

Explanatory Statement

Aged Care Act 1997

Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019

Authority

Section 96-1 of the *Aged Care Act 1997* (**Aged Care Act**) provides the Minister may, by legislative instrument, make Quality of Care Principles providing for matters required or permitted by Part 4.1 of the Act, or necessary or convenient to give effect to Part 4.1 of the Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Purpose

The *Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019* (**Amending Principles**) amends the *Quality of Care Principles 2014* (**Quality of Care Principles**) to limit the use of chemical and physical restraint by approved providers of residential care and short-term restorative care in a residential setting.

Background

A restraint-free environment is a basic human right for all consumers and restraint should not be implemented unless alternatives are explored. Any decision to restrain a consumer carries significant ethical and legal responsibilities.

To promote a restraint-free environment, the Amending Principles introduce two new provider responsibilities which regulate the use of restraint.

Physical restraint must not be used unless:

- the consumer has been assessed by an approved health practitioner with day-to-day knowledge of the consumer as posing a risk of harm to themselves or others; and as requiring restraint;
- alternatives to restraint have been used for the consumer to the extent possible;
- the restraint is the least restrictive form of restraint possible; and
- the provider has the informed consent of the consumer (or their representative) to the use of restraint, unless the restraint is necessary in an emergency.

Chemical restraint must not be used unless:

- a medical practitioner or nurse practitioner has assessed the consumer as requiring the restraint and has prescribed the medication for the purposes of restraint;
- the decision to use restraint is documented in the consumer's care and services plan; and
- the consumer's representative is informed of the use of the chemical restraint.

If restraint is used, the Amending Principles, require providers to regularly monitor the consumer and record information in the consumer's care and services plan.

Existing guidance on best practice is set out in the *Decision Making Tool: Supporting a Restraint-Free Environment* (**Decision Making Tool**). The Decision Making Tool notes the use of restraint should always be the last resort and viewed as a temporary solution to any behaviour causing concern. Additionally, its use should only be considered after exhausting all reasonable alternative options and be informed by a comprehensive assessment of a consumer and their interactions.

Consultation

Key stakeholders consulted in the drafting of the Amending Principles included representatives of residential aged care providers and their peaks, consumer peaks, the Aged Care Quality and Safety Commission, the Australian Commission on Safety and Quality in Health Care, the Australian Nursing and Midwifery Federation, academics with expertise in aged care clinical practice, and the Department of Social Services.

Stakeholder provided strong support for the policy intent and general support for the proposal.

The details of the Amending Principles are set out in the Attachment.

The Amending Principles commence immediately after the commencement of the *Quality of Care Amendment (Single Quality Framework) Principles 2018*, which is on 1 July 2019.

The Amending Principles are a legislative instrument for the purpose of the *Legislation Act 2003*.

ATTACHMENT A

Details of the *Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019*

1. Name

Section 1 provides for the instrument to be referred to as the *Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019 (the Amending Principles)*.

2. Commencement

This section provides that the Amending Principles commence immediately after the commencement of Schedule 1 to the *Quality of Care Amendment (Single Quality Framework) Principles 2018*.

3. Authority

Section 3 provides that the Amending Principles are made under the *Aged Care Act 1997 (the Aged Care Act)*.

4. Schedules

Section 4 provides that each instrument that is specified in a Schedule to the Amending Principles is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Amending Principles has effect according to its terms.

Schedule 1—Amendments

Quality of Care Principles 2014

Item 1. Section 4

Item 1 inserts four definitions under section 4 to the Amending Principles:

- Approved health practitioner;
- Chemical restraint;
- Physical restraint; and
- Restraint.

Approved health practitioner

An approved health practitioner is defined as a medical practitioner, nurse practitioner or registered nurse.

Chemical restraint

Chemical restraint is defined as restraint that is, or that involves, the use of medication or a chemical substance for the purpose of influencing a person's behaviour.

However, it does not include medication prescribed for the treatment of, or to enable treatment of:

- a diagnosed mental disorder;
- a physical illness;
- a physical condition.

Examples of pharmacological agents used as chemical restraint are antipsychotics and benzodiazepines. However, it is not chemical restraint if those medications are used to treat a diagnosed mental disorder (e.g. antipsychotics to treat psychosis associated with disorders such as schizophrenia or bipolar).

Physical restraint

Physical restraint means any restraint, excluding:

- chemical restraint (as defined above), or
- the use of medication prescribed for the treatment of, or to enable treatment of, a diagnosed mental disorder, a physical illness or a physical condition.

Physical restraint includes, but is not limited to:

- the intentional restriction of a consumer's voluntary movement or behaviour by the use of a device, or removal of mobility aids, or physical force; and
- limiting a consumer to a particular environment.

Restraint

Restraint is any practice, device, or action that interferes with a consumer's ability to make a decision or which restricts their free movement

Item 2. After Part 4

Item 2 inserts a Part 4A in the *Quality of Care Principles 2014 (Quality of Care Principles)*.

