

section 2.7: advance care planning

planning ahead

“We need to acknowledge the inevitability of death to have some choice in the manner of our dying.”¹

Planning ahead is a proactive and positive approach to letting those close to us know our wishes should we be faced with an event or illness that threatens to limit our life or our decision-making capacity.

For some people, advance care planning can be confronting as it involves the complex interplay of relationships, trust, responsibility and communication.² However this type of planning can offer confidence that critical information and directions have been provided and can be accessed by families or legal or medical staff if or when this becomes necessary. These directions can create an open dialogue for ongoing discussions and decision making which allow for changes to health and circumstances.

In most instances patients are able to make and communicate reasoned decisions for themselves as the need arises, however in some situations mental capacity is lost. These include dementia and other neurodegenerative diseases and sudden and acute medical conditions.

Advance care planning can reduce conflict in tense and distressing times and allow for implementation of the advance plan as and when this is deemed appropriate.³

For all concerned – patient, family and caregivers, appointed proxy decision-makers, medical and nursing staff, this can make decision making more straightforward.

related legislation

In South Australia there are 5 legally binding documents that can be used in advance care planning:

- Enduring Power of Attorney
- Enduring Power of Guardianship
- Medical Power of Attorney
- Anticipatory Direction
- Living Will.

Enduring Power of Attorney

- for use in *financial matters*
- provides for the legal appointment of another person, known as an attorney, who is empowered to make decisions about financial, property, shares and related legal matters
- is activated only when the person loses the ability to make their own financial and legal decisions

- a request for formal authorisation from the relevant bank is necessary if access to operate another person's bank account is required,.
- relevant legislation: *Powers of Attorney and Agency Act 1984 (SA)*

Enduring Power of Guardianship

- for use in *lifestyle (types of accommodation and recreation) and medical treatment decisions*
- allows the appointment of an enduring guardian who has the legal right to make most substitute decisions for a person who has lost mental capacity, as if the guardian were that person
- also allows the person to record their wishes, in advance, in relation to lifestyle and medical treatment decisions
- Power of Guardianship also acts as the Medical Power of Attorney
- the Guardianship Board offers assistance to staff and administers responsibilities under the Guardianship Act when a person has reduced mental capacity and formal arrangements have not been put in place, or there is significant conflict within the family about decision making,
- for more information phone 8368 5600
- relevant legislation: *Guardianship and Administration Act 1993 (SA)*

The Consent to Medical Treatment and Palliative Care Act 1995 (SA) is the legislation that relates specifically to the medical care of people in the terminal phase of a terminal illness.

Medical Power of Attorney

- permits people to appoint a Medical Agent who is able to make decisions about *possible future medical treatment and palliative care* in the event that the person loses mental capacity to make such decisions
- the form can be used on its own or as part of the Enduring Power of Guardianship
- if an Enduring Power of Guardianship and a Medical Agent have been appointed, then the Medical Agent takes precedence in making decisions about medical treatment
- if an Anticipatory Direction has been written, the appointed Medical Agent is legally bound to honour the person's expressed wishes
- relevant legislation: *Consent to Medical Treatment and Palliative Care Act 1995 (SA)*

Anticipatory Direction

- a document which *legally records a person's wishes and decisions about end of life care*
- allows the person to record the type of care they do or do not want in the terminal phase of a terminal illness or in a persistent vegetative state
- does not involve the appointment of another person to make decisions but provides directions for those responsible for providing health and medical care
- relevant legislation: *Consent to Medical Treatment and Palliative Care Act 1995 (SA)*

Living Will

- records directions *for medical decisions only*, if no other advance care plan has been subsequently executed
- has been superseded by the Anticipatory Direction but remains a legally binding document if an Anticipatory Direction has not been subsequently executed
- relevant legislation: *Natural Death Act 1983 (SA)*, now covered by *Consent to Medical Treatment and Palliative Care 1995 (SA)*

Clinical decisions made in advance by medical practitioners may be recorded on a form or document inserted in the patient's case notes, which is specific to the particular hospital – check with your facility.

One of the advance care planning tools currently used in some facilities is the “Respecting Patient Choices”.

Purchasing Kits

Medical Power of Attorney forms and kits can be obtained from

- Service SA, Ground Floor, 101 Grenfell St, Adelaide, ph 13 23 24
- Legal Services Commission, Ground Floor, Noarlunga House, Noarlunga Centre
- Palliative Care Council Of South Australia
- Office of the Public Advocate

Combined Power of Attorney and Power of Guardianship kits can be obtained from:

- Australia Post outlets, while basic forms can be purchased from some newsagents
- A lawyer may be privately engaged to prepare a document

Other related legislation

Coroners Act 2003

The Coroner' Act SA (2003) specifies the instances in which it is mandatory for a death to be reported to the State Coroner – some of these may have particular relevance for palliative care patients and their primary health care providers. These include:

- death occurring within 24 hours of discharge from hospital or having sought emergency treatment at a hospital
- death by unusual, unexpected, unnatural violent or unknown cause.

Other requirements also exist and can be viewed at www.courts.sa.gov.au.

Queries can be directed to the State Coroners Office, details are available on the web site. This site includes a “Frequently asked questions” section for the public which includes:

- what is a coronial investigation?
- what is a post-mortem and when is it necessary?
- can I see the body?
- when can funeral arrangements be made?
- how and when can I obtain a copy of the death certificate?
- what is an inquest?

- can I receive counselling, information and support from an experienced social worker provided by the State Coroners Office?

related resources and information

CareSearch

Provides considerations for practice, links to communication resources and to a resource for assessing testamentary capacity.

See www.caresearch.com.au – understanding advance care planning

Office of the Public Advocate

Ph 8269 7575 or toll free 1800 066 968

Information in the form of a generic fact sheet is available and has been translated into 12 languages – these sheets can be downloaded from the website.

See www.opa.sa.gov.au

Respecting Patient Choices

This model encourages people to appoint a guardian/ enduring power of attorney and to record an advance directive.

See www.respectingpatientchoices.org.au

references

¹ Ashby M, Kellahear A, Stoffell B (2005) Resolving conflict in end-of-life care in *MJA*, Editorial, September. Vol 183 (5), pg 230.

² Decision making in advance: Reducing barriers and improving access to advance directives for people with dementia (2006) Alzheimer's Australia Discussion Paper.

³ Therapeutic Guidelines-Palliative Care, Version 2 (2005) Therapeutic Guidelines Ltd, Victoria, Australia.