Office of the Senior Practitioner
Disability Policy Unit

Restrictive Practices Authorisation Requirements in South Australia

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This presentation aims to give disability service providers an understanding of the authorization requirements in the new Quality and Safeguards environment.

Why do we take the use of restrictive practices so seriously?

Firstly, because of Magna Carta!

No free man can be seized or imprisoned except by the lawful judgment of his equals or by the law of the land.

The principles of Magna Carta hold to this day in that no-one can be deprived of his/her liberty unless there is a legal process to do that.

Secondly, because Restrictive Practices are Dangerous!

In the United States, a team of *Hartford Courant* reporters and researchers compiled a national database believed to be the first of its kind. The database:

- shed light on deaths that occurred during or shortly after psychiatric or developmentally disabled patients were restrained or secluded in hospitals, residential facilities and group homes.
- documented 142 deaths from 1988 to 1998 as identified by public agencies, advocacy offices and news accounts.

The use of restrictive practices can seriously violate the rights of the people we support.

Unauthorised, restrictive practices may constitute the crimes and torts of false imprisonment, assault and battery.

False Imprisonment

- is an action which is committed when a person directly subjects another to deprivation of freedom of movement without lawful justification.
- is both a crime and a tort and, therefore, may result in either criminal and/or civil liability.

Cornelia Rau was found to have been falsely imprisoned from 5th April 2004 until 31st January 2005 and was subsequently awarded $2.6M.

Assault

- is carried out by a threat of bodily harm coupled with an apparent, present ability to cause the harm.
- is both a crime and a tort and, therefore, may result in either criminal and/or civil liability.

Battery

- is intentionally and voluntarily bringing about an unconsented harmful or offensive contact with a person. The contact can be by one person to another or the contact may be made by an object e.g. the intentional contact by a car.
- is an unconsented administration of a substance, including medication.
- Is an unconsented medical procedure.
- is both a crime and a tort and, therefore, may result in either criminal and/or civil liability.

An Historical Perspective

People with disabilities…

- have been locked up. Without appropriate consent this constitutes false imprisonment.
- have been physically restrained. Without appropriate consent this constitutes battery.
- have been medicated. Without appropriate consent this constitutes battery.
- have been sterilized. Without consent this constitutes battery.

How did this Occur?

No-one asked the question “On what legal basis do we do this?” because essentially people with disabilities were seen as “other”…

It was assumed that basic rights did not apply to them.

People with Disabilities

- Although these rights and freedoms have always applied to people with disabilities, historically they have often not been recognised and enforced.
- The United Nations Convention on the Rights of People with Disabilities does not confer new rights, rather it requires us to ensure that these inherent rights of people with disabilities are guaranteed.

Restrictive Practices

A practice, device or action that removes another person's freedom or interferes with another person's ability to make a decision.

They do not include the use of devices for therapeutic or safety purposes - ***unless the individual objects to their use.***

Types of Restrictive Practices

- Physical Restraint
- Mechanical restraint
- Seclusion
- Chemical Restraint
- Environmental Restraint
- Exclusion
- Aversive Restraint or Intervention
- Psycho-social Restraint

Physical Restraint

The sustained or prolonged use or action of physical force to prevent, restrict or subdue movement of a person's body, or part of their body, for the primary purpose of influencing a person's behaviour. Physical restraint is distinct from the use of a hands-on technique in a reflexive way to guide or redirect a person away from potential harm/injury, consistent with what could reasonably be considered the exercise of care towards a person.

Mechanical Restraint

The use of a device to prevent, restrict or subdue a person's movement for the primary purpose of influencing their behaviour. It does not include the use of devices for therapeutic or non-behavioural purposes. For example, it may include the use of a device to assist a person with functional activities as part of occupational therapy, or to allow for safe transportation.

Seclusion

The sole confinement of a person with disability in a room or physical space at any hour of the day or night where voluntary exit is prevented, impeded or not facilitated.

Chemical Restraint

The use of medication or chemical substance for the primary purpose of influencing a person's behaviour or movement. It does not include the use of medication prescribed by a medical practitioner for the treatment of, or to enable treatment of, a diagnosed mental disorder, a physical illness or physical condition.

