

# ADVANCE HEALTHCARE DIRECTIVE

## GUIDANCE NOTES ON COMPLETING AN ADVANCE HEALTHCARE DIRECTIVE

It is advisable that you read the Decision Support Service's guidance '[Your Guide to an Advance Healthcare Directive](#)' before you complete your Advance Healthcare Directive

### What is an Advance Healthcare Directive?

An Advance Healthcare Directive is a document setting out your wishes in relation to one or more healthcare treatment decisions. It will come into effect when you lack the decision-making capacity to make healthcare treatment decisions for yourself. An Advance Healthcare Directive is a legally recognised document under the Assisted Decision-Making (Capacity) Act 2015, as amended.

These guidance notes and Advance Healthcare Directive form uses the term 'Directive-Maker' to describe you, the person who makes an Advance Healthcare Directive.

In your Advance Healthcare Directive, you may make a legally binding decision to refuse healthcare treatment which must be complied with if the following 3 conditions are met:

- (a) at the time in question you lack capacity to give consent to the treatment;
- (b) the treatment to be refused is clearly identified in your Advance Healthcare Directive;
- (c) the circumstances in which the refusal of treatment is intended to apply are clearly identified in the Advance Healthcare Directive.

You may also make a request for treatment although this is not legally enforceable in the same way as a refusal. You may also appoint a Designated Healthcare Representative to act on your behalf, within the scope of the Advance Healthcare Directive.

It is strongly recommended that you obtain any help or assistance you may need when you are making an Advance Healthcare Directive. In addition, it is recommended that you consult with the healthcare professional(s)<sup>1</sup> who know you prior to completing your Advance Healthcare Directive e.g. your GP. Your healthcare professional can give you information about treatments and care options for your future care needs and help ensure that how you express your wishes is clear and unambiguous. Your healthcare professional will help you understand circumstances in which such decisions may come into effect and the potential implications of requesting or refusing certain treatments.

### Who can make an Advance Healthcare Directive?

You can make an Advance Healthcare Directive if you:

- Are 18 years old or more; and
- Have decision-making capacity<sup>2</sup> at the time you are making your Advance Healthcare Directive.

<sup>1</sup> Healthcare professional means a member of any health or social care profession, including registered medical practitioners.

<sup>2</sup> Decision-making capacity is a person's ability to understand, at the time that a decision is to be made, the nature and consequences of the decision to be made by him or her in the context of the available choices at that time.

## What can I do in my Advance Healthcare Directive?

You can refuse and/or request specific healthcare treatment(s) for a time in the future when you are unable to communicate your wishes or unable to make a decision for yourself. You can also appoint a **Designated Healthcare Representative** who is a trusted person, chosen by you, to ensure that the terms of your Advance Healthcare Directive are complied with.

### Refusal of a healthcare treatment(s)

A refusal of a healthcare treatment(s) in an Advance Healthcare Directive is **legally enforceable**. A refusal of a healthcare treatment in a valid and applicable Advance Healthcare Directive must be respected by all healthcare professionals who are treating you provided that it meets the legal requirements of the Assisted Decision-Making (Capacity) Act 2015.

Your Advance Healthcare Directive must be very clear about what healthcare treatment(s) you wish to **refuse** and about the **specific circumstances** in which the refusal of treatment is intended to apply. Healthcare professionals can only be guided (and legally bound) by your will and preferences if they know exactly what they are.

If you wish to **refuse life-sustaining treatment**, you must make **a clear statement** in your Advance Healthcare Directive **that you wish to refuse the particular treatment even if your life is at risk and it leads to your death**. Life-sustaining treatment is any medical treatment, technology, procedure or medication that is administered to forestall the moment of death. These treatments may include, but are not limited to, mechanical ventilation, artificial hydration and nutrition, cardiopulmonary resuscitation (CPR), haemodialysis, chemotherapy, or certain medications including antibiotics (although antibiotics are not routinely considered to be life-sustaining treatment).

