

OFFICIAL

SA Health

# Policy

## Advance Care Directives

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Government  
of South Australia

SA Health

## 1. Name of Policy

Advance Care Directives

## 2. Policy statement

This policy outlines the requirements for SA Health to appropriately and effectively comply with the [Advance Care Directives Act 2013](#) (the Act).

## 3. Applicability

This policy applies to all employees and contracted staff of SA Health; that is all employees and contracted staff of the Department for Health and Wellbeing (DHW), Local Health Networks (LHNs) including state-wide services aligned with those Networks and SA Ambulance Service (SAAS).

## 4. Policy principles

SA Health's approach to advance care directives is underpinned by the following principles:

- > We apply the principles of the Act to health care provision to support a person who has made decisions and given directions in relation to their future health care, end of life, living arrangements and other personal matters.
- > We support employees and contracted staff to understand their obligations and rights to appropriately and effectively comply with the Act.
- > We acknowledge the need for sensitivity, compassion and respect in supporting a person to make decisions and give directions in an Advance Care Directive.
- > We provide the necessary resources to enable employees and contracted staff to carry out the requirements of the Act.

## 5. Policy requirements

### Advance Care Directives

- > An Advance Care Directive must be considered valid if made on the [approved form](#), and completed and witnessed in accordance with the Act and the [Advance Care Directives Regulations 2014](#) (the Regulations).
  - An electronic copy of an Advance Care Directive form that has been completed and witnessed in accordance with the Act must be considered a valid copy if it is of a kind prescribed by the Regulations, including those stored on Sunrise EMR and My Health Record.
- > A written refusal of health care in a valid Advance Care Directive must be followed if relevant to the circumstances at the time.

### Giving effect to Advance Care Directives

- > DHW, LHNs and SAAS must ensure all employees and contracted staff are aware of their obligations in relation to giving effect to Advance Care Directives, including:
  - If a person who gave an Advance Care Directive has impaired decision-making capacity in respect of a particular decision, a Substitute Decision-Maker may make a decision under an Advance Care Directive, and the Substitute Decision-Maker must be consulted (if available) to provide consent to medical treatment.

- A health practitioner must only provide health care pursuant to a consent granted under the Advance Care Directive (whether by a Substitute Decision-Maker or otherwise) if at the relevant time the person who gave the Advance Care Directive has impaired decision-making capacity in respect of a particular decision relevant to the provision of that health care.

### Health practitioner obligations

- > Health practitioners providing health care to a person who has given an Advance Care Directive and who has impaired decision-making capacity in respect of a particular decision that is required in relation to the health care must comply with the requirements of the Act.
- > Refusal to comply with a provision of an Advance Care Directive must only occur where the health practitioner believes on reasonable grounds that the:
  - person who gave the Advance Care Directive did not intend the provision to apply in the particular circumstances; or
  - provision does not reflect the current wishes of the person who gave the Advance Care Directive; or
  - kind of health care that the person who gave the Advance Care Directive wishes to receive:
    - is not consistent with any relevant professional standards; or
    - does not reflect current standards of health care in the South Australia.
- > The ability for a health practitioner, bound by this Policy, to refuse to comply does not authorise a health practitioner to provide health care. If health care is to be provided, consent must be given in accordance with the [Consent to Health Care and Medical Treatment Policy](#).
- > The ability to refuse to comply does not apply to a binding provision of an Advance Care Directive or if the specified health care comprises the withdrawal, or withholding, of health care to a person (including the withdrawal or withholding of life-sustaining measures).

### Conscientious Objection

- > LHNs must ensure that registered health practitioners are supported to exercise their right to refuse to comply with a provision of an Advance Care Directive on conscientious grounds.
- > If a health practitioner has a conscientious objection to complying with a provision of an Advance Care Directive, the practitioner must hand over the care of the person to another practitioner in accordance with the practitioner's professional Code of Conduct issued by the relevant Health Practitioner Board.

### Effect of advance care directives in the case of suspected suicide or self-harm

- > Health practitioners must be aware that where they reasonably suspect that a person has attempted suicide or self-harmed and they are of the opinion that the provision of health care is reasonably necessary to save the life of the person, they may:
  - disregard a binding provision of an advance care directive if the need for the health care arises out of the attempted suicide or self-harm of the person, and the health care is reasonably necessary to save the life of the person.
  - if authorised to do so in accordance with the Consent Policy, provide health care to the person despite the person's refusal of the health care in their advance care directive.
  - decide to comply with the person's refusal of health care in their advance care directive and not provide such health care to the person.

- > A health practitioner who provides health care in contravention of a binding provision of an advance care directive must, as soon as reasonably practicable after doing so, make a written record and provide a report in accordance with the mandatory instruction set out in Appendix 1.

