



# Getting ready for Advance Healthcare Directives under the Assisted Decision-Making (Capacity) Act 2015 -Personal Consideration-

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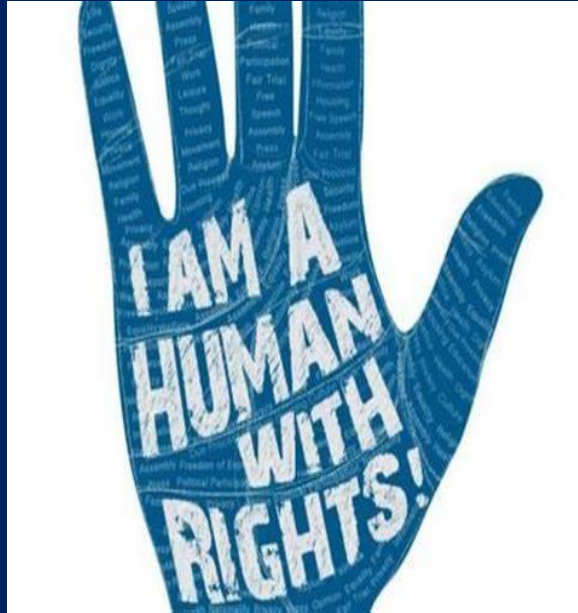
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# What is an AHD?

An Advance Healthcare Directive (AHD) is a written statement made by a person with capacity (ability to understand, weigh, retain and communicate a decision)

It sets out their preferences about medical and healthcare treatment decisions in the future, if a time comes where they may be unable to make or communicate their decisions.



- UNCRPD states that ALL people have the right to make decisions and choices about their own lives and speak on their own behalf.
- Act introduces a statutory framework for AHD's (provided for under part 8 of the Act)

AHD's are excellent tool for upholding rights:

1. For people to direct their own futures & enhance their autonomy.
2. Provides health/social care professionals with information on the person's wishes, will & preferences.

# Best Interests



# Will & Preference



- The Act signals a shift away from a 'best interests' approach...to a rights-based approach of choice, control, and consent.
- Commonplace in Ireland for years, for people with disabilities, in particular to be the subjects of decisions rather than active participants in their own lives. The focus has often been on what everybody else around a person sees as being in the person's 'best interests', without any due consideration to what the person themselves would want.
- The ADM legislation shifts the focus within decision making to will and preference, which clearly puts the person's own wishes and preferences right back at the heart of all decisions being made.
- In this context, an Advance Health Care directive ensures that a person's own wishes remain central in decisions that may be made in the future in relation to medical and healthcare treatments.

# Advance Healthcare Directives

## Overview



- Important instrument for upholding our rights. Provides an increased sense of control over future treatment.
- Any person over the age of 18 years can make an AHD, at any time. No cost.
- You do not have to make an AHD if you do not want to and you can end an AHD at any time (\*with capacity to do so).
- It ensures that we have the right to refuse treatment even if others consider that refusal unwise – even where it may result in death, provided the person had the decision-making capacity at the time of making the AHD. (\*does not apply to basic care – warmth, shelter etc)
- Person may include a request for a specific treatment (\*not legally binding).
- Person can revoke the AHD or amend it at any time (so long as they have capacity to do so).
- Person can nominate a Designated Healthcare Representative to make sure that their wishes are respected and communicated. Healthcare providers must respect their wishes to refuse any treatments that they have said they do not want.
- AHD only comes into effect if person loses capacity and are unable to communicate their healthcare decisions.

# Advance Healthcare Directives & the Mental Health Act

\*Amendments in 2022 Act

- Person with an AHD in a mental health care facility – AHD used to inform treatment decisions.
- Where particular treatments have been refused in advance by a person in an AHD, this must be respected.
- Requests within an AHD for a specific treatment can be taken into consideration.

## Exception

For those admitted to a mental health facility on an involuntary basis due to a risk of harm to themselves or others; an AHD pertaining to mental illness does not have to be upheld, but may be taken into consideration.

(s.3(1)(a) of Mental Health Act 2001)



# Supporting a person to complete their AHD

- Choose a time of day that is best for the person.
- Confidence & competence to talk about advance healthcare planning. Values often a useful starting point to begin the conversation.
- Give sufficient time to the person to work through their wishes.
- For some people completing small portions at a time may work best.
- Communication that facilitates people's understanding, is key. (Accessible)
- The person's own voice V the voice or wishes of those around them. Be aware of influence/duress. Choose suitable place.
- Ensure presumption of capacity e.g. a person with an intellectual disability/dementia/ABI etc should be supported to make an AHD if they wish to do so.
- Person may require medical advice to understand consequences of decisions they need to make (informed decision).
- Revisit on a regular basis to check if person has changed their mind, especially if circumstances have changed for them. (A process rather than a one off event)



# The Role of an Advocate in AHD's

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- Where a person has no natural supports and requires information or support to make an AHD.
- Where concerns exist that a Designated Healthcare representative is not following the person's preferences and the person may require support to raise a concern with the Decision Support Service.
- Where duress is being placed upon a person regarding the contents/decisions written in the AHD.





# Things to watch for.....

- Important not to make assumptions e.g. that a person with a disability would not wish to be treated or resuscitated.
- The imposition of unrequested DNAR's: Advocates regularly deal with the issue of DNAR's being placed on people's files who live in Residential Disability settings without their consent or knowledge.
- UK – Covid Pandemic – People with learning disabilities given DNAR's.
- Preferences for treatment may change over time: Flexibility is key.
- Consider if advocacy support is required where an issue exists.
- Ensuring that the AHD is communicated to key health/social care practitioners/family/others (no register upon commencement of Act)



# NAS ENQUIRY PATHWAYS



National Phone line: 0818 07 3000



Online: [www.advocacy.ie](http://www.advocacy.ie)



NAS Enquiry forms



In Person



Via Email to: [info@advocacy.ie](mailto:info@advocacy.ie)