i) 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;

(j) 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.

These are the overarching requirements that providers must have regard to prior to and during the use of any form of restrictive practices.

Assessments prior to the use of restrictive practices

An approved health practitioner, who has day-to-day knowledge of the consumer, must have assessed (and documented) that there is a risk of harm to either the consumer or another person, and that the use of a restrictive practice is necessary. The restrictive practice and its use must be in accordance with the requirements of the Principles.

In the case of chemical restraint, the assessor and prescriber of the associated medication must be a medical practitioner or nurse practitioner. As this person will in many circumstances not be an employee or representative of the provider, the provider must have assured themselves that the assessment and giving of consent has taken place in accordance with the requirements of the Principles. They must also ensure that the assessment and decision to use the chemical restraint, the changed behaviours and reasons that necessitated the use of the restrictive practice, and the information provided to the assessor, are recorded in the care and services plan.

If chemical restraint is used, the provider is responsible for ensuring the prescribing medical practitioner or nurse practitioner is regularly given information about the effect and use of the restrictive practice. The purpose of this information is to ensure that the prescriber understands whether the chemical restraint is effective, or that its use needs to be reassessed.

Use of restrictive practices in an emergency

The 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.

As soon as practical after the application or use of the restrictive practice in an emergency, the provider must inform the consumer's restrictive practices substitute decision maker about the use of the restrictive practice, and this must be documented. Consent should be provided and recorded as soon as practical after the application or use of the restrictive practice. Once the emergency is over, the provider should revert to the usual policies and procedures regarding the application or use of any restrictive practice for the consumer. This includes reduction or removal of the restrictive practice, assessment, consideration and use of alternative strategies, and subsequent update and review of the consumer's **Behaviour Support Plan** and **care and services plan**.

An emergency is a serious or dangerous situation that is unanticipated or unforeseen which requires immediate action. Situations where restrictive practices are required in residential aged care in the event of an emergency should therefore be rare.

It is expected that providers will be actively engaged in a consumer's day to day care and support needs, including behaviour support planning, and that this understanding and engagement will reduce the occurrence of emergencies.

Providers should be conscious of alternative strategies to avoid the need for emergency use of restrictive practices. This includes actively responding to the needs of their consumers in order to avoid the deterioration of health or escalation of changed behaviours, to a point where emergency use of restrictive practices may be required.

In monitoring compliance with provider responsibilities relating to the use of restrictive practices, the Commission will be reviewing care and services plans where emergency use of restrictive practices has been applied. This review will include considering the consumer's care needs in the lead up to the emergency, whether the emergency could have been anticipated given past history of behaviour, and what action was taken to deal with the situation prior to it becoming critical.

If emergencies are occurring for extended periods of time or are occurring regularly for one or more consumers in a provider's care, this may indicate that a provider is not meeting their responsibilities under the Aged Care Act and Principles and the Commission would monitor or investigate these circumstances.

Where there is evidence that insufficient action has been taken by a provider to avoid emergency use of restrictive practices for a consumer, the Commission may take further regulatory actions where it is deemed appropriate and proportionate in order to address any non-compliance.

Responsibilities while restrictive practices are being used

If a restrictive practice is used, a 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 (ADLs)

The necessity and effectiveness of the restrictive practice must be considered on an ongoing basis, and in accordance with the overarching requirements, and its use ceased or altered if the practice is no longer required or is ineffective.

Providers must consider (to the extent they are able to) whether environmental changes can be made that would reduce or remove the need for the use of a restrictive practice.

Behaviour Support Plans

Consistent with previous legislative requirements on the use of restraint, providers continue to be expected to have individual care and services plans in place which outline a consumer's behaviour support needs, including for the use of physical or chemical restraints. This includes requirements that providers have documented evidence that other strategies were used prior to the application or use of the restrictive practice as a last resort, have documented evidence of consent for use of the restrictive practice, and evidence of ongoing monitoring and evaluation for its continued use.

