



seirbhís tacaíochta
cinnteoireachta
decision support service

Decision Support Service Code of Practice

Code of Practice for Designated Healthcare Representatives

This Code should be read in conjunction with the Assisted Decision-Making (Capacity) Act 2015. For the avoidance of doubt, in the event of any conflict or inconsistency, the legislative provisions prevail.



Draft

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Introduction and overview

1.1 Introduction to a designated healthcare representative

Any person aged 18 or older with decision-making capacity can make an advance healthcare directive that will come into effect if they lack the capacity to make healthcare decisions for themselves. A designated healthcare representative is a person chosen by the directive-maker (the person who makes an advance healthcare directive) to ensure that the terms of the advance healthcare directive are complied with, by providing direction to healthcare professionals and taking steps to ensure that the will and preferences of the directive-maker in relation to their healthcare treatment decisions are respected.

1.2 Purpose of this code of practice

The purpose of this code of practice is to guide you, as a designated healthcare representative, in meeting your statutory obligations under the Assisted Decision-Making (Capacity) Act 2015 (the Act). Information on eligibility for appointment as a designated healthcare representative, guidance on how to make an advance healthcare directive, and further guidance for designated healthcare representatives can be found on the Decision Support Service website: www.decisionsupportservice.ie

1.3 About the Assisted Decision-Making (Capacity) Act 2015

The Assisted Decision-Making (Capacity) Act 2015 (the Act) was signed into law by the President on 30 December 2015, <and came into force on X date>. The Act is an important piece of reforming human rights law. The Act repealed two laws about decision-making capacity that have been in place since the 19th century. These are the Marriage of Lunatics Act 1811 (repealed in February 2021) and the Lunacy Regulation (Ireland) Act 1871.

The Act establishes a modern legal framework to support decision-making by adults who may have difficulty making decisions without help. It includes three types of decision support arrangements for people who currently, or may shortly, face challenges when making certain decisions. It also provides for people who wish to plan for a time in the future when they might lose capacity, by way of an advance healthcare directive and an enduring power of attorney.

Under the Act, a person over the age of 18 is always presumed to have capacity. In a situation where a person's capacity is questioned, capacity is assessed based on their ability to make a specific decision at a specific time. This is called the 'Functional Test' of capacity. A person is considered to have the capacity to make a decision if they can:

- understand the information relevant to the decision,
- retain the information long enough to make a choice,
- use or weigh up the information to make a decision, and
- communicate their decision (this may be with assistance).

The Act includes important safeguards requiring the Director of the Decision Support Service (DSS) to oversee and supervise decision support arrangements. This includes monitoring decision supporters, for example, through general and special visitors and through the review of annual reports that decision supporters are required to provide. The Act also requires the Director to investigate complaints made about decision supporters and decision support arrangements, including designated healthcare representatives.

1.4 Legal status of this code of practice

This code of practice is provided for under section 91 of the Act. Section 91 (3) establishes that the Director of the DSS may publish codes for the purposes of providing guidance to specified people with regard to advance healthcare directives. Once published, those for whom the code is intended must have regard to its contents while performing any function under the Act to which that code refers, as set out in section 91(13). Section 91 (12) of the Act provides for these codes to be admissible in legal proceedings. Under section 91(14), where it appears to a court, tribunal or other body conducting proceedings that a provision of or breach of a code is relevant to the question before it, it shall take the provision or breach of the code into account in deciding the question.

1.5 Terms and language used in this code

As far as possible, Plain English principles have been adhered to in the writing of this code. However, in order to accurately reflect the Act, it has sometimes been necessary to use terms and language that may not be familiar to readers. A full list of these terms can be found in the Glossary.

The term intervention is defined in a narrow way under the Act, limited to the actions of people defined in the Act as interveners and only when such actions are specifically identified within the Act as actions to be undertaken when acting as an intervener. Under section 8 of the Act, only these named interveners are obliged to apply the guiding principles (described in section 1.6). A designated healthcare representative is an intervener.

1.6 Guiding principles

The Act is based on a set of guiding principles that are the foundation for interpreting and administering the Act. As an intervener, a designated healthcare representative is obliged to give effect to these guiding principles.

There are nine guiding principles in the Act, each of which is summarised below. For further information including how the guiding principles may be applied, please see the code of practice on supporting decision-making and assessing capacity.

