

INFORMATION-SHARING PROVISIONS OF THE DISABILITY SERVICES ACT 2006 FOR GENERAL PRACTITIONERS

POSITIVE BEHAVIOUR SUPPORT & RESTRICTIVE PRACTICES

The Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (the department) draws on its SOLID values (Strengths based, Open, Loyal, Innovative and Dedicated) to commit itself to supporting people with a disability to thrive.

As such, the department is committed to ensuring that adults with intellectual or cognitive disability are supported in appropriate ways which ensure personal safety while actively considering the adult's rights and needs. Furthermore, the department is committed to respecting, protecting and promoting human rights. Under the *Human Rights Act 2019*, the department, as a public entity, has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights.

The *Disability Services Act 2006* (the Act) contains safeguards that uphold the human rights of adults with an intellectual or cognitive disability who exhibit behaviour that causes harm. The Act regulates the use of restrictive practices and provides a positive behaviour support framework to improve the quality of life for these adults.

The legislation applies to adults 18 years or older who:

- have an intellectual or cognitive disability
- are receiving services provided by the department, or services prescribed by regulation and funded under a NDIS participant plan
- behave in a way that causes physical harm or a serious risk of physical harm to themselves or others.

This group could include adults with an acquired brain injury.

This Fact sheet provides treating doctors with information to assist them when prescribing medication for the primary purpose of controlling the adult's behaviour that causes harm to the adult or others. This is known as chemical restraint and is a restrictive practice defined under the Act.

The information-sharing provisions between the treating doctor and service provider of the adult under the Act are also outlined.

Legislative provisions and information sharing

The Act provides for information sharing among health professionals, including between the treating doctor and the service provider of the adult.

Under Section 197, a relevant service provider may request confidential information from a health professional or the Chief Executive (Health), or a health service chief executive if the service provider considers they may hold confidential information about an adult with an intellectual or cognitive disability that is relevant to any of the following being done by the provider:

- The assessment of the adult including the making of a decision about whether to assess the adult.
- The development or changing of a Positive Behaviour Support Plan for the adult.
- The development of a respite or community access plan for the adult.

This section of the Act also states that, where a health professional or the Chief Executive (Health) gives confidential information requested under this section and would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the health professional:

- does not contravene the Act, oath or rule of law or practice by giving the information
- is not liable to disciplinary action for giving the information.

Additionally, in merely providing the confidential information, the health professional cannot be held to have:

- breached any code of professional etiquette or ethics
- departed from acceptable standards of professional conduct.

Positive Behaviour Support & Restrictive Practices Factsheet: Information-sharing provisions of the Disability Services Act 2006 for General Practitioners

Section 198 of the Act requires the service provider to maintain the confidentiality of the information obtained from a health professional.

Developing an effective and collaborative relationship with the adult's service provider provides a strong foundation for ensuring all prescribed medication is managed appropriately.

Legislative provisions and chemical restraint

Under the Act, the treating doctor is recognised as a core stakeholder in the assessment of, and planning for, an adult where a medication may be used for the primary purpose of controlling the adult's behaviour in response to the adult's behaviour that causes harm to the adult or others (defined as 'chemical restraint' under the Act).

However, under the Act, the following are not chemical restraint:

- The use of medication for the proper treatment of a diagnosed mental illness or physical condition.
- Using medication, for example a sedative, prescribed by a medical practitioner to facilitate or enable the adult to receive a single instance of health care under the *Guardianship and Administration Act 2000*. For example, sedating an adult before attending a dentist appointment is not chemical restraint.

When medication is prescribed for the primary purpose of controlling an adult's behaviour, a Positive Behaviour Support Plan is required and consent or approval must be sought, usually from the adult's guardian, who has been appointed specifically for restrictive practice matters by the Queensland Civil and Administrative Tribunal (QCAT).

It is a legislative requirement that the treating doctor is consulted and their views incorporated into the development of a positive behaviour plan for the adult when a medication is used as a chemical restraint. Section 150(2) (e) of the Act outlines the specific information on the use of chemical restraint that must be included in the plan:

- The name of the medication and any available information about the medication (for example, any possible side effects).
- The dose, route and frequency of the administration, including, for medication to be administered as and when needed, the circumstances in which the medication may be administered, as prescribed by the adult's treating doctor.
- If the adult's medication has previously been reviewed, the date of the most recent medication review.

Where chemical restraint is used with an adult with an intellectual or cognitive disability who has behaviour that causes harm, disability service providers are required by policy and procedures to seek regular medication reviews with the treating doctor.

Some adults with an intellectual or cognitive disability may be receiving chemical restraint medications that were prescribed many years ago, and that have been in use for an extended period of time. The original reason for the prescription may now be unclear, particularly if treating doctors have changed. Some medications may have been prescribed with little or no evidence being presented to the treating doctor to support this as the least restrictive approach. In this case, a comprehensive medication review will be required.

It should be noted that a comprehensive assessment and/or review of medication may require extended consultations. For this purpose, Medicare arrangements allow for an extended consultation to conduct an annual health assessment of people with an intellectual disability.

Further Information

For more information, contact the Positive Behaviour Support and Restrictive Practice team on 1800 902 006 or enquiries_rp@dssatsip.qld.gov.au.

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