Consent for use of any type of restraint is required and should be documented in the consumer's care and services plan.

From 1 September 2021, providers are required under the Principles to have a Behaviour Support Plan in place for every consumer who has restrictive practices used or applied as part of their care, unless in an emergency, as outlined above. The Behaviour Support Plan forms a part of the care and services plan.

Behaviour Support Plans must set out information about the consumer that helps the provider to understand the consumer's background and changed behaviours, including but not limited to:

- any assessments which have been carried out regarding those behaviours,
- known triggers which may precede those behaviours,
- alternative strategies which are known to be successful, or unsuccessful, in managing those behaviours, and
- any restrictive practices which are used or applied once alternative strategies have been tried.

It must also include consent from the consumer, or their restrictive practices substitute decision maker.

Providers are encouraged to make use of the range of resources available on the Commission's website regarding behaviour support planning, and to introduce Behaviour Support Plans for consumers who require them prior to 1 September 2021.

Consent

It remains an expectation for providers that informed consent is required prior to the use of any restrictive practice, with exceptions only applying in an emergency.

Informed consent means that the consumer (or their substitute decision maker) has been provided with information and has had the opportunity to review and ask questions about the use of any restrictive practice, and subsequently has made a decision to have a restrictive practice used or applied as part of their care. In the event of the consumer lacking capacity to provide informed consent regarding use of restrictive practices, the restrictive practices substitute decision maker can provide this consent. This may be a nominated family member identified in the Care and Services Plan, or a body such as a State or Territory Public Guardian.

The consumer themselves should be consulted in the first instance for their informed consent regarding the consideration or use of any restrictive practice as part of their care. If the consumer lacks capacity to consent, their restrictive practices substitute decision maker should be consulted to provide consent prior to the use of any restrictive practice.

The Principles define restrictive practices substitute decision maker as:

- a person or body that, under the law of the State and Territory in which the consumer is provided with aged care can give informed consent to the use of the (restrictive) practice in relation to the consumer; and
- if the practice is chemical restraint – the prescribing of medication for the purpose of using the chemical restraint;
- if the consumer lacks capacity to give consent.

The Commission recognises that there are complexities in current consent arrangements relating to the use of restrictive practices with consumers in different jurisdictions. Consumers who do not have someone known to them who is authorised to make certain decisions on their behalf must rely on the relevant Tribunal to appoint a guardian in that jurisdiction for this purpose. However the Commission is aware that some jurisdictions currently do not have a statutory framework that readily enables a guardian to be appointed or act as a restrictive practices substitute decision maker. How the Commission will respond in these circumstances is detailed in the Frequently Asked Questions.

Practices which may be used or considered as a safety measure, such as bed rails or low beds, may still be considered under the Principles as a restrictive practice, if they meet the Principles definitions of a restrictive practice. Their use still requires the same process of assessment, consent, monitoring and evaluation as would be in place for use of any other restrictive practice.

Information on informed consent is available on the Commission website. Additional resources regarding consent for substitute decision makers will be made available shortly.

Enforcement

The Commission has a range of regulatory powers to respond when a provider is not complying with its responsibilities. This includes a power specific to the use of restrictive practices in addition to existing enforceable regulatory actions. The Commission may take one or more regulatory actions where it is deemed appropriate and proportionate in order to address the non-compliance.

Restrictive Practices Compliance Notice

The Commission may issue a **Restrictive Practices Compliance Notice** where a provider is not, or may not be, complying with its responsibilities in relation to the use of restrictive practices as detailed in the Quality of Care Principles. This notice is to specify actions the provider must take, or refrain from taking, within a reasonable period to address the identified or potential non-compliance.

For more information on the Commission's approach to compliance and enforcement, including use of its regulatory powers, refer to the Compliance and Enforcement Policy.

