INFORMATION-SHARING PROVISIONS OF THE DISABILITY SERVICES ACT 2006 FOR SERVICE PROVIDERS (DISABILITY SERVICE PROVIDER TO TREATING DOCTOR)

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 non- government service providers with information about and suggestions for engaging with a treating doctor of an adult where chemical restraint, as defined by the Act, is proposed or is in use.

Legislative requirements

Under the Act, the adult's treating doctor is recognised as a critical stakeholder in the assessment of behaviour and planning positive behaviour support for an adult where chemical restraint is proposed or is in use. Sections 150(2) (e) and 173(3) of the Act require the adult's treating doctor be consulted.

If a service provided or funded by the department, or services prescribed by regulation and funded under a NDIS participant plan proposes to use chemical restraint, they must consult the adult's treating doctor and inform them of:

- the findings and theories of the person who assessed the adult about the behaviour that causes harm to the adult or others, including the factors contributing to the behaviour
- the strategies for:
    - meeting the adult's needs and improving the adult's capabilities and quality of life
    - reducing the intensity, frequency and duration of the adult's behaviour that causes harm to the adult or others
- details of any other restrictive practices proposed to be used in conjunction with the use of the chemical restraint.

Under Section 150 of the Act, the positive behaviour support plan for the adult must also include the following information about the proposed use of chemical restraint, as prescribed by the adult's treating doctor:

- 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.

Developing an effective and collaborative relationship with the adult's treating doctor provides a strong foundation for ensuring chemical restraint, if used, is managed appropriately.

Preparing information for the treating doctor

In general, under the Act, assessment and planning for the adult will be coordinated by an appropriately qualified person who is working with or for the service provider.

The type of information the service provider should make available to the treating doctor may include:

- a history of the medication and use of chemical restraint
- a clear and well-documented description of the behaviours to be managed
- clear and accurate behavioural records, including measures of the frequency, intensity and duration of the behaviours
- a record of the reactions to, and the outcomes from, the behaviour, particularly in terms of any harm caused to the adult or others
- any detailed hypotheses regarding the major factors considered to contribute to the behaviour and the function of the behaviour
- a well-documented risk assessment for the adult
- an outline of a range of management strategies and, if already attempted, their outcome.

The service provider should request the treating doctor complete a Clarification of Purpose of Medication form. The treating doctor needs to state whether the medication is being administered for a diagnosed physical condition or mental illness, or if the medication is prescribed for the primary purpose of controlling the behaviour of the adult.

In some cases, some adults may be receiving chemical restraint but not actively displaying behaviour that causes harm. In such cases, the service provider should include as much historical data as possible to inform an assessment of whether the chemical restraint is necessary to prevent the adult's behaviour causing harm to the adult or others, and is the least restrictive way of ensuring the safety of the adult or others.

It is important to note that a comprehensive health assessment and/or review of medication may require more than one consultation with the treating doctor. To ensure consistency, it is ideal that the same support person be involved in all consultations where chemical restraint is being considered.

Section 198 of the Act outlines the requirements for service providers in relation to maintaining confidentiality. Confidential information obtained under the information sharing provisions of the Act must not be disclosed other then as outlined by Section 198(3) of the Act.

After the consultation

Where the use of chemical restraint is supported, the service provider must develop and implement a positive behaviour support plan that directs the circumstances under which chemical restraint can be used.

All positive behaviour support plans require consent or approval for the implementation.

Service providers should involve all stakeholders in any changes to the chemical restraint and inform them of the changes. It is essential that the decision maker consents to the changes where required by the Act. If the chemical restraint has been approved with seclusion and containment, this will be the Queensland Civil and Administrative Tribunal. For all others, the Guardian for a restrictive practice matter (general or respite) must provide consent.

The service provider is responsible for ensuring that all monitoring and review processes take place with the treating doctor and that all client files and records are kept up to date.

Further Information

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

August 2022

Christopher Booker

Director, Positive Behaviour Support & Restrictive Practices