### Provisions that cannot be included in Advance Care Directives

- > DHW, LHNs and SAAS must implement local procedures to ensure all SA Health employees and contracted staff are aware that the following provisions, if written in an Advance Care Directive, are void and of no effect:
  - A provision which is unlawful or would require an unlawful act to be performed
  - A provision that, if given effect, would cause a health practitioner to breach a professional standard or code of conduct
  - A provision which comprises a refusal of mandatory medical treatment, for example treatment required under a community treatment order under the *Mental Health Act 2009*
- > An Advance Care Directive which includes wishes regarding voluntary assisted dying must not be considered a request for voluntary assisted dying.

### Substitute Decision-Makers

- > To act as a Substitute Decision-Maker to an Advance Care Directive SA Health employees and contracted staff must:
  - be a competent adult;
  - not be a health practitioner who is responsible (whether solely or with others) for the healthcare of the person giving the Advance Care Directive;
  - not be a paid carer of the person giving the Advance Care Directive.

### Witnesses

- > To act as an authorised witness to an Advance Care Directive in accordance with the Act, SA Health employees and contracted staff must:
  - be a competent adult.
  - be a person, or a person of a class, included on the list of suitable witnesses set out in Schedule 1 of the Regulations.
  - not be appointed as a Substitute Decision-Maker of the person giving the Advance Care Directive.
  - not have a direct or indirect interest in the estate of the person giving the Advance Care Directive (whether as a beneficiary of the person's will or otherwise).
  - not be a health practitioner who is responsible (whether solely or with others) for the healthcare of the person giving the Advance Care Directive.
  - not be the holder of a position of authority in a hospital, hospice, nursing home or other facility at which the person giving the Advance Care Directive resides.

### Interpreters

- > Where a person for whom English is not their first language wishes to give an Advance Care Directive, the assistance of an interpreter must be used to assist in relation to a language in which the person is fluent.
- > To act as an interpreter in relation to an Advance Care Directive SA Health employees and contracted staff must:
  - be a competent adult.

- not be appointed as a Substitute Decision-Maker of the person giving the Advance Care Directive.
  - not have a direct or indirect interest in the estate of the person giving the Advance Care Directive (whether as a beneficiary of the person's will or otherwise).
  - not be a health practitioner who is responsible (whether solely or with others) for the healthcare of the person giving the Advance Care Directive.
  - not be the holder of a position of authority in a hospital, hospice, nursing home or other facility at which the person giving the Advance Care Directive resides.
- > SA Health employees and contracted staff must comply with the [Equity of Access, Interpreting and Translating Policy](#).

### Identifying, managing and recording Advance Care Directives in Local Health Networks

- > LHNs must establish local procedures to instruct SA Health employees and contracted staff on:
- How to initiate a discussion with a person about Advance Care Directives.
  - How to identify and document a person's Advance Care Directive in the electronic medical record.
  - How to record conversations between health practitioners and patients within the electronic medical record, in relation to:
    - Advance Care Directives
    - Treatment plans
    - 7-step pathways
    - Non-statutory directives
  - How to identify, record and store an Advance Care Directive if completed prior to admission to hospital and not currently recorded in the electronic medical record.
  - The local escalation pathway to manage disputes about Advance Care Directives within the LHN.
  - The local escalation pathway to determine when and how disputes are to be referred to the Office of the Public Advocate.
- > LHNs must report annually in accordance with the mandatory instruction set out in Appendix 1.

### Instruments under previous legislation

- > LHNs must establish local procedures which include a clear protocol to identify the existence of previous valid instruments,
- > LHNs must ensure local procedures recognise valid instruments including Enduring Power of Guardianship, Medical Power of Attorney and Anticipatory Direction continue to be legally effective documents and will all be considered an Advance Care Directive for the purposes of the Act until a new Advance Care Directive has been given.

## 6. Mandatory related documents

The following documents must be complied with under this Policy, to the extent that they are relevant:

- > [Advance Care Directives Act 2013](#)
- > [Advance Care Directives Regulations 2014](#)
- > [Consent to Medical Treatment and Palliative Care Act 1995](#)

- > [Consent to Health Care and Medical Treatment Policy](#)
- > [Equity of Access, Interpreting and Translating Policy](#)
- > [Guardianship and Administration Act 1993](#)
- > [Mental Health Act 2009](#)

## 7. Supporting information

The following information informs and/or supports the implementation of this Policy:

- > SA Health Advance Care Directives website: [www.advancecaredirectives.sa.gov.au](http://www.advancecaredirectives.sa.gov.au)
- > [Advance Care Directives for health professionals](#)
- > [Advance Care Directives Regulations 2014 Schedule 1—List of suitable witnesses](#)
- > [Consent \(including where consent cannot be obtained\) Guideline](#)
- > [Resuscitation Plan – 7 Step Pathway Clinical Directive](#)
- > [Office of the Public Advocate](#)

