

# MENTAL CAPACITY ACT FACTSHEET

## ADVANCE DECISIONS TO REFUSE TREATMENT

An advance decision enables someone aged 18 and over, while still capable, to refuse specified medical treatment for a time in the future when they may lack the capacity to consent to or refuse that treatment.

An advance decision to refuse treatment must be valid and applicable to current circumstances. If it is, it has the same effect as a decision that is made by a person with capacity and healthcare professionals must follow the decision

People can only make an advance decision under the Act if they are 18 or over and have the capacity to make the decision. They must say what treatment they want to refuse, and they can cancel their decision – or part of it – at any time.

There are no particular formalities about the format of an advance decision. It can be written or verbal, unless it deals with life-sustaining treatment, in which case it must be written and must **be signed and witnessed**, and state clearly that they wish it to apply, even if their life is at risk.

People can only make advance decisions to *refuse* treatment. Nobody has the legal right to demand specific treatment, either at the time or in advance. So no-one can insist (either at the time or in advance) on being given treatments that healthcare professionals consider to be clinically unnecessary, futile or inappropriate. But people can make a request or state their wishes and preferences in advance. Healthcare professionals should then consider the request when deciding what is in a patient's best interests if the patient lacks capacity

### *What an Advance Decision cannot do*

An advance decision cannot refuse actions that are needed to keep a person comfortable (sometimes called basic or essential care). Examples include warmth, shelter, actions to keep a person clean and the offer of food and water by mouth. Section 5 of the Act allows healthcare professionals to carry out these actions in the best interests of a person who lacks capacity to consent. An advance decision can refuse artificial nutrition and hydration *MCA COP 9.28*

Nobody can ask for and receive procedures that are against the law (for example, help with committing suicide). As section 62 sets out, the Act does not change any of the laws relating to murder, manslaughter or helping someone to commit suicide.

### **Do healthcare professionals always have to follow an advance decision?**

Healthcare professionals must follow an advance decision if they are aware of it and it is **valid** and **applicable** to the current situation. It is important to check if someone has an ADRT.



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## How do we know an ADRT is valid?

**Valid** –this means the person must have been over 18 and had mental capacity to make the advance decision at the time it was made. Clinicians must be sure that the person has not withdrawn it or clearly done something that goes against it and so suggests they have changed their mind.

Clinicians must also be sure that since the ADRT was made, the person has not made a Lasting Power of Attorney (health and welfare) that gives the attorney the power to make the same treatment decisions described in the ADRT

## How do we know an ADRT is applicable?

**Applicable** –this means an advance decision must apply to the situation in question and in the current circumstances.

Clinicians should consider whether there are any new developments that the person didn't anticipate when they made the decision, which could have affected the decision; for example new developments in medical treatment or changes in the person's personal circumstances

Professionals can provide treatment they believe is in the individual's best interests if they are in doubt over the existence, validity or applicability of an advance decision.

## Guidance on writing an ADRT

For guidance on how to write a valid and applicable ADRT- there is a free online service – MyDecisions .org

This website provides guidance on writing ADRTs.

*This fact sheet was correct at time of writing- December 2016*

*Full guidance on ADRTs can be found in chapter 9 of the MCA Code of Practice*