- **Presume capacity:** Presume the relevant person has capacity to make a decision on the issue in question at the time the decision needs to be made.
- **Support the relevant person to make decisions:** Support the relevant person as much as possible to make their own decision on the issue in question before considering them unable to make this decision at the time the decision needs to be made.
- **Unwise decisions:** The fact that a decision appears unwise does not mean the person lacks the capacity to make it.
- **Do not intervene unless necessary:** Only intervene in respect of a relevant person where it is necessary to do so having regard to the individual circumstances of the relevant person.
- **Minimal intervention:** Any intervention in respect of a relevant person must:
 - take an approach that minimises restrictions of the person's rights and freedom of action,
 - have due regard for dignity, bodily integrity, privacy, autonomy and control over financial affairs and property,
 - be proportionate to the significance and urgency of the matter on which a decision is to be made, and
 - be as limited in duration as practicable having regard to the individual circumstances of the relevant person.
- **Give effect to will and preferences:** In making an intervention in respect of the relevant person, the intervener must, as far as practicable and ascertainable:
 - permit, encourage and facilitate the relevant person to participate, or to improve his or her ability to participate, as fully as possible in the intervention,
 - give effect to the past and present will and preferences of the relevant person,
 - take into account the beliefs and values of the relevant person, especially those in writing and any other factors which the relevant person would be likely to consider if they were able to do so,
 - consider the views of any person named by the relevant person as someone to be consulted on this or a similar issue, and any decision supporter for the relevant person,
 - act in good faith and for the benefit of the relevant person, and
 - consider all other circumstances of which they are aware, and which would be reasonably regarded as relevant.

- **Consider the views of others:** In making an intervention in respect of the relevant person, the intervener may consider the views of any person engaged in caring for, or with a bona fide interest in the welfare of the relevant person, or healthcare professionals.
- **Consider the urgency of the intervention:** Before making an intervention in respect of the relevant person, consideration should be given to the likelihood of the relevant person regaining capacity to make a decision on the issue in question and the urgency of making the intervention prior to such time as the relevant person may regain capacity.
- **Use of information:** In making an intervention in respect of the relevant person, the intervener must only obtain information that is reasonably required to make a decision on the issue in question; only use this information for the purposes of making that decision; and take reasonable steps to ensure this information is kept secure from unauthorised access, use or disclosure and is safely disposed of when the intervener believes it is no longer required.

1.7 Relevant decisions

The provisions of the Act apply to personal welfare decisions and to property and affairs decisions. Personal welfare decisions include decisions related to the relevant person's health and social care as well as to accommodation, employment, education and social activities. Property and affairs decisions include decisions related to the relevant person's property, business and/or money matters.

1.8 Decision support arrangements

The Act names five decision support arrangements for people with decision-making capacity challenges who may need support to make certain decisions. These arrangements are based on the different levels of support that a person requires to make a specific decision at a specific time. Under these arrangements, a person can be appointed as a decision supporter. The type of support a decision supporter can provide depends on the decision support arrangement that is put in place.

There are three decision support arrangements for people who currently, or may shortly, face challenges making certain decisions:

- **Decision-making assistance agreement:** A person who requires support to make certain decisions can appoint a decision-making assistant to help them access information, understand their options, and communicate their decisions to others.
- **Co-decision-making agreement:** A person who requires more support than that provided by a decision-making assistance agreement can appoint a co-decision-maker to make certain decisions jointly with them.
- **Decision-making representation order:** If a person is unable to make certain decisions, the court may appoint a decision-making representative to make those decisions on their behalf. The court can also make a decision-making order to make a decision on behalf of the person.

There are two types of arrangements for people who wish to plan for a time in the future when they might lose decision-making capacity:

- **Advance healthcare directive:** A person can set out their wishes regarding healthcare treatment decisions, including treatment refusals, in case they are unable to make those decisions at some time in the future.
- **Enduring power of attorney:** A person can appoint someone (or multiple people) to make certain decisions about their welfare, property, and money matters if they are unable to make those decisions for themselves at some time in the future.

The Act recognises that a person's decision support requirements may change over time. This tiered system of decision support arrangements allows for the amendment, cancellation, or replacement of one type of arrangement with another, depending on the person's capacity and needs.



Your functions and duties

2.1 Before undertaking the role

Before you agree to undertake the role of designated healthcare representative you should understand what the role involves and be comfortable with the obligations you are undertaking. It is especially important that you are aware that your role is to ensure that the directive-makers' expressed will and preferences as set out in their advance healthcare directive are respected, even if you do not agree with these. If you believe that you cannot commit to this, you must not take on the role of designated healthcare representative. Further information on the role of designated healthcare representatives including eligibility criteria, and how to make an advance healthcare directive are available on the Decision Support Service website: www.decisionsupportservice.ie

2.1.1 Understand the advance healthcare directive

When making the advance healthcare directive, the directive-maker will outline the healthcare treatment decisions or areas that you can assist them with. The directive-maker may give you general authority to assist them or specify certain treatment decisions. They may also specify any exceptions, exclusions or conditions to those decisions. You must read and understand it as the legal basis for actions you take as a designated healthcare representative. You must always act within the scope of the advance healthcare directive.

2.1.2 Discuss the directive-maker's will and preferences

As set out under section 87(1) of the Act, signing the advance healthcare directive confirms your willingness to act in accordance with the known will and preferences of the directive-maker regarding all treatment decisions over which you are being given authority. It is therefore important that you have a clear understanding of the directive-maker's will and preferences in relation to treatment decisions. This is especially important if you have been given specific powers in the advance healthcare directive to interpret the directive-maker's specified will and preferences. Even if you know the directive-maker well, it is important to document and maintain a record of the directive-maker's will and preferences, in relation to the decisions you may be required to make on their behalf in the future.

