



# Restrictive Practices Consent: Frequently Asked Questions

This document answers questions on obtaining informed consent from a Restrictive Practices Substitute Decision Maker (RPSDM).

## What is a Restrictive Practices Substitute Decision Maker?

A RPSDM can provide informed consent to the use of a restrictive practice for an older person on their behalf if the older person no longer has capacity to consent.

A RPSDM is a person or body that can give informed consent to a restrictive practice (or to the prescription of medication in the case of a chemical restraint), under the law of the state or territory where the older person is living in residential aged care.

The Commonwealth hierarchy to appoint a RPSDM, can only be used when:

- the older person cannot consent themselves; and
- no body or person is appointed as the RPSDM under state or territory law; and
  - there are no explicit legal avenues to appoint a RPSDM in the relevant state or territory; or
  - an application to appoint a RPSDM has been made but is experiencing significant delay.

## What does 'informed consent' mean?

For consent to be valid, it must be informed, voluntary, current, and specific, and provided by someone with capacity to understand and communicate their consent.

Consent is informed when the decision-maker is provided sufficient information about the decision before giving their consent. The older person or RPSDM should be given accurate and relevant information on:

- the proposed restrictive practice, including whether it involves medication or an intervention;
- the reason for the use of the proposed restrictive practice;
- any alternative options available to them (including not taking or using the medication or intervention); and
- the risks and benefits of the use of the proposed restrictive practice and any alternative options.

The older person or RPSDM should be given the opportunity and time to review and ask questions about the use of any proposed restrictive practice.

The registered provider should be satisfied that the older person or RPSDM has the capacity to understand the decision and to communicate their decision.

The older person or RPSDM must be able to come to a considered and independent decision, free from duress or coercion.

Further information regarding informed consent is available on the Aged Care Quality and Safety Commission's website under the heading [consent and decision making](#).

## **Can the RPSDM consent to restrictive practices before they are required?**

Informed consent must be provided for each type of restrictive practice and the circumstances for when it is intended to be used on an older person.

The RPSDM can provide consent to more than one type of restrictive practice, or more than one use of that restrictive practice, provided that the specific requirements and appropriate detail for each one are given to the RPSDM to consider. The purpose of, and risks associated with, each type of restrictive practice will differ for each older person. For this reason, these need to be reflected in discussions of, and consent (or not) to, the use of a restrictive practice.

Overarching or pre-emptive consent cannot be given for the use of restrictive practices for an older person.

Seeking and accepting 'blanket' consent for all types of restrictive practices for an older person is contrary to the Aged Care Act 2024, including the Aged Care Quality Standards and Statement of Rights, and contravenes the principles of person-centred care.

## **Is there a time limit to the consent provided by the RPSDM?**

Consent is based on a specific proposed use of a restrictive practice and the provider must inform the RPSDM of the intended timeframe for use of the restrictive practice. The informed consent can be withdrawn at any time, is time limited and must be reviewed.

If the restrictive practice is later required to be used beyond the specified time period or outside the specified circumstances the registered provider must seek informed consent from the RPSDM for these uses.

As the RPSDM may withdraw consent at any time, the registered provider should take steps to communicate regularly with the RPSDM about the use of the restrictive practice. This includes confirming that their informed consent to the use of a restrictive practice is still current and accurate.

## **Where a chemical restraint is used or considered, how will registered providers determine if the medical or nurse practitioner gained informed consent to prescribe medication to be used as a chemical restraint?**

The legislation requires a registered provider to be satisfied that a medical or nurse practitioner obtained informed consent to prescribe medication as a chemical

restraint. As such, the registered provider should seek from the prescriber details of the process undertaken to gain informed consent. Registered providers should have systems in place to ensure and demonstrate that:

- There is documentation on how the registered provider satisfied themselves that informed consent was obtained to prescribe medication as a chemical restraint; and
- Where a restrictive practice is used in an emergency, the registered provider informs the RPSDM about the use of the restrictive practice, which may include medication, and document that communication in the older person's Behaviour Support Plan.

Registered providers should determine how this system works for them and older people, including links with medical or nurse practitioners who may prescribe medication as a chemical restraint, recording methods and practices for clinical notes, and the preferred method of communication between the provider, older people and their families.

If the registered provider is not or cannot be satisfied that the prescriber has gained informed consent to prescribe medication as a chemical restraint, the chemical restraint cannot be used.

### **Is the registered provider responsible for documenting the individual/body's agreement to be the RPSDM in writing?**

Yes. A registered provider must assist older people to seek an individual's agreement to be a RPSDM when appointed under the Commonwealth hierarchy and keep a record of the written agreement, and if relevant, whether the individual has withdrawn that agreement. It is recommended the agreement is included in the older person's Behaviour Support Plan.

### **What is the correct form of written agreement to appoint a RPSDM?**

The only requirement is a RPSDM agrees to the nomination in writing. There is no legal requirement on the form of the written agreement. For example, it may include a signed form stating the older person has capacity and nominates a person to be their RPSDM, and the RPSDM has capacity and agrees to be the RPSDM for the older person.

### **Does the registered provider need to make a capacity assessment of the RPSDM or is it presumed?**

While a person is presumed to have capacity, a registered provider must be satisfied the RPSDM has the required cognitive capacity to understand the information provided about the use of the restrictive practice to make an informed decision about whether to give or withhold consent.

## **What if an eligible person in the hierarchy is unwilling to act as the RPSDM?**

If an eligible person or body in the Commonwealth hierarchy declines the appointment the registered provider can move down the hierarchy to find an eligible person or body. The registered provider must document that the appropriate individual declined the appointment.

