



AGED CARE QUALITY AND SAFETY COMMISSION SUBMISSION  
PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS 20.08.19  
QUALITY OF CARE AMENDMENT (MINIMISING THE USE OF RESTRAINTS) PRINCIPLES 2019

Introduction

- 1 This submission focuses on the role of the Aged Care Quality and Safety Commission (Commission) in regulation of the use of restraint under the Aged Care Quality Standards (Quality Standards) and requirements of the Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019.
- 2 Because of the high potential for harm to aged care consumers arising from the use of restraint, restrictive practices are a focus of attention by the Commission when conducting performance assessments against the Quality Standards and investigating complaints about aged care providers. We are also using education, information and targeted communications to support our regulatory objectives.
- 3 Since the introduction of the Minimising the Use of Restraints Principles we have taken steps to:
  - a) communicate our expectations to residential aged care services providers;
  - b) provide information and resources for the sector, including a self-assessment tool on minimising the use of chemical restraint;
  - c) sharpen our focus on the use of physical and chemical restraint during our assessment of the Standard of quality of care and services during site visits to residential aged care services, and;
  - d) develop clinical pharmacist advisory support with tailored products for providers and consumers.
- 4 We are seeing some early evidence of increased awareness of providers and their review of care practices in this area. We understand that this is a complex issue and the Commission will continue to monitor closely and look for further evidence of the necessary behaviour change to improve outcomes for consumers and ensure that restraints are used only as a last resort and not until alternative strategies have been considered.

- 5 The Commission is an independent statutory authority governed by the Aged Care Quality and Safety Commission Act 2018 (Cth) (Act) and the Aged Care Quality and Safety Commission Rules 2018 (Cth) (the Rules). The functions of the Commission are set out in sections 16 to 20 of the Act.
- 6 The role of the Aged Care Quality and Safety Commission is to:
- (a) promote the provision of quality care and services by ‘approved providers’<sup>1</sup> of aged care services and ‘service providers’ of Commonwealth-funded aged care services<sup>2</sup>;
  - (b) protect and enhance the safety, health, wellbeing and quality of life for all aged care consumers.
- 7 The Commission’s work sits within the broader aged care regulatory framework established by the Aged Care Act 1997 (Cth) (Aged Care Act), which includes the Quality of Care Principles 2014 (Cth) (the Principles) made under section 96-1 of the Aged Care Act and the obligations and responsibilities that aged care providers must follow to receive subsidies from the Australian Government. It is expected<sup>3</sup> that additional compliance functions will be transferred from the Department to the Commission in 2020.

#### Regulating the use of restraint

- 8 Consistent with its existing regulatory, education and complaints functions under the Act, the Commission currently has three key roles in regulating restraint in residential aged care services in connection with the Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019. These roles are performed by the Commission:
- (a) as part of its regulatory functions:
    - (i) to gather evidence on the inappropriate use of restraints through its assessment and monitoring activities against the new Quality Standards;
    - (ii) to assess provider compliance with the Quality Standards informed by best practice guidance and the legislative requirements contained in the 2019 Principles, and if in performing the regulatory functions the Commission becomes aware of information

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<sup>1</sup> An ‘approved provider’ is a person or body in respect of which an approval under Part 2.1 of the Aged Care Act is in force in accordance with Schedule 1 of the Aged Care Act.

<sup>2</sup> CHSP services and National Aboriginal and Torres Strait Island Flexible Aged Care Program services as specified under the Act as ‘Commonwealth-funded aged care services’ (Rules, s 8).

<sup>3</sup> These reforms are foreshadowed in section 5(2) of the Act and will require legislative amendments to, among other things, the Aged Care Act.

about a failure to meet provider responsibilities under the Aged Care Act, to give the Department of Health this information for the purposes of the Department's compliance functions; and

(iii) to also notify any finding of non-compliance with the Quality Standards and provide the Commission's decision and the report of the assessment team to the Department of Health;

(b) as part of its education functions, to educate providers on best practice guidance and their legislative obligations regarding the use of restraints;

(c) as part of its complaints functions, to deal directly with complaints from care recipients, their representatives and others about the use of restraints. Again, the Commission will refer information to the Department of Health where there has been a breach of the 2019 Principles.

9 The Department of Health currently has the power under the Aged Care Act to sanction providers for non-compliance with the 2019 Principles. In future, the Commission expects to have a role in dealing with non-compliance under the 2019 Principles through an expanded compliance remit.<sup>4</sup>

#### Risk based regulation

10 The Commission applies a risk-based approach to regulation. This means the focus of our activities is on the areas of greatest risk to the safety, health and wellbeing of aged care consumers, and on those services providing care that does not meet the Quality Standards.