2.2 Apply the guiding principles

As an intervener under the Act, a designated healthcare representative is bound by the guiding principles which underpin this and all codes of practice. A detailed explanation of the guiding principles can be found in the code of practice on supporting decision-making and assessing capacity, which should be read alongside this code.

The guiding principles must be applied throughout your appointment as a designated healthcare representative when making a decision or taking an action on behalf of the directive-maker in the context of the Act. Reference is made to relevant guiding principles in the sections below as they relate to your functions and duties.

2.3 Following your appointment as designated healthcare representative

2.3.1 Keep a copy of the advance healthcare directive

You should ensure that you keep a copy of the advance healthcare directive in a convenient and accessible place so that you can easily find it if an emergency arises or in the event of any complaints or investigations (see section 2.12). If you have notes of your conversation with the directive-maker about their will and preferences, keep these with the copy of the advance healthcare directive. If the directive-maker has amended their advance healthcare directive, you should ensure that you keep a copy of the most up to date version.

2.3.2 Informing relevant healthcare service providers about the advance healthcare directive

The directive-maker may wish to advise relevant people about the existence of their advance healthcare directive and your appointment as a designated healthcare representative while they have capacity to do so. Service providers should be clear that treatment decisions will continue to be made by the directive-maker unless the decision-maker lacks capacity to do so. It may be useful for you to be aware of the health and social care services the directive-maker is receiving and key contacts within those services, so that you can inform relevant people, should the directive-maker's capacity change. In this case, you should also provide your current contact information to service providers. You may be requested to provide a copy of the advance healthcare directive to some people and organisations. However, you should only share this information where it is necessary for you to carry out your functions as set out in the advance healthcare directive.

2.3.3 Changes to the advance healthcare directive

It is recommended that you revisit the topic of the directive-maker's specified will and preferences on a regular basis and especially if the directive-maker has experienced a notable change in circumstances, for example, if the directive-maker has been diagnosed with a serious illness.

A directive-maker may amend or revoke their advance healthcare directive and they may change the person appointed as designated healthcare representative. This may require the making of a new advance healthcare directive and the directive-maker must have capacity to do so. You should ensure you are aware, as far as possible, of any such changes.

The directive-maker person may name more than one designated healthcare representative in an advance healthcare directive. The purpose of this is to have an alternate designated healthcare representative available should the first named person be unable to take on this role if the need arises.

2.4 Acting as a designated healthcare representative

Where the relevant person does not have capacity to make the specific decision, even with support, you should still involve them in the decision-making process as much as possible. For so long as the directive-maker lacks capacity you, as the designated healthcare representative, have the authority to ensure that the terms of the advance healthcare directive are complied with.

Depending on the terms of the advance healthcare directive, this may include engaging with the directive-maker's treatment providers and,

- advising and interpreting what the directive-maker's will and preferences are with regard to treatment decisions by reference to the relevant advance healthcare directive
- consenting to or refusing a particular healthcare treatment, up to and including life-sustaining treatment, based on the known will and preferences of the directive-maker by reference to the relevant advance healthcare directive.

You do not have powers beyond those which are specified in the relevant advance healthcare directive. You may not delegate your powers to another person.

You may be consulted by a healthcare professional who is seeking to resolve any ambiguity about the validity or ambiguity of an advance healthcare directive.

The following sections sets out relevant considerations and steps you should follow when making a decision on behalf of a directive-maker.

2.4.1 Consider necessity of decision

When making a decision on behalf of the directive-maker, you must first consider whether the decision is necessary at this time. Decisions should not be made pre-emptively, where there is not an identified need.

2.4.2 Check authority to make the decision

You must ensure you have the appropriate authority to make the decision on behalf of the directive-maker. You should review the advance healthcare directive to ensure the specific decision comes within the scope of your authority.

2.4.3 Where the relevant person has capacity to make the decision

An advance healthcare directive is only applicable when the directive-maker lacks capacity to give or refuse consent to the treatment covered by the advance healthcare directive. When making a decision on behalf of the person as designated healthcare representative, you must reasonably believe that the person lacks capacity to make that decision or to give consent at the time it was needed.

You do not need to follow formal processes to make an assessment. However, if somebody challenges your assessment, you must be able to describe your reasoning and why you believed the person lacked capacity to make the decision.

It may be necessary to make an application to court for a declaration as to whether the advance healthcare directive is applicable. If the application concerns life-sustaining treatment, then the application must be made to the High Court.

2.4.4 Gather all relevant information

Before making a decision under an advance healthcare directive in respect of treatment, you must gather relevant information on the options available and the risks and benefits of these options. You must ensure, as much as possible, that you understand the short-term and long-term consequences of the options available. It is important that you can justify your reasons based on relevant information, where you decided to accept certain risks. When gathering information, you should ensure that you include information on any factors that would have been considered important to the directive-maker if they were making the decision themselves, irrespective of whether other people would consider such things to be important.

2.4.5 Ascertain will and preference

Where the directive-maker has expressed a clear will and preference in relation to the decision that needs to be made, you must act in accordance with that known will and preference.

Where the directive-maker has not expressed a clear will and preference in relation to the decision that needs to be made, you must make all reasonable efforts to gather information to ascertain the directive-maker's current or past will, preferences, values, and beliefs in relation to that decision.

