**Submission to the Independent Expert**

**on the enjoyment of all human rights by older persons**

**Older persons deprived of their liberty**

**April 1, 2022**

**Introduction**

This submission is based on Human Rights Watch’s research on the use of chemical restraints in care settings carried out between 2016 and 2017 in the United States,[[1]](#footnote-1) between 2018 and 2021 in Australia,[[2]](#footnote-2) and as part of ongoing monitoring during the Covid-19 pandemic.[[3]](#footnote-3) It also draws on Human Rights Watch’s research in 2021 on lack of access to home and community-based support services in Russia.[[4]](#footnote-4)

This submission responds to questions 1 and 3 of the Independent Expert’s questionnaire.

**Question 1: What are the key human rights risks and violations affecting older persons deprived of their liberty, considering different intersectional factors?**

1. **The use of chemical restraints on older people in care settings**

Human Rights Watch has documented how nursing homes in the United States and Australia give older people antipsychotic drugs as chemical restraints.[[5]](#footnote-5) Chemical restraint is the use of medications to control the behavior of nursing home residents without a therapeutic purpose.

**United States**

In 2018, Human Rights Watch documented that nursing homes across the United States routinely had been giving antipsychotic drugs to residents with dementia to control their behavior, without free and informed consent, despite rules against the misuse of drugs as chemical restraints.[[6]](#footnote-6) This abusive practice remains widespread, even though the use of antipsychotic drugs on older people with dementia is associated with a nearly doubled risk of death.[[7]](#footnote-7) Based on government data, we estimated that in an average week, more than 179,000 older people in nursing homes in the US were given antipsychotic drugs without an appropriate diagnosis.[[8]](#footnote-8)

Federal regulations require individuals to be fully informed about their treatment and provide the right to refuse treatment. Some US state laws require informed consent prior to the administration of antipsychotic drugs to nursing home residents. Yet nursing facilities often fail to obtain consent or even to make any effort to do so. Using antipsychotic medications as a “chemical restraint” – for the convenience of staff or to discipline residents – violates federal regulations and can amount to cruel, inhuman, or degrading treatment under international human rights law.[[9]](#footnote-9) Yet even when nursing homes are found to have broken these rules, they are rarely punished.[[10]](#footnote-10)

**Australia**

In Australia, Human Rights Watch’s research found that many aged care facilities routinely give older people with dementia dangerous medicines to control their behavior. Instead of providing support to older people with dementia in the form of non-medical interventions such as exercise, music, and redirection to a different activity, facilities use drugs to control their behavior. Many of the drugs used to control people in aged care facilities are antipsychotics that are not approved in Australia for older people with dementia. In addition to the physical, social, and emotional harm for older people restrained with these drugs, the use of these drugs in older people with dementia is also associated with an increased risk of death.[[11]](#footnote-11)

One woman with whom Human Rights Watch spoke in Australia said that her grandmother had wandered away from an aged care facility where she was living in 2017. After the incident, the facility staff said they placed her on antipsychotic drugs. “Everything about her, her health, her spirit, declined after that drug,” the granddaughter said. “We went to see her after the meds, and she couldn’t hold a conversation, she was dropping off to sleep, [just] like that.… Her eyes would roll back in her head.”[[12]](#footnote-12)

The Quality of Care Amendment (Restraints Principles) were introduced in mid-2019 to minimize the use of restrictive practices, with [updated regulations](https://insightplus.mja.com.au/2021/26/chemical-restraint-legislative-changes-to-restrictive-practices/) introduced to replace them on June 30, 2021.[[13]](#footnote-13) While the principles clarify that chemical restraint is a last resort, it falls short of an outright ban on the practice. Human Rights Watch’s review of non-compliance reports for aged care facilities across Australia from July 1, 2020 to June 30, 2021 found the misuse of chemical restraints in more than 150 aged care facilities, despite these regulations.[[14]](#footnote-14)

1. **Lack of home and community-based services**

Lack of home and community-based services may leave older people with little choice but to live in a nursing home.

**Russia**

In Russia, Human Rights Watch found that the Russian government was not providing adequate resources for home-based services for older people, denying some of them the ability to live independent and dignified lives. Despite legislative reform to enhance these services, their funding and delivery appeared to be inadequate to meet the needs of older people.