11 The Commission uses information about the performance of an aged care service, complaints and feedback from consumers and relevant information that may be referred from the Department of Health to determine the scope and frequency of compliance monitoring visits to that service. Risk based regulation also means that we look to the evidence of what works and collaborate with others to solve problems and achieve our intended objectives. We use education, information and targeted communications to support our regulatory objectives.

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<sup>4</sup> The objects of the Commission's Act state in section 5(2) that: *"It is Parliament's intention to further the object of this Act by conferring, through future legislative change, additional functions on the Commission relating to matters such as the approval of providers of aged and compliance."* Subject to legislative change, the Commission expects in future to have certain approval and compliance functions currently performed by the Department of Health transferred to it.

- 12 Because of the high potential for harm arising from the use of restraint, these practices are a focus of attention by the Commission when conducting accreditation audits against the Quality Standards and investigating complaints about aged care providers
- 13 In addition, when unannounced assessment contacts of residential aged care services are conducted, quality assessors ask a number of risk screening questions to help inform or focus the contact.<sup>5</sup> Recognising the need for a renewed focus on the use of restraint, in January 2019 the Commission added to the risk screening questions the following questions relevant to the use of restraint:
- (a) *How many consumers at the service are currently receiving psychotropic medications? and*
  - (b) *How many consumers are restrained in order to manage risks to themselves or others at the service?*

Quality assessors are expected to capture the response to each of these questions as a rate or per cent of total consumers at the service.

- 14 The information obtained in response to the risk screening questions is used by quality assessors as a way of understanding the relative risk profile of the service for the purposes of guiding the assessment process (for example, identifying consumers and/or representatives to follow-up during the audit and helping to inform the focus of interviews, observations and document review which may be conducted during the contact).

#### Aged Care Quality Standards

- 15 The Quality Standards have at their core the principle that care should be based on comprehensive assessment of a consumer's needs and shaped to optimise health, wellbeing and quality of life of those receiving care. The Quality Standards also set expectations of practices and systems, and an environment and a culture of care which promote a restraint free environment, and where restraint is used, that it is only used after applying all reasonable alternative management options. Providers are expected to make positive changes to how they assess, plan and deliver care and services in order that restraint is only ever used as a last resort and as a temporary solution. The Quality Standards relevant to the use of restraint include:

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<sup>5</sup> The full set of questions are published on the Commission's website at <https://www.agedcarequality.gov.au/providers/assessment-processes/assessment-contacts#determining%20the%20scope%20of%20unannounced%20assessment%20contacts> [accessed 17 April 2019].

- (a) Standard 1 – Consumer dignity and choice, which requires each consumer to be supported to take risks to enable them to live the best life that they can;
  - (b) Standard 2 – Ongoing assessment and planning with consumers, which requires services to undertake assessment and planning with consumers, including the consideration of risks to the consumer’s health and well-being, that informs the delivery of safe and effective care and services;
  - (c) Standard 3 – Personal care and clinical care, which requires services to ensure:
    - (i) each consumer gets safe and effective personal and clinical care that is best practice, is tailored to their needs and optimises their health and well-being;
    - (ii) effective management of high prevalence risks to the care of each consumer; and
    - (iii) that the care provided is responsive to changes in a consumer’s mental health cognitive or physical capacity or functioning;
  - (d) Standard 5 – Organisation’s service environment, which addresses how the service environment must be easy to understand and optimise independence, interaction and function, enabling consumers to move freely both indoors and outdoors so that it is as least restrictive as possible in line with assessed needs.
- 16 The Quality Standards require aged care providers which deliver clinical care to have a clinical governance framework in place that includes minimising the use of restraint (Standard 8, Requirement 3(e)). Specifically, under Standard 8, residential aged care providers are expected to have:
- (a) effective organisation wide governance systems in place including a clinical governance framework which minimises the use of restraint; and
  - (b) effective organisation wide governance systems for regulatory compliance (this means systems to ensure regulatory compliance with relevant state and territory laws in relation to consent and substitute decision making, and effective oversight of the use of restraints consistent with the Minimising the Use of Restraints Principles).
- 17 As part of its assessment and monitoring, the Commission therefore expects providers to demonstrate how they are meeting their legislative obligations including under the new regulations. The Commission expects to see an effective oversight system consistent with legislation and best practice guidance for any form of restraint. Assessment Teams will look for evidence such as: the presence of informed consent, including involvement of consumer representatives where this is

needed; authorisations from prescribing practitioners; the consideration of alternatives to restraint, and; the regular review and reassessment of the ongoing need for restraint.