Supporting Providers in minimising use of restrictive practices

The Commission continues to focus on supporting providers with advice regarding appropriate use of restrictive practices and minimising their use.

The Commission has recently updated guidance available to assist providers regarding minimising use of restrictive practices. This includes information on:

- behaviour support and care planning
- consent and decision making
- dementia
- governance
- medication safety
- minimising restrictive practices

The Guidance Resources are available on the Commission website.

In addition, the Commission is working with experts in behaviour management and the Department of Health to prepare further advice and guidance for consumers, their representatives and providers on the appropriate use of restrictive practices.

These resources will include:

- Webinars
- Updated restrictive practices scenarios
- *The Decision Making Tool* – supporting a restraint-free environment in residential aged care, and its companion document for community aged care (currently being reviewed and combined into a single toolkit).
- Information about provision of consent, including for a substitute decision maker.

The Commission is also working with the Department of Health and Dementia Support Australia to provide focused resources on behaviour support planning for consumers. These resources will be available shortly on the Commission website.

The resources will be updated on the Commission's website as they become available from July 2021.

Senior Practitioner, Restrictive Practices

In response to the Independent review of legislative provisions governing the use of restraint in residential aged care Final Report December 2020, and as part of the Government's response to the findings of the Royal Commission into Aged Care Quality and Safety, the Commission has established a new role of Senior Practitioner, Restrictive Practices.

The **Senior Practitioner, Restrictive Practices** commenced on 10 January 2022 and will lead education in the sector, including for aged care providers, prescribers and other critical partners to support providers in understanding their regulatory obligations regarding use of restrictive practices, and to support positive behaviour practices as alternatives to restrictive practices.

The Senior Practitioner, Restrictive Practices will provide expert advice, and support the Commission in responding to: complaints about the provision of aged care services, notifications received under the Serious Incident Response Scheme, monitoring and assessment of provider's performance, and managing non-compliance relating to provider's responsibilities on the use of restrictive practices, behaviour support and the Quality Standards.

The Senior Practitioner, Restrictive Practices will also ensure that the views of individual consumers and their representatives continue to be given appropriate weight in assessing providers' compliance with their legislative obligations to minimise the use of restrictive practices.

Frequently asked questions

1. How will the Commission monitor compliance with provider responsibilities in relation to the use of restrictive practices?

The Commission will monitor and investigate provider compliance with the restrictive practices requirements to ensure the safety, health, wellbeing and quality of life of consumers. Where a provider is not or may not be complying with its responsibilities, including restrictive practices obligations, the Commission has the power to take enforceable regulatory action(s) where appropriate.

The Commission will continue to seek a range of evidence when monitoring provider compliance in relation to the use of a restrictive practice. This could include:

- the actions taken by the provider to consider and use alternative strategies to minimise the use of restrictive practices at their service, consistent with best practice and regulatory requirements
- where restrictive practices are used, how long they are used for, observations of their use, monitoring the welfare of any consumer subject to use of restrictive practices, evidence of restraints being removed at recorded intervals
- observations of consumers moving freely, or being enabled to move freely, indoors and outdoors
- interviews with staff to test their understanding regarding use of restrictive practices, including that a restrictive practice is to be used only where it is necessary to prevent harm and all other reasonable strategies have been exhausted, for example, staff can describe the checks that need to occur before a restrictive practice is applied or used, the way that consumer representatives are advised, how consent is obtained, how staff monitor the use of the restrictive practice for a consumer and its review and evaluation
- interviews with consumers and representatives about their engagement with the provider in providing consent for and use of restrictive practices, as well as efforts to minimise their use

