Restrictive Practices in Residential Aged Care

The Role of a Restrictive Practices Substitute Decision-Maker

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This fact sheet is intended for older people receiving Australian Government funded aged care services, and their families, supporters, and care representatives. It applies to residential aged care services to help readers understand the role of a Restrictive Practices Substitute Decision-Maker (RPSDM).

The role of a RPSDM is limited to deciding whether to consent to a restrictive practice for an older person in residential aged care. It does not extend to other decisions, such as entry into residential aged care or financial matters.

What are restrictive practices?

Restrictive practices are any action(s) that restrict the rights or freedom of movement of an older person. They can impact an older person's autonomy, wellbeing and quality of life.

There are 5 types of restrictive practices

1. Chemical – using a medication or chemical substance for the primary purpose of influencing an older person's behaviour.
    - For example, using medicine to alter an older person's mood or behaviour.
2. Environmental – restricting an older person's free access across all parts of their environment and the community (including access to items and activities) for the primary purpose of influencing their behaviour.
    - For example, restricting access to an outside space such as a courtyard, or putting an older person's walking frame out of reach.
3. Mechanical – using a device to prevent, restrict or subdue an older person's movement to influence behaviour.
    - For example, worker lowering an older person's bed (such as a low bed) to the lowest height to stop them from getting out.
4. Physical – using physical force to prevent, restrict or subdue movement of an older person's body, or part of their body
    - For example, holding an older person's arms down to stop movement during personal care.

5. Seclusion – using solitary confinement in a room or physical space to influence behaviour where voluntary exit is prevented, or it's implied that leaving is not allowed at any time.
    - For example, taking an older person away from the presence of others to a room where they are alone and feel they cannot exit.

Further information on the types of restrictive practices and other examples is available on the Aged Care Quality and Safety Commission's website.

Visit http://www.agedcarequality.gov.au and search for 'minimising restrictive practices'

When can restrictive practices be used?

Restrictive practices must only be used as a last resort to prevent harm to the older person or others around them. Before using a restrictive practice, the provider must proactively recognise and respond by using person-centred behaviour support strategies. These alternative strategies must be used to the extent possible before using a restrictive practice.

The provider must follow legal requirements for the use of a restrictive practice.

What legal requirements apply?

Providers can only use a restrictive practice if:

- it is a last resort to prevent harm to the older person or others around them
- it is used in the least restrictive form and used for the shortest time possible
- a medical practitioner, nurse practitioner or registered nurse (also known as an approved health practitioner) has assessed that the restrictive practice is needed and documented
- to the extent possible, best practice alternative strategies have been used and documented
- a behaviour support plan is in place and is being implemented
- the older person, or their RPSDM, has provided informed consent.

There may be circumstances where a restrictive practice is used in an emergency. An emergency is a serious or dangerous situation that is unanticipated or unforeseen which requires immediate action by the provider. Situations where restrictive practices are required in residential aged care in the event of an emergency should be rare. However, if emergency use of a restrictive practice is necessary, the provider must as soon as practicable after the restrictive practice starts to be used:

- inform the RPSDM about the use of the restrictive practice and the reason it was necessary (if the older person lacks capacity to give consent)
- document the emergency use, alternative strategies used, and relevant assessment in relation to the older person's care and behaviour support needs in their behaviour support plan.

Who can consent to the use of a restrictive practice?

Older people should be supported to make their own decisions wherever possible. An older person can provide consent if they have capacity. This means they can understand the decision, consider the information and communicate their choice.

If the older person cannot provide consent, then a RPSDM arrangement must be in place.

What is a RPSDM?

A RPSDM is a person or body who can provide consent to the use of a restrictive practice for an older person.

How does someone become a RPSDM?

The process for becoming a RPSDM differs depending on which state or territory the older person is receiving residential care services. State or territory laws are followed first.

Further information about the process is included at the end of this factsheet.

What should the RPSDM discuss with the provider?

Providers must follow legal requirements when considering or using a restrictive practice. Understanding these requirements can help older people and RPSDMs know what to expect and what questions to ask.

One of these requirements is that the provider must prepare a behaviour support plan if a restrictive practice is being considered or used. The plan must include:

- information that helps the provider to understand and support the older person and their behaviour
- any assessment that is relevant to understanding the older person's behaviour
- occurrences for changed behaviours such as timing and triggers or causes
- best practice alternative strategies that are individualised and tailored to support the older person
- information about the restrictive practice and how a restrictive practice will be used including duration, frequency and intended outcome
- how the use of a restrictive practice is to be monitored and evaluated.

