



Quality of Care Amendment (Restrictive Practices) Principles 2022

I, Anika Wells, Minister for Aged Care, make the following principles.

Dated 30 November 2022

Anika Wells
Minister for Aged Care

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules.....	1
	Schedule 1—Amendments commencing day after registration	2
	<i>Quality of Care Principles 2014</i>	2
	Schedule 2—Amendments commencing 1 April 2023	9
	<i>Quality of Care Principles 2014</i>	9
	Schedule 3—Amendments commencing 2 years after registration	10
	<i>Quality of Care Principles 2014</i>	10

1 Name

This instrument is the *Quality of Care Amendment (Restrictive Practices) Principles 2022*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	1 December 2022
2. Schedule 1	The day after this instrument is registered.	1 December 2022
3. Schedule 2	1 April 2023.	1 April 2023
4. Schedule 3	The day after the end of the period of 2 years beginning on the day this instrument is registered.	1 December 2024

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Aged Care Act 1997*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments commencing day after registration

Quality of Care Principles 2014

1 Section 4

Insert:

individual nominee has the meaning given by subsection 5A(2).

medical treatment authority, for a care recipient, means an individual or body that, under the law of the State or Territory in which the care recipient is provided with aged care, has been appointed in writing as an individual or body that can give informed consent to the provision of medical treatment (however described) to the care recipient if the care recipient lacks capacity to give that consent.

nominee group has the meaning given by subsection 5A(3).

restrictive practices nominee has the meaning given by subsection 5A(1).

2 Section 4 (definition of *restrictive practices substitute decision-maker*)

Repeal the definition, substitute:

restrictive practices substitute decision-maker has the meaning given by section 5B.

3 At the end of Part 1

Add:

5A Nominating restrictive practices nominees

- (1) *Restrictive practices nominee*, for a restrictive practice in relation to a care recipient, means:
 - (a) if there is only a single individual nominee for the restrictive practice in relation to the care recipient—that individual nominee; or
 - (b) if there is only a nominee group for the restrictive practice in relation to the care recipient—that nominee group; or
 - (c) if there is more than one individual nominee, or a nominee group and one or more individual nominees, for the restrictive practice in relation to the care recipient—the individual nominee or nominee group (as applicable) that takes precedence (see paragraph (9)(a)).
- (2) *Individual nominee*, for a restrictive practice in relation to a care recipient, means an individual:
 - (a) who has been nominated by the care recipient, in accordance with this section, as an individual who can give informed consent to the use of the restrictive practice in relation to the care recipient if the care recipient lacks capacity to give that consent; and
 - (b) who has agreed, in writing, to the nomination (and has not withdrawn that agreement); and
 - (c) who has capacity to give the informed consent mentioned in paragraph (a).

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- (3) **Nominee group**, for a restrictive practice in relation to a care recipient, means a group of individuals:
 - (a) who have been nominated by the care recipient, in accordance with this section, as a group of individuals who can jointly give informed consent to the use of the restrictive practice in relation to the care recipient if the care recipient lacks capacity to give that consent; and
 - (b) each of whom has agreed, in writing, to the nomination (and has not withdrawn that agreement); and
 - (c) each of whom has capacity to give the informed consent mentioned in paragraph (a).
 - (4) A care recipient may make, vary or revoke a nomination only if the care recipient has capacity to do so.
 - (5) A nomination, or a variation or revocation of a nomination, must be made in writing.
 - (6) A nomination (or varied nomination) of a group may nominate not more than 3 individuals as members of the group.
 - (7) A nomination (or varied nomination) may include only one nomination of a group.
 - (8) An individual may be nominated as an individual, or as a member of a group, but not both.
 - (9) If a nomination (or a varied nomination) nominates more than one individual nominee, or both one or more individual nominees and a nominee group, the nomination (or varied nomination) must:
 - (a) state the order of precedence in which the individual nominees and nominee group (as applicable) are nominated; and
 - (b) if a nominee group is nominated—state the rules that will apply if the members of the group cannot agree on whether to give informed consent as mentioned in paragraph (3)(a) in a particular case.
 - (10) A care recipient may nominate, as an individual or a member of a group, an individual who is a member of the service staff in relation to an aged care service through which aged care is provided to the care recipient only if the individual is the partner or a relative of the care recipient.