The law, [On the Foundations of Social Services for Citizens of the Russian Federation](http://pravo.gov.ru/proxy/ips/?docbody=&nd=102170561), which entered into force in 2015, says that services should be tailored to an individual’s needs with the goal of enabling older people “to remain in a familiar and positive living environment.”[[15]](#footnote-15) Under the law, financing and delivery of home-based services is the responsibility of regional governments. However, insufficient services may have left older people with little choice but to live in a nursing home or other institutional setting, rather than guaranteeing their right to live where and with whom they choose within their community. Social workers said that if a person had higher support needs and required more assistance, such as with cooking, eating, or personal hygiene, they could only ask relatives for help, pay for services, or move to an institution.

**Question 3: What kind of specific measures have been taken and implemented concerning older persons deprived of their liberty in the context of the COVID-19 pandemic?**

**Increases in the use of psychotropic medications in the context of the COVID-19 pandemic**

Scientific research has shown the links between social isolation and loneliness and the deterioration in physical health, increased memory loss and mental health conditions such as anxiety and depression in older people.[[16]](#footnote-16) The increased loneliness and isolation experienced by older people due to the pandemic raises serious concerns, particularly when combined with some care homes’ dangerous increase in the use of psychotropic medications.[[17]](#footnote-17)

A 2020 scientific study found a dramatic increase in prescribing psychotropic medications to older people in care homes in Ontario, Canada, including antipsychotics, antidepressants, and benzodiazepines such as Valium or Klonopin.[[18]](#footnote-18) The Ontario study linked the increase to “the effects of prolonged social isolation during lockdowns,” including restrictions on visits from loved ones and suspension of social activities and group dining.[[19]](#footnote-19)

A November 2020 study in the United Kingdom similarly found increased prescribing of antipsychotics during the pandemic to people with dementia, concluding the increase was “probably in response to worsened agitation and psychosis” associated with COVID-19 restrictions.[[20]](#footnote-20)

**Recommendations**

1. Governments should introduce policies to end the use of chemical restraint, especially as a means of managing or disciplining older people in care homes. Policies should include:

* Prohibition of the use of chemical restraints and outline of penalties;
* Requirement of informed consent for all treatments and interventions from the older person or, where that is not possible, a trusted person or family member chosen by them;
* Mandatory training for care home staff in dementia and alternative methods to de-escalate unwanted behavior and support the needs of people with dementia;
* Adequate minimum staffing levels to provide support to older people; and
* Adequate enforcement mechanisms to protect older people’s rights.

2. Governments should ensure strong reporting requirements and oversight of care homes’ prescribing practices as well as accountability for misuse of medication to deter such practices. This should include:

* Independent monitoring and oversight of all facilities without obstacles; and
* Effective, accessible, independent complaint mechanisms, including for individuals in care homes and their families or chosen trusted persons.

3. Care homes should develop individualized support for older people experiencing emotional distress or pain in care homes that do not involve restraints.

4. Governments should ensure that older people have access to the home and community-based services they need to realize their rights to live independently in their communities with their rights to health and private and family life protected.

**Additional Human Rights Watch Resources**

Videos:

* Fit and Healthy After Getting Off Chemical Restraints, <https://www.youtube.com/watch?v=kzl7kmDdG_Y&t=8s>
* Nursing Homes in Australia Routinely Sedate Older People

