

14 November 2022

The Australian Department of Health and Aged Care
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CANBERRA ACT 2601

Via email: QualityAgedCare@health.gov.au

Feedback in response to the Revised Aged Care Quality Standards

Thank you for the opportunity to comment on the Revised Aged Care Quality Standards.

As the Public Advocate for Queensland, I undertake systemic advocacy to promote and protect the rights and interests of Queensland adults with impaired decision-making ability.¹

People with impaired decision-making ability are a broad and diverse group due to the range of conditions that may affect a person's decision-making ability. In aged care settings, it includes conditions like dementia and other cognitive impairments or decline which affect decision-making ability.

Impaired decision-making ability can make people extremely vulnerable to the actions of others (including service providers), particularly when combined with conditions that reduce physical mobility or affect someone's ability to communicate verbally with others.

It is of vital importance to people within this cohort that the aged care quality standards provide an appropriate balance between the provision of appropriate safeguards and protections and the upholding of rights, including the right to have involvement, to the greatest extent possible, in decisions that affect their health and wellbeing.

The aged care quality standards are just one part of the aged care system's framework of protections and obligations. They are fundamental, however, to the setting of expectations for aged care providers in relation to the person-centred approach to care that was core to the recommendations of the Royal Commission into Aged Care Quality and Safety.

My comments in relation to the standards are detailed below.

Standard 1: The Person

This standard provides details regarding expectations associated with person-centred care and the outcomes expected of providers.

The standard could be further enhanced with the following inclusions.

- Specific references to the use of supported decision-making by the service provider, meaning that all attempts will be made to include the person in the making of relevant decisions, regardless of whether they have a substitute decision-maker or not. The appointment or presence of a substitute decision-maker for a person should not preclude their involvement in decision-making. Instead, all efforts should be made by the provider, in all circumstances, to consult with the person about particular elements of their care, health and wellbeing that require a decision to be made. It should be recognised in the standard that this process may take more time than consulting with a substitute decision maker would, however it is an absolutely essential

¹ *Guardianship and Administration Act 2000 (Qld) s209.*

component of person-centred care and having the right to be treated with dignity and respect. Action 1.3.4 does address some of these issues however it does not speak specifically to the role of a substitute decision-maker and note that their presence should not preclude all efforts being made by the provider to access supports for the person in their care to participate in decision-making. Of additional note in relation to this standard is that substitute decision-makers, under applicable legislation in most states and territories (in Queensland it is the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998*) are also required to actively include the person, to the greatest extent possible, in any decision made for them on a substitute basis.

- Action 1.3.4 notes that the provider must support people to access advocates of their choosing. Further detail and a definition of 'access' should potentially be provided here or alternatively in a guide that accompanies the standards. Does it mean that providers are required to explain to older people what advocates are and how they can assist them, or do they need to simply provide older people with information regarding advocates who are available, or assist them to contact an advocate of their choosing or organize for that advocate to visit them at an appropriate time? For people with impaired decision-making ability it may be that a combination of all of these types of assistance will be required, however without a consistent workable definition of what 'access' is staff may not know what is necessary. It may be more appropriate for the action to include providers having a requirement to explain to older people what advocacy is and how it can assist them (as many may not be familiar with the term) and to use the term 'connect with' rather than access so that there is the opportunity for contact to be made.

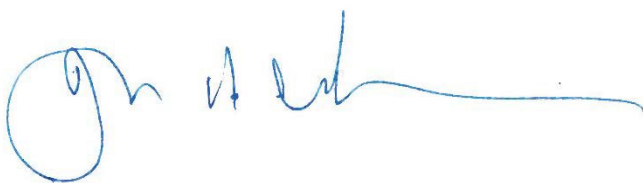
Standard 3: The Care and Services

- Action 3.2.5 details the use of the consent-based model for restrictive practices by a service provider. I understand that the Exposure Draft Quality of Care Amendment (Restrictive Practices) Principles 2022 is still under consideration by government. I made a submission regarding the exposure draft when it was open for consultation in September 2022, noting that the interaction between the proposed consent model and state and territory substitute decision-making regimes is difficult to understand, and will be even more difficult to implement. Again, the standard does not refer to substitute decision-makers, only referring to 'the consent of the older person' when in reality it will not be the person, in most circumstances, making this decision. While it is agreed that the standard is potentially not the appropriate place for a very detailed explanation of how the consent model will operate it is felt that it at least needs to refer to substitute decision-making and its use where required.

Additionally, action 3.2.5 makes no mention of the need for restrictive practice use by providers to incorporate a Behaviour Support Plan. It is a requirement to have a behaviour support plan in place for each consumer who requires, or may require, the use of restrictive practices as part of their care.

Thank you for the opportunity to provide feedback regarding the Revised Aged Care Quality Standards. If you require clarification of any of the issues raised in this correspondence, please contact my office on 07 3738 9513.

Yours sincerely



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Public Advocate