Purpose of this Part

Section 15D sets out the purpose of Part 4A, which is to specify the other responsibilities of an approved provider of residential care or flexible care service in the form of short-term restorative care in a residential setting in relation to quality of the aged care.

State and Territory Laws continue to apply

Section 15E states that Part 4A does not affect the operation of State and Territory laws in relation to the use of restraint.

Providers, medical practitioners, nurses and other health professionals must comply with the other laws in the applicable State or Territory which regulate restraint.

Use of physical restraint

Section 15F states an approved provider must not use physical restraint on a consumer, unless certain conditions are met in relation to the use of that restraint.

Before physical restraint is used

The four conditions which must be satisfied before using physical restraint are:

1. Assessment by an approved health practitioner

An approved health practitioner (as defined in item 1), who has day-to-day knowledge of the consumer, must conduct an assessment. The approved health practitioner must assess whether:

- the consumer poses a risk of harm to themselves, or another person; and
- it is necessary to use restraint, due to the risk of harm.

Unless the restraint is necessary in an emergency, the assessment must be documented before the physical restraint is used.

2. Alternatives to the use of restraint

The provider must consider whether the risk of harm can be managed by using any alternatives to restraint, and use those alternatives to the extent possible. The use of restraint should always be the last resort and viewed as a temporary solution to any behaviour causing concern or circumstantial factor.

Unless the restraint is necessary in an emergency, the provider must document its consideration, and use of, these alternatives before the physical restraint is used.

3. Least restrictive form of restraint

The provider must ensure it uses the least restrictive form of restraint to address the risk of harm.

To use the least restrictive form of restraint, the provider must have regard to the total period for which restraint will be used, including periods of release. This should be determined before the restraint is commenced.

4. Informed consent

The provider must ensure it has the informed consent of the consumer, or their representative, to use physical restraint.

The meaning of 'representative' is defined in section 5 of the Quality of Care Principles. It means:

- a person nominated by the consumer to be told about matters affecting the consumer; or
- a person who nominates themselves as a person to be told about matters affecting a consumer, and who the provider is satisfied has a connection with the consumer and is concerned for the safety, health and well-being of the consumer.

A 'representative' includes a person who:

- is a consumer's partner, close relation or other relative;
- holds an enduring power of attorney;
- has been appointed by a State or Territory guardianship board; or
- represents the consumer in dealings with the provider.

The consumer or their representative may withdraw their consent at any time. Therefore, the provider must take steps to regularly communicate with the consumer or their representative, and obtain informed consent contemporaneously.

This communication should be done in a way that they can understand and they should be given the opportunity to discuss their concerns and expectations. The communication is enhanced if families or representatives are given some written information that they can take home and read at their leisure.

The informed consent must be obtained before the physical restraint is used, unless the restraint is necessary in an emergency.

While physical restraint is being used

If the approved provider uses a physical restraint on a consumer it must ensure the following requirements are met:

1. Care and service plan

The Aged Care Quality Standards, set out in Schedule 2 to the Quality of Care Principles, require providers to document the outcomes of assessments and planning in a care and services plan.

The Amending Principles require the care and services plan to identify the following:

- the consumer's behaviours that are relevant to the need for the restraint;
- the alternatives to restraint that have been used (if any);
- the reasons the restraint is necessary; and
- the care to be provided to the consumer in relation to the consumer's behaviour.

2. Minimum time necessary

The restraint must only be used for the minimum time necessary.

3. Monitoring and review

While the consumer is subject to the restraint, the provider must:

- regularly monitor the consumer for signs of distress or harm; and
- regularly monitor and review the necessity for the restraint.

The use of restraint itself poses risk. For the protection of a consumer who is restrained providers should ensure:

- the correct use of particular restraint;
- the frequency and type of observation required; and
- comfort and safety of the consumer through maintaining activities of daily living such as; regular toileting, hydration, nutrition, exercise and mobility, skin care, pain relief, and social interaction.

Providers must also regularly monitor and review the use of restraint to determine whether it is still required and optimal. The review must reassess the need for the use of restraint and consider alternative measures to restraint.

4. Use of restraint in an emergency

If the provider did not document the following matters, because the restraint was necessary in an emergency, it must document these matters as soon as practicable after the restraint starts to be used:

- the assessment conducted by the approved health practitioner; and
- consideration or use of alternatives to restraint.

Additionally, if the provider did not obtain the informed consent of the consumer (or their representative) prior to using the restraint, it must inform the consumer's representative as soon as practicable after the restraint starts to be used. The provider is not required to obtain the consumer's informed consent prior to using the restraint if it is necessary in an emergency. However, the representative may withdraw their consent, or decline to consent, to the use of physical restraint at any time.

Use of chemical restraint

Section 15G states an approved provider must not use chemical restraint on a consumer, unless certain conditions are met in relation to the use of that restraint.