It is **not** possible to **refuse basic care** in an Advance Healthcare Directive. This includes (but not limited to) warmth, shelter, oral nutrition, oral hydration, and hygiene measures. However, it is possible to refuse artificial nutrition (such as feeding by tube) or artificial hydration (such as giving fluid through a drip) as these are treatment decisions and not basic care.

### Request for healthcare treatment

Your Advance Healthcare Directive may include a request for a specific healthcare treatment(s). For example, if you have a physical or mental health condition which you know from experience responds most effectively to a particular healthcare treatment, you can request this in your Advance Healthcare Directive. **A request** for a healthcare treatment(s) in an Advance Healthcare Directive is **not legally binding**. For example, you cannot insist that a healthcare treatment(s) that is not available or clinically appropriate is provided. Even though your treatment request is not legally binding, it is a strong statement of your will and preferences. It must be taken into consideration in during any decision-making process which relates to treatment for you if that specific treatment is relevant to the medical condition for which you may require treatment.

Where a request for a specific treatment set out in the Advance Healthcare Directive is not complied with in a decision-making process, the healthcare professional concerned, involved in that decision-making process, shall:

- (i) record the reasons for not complying with the request in your healthcare record, and
- (ii) give a copy of those reasons as so recorded to your Designated Healthcare

Representative (if you have appointed one) as soon as is practicable after they have been recorded but, in any case, not later than 7 working days after they have been recorded.

## What is a Designated Healthcare Representative?

It is important to be aware that other people including close family members do not have the power to make treatment decisions on your behalf if you are unable to do so. However, you can appoint a Designated Healthcare Representative and give them the power to ensure that the terms of your Advance Healthcare Directive are complied with.

A Designated Healthcare Representative is a trusted person, chosen by you, to ensure that the terms of your Advance Healthcare Directive are complied with when you can no longer make these healthcare treatment decisions for yourself. A Designated Healthcare Representative may only exercise the relevant powers when and for so long as you lack capacity. Your Designated Healthcare Representative must always act in accordance with your known will and preferences as set out in your Advance Healthcare Directive.

A Designated Healthcare Representative shall as soon as practicable after making a relevant decision but, in any case, not later than 7 working days after making the decision, make and keep a record in writing of the decision, and produce that record for inspection at your request if you have regained capacity, or at the request of the Director of the Decision Support Service.

You may also designate, in your Advance Healthcare Directive, a named individual to be your alternate Designated Healthcare Representative if the original Designated Healthcare Representative dies, or is unable, for whatever reason, to exercise the relevant powers. Any alternate Designated Healthcare Representative must be eligible to act at the time in question. Your Designated Healthcare Representative cannot appoint an alternate on your behalf; you must do this yourself in your Advance Healthcare Directive.

## Who should I appoint as my Designated Healthcare Representative?

It is strongly recommended that you appoint a person as your Designated Healthcare Representative who you trust to give effect to your will and preferences if you lack the capacity to make healthcare treatment decisions. You should ensure that the person you appoint agrees to take on this role and is aware of your will and preferences as set out in your Advance Healthcare Directive.

However, you are not required to have a Designated Healthcare Representative and if you do not have a Designated Healthcare Representative, you can still make an Advance Healthcare Directive stating your will and preferences.

You **cannot** nominate a person to be your Designated Healthcare Representative if:

- He or she is under 18 years of age;
- He or she has been convicted of an offence in relation to you or your property or your child or property of your child;
- A safety or barring order has been made against the person in relation to you or your child;

- The person is the owner or the registered provider of a designated centre<sup>3</sup> or mental health facility in which you reside or is a person residing with, or an employee or agent of, such owner or registered provider, unless the person is your spouse, civil partner, cohabitant, parent, child, or sibling; or
- The person provides personal care or healthcare services to you in return for compensation unless the person is your primary carer or your spouse, civil partner, cohabitant, parent, child, or sibling.

