



Safeguarding the rights and interests of people with disability

## Policy Position: Signing Residential Aged Care Facilities' Advance Care Planning Documentation

The Office of the Public Advocate (OPA) promotes all adults considering advance care planning (ACP) options.

There are particular life stages which provoke consideration of ACP and admission to residential aged care is clearly one of these stages.

Residential Aged Care Facilities (RACF) must comply with Aged Care Quality Standards<sup>1</sup>:

Standard 2 (ongoing assessment and planning with consumers) is particularly relevant to ACP and the organisations statement is:

“The organisation undertakes initial and ongoing assessment and planning for care and services in partnership with the consumer. Assessment and planning has a focus on optimising health and well-being in accordance with the consumer’s needs, goals and preferences.” Part of the requirement of this is “assessment and planning identifies and addresses the consumer’s current needs, goals and preferences including advance care planning and end of life planning if the consumer wishes.”

The Standards emphasise the rights of consumers to exercise choice and independence and to be supported to do so and to make decisions about their own care and to make decisions about when others should be involved in their care.

It is common practice in RACF to request incoming residents to complete ACP forms or for family members of residents to do so on their behalf.

OPA encourages RACF to promote ACP to their residents but notes that any documentation any RACF develops must be consistent with relevant legislation.

The law in relation to medical treatment planning and medical treatment decision making is a matter of State law. In Victoria, the relevant law is the *Medical Treatment Planning and Decisions Act 2016*.

On occasions, OPA has been concerned that forms developed by some RACF have not been consistent with Victorian law. In particular, OPA has been concerned that some forms purport to invest a person with decision making authority in relation to a resident they do not have, or cannot have, under Victorian law.

While the terminology of ACP is used in different ways in the health and aged care sectors, the ACP options provided for in the *Medical Treatment Planning and Decisions Act* (making an

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<sup>1</sup> These Standards commence on 1 July 2019

advance care directive, appointing a medical support person or appointing a medical treatment decision maker) require the person to have decision making capacity.

If a person does not have decision making capacity to make an advance care directive they may nonetheless have the ability to communicate their preferences and values for medical treatment. ACP is what a person does for him or herself.

If a family member wishes to document what they understand to be the resident's preferences and values then we recommend they complete the form titled *What I understand to be the person's preferences and values*, which can be accessed via a link on OPA's website.

This document is intended to be used by a medical treatment decision maker if they need to make a medical treatment decision.

Under Victorian law, it is not legally possible for any person other than the person themselves to complete an advance care directive.

It is not legally possible for a family member to sign documentation which purports to be a medical treatment decision unless that person is acting as medical treatment decision maker and actually making a medical treatment decision. Therefore, it is not possible for any person to sign a form which purports to be a refusal of resuscitation in anticipation of the event of respiratory or cardiac arrest. This is explained more thoroughly in our fact sheet titled "Advance care planning and residential aged care".

**Advocate/Guardians at OPA are instructed not to sign any RACF documentation which purports to be a 'Not for Resuscitation' decision as this would be beyond their legal authority. Our advice to family members similarly is not to sign such documentation. Our advice to RACF is not to ask family members to sign such documentation.**

OPA recommends the issue of resuscitation be dealt with by family members meeting with the resident's treating General Practitioner (GP) to discuss whether resuscitative treatment would be clinically futile or non-beneficial. If so, the GP could complete a Medical Treatment Plan indicating that such treatment should not be provided. Of course, if the resident has decision making capacity to do so then they may choose to complete an instructional directive in an advance care directive stating that they consent to or refuse such treatment should it be clinically indicated at a future point in time.

OPA has a number of publications and fact sheets which are relevant to explaining Victorian law and can be downloaded from the website [www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)

## OPA Publications

1. [Take Control: your self-help guide to appointing a medical treatment decision maker](#)
2. [Side by Side](#)
3. [Supported decision making in Victoria: a guide for families and carers](#)
4. [Medical consent flow chart](#) (also available as a mobile app)
5. [Obligations for health practitioners under the \*Medical Treatment Planning and Decisions Act 2016\*](#)
6. [Advance care planning and mental illness](#)
7. [Do I need the consent of OPA for urgent medical treatment?](#)
8. [Limitations or conditions for appointed medical treatment decision makers](#)
9. [Palliative care when the person does not have decision making capacity](#)
10. [Treatment for mental illness: transitioning from \*the Mental Health Act 2015\* to the \*Medical Treatment Planning and Decisions Act 2016\* for treatment for mental illness:](#)
11. [End of life decision making when there is no medical treatment decision maker](#)
12. Advance care planning and substitute medical treatment decision making
13. Information for witnesses
  - a. [advance care directive](#)
  - b. [appointment of medical support person](#)
  - c. [appointment of medical treatment decision maker](#)
14. Advance care planning and residential aged care
15. Relationship Between Guardianship and Decision-Making Capacity for Medical Treatment Decisions
16. Advance care planning and dementia
17. Relationship Between Guardianship and Decision-Making Capacity for Medical Treatment Decisions
18. [Guide: Medical decision making and the person who lacks capacity: for clinicians](#)
19. [Guide: Medical decision making and the person who lacks capacity: for medical treatment decision makers](#)

On OPA's website there is also a link to [Northern Health's website](#) for the following documents:

1. Goals of Care
2. What I understand to be the person's preferences and values form