Before chemical restraint is used

The three conditions which must be satisfied before using chemical restraint are:

1. Assessment by a medical practitioner or nurse practitioner

A medical practitioner or nurse practitioner must assess the consumer as requiring the restraint. The practitioner must also prescribe the medication that is, or is involved in, the restraint.

2. Record decision to use restraint

The practitioner's decision to use the restraint must be recorded in the consumer's care and services plan.

3. Inform the consumer's representative

If it is practicable to do so, the consumer or their representative must be informed about the use of the chemical restraint. This communication should be done in a way that the consumer or their representative can understand and they should be given the opportunity to discuss their concerns and expectations.

While chemical restraint is being used

If a provider uses a chemical restraint in relation to a consumer, it must ensure the following requirements are met:

1. Care and services plan

Record the following information in the consumer's care and services plan:

- the consumer's behaviours that are relevant to the need for the restraint;
- the alternatives to restraint that have been used (if any);
- the reasons the restraint is necessary (if known by the approved provider); and
- the information (if any) provided to the practitioner by the provider that informed the decision to prescribe the medication.

Where a consumer entered the residential aged care service, and has existing chemical restraint medication prescribed, the provider will not have had the opportunity to have explored alternatives to the use of restraint prior to entry. In this circumstance, it is expected the provider will thoroughly investigate the reasons for the restraint, and communicate with the practitioner as soon as practicable with a view to implementing alternatives to restraint.

2. Monitoring and review

While the consumer is subject to the restraint the provider must regularly monitor the consumer for signs of distress or harm.

The provider must also provide information to the practitioner regarding use of the restraint. This review process aims to trigger reassessment of the need for the use of restraint by the practitioner and, where possible, to implement alternatives to using restraint.

3. Inform the consumer's representative

If the consumer or their representative has not been informed of the use of the restraint, the provider must inform the consumer's representative as soon as practicable after it starts to use the restraint.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019

The Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the legislative instrument

The *Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019 (Amending Principles)* will amend the *Quality of Care Principles 2014 (Quality of Care Principles)*.

A restraint-free environment is a basic human right for all care recipients and restraint, such as the use of antipsychotics, should not be implemented until all alternatives are explored.

To promote a restraint-free environment in residential aged care, the Amending Principles introduce two new provider responsibilities seeking to minimise the use of restraint.

Physical restraint must not be used unless:

- the consumer has been assessed by an approved health practitioner with day-to-day knowledge of the consumer as posing a risk of harm to themselves or others; and as requiring restraint;
- alternatives to restraint have been used for the consumer to the extent possible;
- the restraint is the least restrictive form of restraint possible; and
- the provider has the informed consent of the consumer (or their representative) to the use of restraint, unless the restraint is necessary in an emergency.

Chemical restraint must not be used unless:

- a medical practitioner or nurse practitioner has assessed the consumer as requiring the restraint and has prescribed the medication for the purposes of restraint;
- the decision to use restraint is documented in the consumer's care and services plan; and

- the consumer's representative is informed of the use of the chemical restraint.

If restraint is used, the Amending Principles, require providers to regularly monitor the consumer and record information in the consumer's care and services plan.

Human rights implications

The Amending Principles engage the following rights:

- right to the enjoyment of the highest attainable standard of physical and mental health; and
- the right to protection from exploitation, violence and abuse.

Right to the enjoyment of the highest attainable standard of physical and mental health

The right to health is contained in article 12(1) of the International Covenant on Economic Social and Cultural Rights. The right to health is the right to the enjoyment of the highest attainable standard of physical and mental health.

The Amending Principles promote the right to health, by regulating the circumstances in which a provider may use physical or chemical restraint. The application of restraint, for any reason, is an imposition on an individual's rights and dignity and, in some cases, may subject the person to an increased risk of physical and/or psychological harm. The Amending Principles emphasise the need to take a person-centred approach, which is a restraint free approach – a way of thinking that preserves the human rights of any person.

Right to protection from exploitation, violence and abuse

The Amending Principles engage the right to protection from exploitation, violence and abuse as contained in article 20(2) of the International Covenant on Civil and Political Rights and article 16 of the Convention of the Rights of Persons with Disabilities. The Amending Principles are intended to increase protection for aged care consumers against potential exploitation, violence and abuse in the form of chemical and physical restraint.

In some circumstances, a change in a consumer's behaviour may result in a consumer harming themselves or others. To protect the safety of the consumer, or another person, the Amending Principles permit a provider to use physical or chemical restraint, provided certain requirements are met. These conditions ensure that the use of restraint is always a measure of last resort and viewed as a temporary solution to any behaviour causing a risk of harm.

Conclusion

The Amending Principles are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. It promotes the consumer's rights to the enjoyment of the highest attainable standard of physical and mental health, and to protection from exploitation, violence and abuse. The Amending Principles will also assist in promoting a key object of the Aged Care Act, namely to protect the health and well-being of recipients of aged care services.

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Minister for Senior Australians and Aged Care