## **Can a registered provider move to a lower item of the hierarchy if the RPSDM does not consent to or declines to make a decision regarding the use of a restrictive practice?**

No. If the RPSDM does not provide consent (by either refusing to consent or declining to decide) to the use of the restrictive practice then the restrictive practice cannot be used. Registered providers cannot seek consent from a person who is lower in the Commonwealth hierarchy.

## **Can the RPSDM withdraw consent?**

Yes, the RPSDM who previously gave consent to the use of the restrictive practice can withdraw that consent at any time.

## **How many individual nominees or nominee groups can a older person nominate as the RPSDM?**

There is no limit on the number of individual nominees an older person can nominate. If there is more than one nominee, the older person must provide the order of precedence.

An older person may only nominate one nominee group, which can have a maximum of three members.

## **If the older person nominates more than one nominee, do they all have to consent to the use of a restrictive practice before the restrictive practice can be used?**

This is a decision for the older person and must be documented in their nomination of the nominees. If the older person does not require all nominees to consent to the use of a restrictive practice, they then need to identify which nominee takes precedence.

## **How is a dispute dealt with if the older person determined all nominees must agree that a restricted practice can be used?**

This is a decision for the older person and must be documented in their nomination. This may include that the restrictive practice cannot be used or provide an avenue for the dispute to be resolved. For example, a separate individual can provide consent in this situation.

## **If an older person has an appointed medical treatment authority is this individual or body the RPSDM in the first instance?**

No. It is only if items one to four of the Commonwealth hierarchy do not apply that the medical treatment authority can be relied on as the RPSDM under item five.

## **Who can act as a RPSDM for an older person with no family or friends in a state/territory without an explicit legal avenue to appoint a RPSDM?**

If an older person is receiving aged care in a state/territory without an explicit legal avenue to appoint a RPSDM and has no family or friends who met the criteria set out in the Commonwealth hierarchy, then a person or body appointed as their medical treatment authority under state/territory laws can act as the RPSDM.

If the older person does not have a medical treatment authority, the registered provider can apply to the relevant court or tribunal to have someone appointed as the medical treatment authority. Otherwise, the registered provider cannot use a restrictive practice on the older person.

## **Who can an older person or representative contact if they are concerned about a decision of the RPSDM?**

If an older person is concerned about a decision of the RPSDM, the older person or their representative should contact the registered provider to discuss their concerns. If they are not happy with the registered provider's response, the older person or their representative should contact the Aged Care Quality and Safety Commission (Commission).

The Commission provides a free service for anyone to raise a concern or make a complaint about the quality of care or services provided to people receiving aged care subsidised by the Government. The Commission can be contacted on 1800 951 822 or by visiting the website at: [www.agedcarequality.gov.au](http://www.agedcarequality.gov.au).

## **Can the RPSDM seek a second opinion on the registered provider's recommendation to use a restrictive practice?**

Yes. The RPSDM has the right to ask for, and should be supported to get, a second opinion for any treatment including medications or restrictive practices.

A RPSDM can refuse to consent to the use of a restricted practice even when a registered provider following advice from an approved health practitioner (either a medical practitioner, nurse practitioner or a registered nurse) who has day-to-day knowledge of the older person, has determined a restrictive practice is necessary as a last resort to protect the older person and others. If the older person or their RPSDM does not provide consent to the use of a restrictive practice, the registered provider cannot use the restrictive practice on the older person.

## **What does a ‘significant delay’ to the appointment of a RPSDM mean?**

Consideration of whether a delay is ‘significant’ will depend on the individual circumstances for each older person and will be considered on a case-by-case basis.

The intention is to ensure informed consent can be given when there is a significant delay with a tribunal considering an application, recognising the time it may take for state/territory bodies to decide applications. Therefore a ‘significant delay’ would be considered months or years rather than days or weeks.

The following matters should also be considered when determining whether a significant delay is occurring:

- the relevant circumstances of the older person
- the impact and consequences of the timing of the decision on the older person
- whether the impacts and consequences are reversible, and
- whether the state or territory tribunal can make emergency decisions.

It is available to providers to seek their own independent advice, including legal advice, as specific cases arise in relation to whether the delays may be considered significant and effect the Commonwealth hierarchy.

## **Do behavioural and psychological symptoms of dementia fall under ‘diagnosed mental disorder’?**

No. Any medications prescribed to treat behavioural and psychological symptoms of dementia are a chemical restraint and the requirements for the use of restrictive practices apply.

## **Are restrictive practices requirements in residential care the same for home and community care?**

The requirements for the use of restrictive practices only applies to registered providers of residential care.

Under the Serious Incident Response Scheme (SIRS), all Commonwealth funded registered providers are required to report the inappropriate use of restrictive practices to the Commission. This provides additional safeguards when it comes to restrictive practices in home and community care.

Further information regarding the reporting requirements under the Serious Incident Response Scheme is available on the Commission website, available at [The Serious Incident Response Scheme | Aged Care Quality and Safety Commission](#).

## **If a person is under 65 and an NDIS participant in residential aged care will the restrictive practices safeguards apply to them?**

Any registered provider who is supporting a NDIS participant must be a registered NDIS provider. As such, the registered provider is required to meet the requirements

of both the aged care legislation as well as the NDIS legislation regarding restrictive practices.



**Phone 1800 200 422**

(My Aged Care's free call phone line)



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