In practice, this means you must try to find out what the directive-maker's wishes were about the issue or decision in the past and think about how this affects the decision now. You must use what you know about the directive-maker to work out what you think their wishes would be if they were able to make the decision now themselves.

The extent of reasonable efforts made should be balanced against the seriousness and urgency of the decision.

You must at all times act in good faith in accordance with the guiding principles and ensure that the decision you make is for the benefit of the relevant person.

A designated healthcare representative who acts in good faith and according to what they believe at the time to be the will and preferences of the directive-maker by reference to the advance healthcare directive is not subject to civil or criminal liability

2.4.6 Consult the views of others

In gathering information to make a decision, you should consider whether there are any people you could consult that might provide you with useful information on the directive-maker's will and preference in relation to the specific decision at hand. You may consider consulting:

- Any person engaged in caring for the directive-maker
- Any person who has a true interest in the welfare of the relevant person
- Healthcare professionals
- Subject matter experts

If you consider that it would be beneficial to consult someone, you must ensure that you do not disclose the directive-maker's confidential information unless it is strictly necessary to do so to allow for appropriate consultation. You should make a record of any person you consulted as part of the decision-making process, including why you consulted them and the information they provided you with.

2.4.7 Making difficult decisions

You may be required to make difficult and sensitive decisions; this includes where you may be required to make decisions that go against the wishes of the directive-maker's loved ones or a service provider's recommendation.

It is important to be clear with the directive-maker, and with any other people involved, about your reasons for making a decision and to record your reasons.

You must ensure that any action taken is proportionate to the significance and urgency of the decision. If the decision is not urgent, you must consider whether there is a possibility that the directive-maker may regain capacity to make the decision at hand or may be supported to be more involved in the decision-making process for this decision over time.

2.5 Record keeping

2.5.1 Duty to keep records

As a designated healthcare representative, you must keep and maintain accurate records. You are required to make and keep a record in writing of relevant decisions as soon as is practicable after making it but in any case, not later than seven working days after making the decision.

You are required to be able to produce that record for inspection at the request of the directive-maker, if they regain capacity, or the Director as part of the investigation of a complaint. In addition, a court may seek a record of the decision made in the event that a complaint is filed in court about you in your role as a designated healthcare representative.

2.5.2 What and when you need to record

As outlined in section 2.5.1, you must keep and maintain accurate records relating to decisions made and consents provided on behalf of the directive-maker. This includes a record of what you have done in making those decisions. You must record your reasons for each decision made, at the time of making them.

When you make a record, you should ensure it includes the date of the record and has enough detail so that you would be able to answer questions about the decision if necessary. The level of detail should be proportionate to the significance and complexity of the decision.

2.5.3 Sharing information

You must ensure the directive-maker's personal information is shared only with individuals or organisation who require such information for the benefit of the directive-maker, or for legal reasons.

2.5.4 Retention and storage of information

You must ensure you only keep personal information about the directive-maker, such as relevant documentation and records, for as long as they are needed during your appointment. While you keep information and records on behalf of the directive-maker you must ensure it is held securely and is not able to be accessed by any other person who is not expressly authorised. If you store information or records on a shared device e.g., a personal computer, tablet or other device that is used by other members of your family, you must ensure you have sufficient security settings so that the information cannot be accessed. If you store information or records electronically, you must ensure that the information is backed up to prevent unintended loss.

2.5.5 Destruction or disposal of information

If your appointment ends for any reason, you must ensure documentation is either returned to the directive-maker or disposed of securely.

2.5.6 Loss or unauthorised use or sharing of information

You must not obtain access to or use information that is not relevant to your role as set out in the advance healthcare directive or required to fulfil your general functions and duties as a designated healthcare representative, as set out in the Act and this code. A data breach occurs when there is any unauthorised or accidental disclosure, loss, or any other form of unauthorised, accidental, or unlawful collection, use, recording, storing, or distributing of personal data. You must immediately report any data breach in relation to the directive-maker's personal data you have accessed and obtained during your appointment to the Decision Support Service. This includes any personal data contained in records you have kept and in your annual or periodic reports.

2.6 Interacting with other decision supporters

As a designated healthcare representative, you may be required to interact with other decision supporters appointed by the directive-maker, or by the court. If the directive-maker has different decision supporters for different decisions, you should ensure that you are acting consistently for the benefit of the directive-maker. While other decision

supporters may have authority to act in treatment decisions, under section 38(3) of the Act, where a decision-making representation order is made, this must be consistent with an existing advance healthcare directive.

When making a decision on behalf of the directive-maker, you are required to consult the views of others, where relevant. It may be appropriate for you to seek the views of another decision supporter where the decision may impact on decisions, they provide support or assistance with. The decision supporter may also provide you with information on the directive-maker's past or present will, preferences, values and beliefs.

