

InfoSheet:

Appointment of an Enduring Guardian and Advance Health Care Directive

An enduring guardian makes health and lifestyle decisions for you if you lose capacity to make those decisions for yourself.

When you appoint an enduring guardian you authorise that person to make health and lifestyle decisions on your behalf – but only if you lose the mental capacity to make those decisions yourself.

Anyone older than 18 years can appoint an enduring guardian (who must also be over 18 years). We recommend you appoint a family member or trusted friend.

The appointment of an enduring guardian has effect only during the period of time that you are totally or partially mentally incapacitated.

The need for an Appointment of Enduring Guardian

It is often misconceived that your 'next of kin' has legal authority to make health and lifestyle decisions on your behalf, if you lose capacity. This is not the case under law.

Healthcare providers will continue to take measures for protection against litigation. It may in the future become common practice for a patient to provide a guardianship document to their doctor or hospital.

What can an enduring guardian do?

You can appoint your enduring guardian to:

- decide where you live (e.g. in a nursing home)
- decide what health care and other services you need (e.g. home care services)
- consent to medical and dental treatment.

You can direct your guardian that you do not wish to have any extraordinary measures taken to prolong or sustain your life if you are suffering a condition which causes you severe distress or from which you are unlikely to recover.

You can also give specific instructions in relation to organ donation.

Appointing a guardian to carry out these functions is a very serious decision and needs to be taken in consultation with your lawyer.

Your guardian must:

- only act in your best interests
- make decisions that would reflect your own wishes
- consult with other family members.

You may be involved in a serious accident and your family may be told that you are being kept alive by artificial means. You can ensure that your guardian has your authority (and confirmation of your wishes) that you are not to be kept alive in this manner.

The process

The appointment of an enduring guardian is a very serious matter, requiring careful thought.

Your lawyer will prepare the document which will be signed by you and the person or persons you appoint. All parties to the document must sign in the presence of a lawyer who must certify that each person understands the nature and effect of the document.

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Appointment of an Enduring Guardian and Advance Health Care Directive

An Advance Health Care Directive is a document prepared in addition to your Appointment of Enduring Guardian. It allows you to be more specific in stating what treatment you require, especially if you are diagnosed with a chronic or terminal illness, or have strong wishes in relation to your future health care.

Extending your right to choose

An Advance Health Care directive is a legal document which allows you to make known your wishes for future health care. It is prepared in conjunction with the advice of your doctor and your lawyer. This document extends your legal right to choose and determine your medical treatment and health care to a time when you may not be able to express these wishes for yourself.

Content of an Advance Health Care Directive

The types of wishes you make in your Advance Health Care Directive can be both general and specific in nature.

For example, you may make general directions as to your acceptance or refusal of medical treatment in circumstances aimed at intervening with natural death.

You may also make specific directions in relation to medical treatment, including the refusal of blood transfusions, antibiotics, tube-feeding and hydration, assisted ventilation and resuscitation in the event you are suffering from a terminal illness.

Importantly, the Advance Health Care Directive is not a form of euthanasia. You may only make directions in these documents that you can lawfully make while you can speak for yourself.

Who is bound by an Advance Health Care Directive?

The directions you make in an Advance Health Care Directive overrule the authority of your guardian. They are also binding on your doctors, family and other persons involved in your health care.

If you become diagnosed with a serious illness, have a family history of a particular condition or have strong preferences in relation to your future health care, you should consider making an Advance Health Care Directive to ensure that your wishes are carried out in the future.

You may be diagnosed with a life-threatening or seriously debilitating illness, or you may be at high hereditary risk of having a stroke, or you may just have strong feelings about 'quality of life'.

By preparing an Advance Health Care Directive you are able to list your wishes in the event that certain circumstances arise:

- *if you are in a vegetative state;*
- *if you do not wish to be resuscitated;*
- *if your treating doctors have given you a list of possible treatments and consequences.*

Family discussion

This is an excellent opportunity to talk to your family to ensure they are fully aware of your beliefs and wishes.

Accidents and illness are distressing; if you have made an Appointment of Enduring Guardian and/or an Advance Health Care Directive, your family can make decisions with the clear knowledge of your wishes.

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