Environmental Restraint

The practice of making changes or modifications to prevent free access to all parts of the person's environment. This might include not allowing access to various parts of their house or locking refrigerators.

Exclusion

The act of preventing a person from participating in or being part of an activity or decision. Or of deliberately ignoring or not including a person in an activity or decision.

Exclusion should not be used.

Aversive Restraint or Intervention

The practice of using physical, sensory or verbal responses to a person's undesired behaviour as a method of eliminating the behaviour.

In the past, some residents of institutions were rapped on the knuckles with a bunch of keys if they attempted to open a door.

More recently, people have been sprayed in the face with water in response to unwanted behaviours.

These interventions should not be used.

Psycho-social Restraint

The use of power-control strategies to control an individual by directing his/her behaviour, use of voice tone, ignoring the individual or withdrawing privileges.

These strategies should not be used.

The following Physical Restraints are not to be used in any circumstance!

Physical restraint in the form of:

- Supine restraint (face up)
- Prone restraint (face down)

These restraints are hazardous, potentially lethal and have caused deaths in the past.

Supine

Prone

The very first question to ask when considering using a Restrictive Practice:

Is there a <u>legitimate purpose</u> for using it?

It might be legitimate to consider putting a lock on the refrigerator if one of the residents has a eating disorder and free access to food is injurious to his health.

It would not be legitimate to put a lock on the refrigerator because one of the residents regularly spills the milk.

But surely Restrictive Practices are only used in situations where people are at risk?

The first person on the list of those 142 people who died was a 15 year-old-girl who suffocated while being held face-down on the floor for refusing to hand over a family photograph.

In South Australia in 2015, a young man was tackled and taken to ground in the foyer of a bowling alley when, in his exuberance, he ran into the centre and banged on the desk.

Who can Authorise the use of Restrictive Practices?

- **Where a provider believes a restrictive practice is necessary, an appropriate professional must recommend its use.**
- **The NDIS Quality and Safeguards Commission has already discussed the Rules in respect to positive behavior support plans**
- **Seclusion, physical restraint and mechanical restraint require the authorisation of the South Australian Civil and Administrative Tribunal (SACAT).**
- **Chemical restraint requires the consent of an authorised guardian and, if the individual objects to its use, authorisation by SACAT.**
- **Environmental restraint requires the consent of a guardian.**

Sometimes using a restrictive practice is exactly the right thing to do!

Using a restrictive practice might be necessary and indeed the right thing to do in an emergency situation to prevent harm to the individual or others e.g. grabbing someone to prevent him/her from running on the road.

The courts/ coroner would probably take a very dim view if someone didn't intervene because "it was a restrictive practice".

Dangers of Seclusion

In Australia many people have died in legally sanctioned seclusion. This includes people who have suicided whilst secluded.

If seclusion has been authorised, such seclusion must only occur within an environment that is safe, is non-threatening to the person, and maintains the dignity of the person. Close supervision and monitoring must be used to ensure the safety and wellbeing of the person during the period of seclusion.

Seclusion is not an alternative to supervision

Present Thinking

We recognise that:

- the use of unauthorised restraints is an infringement of rights that could lead to civil and/or criminal proceedings.
- restrictive practices were often used more for the benefit of the service provider than the individual.
- with new strategies we can reduce and eliminate the use of restrictive practices.

Current Australian Initiatives

The **National Disability Insurance Scheme Quality and Safeguards Commission** will oversee a system of national safeguards including a complaints mechanism, reporting requirements, Positive Behaviour Support competence standards, a Code of Conduct, and other systems to deal with abuse or neglect, and for addressing the use of restrictive practices.

The Obligations of Service Providers

Before a restrictive practice is approved:

- There must be a legitimate purpose to consider using the restrictive practice
- All less restrictive alternatives will be investigated
- A Positive Behaviour Support Plan will be developed
- Appropriate authorisation will be obtained
- A regular review of the practice is planned
- Collateral outcomes on other clients will be outlined and documented.

Investigation of Less Restrictive Alternatives

- Restrictive practices are to be viewed as a last resort, time-limited strategy, and only follow the trial of all other reasonable, less restrictive alternatives.
- Before using a restrictive practice, all other reasonable, less restrictive alternatives will be trialed and their outcomes documented by the provider.