2.7 Demonstrating your legal authority

Your authority as a designated healthcare representative is taken from the Act and from the advance healthcare directive. If a third-party requires evidence of your authority you can provide them with a copy of the advance healthcare directive. If upon presenting evidence of your legal authority, a third-party refuse to recognise your authority, you should seek to follow the complaints or escalation procedure that applies to that third-party, where appropriate (i.e., where the third party is an organisation, professional or service provider). Alternatively, you can contact the Decision Support Service who can supply information with regard to advance healthcare directives generally. The Decision Support Service will not be on notice of or maintain a register of advance healthcare directives unless and until these matters are provided for by regulation which the Minister for Health may make under the Act.

2.8 Changes in capacity

The directive-maker's capacity may change during your appointment as a designated healthcare representative. It is important that you are aware of and record any changes in the person's capacity. As changes in capacity may be temporary or fluctuating, it is important that action is not taken pre-emptively.

2.8.1 Loss of capacity or diminishing capacity

A person may lose capacity to make certain decisions over time. This may be due to a degenerative or age-related condition. The directive-maker may also be affected by a specific incident or condition during your appointment.

2.8.2 Gaining capacity

A person may build capacity over time through being supported and encouraged to be involved in decision-making. A person may also re-gain capacity over time if their capacity was affected by a specific incident or temporary or fluctuating condition.

2.9 Assistance in court proceedings

Following your appointment, the court may request or allow you to assist the relevant person in a court application. This could happen where the relevant person is the subject of an application to determine or review his or her capacity to make specific decisions. Where the relevant person has no legal representation, the Act allows a designated healthcare representative to assist the relevant person in any hearings related to the proceedings.



Complaints and investigations

3.1 Complaints and investigations

Any person may make a complaint to the Decision Support Service about you in your role and the way that you are exercising your powers:

Following receipt of the complaint, the Decision Support Service will consider whether the complaint is within remit. In the first instance, the Director may require you to provide a copy of the advance healthcare directive. In carrying out an investigation of a complaint, the Director may summon a witness to attend, examine the witness on oath and require the witness to produce any document over which the witness has control. The Director may also, in carrying out an investigation, by notice in writing, require the witness to provide him or her with such written information as the Director considers necessary. A witness who fails to comply with the requirements of the Director or hinders or obstructs the Director or one of the Director's staff in the performance of their functions shall be guilty of an offence and may receive a fine.

Following investigation, the Director may decide to take no further action or may make an application to the court. If the court is satisfied that you have behaved or propose to behave in manner outside the scope of your powers under the advance healthcare directive, the court may make an order prohibiting you from exercising those powers.

3.2 Offences

The Act creates specific offences in relation to advance healthcare directives. If the DSS becomes aware of a suspected offence, it will be reported to An Garda Síochána for investigation.

3.2.1 Fraud, coercion or undue pressure

Any person who uses fraud, coercion or undue pressure to force a directive-maker to make, vary or revoke an advance healthcare directive, commits an offence with penalties up to 5 years imprisonment or a fine of up to €50,000 or both.

This includes any instance where fraud, coercion or undue influence is used to make the directive-maker believe their access to a designated centre or mental health facility depended on them creating, varying or revoking an advance healthcare directive.

3.2.2 Making a false statement

Any person who makes, falsifies, alters or purports to revoke an advance healthcare directive on behalf of another person without that person's consent commits an offence with penalties up to 5 years imprisonment or a fine of up to €50,000 or both.

3.2.3 Ill-treatment or neglect

A designated healthcare representative who ill-treats or wilfully neglects a relevant person commits an offence, with up to 5 years imprisonment or a fine of up to €50,000 or both.

3.3 Disqualification as a designated health representative

3.3.1 Grounds for disqualification

You are not eligible to continuing acting act in your role if, at any time following your appointment, you:

- Are convicted of an offence in relation to the person or property of the directive-maker or a child of the directive-maker
- Become the subject of a safety or barring order in relation to the directive-maker or a child of the directive-maker
- Become the owner, or registered provider, of a designated centre or mental health facility where the directive-maker lives unless your relationship with the directive-maker is explicitly stated in the Act
- Live with, work at or become an agent for a designated centre or mental health facility where the directive-maker lives unless your relationship with the directive-maker is explicitly stated in the Act
- Provide personal care or healthcare services to the directive-maker for compensation unless your relationship with the directive-maker is explicitly stated in the Act
- Become unable, for whatever reason, to exercise relevant powers

Unless the advance healthcare directive provides otherwise, where you are in a relationship with the directive-maker, you will be disqualified from acting as designated healthcare representative, at any time following your appointment, you:

- Are the spouse or civil partner of the relevant person and the marriage or civil partnership is annulled or dissolved, or there is a judicial separation or written agreement to separate
- Are the spouse, civil partner or cohabitant of the relevant person and you have separated and have not lived together for a continuous twelve-month period.

3.4 Identifying and reporting concerns

Concerns in relation to the quality of service the directive-maker is receiving should be reported through the service providers complaints or concerns procedure in the first instance.

Glossary

(the) Act

The Assisted Decision-Making (Capacity) Act 2015

Advance healthcare directive

An advance healthcare directive is an advance expression made by a person with decision-making capacity in accordance with the requirements of the Act of the person's will and preferences concerning healthcare treatment decisions that may arise if he or she subsequently lacks decision-making capacity.