The provider must prepare, review and revise the behaviour support plan in consultation with:

- the older person (and a supporter of the older person (if any)), or
- the older person's RPSDM.

What should the RPSDM consider?

The RPSDM should consider the following matters when deciding to provide informed consent.

- the reasons the restrictive practice is proposed or assessed as necessary including how it will be used, its duration, frequency, intended outcome and review process
- the risks and benefits of the restrictive practice and what this might mean for the older person
- assessments and relevant information regarding the restrictive practice including the behaviour support plan and how these have been considered
- any alternative options and best practice strategies considered or used, including whether the restrictive practice remains necessary or if there is an ongoing need for its use.

Consent must be informed and freely given

For informed consent to be valid, it must be freely given (no coercion or duress) and based on having enough information and a clear understanding of what is being agreed to.

If the RPSDM is unsure about whether to consent, the RPSDM can ask for more information, ask questions and discuss concerns. This may include speaking with the provider, the approved health practitioner that assessed the restrictive practices as necessary, or an independent aged care advocate, such as the Older Persons Advocacy Network (OPAN).

What if I don't consent?

A RPSDM has the right not to consent to a restrictive practice. The provider or approved health practitioner must respect that decision.

A restrictive practice must not be used without valid informed consent, except in an emergency situation where other requirements apply. If a restrictive practice is used without consent, the Aged Care Quality and Safety Commission can investigate.

Is consent to a restrictive practice ongoing?

No. Consent to a restrictive practice is time limited and can be withdrawn at any time.

Consent to a restrictive practice must be reviewed regularly and if the older person's circumstances change, such as changes in mood or behaviour, health decline, hospital admission, a fall or an incident.

Information and Support

For information on restrictive practices in aged care	**Aged Care Quality and Safety Commission** www.agedcarequality.gov.au 1800 951 822
For information on behaviour support and dementia	**Dementia Support Australia** www.dementia.com.au 1800 699 799
For free, independent, confidential support and information in relation to a funded aged care service	**Older Persons Advocacy Network** www.opan.org.au 1800 700 600
For information on the Australian Government's legislation and policy for restrictive practices in aged care	**Department of Health, Disability and Ageing** www.health.gov.au Safeguards.Design@health.gov.au

Information on the process for becoming a RPSDM

What is the order for providing consent to a restrictive practice?

1. The older person
2. If the older person does not have capacity to consent, the RPSDM appointed or recognised under the state or territory law where the older person is receiving residential aged care services

State and territory laws

The process for becoming a RPSDM differs across states and territories. This is due to different guardianship and consent frameworks for each state and territory.

Links to information on state and territory resources are set out below.

What happens if the state or territory does not have a law to appoint or recognise a RPSDM? Or what happens if there is a delay in appointing a RPSDM under state or territory law?

The Australian Government has a hierarchy in place under aged care law if the state or territory does not have a legal process for appointing or recognising a RPSDM, or if there is a delay in appointing or nominating a RPSDM under the state or territory's process. The order is as follows:

1. The person (or persons) nominated by the older person as their RPSDM
2. The older person's partner
3. A relative or friend who was an unpaid carer for the older person
4. A relative or friend who was not a carer for the older person
5. The older person's medical treatment authority

Does being an enduring power of attorney or guardian also make you a RPSDM?

Being appointed as an attorney or guardian for an older person may not automatically extend to making decisions on the use of a restrictive practice. In some states or territories, specific authority for restrictive practices substitute decision making may be required.

If you are unsure, it can be helpful to check the document that appointed you as an attorney or guardian, or seek advice, to confirm whether you can consent to the use of a restrictive practice.

State and Territory Information

Information on substitute decision making arrangements varies across jurisdictions and may be provided by tribunals, public advocates/guardians, or government departments. The links below provide a starting point for arrangements in each state and territory.

Australian Capital Territory	Guardianship and management of property cases - ACAT
New South Wales	Guardianship Division fact sheets | NSW Civil and Administrative Tribunal
Northern Territory	Public Guardian and Trustee
Queensland	Decision-making for Adults with impaired capacity | Queensland Civil and Administrative Tribunal
Tasmania	TASCAT - Tasmanian Civil & Administrative Tribunal
Victoria	Substitute decision-making and restrictive practices in aged care | health.vic.gov.au
Western Australia	Office of the Public Advocate
South Australia	Restrictive practices | Office of the Public Advocate

Please visit www.health.gov.au for up-to-date information and search for ‘restrictive practices in aged care’