<https://www.youtube.com/watch?v=6bpOQ7l4z98>

* Know Your Rights: Nursing Homes

<https://www.youtube.com/watch?v=O3zBYd42AE0&t=17s>

1. Human Rights Watch, *“They Want Docile”: How Nursing Homes in the United States Overmedicate People with Dementia* (New York: Human Rights Watch, 2018), <https://www.hrw.org/report/2018/02/05/they-want-docile/how-nursing-homes-united-states-overmedicate-people-dementia>. [↑](#footnote-ref-1)
2. Human Rights Watch, *“Fading Away”: How Aged Care Facilities in Australia Chemically Restrain Older People with Dementia* (New York: Human Rights Watch, 2019), <https://www.hrw.org/report/2019/10/15/fading-away/how-aged-care-facilities-australia-chemically-restrain-older-people>; “Australia: Chemical Restraint Persists in Aged Care,” Human Rights Watch news release, March 30,2022, https://www.hrw.org/news/2022/03/30/australia-chemical-restraint-persists-aged-care. [↑](#footnote-ref-2)
3. Jane Buchanan (Human Rights Watch) and Kim Samuel, “Another COVID risk – overuse of psychotropic drugs on seniors in care,” Ottawa Citizen, January 14, 2021, <https://www.hrw.org/news/2021/01/15/another-covid-risk-overuse-psychotropic-drugs-seniors-care>. [↑](#footnote-ref-3)
4. “Russia: Insufficient Home Services for Older People: Gaps in Services Create Risks for Institutionalization, Violate Rights,” Human Rights Watch news release, August 24, 2021, https://www.hrw.org/news/2021/08/24/russia-insufficient-home-services-older-people. [↑](#footnote-ref-4)
5. Human Rights Watch, They Want Docile: How Nursing Homes in the United States Overmedicate People with Dementia; Human Rights Watch, Fading Away: How Aged Care Facilities in Australia Chemically Restrain Older People with Dementia; “Australia: Chemical Restraint Persists in Aged Care,” Human Rights Watch news release, March 30, 2022. [↑](#footnote-ref-5)
6. Human Rights Watch, “They Want Docile”: How Nursing Homes in the United States Overmedicate People with Dementia. [↑](#footnote-ref-6)
7. FDA, “Information for Healthcare Professionals: Conventional Antipsychotics,” June 16, 2008, https://wayback.archive-it.org/7993/20171102213617/https:/www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm124830.htm. [↑](#footnote-ref-7)
8. Human Rights Watch, “They Want Docile”: How Nursing Homes in the United States Overmedicate People with Dementia. [↑](#footnote-ref-8)
9. Ibid. [↑](#footnote-ref-9)
10. “US: Nursing Homes Misuse Drugs to Control Residents,” Human Rights Watch news release, February 5, 2018, https://www.hrw.org/news/2018/02/05/us-nursing-homes-misuse-drugs-control-residents. [↑](#footnote-ref-10)
11. Human Rights Watch, “Fading Away”: How Aged Care Facilities in Australia Chemically Restrain Older People with Dementia. [↑](#footnote-ref-11)
12. Ibid. [↑](#footnote-ref-12)
13. Susan Kurrle, “Chemical restraint: legislative changes to “restrictive practices,” Medical journal of Australia, July 19, 2021, https://insightplus.mja.com.au/2021/26/chemical-restraint-legislative-changes-to-restrictive-practices/. [↑](#footnote-ref-13)
14. “Australia: Chemical Restraint Persists in Aged Care,” Human Rights Watch news release, March 30, 2022. [↑](#footnote-ref-14)
15. On the Foundations of Social Services for Citizens of the Russian Federation, No.170-FZ of 2021, art.4. [↑](#footnote-ref-15)
16. Centers for Disease Control and Prevention, “Loneliness and Social Isolation Linked to Serious Health Conditions,” April 29, 2021, <https://www.cdc.gov/aging/publications/features/lonely-older-adults.html> . [↑](#footnote-ref-16)
17. Jane Buchanan (Human Rights Watch) and Kim Samuel, “Another COVID risk – overuse of psychotropic drugs on seniors in care,” Ottawa Citizen, January 14, 2021, <https://www.hrw.org/news/2021/01/15/another-covid-risk-overuse-psychotropic-drugs-seniors-care>. [↑](#footnote-ref-17)
18. Nathan M. Stall et al., “Increased Prescribing of Psychotropic Medications to Ontario Nursing Home Residents during the COVID-19 Pandemic,” medRxiv, November 30, 2o2o, <https://doi.org/10.1101/2020.11.26.20239525> . [↑](#footnote-ref-18)
19. Ibid. [↑](#footnote-ref-19)
20. Robert Howard et al., “Antipsychotic prescribing to people with dementia during COVID-19,” Lancet Neurol. 2020 Nov; 19(11): 892, doi: 10.1016/S1474-4422(20)30370-7. [↑](#footnote-ref-20)