Advance healthcare planning

Advance healthcare planning is a process of discussion and reflection about the goals, values, will and preferences for healthcare treatment occurring in the context of an anticipated deterioration in the person's condition. Advance healthcare plans are generally not legally enforceable unless they are in the form of an advance healthcare directive.

Advocate

A person nominated by an individual adult to speak on their behalf and represent their views. Advocacy comes in different forms including informal support and independent advocacy services. Advocacy should always be independent from the service providing care or support.

Another person

A person, whom the court deems suitable, willing and able to assist the relevant person during the course of a Part 5 application hearing and who is chosen by the relevant person to assist him or her during the course of the hearing. Another person could be, for example, a trusted family member or friend or an independent advocate.

Applicability

Applicability refers to whether something applies, in other words, is relevant or appropriate in a particular situation. When used in the context of a decision-support agreement, directive or order, it means checking that the relevant criteria are being met for a specific decision at a specific time.

Assessment of decision-making capacity

An assessment of decision-making capacity is where a person's ability to understand the nature and consequences of a decision to be made by him or her is assessed in accordance with a functional test of capacity.

Attorney (2015 Act)

An attorney is a person appointed by an adult who has decision-making capacity (referred to as a donor), in an enduring power of attorney, to make decisions on behalf of the donor when the donor no longer has the capacity to make those decisions for himself or herself. The enduring power of attorney must be registered with the Director of the Decision Support Service before the attorney has the authority to make relevant decisions on behalf of the donor.

Attorney (1996 Act)

An enduring power of attorney created under the Powers of Attorney Act 1996 will continue to be governed by the rules and regulations provided for in the 1996 Act. On commencement of Part 7 of the 2015 Act, no further enduring powers of attorney can be created under the provisions of the 1996 Act. Part 7 of the Act provides for some oversight of attorneys under the 1996 Act by the Director of the Decision Support Service. The Director can investigate complaints against attorneys under the 1996 Act in a similar manner to an investigation of complaints against attorneys appointed under the 2015 Act.

Autonomy

The right to make decisions and take actions that are in keeping with one's beliefs and values.

Basic care

Basic care includes (but is not limited to) warmth, shelter, oral nutrition, oral hydration and hygiene measures but does not include artificial nutrition or artificial hydration.

Bona fide

Bona fide means acting in good faith.

Capacity

Capacity is understood to refer to decision-making capacity. In this context, capacity means 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 them in the context of the available choices at the time.

Cardiopulmonary resuscitation (CPR)

Cardiopulmonary resuscitation (CPR) is a treatment which attempts to restart a person's heart and maintain breathing where the person's heart or breathing has stopped. Cardiopulmonary resuscitation usually involves chest compressions, ventilation of the lungs, attempted defibrillation with electric shocks and the injection of drugs.

Co-decision-maker

This is a person appointed by a relevant person to jointly make decisions with him or her. This may occur where the relevant person does not have the capacity to make decision(s) even with the aid of a decision-making assistant but does have the capacity to make decision(s) with the help of a co-decision-maker. A co-decision-maker must be appointed in a written and witnessed agreement. The co-decision-making agreement must be registered with the Director of the Decision Support Service in order to bring it into force.

Cohabitant

A cohabitant is one of two adults who live together as a couple in an intimate and committed relationship, and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other.

Consent

Consent is the giving of permission or agreement for an intervention (including medical treatment), receipt or use of a service or participation in research following a process of communication in which the person has received sufficient information to enable them to understand the nature, potential risks and benefits of the proposed intervention or service. Consent is a legal requirement at common law and the requirement is supported by the Constitution of Ireland and the European Convention on Human Rights.

Court

The circuit court has general jurisdiction under the Act, apart from certain matters reserved for the high court:

- Any decision regarding the donation of an organ from a living donor where the donor is a person who lacks capacity
- Where an application in connection with the withdrawal of life-sustaining treatment for a person who lacks capacity comes before the courts for adjudication.

Court friend

A person appointed by the Director to assist the relevant person in relation to an application to the circuit court under Part 5 of the Act in respect of which the relevant person is the subject. A court friend is appointed by the Director when no other person is available, willing or suitable to assist the relevant person in relation to a Part 5 application.

Decision-making assistant

A person appointed through a formal decision-making assistance agreement by a relevant person to support him or her in making a decision, for example, by obtaining information or personal records and by ensuring that the relevant person's decisions are implemented. The decision-making assistant will not make the decision on behalf of the person. Decision-making responsibility remains with the relevant person.

Decision-making representation order

A court order appointing a decision-making representative to make one or more decisions for a person who has been declared to lack capacity.

Decision-making representative

A person appointed by the court when the relevant person lacks capacity to make a decision. The scope of a decision-making representative's authority to make decisions depends on the court order, which may include the attachment of conditions relating to the making of decisions by the decision-making representative, or the period of time for which the order is to have effect.

Decision supporter

Someone with legal authority specified in a decision-making support arrangement to support a relevant person to make their own decisions or to make the decisions on their behalf.