- a documented system to determine and record consumer consent for use of the restrictive practice and the terms of that consent, including any specified restrictive practices substitute decision maker for the consumer
- documentation in the consumer's care and services plan (**from 1 September 2021 in the Behaviour Support Plan**) that records:
  - the consumer's behaviours which are relevant to the need for the restrictive practice
  - the alternatives to the restrictive practice that have been used (if any)
  - the reasons the restrictive practice is necessary
  - any assessments which have been undertaken in relation to recommendation for the use of restrictive practices
  - the care to be provided to the consumer in relation to the consumer's behaviour
  - consent has been provided regarding use of the restrictive practice
- the plans to review the need for ongoing use of restrictive practice
- evidence that monitoring is taking place of the effects or side effects of the restrictive practice on the consumer
- evidence that the consumer is regularly monitored for signs of distress or harm from the use of the restrictive practice
- written evidence of an organisation wide system designed to minimise and monitor the use of restrictive practices, including reporting to organisation management or to the organisation Board.

From 1 September 2021, as part of its regulatory activities the Commission will monitor provider's compliance with the requirements to have a Behaviour Support Plan in place for every consumer which has restrictive practices used or applied to them, and that providers have policies and processes in place to support appropriate use of restrictive practices, including provision of consent, for consumers.

2. How will the Commission respond to the use of restrictive practices in jurisdictions where a 'restrictive practices substitute decision maker' cannot be appointed or there are delays in the appointment?

The Commission has developed an interim position on the use of restrictive practices when a consumer cannot consent to the use of the restrictive practice and either lives in a jurisdiction where there is not currently state or territory based legislation that facilitates the appointment of an alternate decision maker or there is a significant delay due to the need to approach a Tribunal for a decision. It does not apply to situations where a consumer is able to consent to the restrictive practice, but has decided not to.

2 (a) How will the Commission's interim position be applied?

The Commission continues to expect that any use of a restrictive practice by an aged care provider is compliant with all of the requirements under Part 4A (Behaviour support and restrictive practices – residential care and certain flexible care) of the Principles unless it is an emergency. If a provider uses a restrictive practice in an emergency, the provider must comply with the emergency provisions under section

15GB of the Principles until such time as the emergency situation passes.

The Commission acknowledges that there will be circumstances where there is either a significant delay (due to needing to approach the appropriate Tribunal to appoint a guardian) or no means by which consent to a restrictive practice as described by the Principles can be obtained. If a provider considers that they must still use a restrictive practice in these circumstances, they will be unable to meet the legislative requirements relating to consent.

In this situation, the Commission will consider the particular circumstances of each matter and take into account a range of factors when making a decision about whether to take regulatory action. In the instance that a provider has used a restrictive practice not in accordance with Part 4A of the Principles, some of the factors considered will include, but may not necessarily be limited to, whether:

(a) the approved provider can demonstrate that all applicable requirements under Part 4A of the Principles have been met;

(b) the approved provider can demonstrate that best efforts were made to source a substitute decision maker and, having undertaken those efforts, there was nevertheless no available substitute decision maker (or a significant delay until one would be appointed) to provide consent in relation to the application of a restrictive practice;

(c) demonstrated attempts have been made to consult with someone with a close personal, ongoing relationship with the affected consumer (partner, family member, carer [unpaid except in the form of a carers benefit] or [if there is not a person with a close, personal, ongoing relationship] an independent advocate); and

(d) a Serious Incident Response Scheme notification has been made by the provider.

2. (b) Does a Serious Incident Response Scheme (SIRS) notification need to be made each time the restrictive practice is used?

No. If the same restrictive practice is used (for example an environmental restraint such as accommodating a consumer in a secure dementia unit) in the same circumstances every day in relation to the same consumer, the approved provider does not need to make a separate report to the Commissioner each day or time the restrictive practice is used, as long as the first notice of the reportable incident contains sufficient detail about the circumstances surrounding the use of the restrictive practice in relation to the consumer.

If a different restrictive practice is used (for example, a different type of environmental restraint or another restrictive practice), or there is a change in the circumstances surrounding the use of the same type of restrictive practice in relation to the consumer, the approved provider would need to submit a new reportable incident notification to the Commissioner.