What stays the same?

Definitions of restrictive practices

The requirement to reduce or eliminate restrictive practices

The authorisation requirements to use restrictive practices

What changes?

Every person who is subject to a restrictive practice must have a behaviour support plan registered with the Commission

Providers must report on the use of restrictive practices to the Commission

Some best practice issues

There are some initiatives which are not legal requirements but which constitute good practice in respect to the use of restrictive practices. These are outlined in the following slides.

Each Use of a Restrictive Practice

Service providers should have clear procedures concerning the approval of each use of an authorised restrictive practice (e.g. PRN medication).

It is best practice for approvals to be provided by a supervisor, duty officer or manager.

In an emergency, the decision to use the restrictive practice can be made by the support worker but its use must be reported to the supervisor, duty officer or manager at the very first opportunity.

Review of Restrictive Practices

Service providers should regularly review their policies

Service providers should regularly review the use of restrictive practices within their organisations at an individual level and across the organisation to ensure best practice and continued improvement for reducing the use of restrictive practices.

Ensuring Organisational capacity to manage restrictive practices

Induction training should ensure all new staff understand their responsibilities in respect to restrictive practices

There should be ongoing staff training

Policies and procedures on restrictive practices must be understood and implemented at all levels

Those staff implementing positive behaviour plans must be specifically trained in respect to the specific needs of each individual

The Western Australian Experience

Three organisations supporting some 60 individuals between them agreed to be ‘champion’ for change in the use of restrictive practices.

Their staff were asked how many restrictive practices were used in their services. The answer was very few.

They were given training on restrictive practices and again asked this question. They identified over a hundred examples of restrictive practices.

With just the new understanding that staff had developed, the use of restrictive practices was reduced greatly.

Use of Recording and Reporting

As well as complying with the Commission's requirements, disability service providers can use the information provided from recording the use of restrictive practice to:

- Coach and support staff
- Review the plans of individuals
- Monitor trends

Restrictive Practices Compliance Officer

- The Board will endorse the appointment of a Restrictive Practices Compliance Officer.
- This officer will liaise with the relevant internal client coordinator(s) to ensure that, where their organisation uses a restrictive practice, this occurs within the following framework prior to endorsing the practice.

Framework

- An appropriate practitioner has prescribed the RP
- The least restrictive alternatives have been explored, trialed and documented
- The RP can be used safely
- The appropriate authorisation and consent has been obtained
- All risks associated with the organisation’s use of the RP have been considered and documented.

Framework (cont.)

- Recording and reporting requirements are met
- A dated review process for each RP is in place
- The PBSP that includes the use of the RP is in place and is being implemented consistently.

A Committee to Monitor the Use of Restrictive Practices

- Each Board will endorse the appointment of an internal Governance Committee.
- The Governance Committee is tasked with the systemic reduction of RP across their organisation.
- The RP Compliance Officer may sit on the Governance Committee or this role may be undertaken by appointed members of this committee.
- This is at the discretion of each service provider.

A Committee to Monitor the Use of Restrictive Practices

The committee will use the following ways to monitor:

- Draw upon the organisation's RP data to analyse trends
- Evaluate and report on the effectiveness of RP reduction strategies
- Identify where there may be a reliance upon the use of RP
- Support all levels of staff to understand their specific responsibilities for reducing and eliminating the use of RP
- Positive Behaviour Support best practice

A Committee to Monitor the Use of Restrictive Practices

- Make recommendations for improving risk management practices
- Make recommendations for improving the quality of services
- Brief the Chief Executive and Board on the progress of RP reduction across their organisation.

Use of Internal Audit

A South Australian provider initiated a review of the use of restrictive practices, undertaken by the organisation's internal auditors. They developed, in conjunction with the management team and subject experts, an audit brief that covered all areas of organisational performance in implementing the organisation's policy and procedures on restrictive practices.

Use of Internal Audit

The review found:

- Considerable lack of knowledge of even the *existence* of restrictive practice policies
- The use of many unauthorised or forbidden restrictive practices
- A significant disconnect between senior managers and hands-on staff

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