- 18 In June 2019, the Commissioner wrote to all Residential Aged Care Service Providers alerting them to the new Minimising the Use of Restraints Principles, and that from 1 July 2019 the Commission would be expecting service providers to demonstrate effective oversight to minimise the use of restraint. The Commission also released a self-assessment tool to assist providers to identify consumers at the service who were receiving psychotropic medications and to review their practices in accordance with the Minimising the Use of Restraints Principles. The tool provides details of the type of information record that the Commission will seek to review when undertaking assessment of aged care services against the Standards, and as part of that, monitor how services are effectively minimising and overseeing the use of restraints.
- 19 Providers are encouraged to self-assess their compliance with the Principles on minimising the use of restraints, and to identify and review the management of consumers who are currently chemically or physically restrained. The provider self-assessment tool is also available on the Commission's website<sup>6</sup>
- 20 Quality Assessors are now reviewing this documentation when they attend a site visit to monitor compliance. This includes the following for each consumer receiving psychotropic medication:
- (a) A list of all psychotropic medications for the consumer
  - (b) Whether the medication is prescribed for a diagnosed condition, mental disorder, physical illness or physical condition. (The reason the doctor has prescribed, including for pro re nata use)
  - (c) Consumer behaviour relevant to the need for restraint that informed the decision to prescribe. (Description of the behaviour(s) e.g. agitation, wandering, aggression)
  - (d) Alternatives to the use of restraint that have been used (Non-pharmacological strategies e.g. re-orientation, reassurance, noise reduction)
  - (e) Opportunities to participate and do things of interest to them and frequency undertaken. (This should reflect the provider's efforts to engage the consumer in activities that are meaningful and of interest to the consumer)

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<sup>6</sup> <https://www.agedcarequality.gov.au/resources/self-assessment-tool-psychotropic-medications>

- (f) Practitioner's decision to use restraint (date) recorded in care and services plan. (The care and services plan should record and date the prescriber's decision and record that consent was obtained).
  - (g) Consumer / representative informed prior to restraint use (or as soon as possible) if not practicable (Name of advising representative and date advised)
  - (h) Frequency of monitoring for distress or harm and feedback to practitioner (progress notes or other processes to monitor consumer's condition, monitor for side effects, levels of sedation, and need for continued use of restraint)
  - (i) Date of last review when consideration was given to ceasing or minimising use (providers should proactively inform the medications(s) review by the treating practitioner).
- 21 The self-assessment tool is intended to prompt services to identify consumers on psychotropic medication, and to plan and monitor to reduce use of psychotropic medication use in partnership with treating practitioners to achieve a better quality of life for consumers. The Commission expects such information to be updated and monitored as an active document. Use of the provider self-assessment tool is not mandatory and does not need to be submitted to the Commission as part of an assessment contact or accreditation or reaccreditation assessment. It has been well received by the sector and we have feedback that it is supporting behaviour change by providers.
- 22 In summary - as part of its assessment and monitoring, the Commission expects providers to demonstrate how they are meeting their legislative obligations of the Quality Standards and the Minimising the Use of Restraint Principles and will seek evidence of this through sampling of records of care, interviews with consumers and their representatives and inquiries of staff, health professionals, and others at the service.

#### Dealing with Non-compliance

- 23 When the requirements of the Quality Standards are not met, the Commission will notify the approved provider of a finding of non-compliance with the Quality Standards and issue a timetable for making the necessary improvements with respect to the service. It will set out the compliance monitoring arrangements that will be undertaken by the Commission. Where the Commission is not satisfied that the necessary improvements have been made, it may undertake a review audit to determine whether to vary or revoke accreditation of the service.
- 24 All Commission findings of non-compliance with the Quality Standards and all serious risk decisions will be notified to the Department of Health, along with a copy of the Assessment Team's audit or assessment contact report from the site visit. Until the transfer of compliance functions to

the Commission, the Department will then consider compliance with the Aged Care Act and Principles (including as amended by the 2019 Principles).