## 8. Definitions

- > **Advance Care Directive:** means an Advance Care Directive given under the Act that is in force (and includes, where the context requires, a reference to the Advance Care Directive form). An Enduring Power of Guardianship, Medical Power of Attorney and an Anticipatory Direction are considered to be an Advance Care Directive for the purposes of the Act until such time that a new Advance Care Directive is given.
- > **Advance Care Directive form:** means a legal form that allows people aged 18 years and older, with decision-making capacity, to write down their wishes, preferences and instructions for future health care, end of life, living arrangements and personal matters and/or appoint one or more adults (known as Substitute Decision-Makers) to make these decisions on their behalf when they are unable to do so themselves.
- > **Conscientious objection:** means moral, ethical, religious or other such grounds for a health practitioner to object to treating a person.
- > **Health care:** means any care, treatment (including medical treatment and life-sustaining treatment) and services or procedures to diagnose, maintain or treat a person's physical or mental condition.
- > **Health practitioner:** means a person who practices one or more of:
  - a health profession (within the meaning of the *Health Practitioner Regulation Law (South Australia)*)
  - any other profession or practice declared by the [Regulations](#).
- > **Mandatory medical treatment:** means treatment required under various Acts and laws including but not limited to community treatment order, inpatient treatment order, s56 and s57 of the *Mental Health Act 2009*, a court order, and treatment required by the *Public Health Act 2011*.
- > **Medical treatment:** means the provision by a medical practitioner of physical, surgical or psychological therapy to a person (including the provision of such therapy for the purposes of preventing disease, restoring or replacing bodily function in the face disease or injury or improving comfort and quality of life) and includes the prescription or supply of drugs.
- > **Substitute decision-maker:** means an adult one can choose and appoint in an Advance Care Directive to make decisions about their future health care, living arrangements and other personal matters when the person giving the Advance Care Directive is unable to make their own decision/s. An Enduring Guardian and a Medical Agent are considered to be Substitute Decision-Makers for the purposes of the *Advance Care Directives Act 2013*.

## 9. Compliance

This policy is binding on those to whom it applies or relates. Implementation at a local level may be subject to audit/assessment. The Domain Custodian must work towards the establishment of systems which demonstrate compliance with this policy, in accordance with the requirements of the [Risk Management, Integrated Compliance, and Internal Audit Policy](#).

Any instance of non-compliance with this policy must be reported to the Domain Custodian for the Clinical Governance Safety and Quality Policy Domain and the Domain Custodian for the Risk, Compliance and Audit Policy Domain.

## 10. Document ownership

Policy owner: Domain Custodian for the Clinical Governance, Safety and Quality Policy Domain

Title: Advance Care Directive Policy

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Contact for enquiries: [health.advancecareplanning@sa.gov.au](mailto:health.advancecareplanning@sa.gov.au)

## 11. Document history

Version	Date approved	Approved by	Amendment notes
1.0	28/06/2013	Portfolio Executive	Original version
2.0	03/07/2014	Portfolio Executive	Formally reviewed in line with 1–5-year scheduled timeline for review
3.0	31/07/2024	Chief Executive, DHW	Updated to align with the Policy Framework

## 12. Appendices

1. Advance Care Directives Mandatory Instruction

## Appendix 1: Advance Care Directives Mandatory Instruction

The following instructions must be complied with to meet the requirements of this policy.

### 1. Written records to be made in the case of suicide or self-harm

A health practitioner who provides health care in contravention of a binding provision of an advance care directive must, as soon as reasonably practicable after doing so, make a written record setting out the information required by the regulations in relation to the provision of the health care.

The written record must include the following information:

- the name, address and age (if known) of the person to whom the health care was provided.
- the date or dates on which the health care was provided to the person.
- the location or locations at which the health care was provided to the person.
- a description of the health care provided to the person.
- the grounds for the health practitioner's suspicion that the person had attempted suicide or self-harmed.
- the grounds for the health practitioner's opinion that the provision of the health care was reasonably necessary to save the life of the person.

The written record must be made within the patient medical record.

### 2. Reports to be made to the Chief Executive in the case of suicide or self-harm

A health practitioner who provides health care in contravention of a binding provision of an advance care directive must, as soon as reasonably practicable after doing so, provide a report in relation to the provision of the health care in accordance with the requirements set out in the regulations.

The report must include the following information:

- The health practitioner's email address.
- The health practitioner's telephone number.
- The date when the health care was provided.
- The location where the health care was provided.

In the public health system, a health practitioner providing health care in contravention of a binding provision of an advance care directive is considered a patient incident that must be actioned in accordance with the Clinical Incident Management Policy by recording the incident through the Safety Learning System.

### 3. Annual report to the Minister

Each LHN must report annually to the Minister for Health and Wellbeing on their practices and protocols for identifying, managing, and implementing Advance Care Directives. The Health Services Programs Branch in the Department for Health and Wellbeing must coordinate the collection of information and collate a single statewide report for submission to the Minister by 31 October each year for the previous financial year.