Where you have nominated a person to act as your Designated Healthcare Representative, and after that decision, any of the circumstances outlined above from (b) to (e) arise, they will no longer have the power to act as your Designated Healthcare Representative.

If your spouse, civil partner or cohabitant is your nominated Designated Healthcare Representative, they will be disqualified from acting as your Designated Healthcare Representative from the time that any of the below events occur, unless the Advance Healthcare Directive specifically states that this is not to happen.

- The marriage or civil partnership is annulled or dissolved, or there is a judicial separation or written agreement to separate.
- You have separated and have not lived together for a continuous 12-month period. However, if the reason you are not living together is because one or both of you had to move to a health or residential facility or an institution (including prison), you will not be regarded as having separated.

## **What your Advance Healthcare Directive must contain:**

There is no legally required format for an Advance Healthcare Directive but there are some legal requirements which must be complied with. The form below has been developed to help you ensure that all these legal requirements are fulfilled. However, it is not mandatory to use this form. An Advance Healthcare Directive written in a different format can still be valid provided it complies with the legal requirements.

In order for an Advance Healthcare Directive to be valid, it must be in writing and include the following:

- (i) Your name, date of birth and contact details;
- (ii) Your signature and the date that you signed the Advance Healthcare Directive;
- (iii) The name, date of birth, and contact details of your Designated Healthcare Representative (if you have appointed one);
- (iv) The signature of your Designated Healthcare Representative and the date s/he signed the Advance Healthcare Directive (if you have appointed one);
- (v) The name, date of birth, and contact details of your alternate Designated Healthcare Representative (if you have appointed one);
- (vi) The signature of your alternate Designated Healthcare Representative and the date s/he signed the Advance Healthcare Directive (if you have appointed one);
- (vii) The signatures of two witnesses.

<sup>3</sup> A designated centre is an institution at which residential services are provided e.g. nursing homes and centres for persons with disabilities.

- (viii) Your Advance Healthcare Directive must be absolutely clear about what healthcare treatment(s) you wish to refuse and about the specific circumstances in which your refusal is intended to apply. Healthcare professionals can only be guided (and legally bound) by your will and preferences if they know exactly what they are.
- (ix) If you wish to refuse life-sustaining treatment, you must make a clear statement in your Advance Healthcare Directive that you wish to refuse the particular treatment even if your life is at risk and it could lead to your death.
- (x) Your Advance Healthcare Directive may include a request for specific healthcare treatment(s). A request for a healthcare treatment(s) in an Advance Healthcare Directive is **not legally binding**. For example, you cannot insist upon a healthcare treatment being provided that is not available or clinically appropriate.

## Signing and witnessing your Advance Healthcare Directive

Your Advance Healthcare Directive must be signed by the following:

- you or the person signing on your behalf,
- the Designated Healthcare Representative (if you have appointed one),
- the alternate Designated Healthcare Representative (if you have appointed one),
- and two witnesses, each of whom must have attained the age of 18 years, and of whom at least one is not an immediate family member.

For this purpose, your immediate family member is your:

- (a) spouse, civil partner or cohabitant;
- (b) child, son-in-law or daughter-in-law;
- (c) parent, step-parent, mother-in-law or father-in-law;
- (d) brother, sister, step-brother, step-sister, brother-in-law or sister-in-law;
- (e) grandparent or grandchild;
- (f) aunt or uncle; or
- (g) nephew or niece.

All parties who are required to sign the Advance Healthcare Directive must do so in each other's presence.

An Advance Healthcare Directive may be signed **on your behalf** by a person who has attained the age of 18 years and who is not one of the witnesses if

- (i) you are unable to sign the Advance Healthcare Directive;
- (ii) you are present and direct that the Advance Healthcare Directive be signed on your behalf by that person, and
- (iii) the signature of the person is witnessed.