#### Consumer rights and Complaints

- 25 The Commission handles complaints about the use of chemical and physical restraint from care recipients and their representatives. It does so within the existing set of provider responsibilities identified in the Aged Care Act, including the Minimising the Use of Restraints Principles.
- 26 On 1 July 2019, a single Charter of Aged Care Rights (Charter) was introduced making it easier for consumers, their families, carers and representatives to understand what they can expect from an aged care service.
- 27 In respect of residential aged care, one of the most frequent issues raised with the Commissioner is about the appropriate identification, handling, timing and management of medication.
- 28 As part of its complaints function, when the Commission has grounds to believe that the practices of a provider may be in breach of their responsibilities under the Aged Care Act (for example misusing restraints), the Commission engages with the service and expects them to act immediately to ensure they are meeting their responsibilities. Where this does not happen or where there are questions about the capability of the service to implement actions it has committed to undertaking, the Commission can deploy other regulatory functions and/or instigate the process of issuing formal directions to the provider under the Act.

#### Education, communication and engagement

- 29 The Commission has developed and released a series of fact sheets and guidance on clinical governance in aged care. Clinical governance is an integrated set of leadership behaviours, policies, procedures, responsibilities, relationships, planning, monitoring and improvement mechanisms that are implemented to support safe, quality clinical care and good clinical outcomes for each aged care consumer including minimising the use of restraints. The clinical governance factsheets and guidance were developed with input and advice from a range of stakeholders. This information is available on the Commission website<sup>7</sup>.
- 29 Clinical governance provides the framework for providers to structure and support good clinical outcomes for aged care consumers. The Quality Standards note three specific issues that should be included in a clinical governance framework: antimicrobial stewardship, minimising the use of

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<sup>7</sup> <https://www.agedcarequality.gov.au/providers/quality-care-resources/clinical-governance>



restraint and open disclosure. These issues should be specifically addressed in a provider's clinical governance framework.

- 30 The Commission has updated the Guidance and Resources material it makes available to providers, in order to strengthen information about minimising the use of restraint within both Standard 3 (Personal and Clinical Care) and Standard 8 (Organisational Governance). This content contains reflective questions and examples of actions and evidence that providers can consider demonstrating that restraint is only used as a last resort. The Guidance and Resources material also contains references to relevant resources and tools from the Department of Health and Dementia Australia (formerly known as Alzheimer's Australia).
- 31 Additional materials on the use of restraints to assist providers to ensure they understand their responsibilities and comply with the new Quality Standards and 2019 Principles, including frequently asked questions regarding restraints, are also available on the Commission website<sup>8</sup>.
- 32 A suite of new case studies to support implementation of the Minimising the Use of Restraint have been developed with advice from the Commission's Chief Clinical Advisor. These will be released on the Commission's website this month.
- 33 A Regulatory Bulletin on the Commission's approach to regulating the use of Restraint is being finalised for communication with the sector. This will be available on the Commission website once finalised.

#### Clinical advice and support

- 34 The Chief Clinical Advisor is managing a program of work aimed at minimising the inappropriate use of medications in aged care. Initially focusing on psychotropic medications, especially antipsychotics and chemical restraint, the work program will be extended to include antimicrobial stewardship, which is also referred to in the Quality Standards.
- 35 Particular consideration is being given to the best means of supporting and encouraging consumers and their representatives to participate fully in decision making about the use (commencement, adjustment and cessation) of medications. As part of this, early scoping work is being undertaken on the means of providing convenient digital access to, for example, information on commonly used medications, medication tracking capability, questions to ask prescribers.

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<sup>8</sup> <https://www.agedcarequality.gov.au/providers/assessment-processes/minimising-restraints-use>

36 The Chief Clinical Advisor is also participating in a working group established by the Department of Health to oversee a broader range of activities to reduce the inappropriate use of chemical restraints in residential aged care. The working group's specific brief is to oversee the implementation of recommendations arising from the Department of Health's Chief Medical Officer's Aged Care Clinical Advisory Committee, convened in February and March 2019.

#### National Aged Care Quality Indicator Program

37 From 1 July 2019, the Aged Care Legislation Amendment (Quality Indicator Program) Principles 2019 took effect and the National Aged Care Quality Indicator Program (the Program), managed by the Department of Health, is mandatory for all Commonwealth subsidised residential aged care services. The objectives of the National Aged Care Mandatory Quality Indicator Program are for providers to have robust, valid data to measure and monitor their performance and support continuous quality improvement; and over time, to give consumers transparent, comparable information about quality in aged care to aid decision making.

38 The National Aged Care Mandatory Quality Indicator Program requires aged care services to collect data on every care recipient each quarter, against the following clinical quality indicators:

- Pressure injuries
- Use of physical restraint
- Unplanned weight loss.

39 A further two indicators are in development. Guidance and additional information on quality indicators is available on the Department of Health's website. Data from the Program will be available to the Commission for use in quality assessment and monitoring.