5B Meaning of *restrictive practices substitute decision-maker*

- (1) An individual or body is the ***restrictive practices substitute decision maker*** for a restrictive practice in relation to a care recipient if the individual or body has been appointed, under the law of the State or Territory in which the care recipient is provided with aged care, as an individual or body that can give informed consent to the use of the restrictive practice in relation to the care recipient if the care recipient lacks capacity to give that consent.
- (2) The following table has effect if:
 - (a) there is no such individual or body appointed for the restrictive practice in relation to the care recipient under the law of the State or Territory in which the care recipient is provided with aged care; and
 - (b) either:

Schedule 1 Amendments commencing day after registration

- (i) there is no clear mechanism for appointing such an individual or body under the law of the State or Territory; or
- (ii) an application has been made for an appointment under the law of the State or Territory in relation to the use of the restrictive practice in relation to the care recipient, but there is a significant delay in deciding the application.

Meaning of restrictive practices substitute decision-maker

Item	Column 1 For a restrictive practice in relation to the care recipient, if ...	Column 2 the restrictive practices substitute decision-maker for that restrictive practice in relation to the care recipient is ...
1	there is a restrictive practices nominee for the restrictive practice in relation to the care recipient	that restrictive practices nominee.
2	<p>item 1 does not apply to the restrictive practice in relation to the care recipient, but the care recipient has a partner:</p> <ul style="list-style-type: none"> (a) with whom the care recipient has a close continuing relationship; and (b) who has agreed, in writing, to act as a restrictive practices substitute decision-maker for the restrictive practice in relation to the care recipient (and has not withdrawn that agreement); and (c) who has capacity to act as a restrictive practices substitute decision-maker for the restrictive practice in relation to the care recipient 	that partner.
3	<p>items 1 and 2 of this table do not apply to the restrictive practice in relation to the care recipient, but the care recipient has a relative or friend:</p> <ul style="list-style-type: none"> (a) who, immediately before the care recipient entered aged care of a kind specified in section 15DA, was a carer for the care recipient on an unpaid basis; and (b) who has a personal interest in the care recipient's welfare on an unpaid basis; and (c) with whom the care recipient has a close continuing relationship; and (d) who has agreed, in writing, to act as a restrictive practices substitute decision-maker for the restrictive practice in relation to the care recipient (and has not withdrawn that agreement); and (e) who has capacity to act as a restrictive practices substitute 	<ul style="list-style-type: none"> (a) if there is 1 such relative or friend—that relative or friend; or (b) if there are 2 or more such relatives or friends—the eldest of those relatives or friends.

Meaning of restrictive practices substitute decision-maker		
Item	Column 1 For a restrictive practice in relation to the care recipient, if ...	Column 2 the restrictive practices substitute decision-maker for that restrictive practice in relation to the care recipient is ...
	decision-maker for the restrictive practice in relation to the care recipient	
4	<p>items 1, 2 and 3 of this table do not apply to the restrictive practice in relation to the care recipient, but the care recipient has a relative or friend:</p> <p>(a) who has a personal interest in the care recipient's welfare on an unpaid basis; and</p> <p>(b) with whom the care recipient has a close continuing relationship; and</p> <p>(c) who has agreed, in writing, to act as a restrictive practices substitute decision-maker for the restrictive practice in relation to the care recipient (and has not withdrawn that agreement); and</p> <p>(d) who has capacity to act as a restrictive practices substitute decision-maker for the restrictive practice in relation to the care recipient</p>	<p>(a) if there is 1 such relative or friend—that relative or friend; or</p> <p>(b) if there are 2 or more such relatives or friends—the eldest of those relatives or friends.</p>
5	<p>items 1, 2, 3 and 4 of this table do not apply to the restrictive practice in relation to the care recipient, but there is a medical treatment authority for the care recipient</p>	<p>(a) if there is 1 such medical treatment authority—that medical treatment authority; or</p> <p>(b) if there are 2 or more such medical treatment authorities and the law of the State or Territory in which the care recipient is provided with aged care provides for the order of precedence of the medical treatment authorities—the medical treatment authority that takes precedence under that law; or</p> <p>(c) if:</p> <p>(i) there are 2 or more medical treatment authorities; and</p> <p>(ii) the law of the State or Territory in which the care recipient is provided with aged care does not provide for the order of precedence of the medical treatment authorities; and</p> <p>(iii) 1 of the medical treatment authorities is an individual; that individual; or</p> <p>(d) if:</p> <p>(i) there are 2 or more medical treatment authorities; and</p> <p>(ii) the law of the State or Territory in</p>