You can record your Advance Healthcare Directive in a non-written format, using for example voice and video recording and speech recognition technologies. However, your Advance Healthcare Directive should be transcribed into writing as soon as possible.

If you make your Advance Healthcare Directive in a language other than English or Irish, you should arrange to have this translated as you cannot be sure that an appropriate translator will be available when your Advance Healthcare Directive needs to be relied upon.

## Is it possible to have more than one Advance Healthcare Directive?

You can have more than one Advance Healthcare Directive. You may choose to make separate Advance Healthcare Directives for different treatment decisions. For example, you can make an Advance Healthcare Directive for two or more different physical treatment decisions and you can also make an Advance Healthcare Directive for your physical treatment decisions and your mental health treatment decisions. You can appoint a different Designated Healthcare Representative in each Advance Healthcare Directive. However, you can only appoint one Designated Healthcare Representative and one alternate Designated Healthcare Representative for each Advance Healthcare Directive.

## Who needs to know about my Advance Healthcare Directive?

You must ensure that the following people have access to and a copy of your Advance Healthcare Directive:

- Your Designated Healthcare Representative (if you have appointed one); and
- Your alternate Designated Healthcare Representative (if you have appointed one).

Although it is not required by law, it is strongly recommended that the following people have access to and a copy of your Advance Healthcare Directive:

- Your GP;
- Relevant healthcare professionals that you are dealing with;
- The Emergency Department and/or your hospital admission team if you are admitted to hospital;
- The person in charge of any healthcare or residential facility in which you reside;
- Family members, people you live with, one or more trusted persons around you who can bring the Advance Healthcare Directive to the attention of healthcare professionals in an emergency.

## Do I need to review my Advance Healthcare Directive?

Although this is not a legal requirement, it is advised that you should try to review your Advance Healthcare Directive on a regular basis (annually if possible) especially if you have experienced a significant change in circumstances. For example, if you have been diagnosed with a serious illness, or if a serious illness worsens or a new treatment becomes available.

## Can I alter my Advance Healthcare Directive?

You can alter (change) your Advance Healthcare Directive at any time while you have decision-making capacity. **This must be done in writing, which includes voice and video recording and speech recognition technologies.** After you change your Advance Healthcare Directive you need to sign it, and have it witnessed by two people as you did with your original Advance Healthcare Directive for it to be legally effective as already outlined above.

You can change the person appointed as your Designated Healthcare Representative. If you wish to do this, it will be necessary to have the new Designated Healthcare Representative sign and accept the appointment and for this to be witnessed. The same process applies if you wish to change the person appointed as your alternate Designated Healthcare Representative – it will be necessary to have the new alternate Designated Healthcare Representative sign and accept the appointment and for this to be witnessed.

You should make sure that all the people who have a copy of your previous Advance Healthcare Directive are made aware that you have altered it and provide them with an updated copy.

## Can I cancel my Advance Healthcare Directive?

You can cancel (revoke) your Advance Healthcare Directive at any time while you have decision-making capacity. **This must be done in writing which includes voice and video recording and speech recognition technologies.** There is no requirement for witnesses or any other formalities. When you cancel your Advance Healthcare Directive, you should clearly identify the Advance Healthcare Directive you are cancelling (if you have made more than one). You should make sure that all the people who have a copy of your Advance Healthcare Directive are made aware that you have cancelled it.

## ADVANCE HEALTHCARE DIRECTIVE FORM

In this Advance Healthcare Directive form you can record your refusals and requests for healthcare treatments. You can also appoint a Designated Healthcare Representative and an alternative Designated Healthcare Representative to speak on your behalf should you lack capacity to make decisions about your healthcare treatment in the future.

This document is legally binding when signed and witnessed as explained in Section 5 of this form.

### FORM

Under section 84(9) of the Assisted Decision-Making (Capacity) Act 2015 (as amended) the Minister for Health may for the guidance of persons wishing to make advance healthcare directives, specify forms of such directives, not inconsistent with Part 8, that such persons may use or adapt in making their respective advance healthcare directives.