The Commission will assess each SIRS notification on a case by case basis and will request additional information from the provider where it is deemed necessary.

2. (c) How long will the interim position remain in effect?

The Commission has established an interim position on this issue until it is addressed through legislative amendment at either the Commonwealth or State/Territory levels. Where suitable legislative arrangements exist in states and territories to appoint an alternate decision maker, these arrangements should continue to be relied upon.

Proposed legislative amendments are currently before the Australian Parliament which, if passed, establish interim arrangements which allow for certain persons or bodies to give consent if, under State or Territory laws, no one is able to provide that consent as a 'restrictive practices substitute decision maker'. These amendments are proposed as an interim measure to afford protections to vulnerable consumers and are expected to be in place only until individual States and Territories work to establish or strengthen relevant consent provisions through legislative changes at the State/Territory level.

3. How does the Commission monitor risks related to use of restrictive practices?

The Commission uses its regulatory intelligence (including regular reporting from providers) to profile risks relating to the inappropriate use of restrictive practices. This includes issues raised in complaints, reporting under the Serious Incidents Response Scheme, as well as the Quality Indicator Program (QIP).

The QIP requires providers of residential aged care to submit information quarterly about the percentage of consumers who are physically restrained in each of their services. Under the QIP, physical restraint includes environmental, physical and mechanical restraint, as well as seclusion. From 1 July, providers will also be required to submit information on the percentage of consumers who received antipsychotic medications. More information about how to collect data as part of the QIP can be found in the QIP Manual 2.0 Part A.

The Commission uses risk profiling to undertake risk based targeting in the assessment and monitoring of provider's compliance with the Principles and Quality Standards.

As part of its targeted and regular assessment and monitoring of services, the Commission has developed a set of risk-based questions that are asked on commencement of an assessment of performance against the Quality Standards. Quality assessors ask these questions of the person in charge at the service during the entry meeting. Assessors use the discussion about the risk-based questions as an opportunity to understand the use of restrictive practices at the service in more detail, including asking questions about consumers who are restrained, and the types of restraint being used. If use of restrictive practices is to be a focus of an assessment and monitoring visit, a sample of consumers is selected and their experience in relation to restraint is followed through the assessment process.

The Commission also uses its risk profiling to advise the sector on its performance, and in developing guidance and education for providers, consumers and their representatives in the use of restrictive practices.

Refer to the Commission website for information regarding Risk Based Questions and the Regulatory Bulletin Assessment contacts in residential and home services for further details.

4. What happens if the Commission receives a Serious Incident Report or complaint that a provider has not used restrictive practices in accordance with the requirements?

Part of the Commission's role is to receive and manage complaints about the delivery of aged care, and reports about certain types of serious incidents. Following receipt of a complaint or SIRS notification, the Commission usually gathers information so that it can assess the matter and decide on the appropriate response. Depending on the circumstances, the Commission may engage with the provider so that the provider can understand and resolve a matter including undertaking their own further investigation. The Commission may also initiate its own investigations into the provider's compliance.

The Commission considers the full range of provider responsibilities when managing complaints and serious incident reports. The effective management of consumer's behaviour, effective incident management, appropriate consultation and consent, the handling of emergency situations and appropriate use of restrictive practices are all matters the Commission frequently considers.

If, as a consequence of responding to a complaint or serious incident report, the Commission determines that a provider may not be meeting their responsibilities under the Principles and Quality Standards, this may lead to further regulatory action, including compliance activity.

The Senior Practitioner, Restrictive Practices will oversight Commission regulatory activity relating to the use of restrictive practices. It is critical that consumers, their families and representatives have the ability to raise concerns with a provider about the way restrictive practices are being used, and that where they are being used inappropriately, this is seen and responded to by providers as a serious incident.

More information about the Commission's Complaint Resolution Scheme and Serious Incident Response Scheme (SIRS) can be found on the Commission's website.