Meaning of restrictive practices substitute decision-maker		
Item	Column 1 For a restrictive practice in relation to the care recipient, if ...	Column 2 the restrictive practices substitute decision-maker for that restrictive practice in relation to the care recipient is ...
		which the care recipient is provided with aged care does not provide for the order of precedence of the medical treatment authorities; and (iii) 1 or more of the medical treatment authorities are individuals; the eldest of those individuals.

- (3) For the purposes of paragraph (a) of column 1 of item 3 in the table in subsection (2), a person was a carer for the care recipient on an unpaid basis if:
- (a) the person was not employed, hired, retained or contracted (whether directly or through an employment or recruiting agency) as a carer for the care recipient; and
 - (b) no payment or benefit other than one or more of the following was or will be made or given to the person for being a carer for the care recipient:
 - (i) a carer payment or equivalent benefit;
 - (ii) payment in kind;
 - (iii) a payment or benefit as a beneficiary under the care recipient's will.
- (4) For the purposes of paragraph (b) of column 1 of item 3 in the table and paragraph (a) of column 1 of item 4 in the table in subsection (2), a person has a personal interest in the care recipient's welfare on an unpaid basis if:
- (a) the person is not employed, hired, retained or contracted (whether directly or through an employment or recruiting agency) to have that interest; and
 - (b) no payment or benefit other than one or more of the following is or will be made or given to the person for having that interest:
 - (i) a carer payment or equivalent benefit;
 - (ii) payment in kind;
 - (iii) a payment or benefit as a beneficiary under the care recipient's will.

4 At the end of section 15D

Add:

- ; and (e) specifies persons and bodies in relation to the giving of informed consent to the use of restrictive practices in relation to care recipients.

5 Paragraph 15FA(1)(f)

After "use of the restrictive practice", insert " , and how it is to be used (including its duration, frequency and intended outcome),".

6 After paragraph 15FA(1)(f)

Insert:

- (fa) the use of the restrictive practice is in accordance with the informed consent mentioned in paragraph (f);

7 Subsection 15FA(2)

After "(f)", insert " , (fa)".

8 At the end of paragraph 15FC(1)(a)

Add:

- and (iv) obtained informed consent to the prescribing of the medication for the purpose of using the chemical restraint;

9 Subparagraph 15FC(1)(b)(v)

After “medication”, insert “for the purpose of using the chemical restraint”.

10 After subparagraph 15FC(1)(b)(v)

Insert:

- (va) that the approved provider is satisfied that the practitioner obtained informed consent to the prescribing of the medication;
- (vb) the details of the prescription for the prescribed medication, including its name, dosage and when it may be used;

11 Paragraph 15FC(1)(c)

Repeal the paragraph (not including the note), substitute:

- (c) the use of the medication for the purpose of using the chemical restraint is in accordance with the prescription mentioned in subparagraph (b)(vb).

12 Subsection 15FC(2)

Omit “paragraphs (1)(b) and (c)”, substitute “subparagraph (1)(a)(iv) and paragraph (1)(b)”.

13 Paragraph 15GB(d)

Omit “paragraph 15FC(1)(b)”, substitute “subparagraphs 15FC(1)(b)(i) to (v) and (vb) to (vii)”.