Under section 84(11), the Minister for Health may publish any forms of Advance healthcare directives that he or she has specified under sub-section (9) in such manner that he or she thinks appropriate, including by the use of a website on the internet.

This template advance healthcare directive has been approved by the Minister for Health and released for publication on the DSS website.

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### SECTION 1: DETAILS OF THE PERSON MAKING THE ADVANCE HEALTHCARE DIRECTIVE (THE DIRECTIVE-MAKER) THESE DETAILS MUST BE COMPLETED

Name:	
Date of Birth:	
Contact Details (one or more of the following):	
a. Phone Number:	
b. Address:	
c. Email:	



## SECTION 2: HEALTHCARE TREATMENTS I DO NOT WANT TO RECEIVE

THESE DETAILS MUST BE COMPLETED

PLEASE SPECIFY IN DETAIL IN THIS SPACE BELOW.

Specific treatment I do **NOT** want to receive

Specific circumstances in which this **refusal** is to apply

**Please tick only one box:**

I want this to apply even if my life is at risk because of this refusal

I do not want this to apply if my life is at risk because of this refusal

PLEASE SPECIFY IN DETAIL IN THIS SPACE BELOW.

Specific treatment I do **NOT** want to receive

Specific circumstances in which this **refusal** is to apply

**Please tick only one box:**

I want this to apply even if my life is at risk because of this refusal

I do not want this to apply if my life is at risk because of this refusal

PLEASE SPECIFY IN DETAIL IN THIS SPACE BELOW.

Specific treatment I do **NOT** want to receive

Specific circumstances in which this **refusal** is to apply

**Please tick only one box:**

I want this to apply even if my life is at risk because of this refusal

I do not want this to apply if my life is at risk because of this refusal

## SECTION 3: SPECIFIC TREATMENT I WOULD LIKE TO RECEIVE

I understand that any request for treatment is **not legally binding** but is a valid expression of my will and preferences. This request shall be taken into consideration.

### PLEASE SPECIFY IN DETAIL IN THIS SPACE BELOW.

Specific treatment I <b>would like to receive</b>	
The circumstances in which I would like this request for treatment to apply	

### PLEASE SPECIFY IN DETAIL IN THIS SPACE BELOW.

Specific treatment I <b>would like to receive</b>	
The circumstances in which I would like this request for treatment to apply	

## SECTION 4: DESIGNATED HEALTHCARE REPRESENTATIVE (OPTIONAL)

**Part A must only be completed if you are appointing a Designated Healthcare Representative to act as your agent in accordance with your will and preferences as set out in your Advance Healthcare Directive. If you are not appointing a Designated Healthcare Representative please go to Section 5.**

**Part B must also be completed if you are appointing an alternate Designated Healthcare Representative to act as your agent in accordance with your will and preferences as set out in your Advance Healthcare Directive. If you are not appointing an alternate Designated Healthcare Representative please go to Section 5.**

### Part A: Details of your Designated Healthcare Representative

I wish to appoint:	
Name:	as my Designated Healthcare Representative.
Date of Birth:	
Contact Details (one or more of the following):	
a. Phone Number:	
b. Address:	
c. Email:	

### Part B: Details of the alternate Designated Healthcare Representative

I wish to appoint:	
Name:	as my Designated Healthcare Representative.
Date of Birth:	
Contact Details (one or more of the following):	
a. Phone Number:	
b. Address:	
c. Email:	

## Specific Powers of Designated Healthcare Representative and alternate Designated Healthcare Representative

In addition to ensuring that the terms of my Advance Healthcare Directive are complied with, I give the following specific powers to my Designated Healthcare Representative and to my alternate Designated Healthcare Representative (if I have appointed one):

- To advise and interpret my will and preferences regarding treatment by reference to the detail as set out in this Advance Healthcare Directive.