Decision Support Service

The Decision Support Service is an office based within the Mental Health Commission established by the Act 2015. See also Director of the Decision Supporter Service.

Designated healthcare representative

A person named by the directive-maker, in his or her advance healthcare directive, to exercise certain powers as set out in the advance healthcare directive.

Directive-maker

The directive-maker is the person who makes the advance healthcare directive.

Director of the Decision Support Service

The role of the Director of the Decision Support Service is to support decision-making by and for adults whose capacity is or may be in question. The statutory functions of the Director, as provided for in Part 9 of the Act, are:

- to provide information in relation to the various decision-making support options under the Act
- to provide guidance and information to organisations in the State in relation to their interaction with people who have decision-making capacity difficulties and those who have been appointed to assist in decision-making
- to identify and make recommendations for changes of practices in organisations where the practices may prevent a person with decision-making capacity difficulties from exercising his or her capacity under the Act
- to supervise and handle complaints about those who are appointed to assist persons in making decisions, decision-making arrangements and any person who used fraud, coercion or undue pressure to induce a person to make, vary or revoke a decision-making arrangement

- to maintain registers of co-decision-making agreements, decision-making representation orders and enduring powers of attorney created under the Act
- to maintain panels of suitable persons to act as decision-making representatives, court friends, general visitors and special visitors
- to approve, draft and consult on codes of practice under the Act
- to act as the central authority for the purposes of the operation of the Hague Convention on the International Protection of Adults.

Donor

The person who creates an enduring power of attorney and who appoints an attorney to make decisions on his or her behalf when the donor no longer has the decision-making capacity to make those decisions.

Do not attempt cardiopulmonary resuscitation order

This is a written order stating that cardiopulmonary resuscitation should not be attempted if a person suffers a cardiac or respiratory arrest.

Enduring power of attorney

This is a legal agreement made in accordance with the requirements of the Act whereby a donor gives authority to an attorney to act on their behalf in the event that the donor lacks decision-making capacity at any time in the future. An enduring power of attorney created under the Powers of Attorney Act 1996 will remain valid after commencement of the 2015 Act. An enduring power of attorney created after commencement of the 2015 Act will be subject to the 2015 Act.

Financial professionals and financial service providers

All persons who provide one or more financial products or services, whether regulated or unregulated including those operating in the State and those outside the State who provide a financial service to consumers in the State.

Functional assessment of decision-making capacity

Assessing decision-making capacity on a functional basis means that the emphasis is on the capacity to make a specific decision, at the time the decision has to be made (issue-specific and time-specific):

- **Issue-specific:** Decision-making capacity is assessed only in relation to the decision in question. A judgement that someone lacks decision-making capacity in relation to one issue does not have a bearing on whether decision-making capacity is present in relation to another issue.
- **Time-specific:** Decision-making capacity is assessed only at the time in question. A judgement that someone lacks decision-making capacity at one time does not have a bearing on whether decision-making capacity in relation to that issue is present at another time.
- Functional decision-making capacity focuses on how a person makes a decision and not the nature or wisdom of that decision.

General practitioner

A medical doctor based in the community who provides initial, on-going and continuous personal medical care, with responsibility for integrating care, treating people with acute, minor or chronic illnesses, and referring those with serious conditions to a hospital when specialist treatment is likely to be necessary and be of benefit.

General visitor

A person appointed by the Director of the Decision Support Service to assist the Director in performing his or her supervisory functions as defined in the Act. A general visitor may be directed by the Director to visit a relevant person, decision-making supporters and any other person who may be able to assist with information, and to submit a report to the Director following such visits. A general visitor may also be directed by the Director to obtain copies of any health, personal welfare or financial records held in relation to a relevant person.

Healthcare professionals

Healthcare professionals refers to the various health and social care staff who support people while they are receiving healthcare treatment. The term covers all health and social care professions whether or not the profession is a designated profession within section 3 of the Health and Social Care Professional Act 2005.

Healthcare treatment/ treatment

Healthcare treatment means an intervention that is or may be done for a therapeutic, preventative, diagnostic, palliative or other purpose related to the physical or mental health of the person and includes life-sustaining treatment.

Independent advocate

A person who works with and for a relevant person, around a specific issue or issues which have arisen, where they have difficulty voicing their will and preferences. An Independent Advocate is employed or engaged by an advocacy organisation, is free from conflict of interest and is independent of family and service providers.

Instrument/legal instrument

This is the document in which the decision-support arrangement (such as an enduring power of attorney) is created.

Interveners

The Act provides for legally recognised persons referred to as interveners to support a person to maximise their decision-making capacity. As defined in the Act, an intervener can be:

- The circuit court or high court
- A decision-making assistant, co-decision-maker, decision-making representative, attorney or designated healthcare representative
- The Director of the Decision Support Service
- A special visitor or a general visitor
- A healthcare professional
- Court friend

Intervention

This is any action taken, direction given, or any order made in respect of a relevant person under the Act. The intervention may be made by the courts, by a healthcare professional, or any person under the formal agreements set out in the Act and should reflect the level of support the relevant person requires.

