

Planning Ahead



An introduction to taking control of your future health care decisions

The ability to decide what healthcare and health treatments we want is something assumed everyday. However, there may come a time when illness makes us unable to make clear what we want from our healthcare providers. In NSW there are a number of things that can be done in advance of such a time, so that your wishes can be respected by health care workers and others. This leaflet describes the strategies that are available to you.

Enduring Guardianship

An enduring guardian is a person, over the age of 18 who agrees to be appointed by you to make personal and lifestyle decisions and/or medical treatment and healthcare decisions for on your behalf only when you are no longer able to do so for yourself. You may appoint more than one enduring guardian if you wish, and you may limit the functions of each one.

To appoint an enduring guardian you must do so in writing using an approved form. This is a legal document, and both you and your appointee need to sign the document in the presence of a NSW legal practitioner or a registrar of the local court. A fee may apply.

In appointing an enduring guardian you need to help them to understand what your wishes, values and future care preferences are.

Advance Care Directives

In NSW an Advance Care Directive (or ACD) is a written statement completed by you informing others of your health care preferences. There is no set format, although several examples are available. Although there is no specific legislation for ACDs in NSW, the NSW Department of Health recognises ACDs as an extension of the individual's right, under common law, to decline medical treatment. The ACD acts as your voice when you are no longer able to express your health care preferences directly.

An Advance Care Directive does not require the signature of a witness. It is recommended that you discuss your thoughts about writing an ACD with an appropriate health professional who can assist you with understanding the health situations that may arise, and the possible treatment options available. It is also recommended that you date your ACD, that you review it every year, and that you make copies available for your treating doctor, enduring guardian (if appointed), and that you take a copy with you if you are admitted to hospital.

Identifying your “Person Responsible”

In the event that you are no longer able to make healthcare decisions for yourself, NSW law provides that such decisions fall to the next “person responsible”. This may not be the same as the “next of kin”. In order of appointment the person responsible will be:

1. A guardian or enduring guardian; or, if there is no guardian or enduring guardian;
2. The most recent spouse, de facto spouse or same sex partner with whom you have a close and continuing relationship; or, if there is no spouse, de facto spouse or same sex partner;
3. An unpaid carer who is now providing support to the patient or provided support before the patient entered residential care; or, if there is no carer;
4. A relative or friend who has a close personal relationship with the patient.

It is a recommended strategy that you consider who would be identified as your “person responsible” using this process, and discuss your healthcare wishes and preferences with them. This will enable them to speak for you in an informed way should the need arise.

Enduring Power of Attorney and Wills

These are legal preparations you should consider that will ensure management of your financial affairs. They do not contribute to future healthcare decision making. An enduring power of attorney is a legal document which you can use to appoint a person to make decisions about your property or financial affairs. It is only activated if you lose mental capacity, and ceases upon your death.

A will is a legal document that directs the distribution of your property and possessions upon your death.

Conclusion

It may be uncomfortable to consider ourselves affected by illness, trauma or disability to the extent that we would be unable to tell others what healthcare we wanted. Despite this, planning ahead can be of great help to those who may one day need to make those decisions on your behalf. Palliative Care NSW encourages you to have a conversation, about your health values and your care preferences, with your healthcare provider, and with your “person responsible”. Consider appointing an enduring guardian; consider writing an Advance Care Directive. Above all else though, have a conversation with someone who can speak for you, should the need arise.