I want them to have these powers

Yes

- To consent to or refuse treatment, up to and including **life-sustaining treatment** based on my known will and preferences by reference to the detail as set out in this Advance Healthcare Directive.

I want them to have these powers

Yes

## SECTION 5: SIGNATURES AND DECLARATIONS

Your Advance Healthcare Directive must be signed by you (Part A) or the person signing on your behalf (Part B), the Designated Healthcare Representative (if you have appointed one) (Part C), the alternate Designated Healthcare Representative (if you have appointed one) (Part C), and two witnesses (Part D), each of whom must have attained the age of 18 years, and of whom at least one is not an immediate family member.

For this purpose, your immediate family member is your (a) spouse, civil partner or cohabitant; (b) child, son-in-law or daughter-in-law; (c) parent, step-parent, mother-in-law or father-in-law; (d) brother, sister, step-brother, step-sister, brother-in-law or sister-in-law; (e) grandparent or grandchild; (f) aunt or uncle; or (g) nephew or niece.

All parties who are required to sign the Advance Healthcare Directive must do so in each other's presence.

### Part A:

**Directive-Maker's name:**

I confirm that I am making this Advance Healthcare Directive freely and not under pressure to do so.

I confirm that I am signing this Advance Healthcare Directive in the presence of my Designated Healthcare Representative (if appointed) and my alternate Designated Healthcare Representative (if I have appointed one) and two witnesses as required.

My signature:

Date:

## Part B:

**An Advance Healthcare Directive may be signed on your behalf by a person who has attained the age of 18 years and who is not one of the witnesses if (i) you are unable to sign the Advance Healthcare Directive; (ii) you are present and direct that the Advance Healthcare Directive be signed on your behalf by that person, and (iii) the signature of the person is witnessed. Please note no one can sign your Advance Healthcare Directive without your express instruction.**

Name of person directed to sign on my behalf and with my express instruction:

I confirm that I am making this Advance Healthcare Directive freely and not under pressure to do so

I confirm that \_\_\_\_\_ is signing this Advance Healthcare Directive on my behalf \_\_\_\_\_ (Directive-Maker's name) in the presence of my Designated Healthcare Representative (if appointed) and/or my alternate Designated Healthcare Representative (if appointed) and two witnesses as required.

Signature of person directed to sign on my behalf:

*(I have signed this in the presence of the Directive-Maker under their instruction)*

Date:

## Part C: Designated Healthcare Representative

**These details must be completed if you are appointing a Designated Healthcare Representative.**

Complete in the presence of the Directive-Maker, or the person signing on his/her behalf, and two witnesses.

I confirm that I agree to act in accordance with the will and preferences of  <i>(insert Directive-Maker's name)</i> as set out in this Advance Healthcare Directive.	
Name:	
Signature :	
Date:	

## Alternate Designated Healthcare Representative

**These details must be completed if you are appointing an alternate Designated Healthcare Representative**

Complete in the presence of the Directive-Maker, or the person signing on his/her behalf, and two witnesses.

I confirm that I agree to act in accordance with the will and preferences of  <i>(insert Directive-Maker's name)</i> as set out in this Advance Healthcare Directive, in the event that the original appointed Designated Healthcare Representative is unable to act.	
Name:	
Signature :	
Date:	

## Part D: Witnesses

I confirm that I have witnessed the signing of this Advance Healthcare Directive by the following in the presence of each other (delete if not applicable):

- (i) the Directive-Maker (insert name),
- (ii) the person signing on behalf of and in the presence of the Directive-Maker  
(insert name),
- (iii) the Designated Healthcare Representative (insert name, if  
 appointed), and
- (iv) the alternate Designated Healthcare Representative (insert  
 name, if appointed).

First witness	
Signature :	
Name:	
Relationship to the Directive-Maker:	
Date:	

Second witness	
Signature :	
Name:	
Relationship to the Directive-Maker:	
Date:	