Jointly

When used in reference to decision supporters, this means that all the appointed interveners must work together to make joint relevant decisions and where appropriate each person must sign any relevant documents. A decision made by one person alone will not be valid. A document signed by one person only will not be valid.

Jointly and severally

When used in reference to decision supporters, this means that any one of the appointed interveners may make a relevant decision or where appropriate sign a relevant document. Signatures from other decision supporters are not required to make the document valid.

Key worker

The staff member in the service who carries particular responsibility for the person with a disability, liaises directly with them, coordinates their services and supports, and acts as a resource person.

Legal practitioner

A practicing barrister or a practicing solicitor.

Life-sustaining treatment

This is any clinically appropriate 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.

Multidisciplinary team

A group of healthcare professionals who are members of different disciplines (e.g., psychiatrists, social workers etc.) each of whom provide specific services to the relevant person.

Palliative care

Palliative care aims to improve the quality of life of a person and their family facing the problems associated with life-threatening illness, through the prevention and relief of suffering by means of early identification and assessment and treatment of pain and other problems, physical, psychosocial and spiritual. The aim of palliative care is to enhance quality of life and, wherever possible, to positively influence the course of illness. Palliative care also extends support to families to help them cope with their family member's illness and their own experience of grief and loss.

Palliative care approach

This is the application of palliative care principles by healthcare professionals who do not solely work in specialist palliative care.

Personal welfare decisions

These include decisions concerning accommodation, employment, education, training, social activities, social services, healthcare and well-being.

Presumption of decision-making capacity

This means that it must be presumed that a person has capacity in respect of a specific decision unless otherwise shown. The onus of proving that a person lacks capacity to make a decision is on the person who is questioning a relevant person's ability to make a particular decision.

Property and affairs decisions

These include decisions concerning property (i.e., acquisition, sale, lease and mortgage), business, contracts, debts, taxes, benefits and finances.

Registered medical practitioner

A person who holds a basic medical qualification, and who is registered under section 46, 47, 48, 49 or 50 of the Medical Practitioners Act 2007.

Relevant decision

A decision made, or to be made, which is the subject of a decision-making assistance agreement, co-decision-making agreement, a decision-making order, decision-making representation order, enduring power of attorney or advance healthcare directive.

Relevant person

This is a person:

- whose decision-making capacity is in question or may shortly be in question in respect of one or more matters (i.e., a person who may have difficulty reaching a decision without the support of someone), or
- who lacks decision-making capacity in respect of one or more matters (i.e., a person who may be able to make some decisions but not others), or
- whose decision-making capacity is in question or may shortly be in question in respect of one or more matters and who lacks decision-making capacity at the same time but in respect of different matters (this is a combination of the above).

Revocation

This means the cancellation of a legal document., the act of stating officially that an agreement, right, or legal document is no longer effective.

Special visitor

A person appointed by the Director of the Decision Support Service to assist the Director in carrying out his or her functions. A special visitor may be directed by the Director to visit a relevant person, decision-making supporters and any other person who may be able to provide relevant information and carry out assessments of decision-making capacity in relation to a relevant decision. A special visitor submits a report to the Director following such visits. A special visitor may also be directed by the Director to obtain copies of any health, personal welfare or financial record held in relation to a relevant person.

Suitable person

This refers to the eligibility of a person to become a decision-supporter or other intervener, through meeting the specific criteria set out in the Act.

Supporting decision-making

This refers to any process in which an individual is supported, through whatever means necessary, in making a particular decision.

Trust corporation

A category of companies empowered to undertake trust business, provided certain other conditions are met which are contained in section 30 of the Succession Act 1965. A trust corporation is deemed a person for the purposes of an enduring power of attorney in the Act but may only be given authority in relation to property and affairs decisions.

Unwise decision

This is a decision which may be perceived as being ill-advised or risky. This may reflect a difference in values, goals and preferences between the relevant person and the person interacting with them. The decision may have adverse consequences for the relevant person.

Validity

This is the state of being officially legally binding or acceptable.

Wardship

This was the process whereby an application was made to the court to hold a formal inquiry into the question of a person's decision-making capacity. If, following such an inquiry, a person was declared by the court to be of unsound mind and incapable of managing their personal affairs and property then they were described as a ward of court and the court assumed overall control of the person's affairs and had to make decisions on the person's behalf in their best interests. The wardship process operated under the following legislative provisions: Courts (Supplemental Provisions) Act 1961, section 9; Rules of the Superior Courts, Order 67; Circuit Court Rules, Order 47; and the Lunacy Regulations (Ireland) Act 1871. The Assisted Decision-Making (Capacity) Act 2015 provides for people who were brought into wardship under the above-mentioned legislative provisions to have their capacity by the wardship court and to be assessed and to be provided with supports under the new statutory framework as appropriate.

Witness

A witness is a person who signs one of the following legal instruments: an advance healthcare directive; a co-decision-making agreement; or an enduring power of attorney, in accordance with the requirements of the Act, so as to attest that the instrument was signed by the person making it. Alternatively, a witness could refer to a person whom the Director of the Decision Support Service has called to provide information as part of an investigation.



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