



An Roinn Sláinte

DEPARTMENT OF HEALTH

Advance Healthcare Directive Provisions

Part 8 - Assisted Decision-Making (Capacity) Act
2015

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Tús Áite do
Shábháilteacht **1** Othar
Patient Safety **1** First

Overview

- AHDs are statements made by persons with capacity outlining their will and preferences regarding treatment decisions that may arise in the future when they no longer have capacity.
- Important means by which people can exercise autonomy - integral part of a patient-focused model of healthcare.
- Provide HCPs with information in relation to person's treatment choices:
- Complement Advance Care Planning Process

International Context

- UN CRPD: States should ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person.
- COE: *Recommendation CM/REC (2009) 11 on principles concerning continuing powers of attorney and advance directives for incapacity* - Member States should promote self-determination for capable adults by introducing AHD laws.
- No. of jurisdictions have introduced legally-binding AHDs, e.g.:
 - * Austria
 - * Belgium
 - * Denmark
 - * England/Wales
 - * Estonia
 - * Finland
 - * Germany
 - * Hungary
 - * Spain
 - * All 50 US States

Background

- Legislative provisions for AHDs outlined in Part 8 of the Act.
- February - March 2014 - Public consultation on draft AHD provisions.
- 67 submissions received.
- Amended the provisions to better ensure they were workable on the ground.
- Section 91 - multidisciplinary group to be established to make recommendations re Code of Practice.
- Anticipate commencement of legislation by end 2016.

Purpose and Guiding Principle

- Enable people to be treated according to their will and preferences.
- Provide HCPs with important information about people's treatment choices.
- Adult with capacity can refuse treatment for any reason.
- AHD provisions do not in any way alter the existing legislation on homicide under which both euthanasia and assisted suicide are illegal.

Practicalities of Making an AHD (1)

- Person must be an adult and must have capacity.
- AHDs must be documented in writing, signed and witnessed.
- AHD provisions are not overly prescriptive in terms of a specific format.
- Person may revoke or alter AHD at any time in writing, provided he or she has capacity.

Practicalities of Making an AHD (2)

- Refusal of treatment in AHD is legally-binding if:
 - person lacks capacity to consent at the time in question;
 - treatment being refused is clearly identified in AHD;
 - specific situations in which the treatment refusal is intended to apply are also clearly outlined in AHD.
- Treatment requests in AHD are not legally-binding BUT have to be taken into consideration.

Validity and Applicability (1)

- AHD not valid if:
 - was not made voluntarily;
 - the directive-maker (when s/he had capacity) did anything clearly inconsistent with the treatment decisions in the AHD.
- AHD not applicable if:
 - at the time in question directive-maker still has capacity to give or refuse consent;
 - treatment in question and/or the circumstances that have arisen are not materially the same as those specified in the AHD.

Validity and Applicability (2)

- AHD not applicable to life-sustaining treatment unless includes specific statement that directive-maker intended AHD to apply even if his/her life at risk.
- AHD not applicable to the administration of basic care.
- If ambiguity regarding validity & applicability then:
 - HCP must discuss issue with designated healthcare representative or with family and friends (if no representative).
 - HCP must seek the opinion of a second HCP.
 - Following discussions if ambiguity remains, then the issue will be resolved in favour of preserving the directive-maker's life.

AHDs and Pregnancy

- When considering the applicability of a refusal of treatment in an AHD where the directive-maker is pregnant:
 - Where AHD does not specifically state that it was intended to apply even if the woman is pregnant → presumption that treatment would be provided or continued.
 - Where the woman specifically stated in her AHD that she wanted her refusal of treatment to apply even if she was pregnant
→ application would automatically referred to the High Court.

AHDs and Mental Health

- Single legislative framework encompassing both general and mental healthcare.
- Specific limited circumstances where treatment refusal would not be legally binding, where:
 - person's treatment is regulated under Part 4 of Mental Health Act (2001) or
 - person is the subject of a conditional discharge order under the Criminal Law (Insanity) Act (2006).

Liability Considerations

- HCP who complies with treatment refusal in AHD, s/he has reasonable grounds to believe is valid & applicable, will not incur any civil or criminal liability.
- Similar protection for HCP who does not comply with a treatment refusal in AHD because s/he has reasonable grounds to believe it is not valid and/or applicable.
- HCP would also not incur any civil or criminal liability for not complying with refusal in AHD if at time in question:
 - HCP had no grounds to believe AHD existed or
 - HCP had no immediate access to the AHD or its contents.

Designated Healthcare Representatives

- Person may nominate, in his/her AHD, a legal representative to be involved in the healthcare decision-making process on his/her behalf if s/he subsequently loses capacity.
- Criteria and safeguards regarding who may be nominated as designated healthcare representative.
- Director of Decision Support Service shall deal with complaints in relation to how representative is exercising powers.

Role of Designated Healthcare Representative

- Designated healthcare representative authorised to ensure that the terms of the AHD are upheld.
- If directive-maker wishes s/he may also confer one or both of these additional powers:
 - To advise on and interpret the directive-maker's will and preferences regarding treatment as outlined in AHD;
 - To consent to or refuse treatment, which could include life-sustaining treatment, on behalf of the directive-maker, based on his/her known will and preferences.
- Attorney under an Enduring Power of Attorney
 - A person must not include a decision in his/her enduring power of attorney that is the subject of his/her AHD.

Role of the Courts

- Application can be made to the court to decide whether:
 - AHD is valid,
 - AHD is applicable or
 - whether designated healthcare representative is acting in accordance with his/her relevant powers.
- Applications involving considerations of life-sustaining treatment made to the High Court not the Circuit Court.
- Treatment, including life-sustaining treatment, may be provided while waiting for the High Court to adjudicate on such cases.