14 At the end of Division 4 of Part 4A

Add:

15GC Responsibilities relating to nominations of restrictive practices nominees*Preventing coercion and duress*

- (1) An approved provider must take reasonable steps to ensure that:
 - (a) a care recipient to whom the approved provider provides aged care is not subject to coercion or duress in making, varying or revoking a nomination under section 5A; and
 - (b) an individual nominated under section 5A (whether as an individual or as a member of a group) is not subject to coercion or duress in agreeing as mentioned in paragraph 5A(2)(b) or (3)(b), or in withdrawing that agreement.

Assisting care recipients

- (2) If a care recipient nominates an individual under section 5A (whether as an individual or as a member of a group), the approved provider of the aged care service through which aged care is provided to the care recipient must assist the care recipient to:
 - (a) notify the individual of the nomination; and

- (b) give the individual a copy of the nomination; and
- (c) seek the individual's agreement as mentioned in paragraph 5A(2)(b) or (3)(b).

Keeping records

- (3) If a care recipient nominates an individual under section 5A (whether as an individual or as a member of a group), the approved provider of the aged care service through which aged care is provided to the care recipient must keep a record of:
 - (a) the nomination; and
 - (b) whether the individual has agreed as mentioned in paragraph 5A(2)(b) or (3)(b); and
 - (c) if the individual has agreed as mentioned in paragraph 5A(2)(b) or (3)(b)—whether the individual has withdrawn that agreement.

15 At the end of Part 4A

Add:

Division 6—Giving of informed consent by certain persons and bodies

15J Giving of informed consent by certain persons or bodies

For the purposes of paragraph 54-11(2)(a) of the Act (which refers to the giving of informed consent to the use of a restrictive practice in relation to a care recipient), a person or body that is a restrictive practices substitute decision-maker for the restrictive practice in relation to the care recipient under any of the items of the table in subsection 5B(2) of this instrument is specified.

Schedule 2—Amendments commencing 1 April 2023

Quality of Care Principles 2014

1 After paragraph 15HC(e)

Insert:

- (ea) if the care recipient lacks the capacity to give informed consent to the use of the restrictive practice:
 - (i) whether subsection 5B(1), or an item of the table in subsection 5B(2), applies for the restrictive practice in relation to the care recipient, and why that subsection or item applies; and
 - (ii) the name of that restrictive practices substitute decision-maker for the restrictive practice in relation to the care recipient;

2 Paragraph 15HC(g)

After “use of the restrictive practice”, insert “, and how it is to be used (including its duration, frequency and intended outcome),”.

3 Section 15HC (note)

Repeal the note, substitute:

Note: Sections 15FB and 15FC also require other matters to be documented in the behaviour support plan.

4 At the end of paragraph 15HD(a)

Add:

- (v) whether its use was in accordance with the informed consent set out under paragraph 15HC(g);

5 Paragraph 15HE(d)

After “about the ongoing use of the restrictive practice”, insert “, and how it is to be used (including its duration, frequency and intended outcome),”.

Schedule 3—Amendments commencing 2 years after registration

Quality of Care Principles 2014

1 Section 4

Repeal the following definitions:

- (a) definition of *individual nominee*;
- (b) definition of *medical treatment authority*;
- (c) definition of *nominee group*;
- (d) definition of *restrictive practices nominee*.

2 Section 4 (definition of *restrictive practices substitute decision-maker*)

Repeal the definition, substitute:

restrictive practices substitute decision-maker, for a restrictive practice in relation to a care recipient, means an individual or body that, under the law of the State or Territory in which the care recipient is provided with aged care, has been appointed as an individual or body that can give informed consent to the use of the restrictive practice in relation to the care recipient if the care recipient lacks capacity to give that consent.

3 Sections 5A, 5B and 15GC

Repeal the sections.

4 Paragraph 15HC(ea)

Repeal the paragraph, substitute:

- (ea) if the care recipient lacks the capacity to give informed consent to the use of the restrictive practice—the name of the restrictive practices substitute decision-maker for the restrictive practice in relation to the care recipient;

5 Division 6 of Part 4A

Repeal the Division.