5. How do the Quality Standards and Principles intersect in regulation of restrictive practices?

The Commission assesses provider compliance with obligations under the Quality Standards. In relation to restrictive practices, these obligations lie across **all Quality Standards**, and specifically in:

- Standard 3 - Personal care and clinical care,
- Standard 5 – Organisation's service environment, and,
- Standard 8 Organisational governance.

Standard 7 – Human resources is also considered, specifically in relation to staff training and understanding of provider processes regarding restrictive practices.

Where a provider is found non-compliant against the Quality Standards regarding use or application of restrictive practices for consumers, usual regulatory processes will apply.

In addition to the above, or where investigation of a complaint or SIRS notification indicates poor procedures

or systemic failures of the provider regarding restrictive practices use, the Commission may take further action which may lead to compliance action under the Principles, specifically regarding obligations in relation to the requirements governing use of restrictive practices for consumers. In this event a Restrictive Practices Compliance Notice may be issued.

The Restrictive Practices Compliance Notice may be issued **in addition** to other compliance notices relating to that or other compliance action against the provider.

6. What are a provider's obligations regarding obtaining consent before using chemical restraint?

In summary, the prescriber of medication for the purpose of chemical restraint is responsible for seeking and obtaining informed consent from the resident or their restrictive practices substitute decision maker. The aged care provider is responsible for having clinical governance arrangements in place to ensure that consent has been obtained, and that this is consistent with state or territory laws.

If a medical practitioner or nurse practitioner prescribes medication, including psychotropics, for the purpose of chemical restraint, they are responsible for seeking and obtaining informed consent. In doing so, the practitioner must be aware of their ethical and legal obligations, including under relevant state or territory laws.

With respect to provider responsibilities, in the Quality Standards, Standard 3 – Personal care and clinical care, Standard 5 – Organisation's service environment and Standard 8 – Organisational governance include requirements for providers to:

- have effective organisation wide governance systems in place including a clinical governance framework which minimises the use of restraint; and
- have effective organisation wide governance systems for regulatory compliance.

These governance systems help ensure that clinical care provided in the service is safe, of good quality and accords with relevant legal requirements. This includes ensuring that consent has been obtained, and that this is consistent with the relevant state or territory laws.

Under the Principles, the aged care provider must inform the consumer or their representative about the use of the chemical restraint. The aged care service must provide this information before commencing the chemical restraint if it is practicable to do so, or immediately after. This communication should be done in a way that the consumer or their representative can understand, include an explanation on the advantages and disadvantages of restraint, and they should be given the opportunity to discuss their concerns and expectations.

If the consumer or their representative has concerns about the medication, they should be referred to the medical or nurse practitioner who prescribed the medication.

7. Is the Psychotropic Medications self-assessment mandatory as part of an assessment?

The Self-Assessment Tool for Recording Consumers Receiving Psychotropic Medications (psychotropic medications self-assessment tool) provides details of the type of information that the Commission will seek to review when undertaking assessments of aged care services against the Quality Standards, and as part of that, monitor how services are effectively overseeing the use of chemical restraints.

Use of the psychotropic medications self-assessment tool is not mandatory. Providers are encouraged to use it to support continuous improvement processes in relation to how they use and minimise the use of chemical restraint.

Providers may also or instead use other tools that give them the required information and may adapt the tool to their purposes.

The Self-Assessment Tool for Recording Consumers Receiving Psychotropic Medications can be found on the Commission website.

Further resources

The Commission has released a range of further resources to help providers understand their responsibilities around minimising the use of restrictive practices.

These can be found on the Commission's website at agedcarequality.gov.au/resources/minimising-use-restraints-resources

Additional resources, including information on planned webinars, will be made available through the Commission website, and social media and quality bulletin updates.

Need to know more?

If you have any questions, contact the Commission by email on: info@agedcarequality.gov.au.

Stay up to date with Regulatory Bulletin releases by subscribing to the Commission's newsletter.

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