

# Advance statements

There are various ways that adults with capacity can state their wishes and plans in advance, in case in the future they become temporarily or permanently unable to make decisions or communicate their wishes.

There are several terms used to describe the different sorts of advance decision making.

## Advance statements

An advance statement is a declaration that an adult gives about the care and support they receive. One of the types of statements that can be given is an advance directive.

## Advance directives (refusal)

This is where an adult refuses in advance a specific medical treatment or procedure.

This is the only form of advance statement that is legally binding on doctors.

## Advance agreements

This refers to a plan that may be developed between a mental health service user and the service provider. It is referred to in the Government's proposals to reform the Mental Health Act 1983.

These agreements do not currently have legal status and are likely to be overridden

if the person is subject to compulsory treatment under mental health legislation.

## Living wills

This term is sometimes used to describe advance statements or advance directives and is most commonly used when people who are terminally ill refuse life-prolonging treatments. The term is somewhat misleading though, because executors are not appointed nor are bequests made, as its name would suggest.

## Do advance statements cover all eventualities?

Advance statements **do not** have to be followed by professionals when:

- a person is subject to compulsory powers under the Mental Health Act 1983
- there is a medical situation which is not specifically covered by the advance statement.

Advance statements cannot:

- ask to withhold 'basic care' defined by the British Medical Association (BMA) as 'procedures essential to keep the individual comfortable, e.g. warmth, shelter, pain relief and the management of distressing symptoms'
- authorise a doctor to do anything unlawful, such as practise euthanasia.

**The Making Decisions Alliance believes that new legislation on mental capacity is urgently needed**

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## When are advance statements valid?

Only advance directives are legally binding. Though they can be overridden if the individual is sectioned under the Mental Health Act. They are binding on medical professionals alone (no matter what their personal beliefs) and only when they concern the refusal of treatment. They must also satisfy the following six conditions:

- The person had mental capacity when it was written.
- It is not made under conditions of undue influence or compulsion.
- The person has made informed choices which are the result of having relevant information and of careful thought.
- It is clear, so that there is no doubt about the individual's intentions.
- It is applicable to the person's medical condition at the time the advance statement comes into force.
- It does not request anything that is against the BMA's code of ethics.

Advance statements may contain advance consent or advance delegation to another person. Advanced delegation of decision making in healthcare is not legally binding on doctors. However, it is good practice that the views of the delegated person are taken into account if the doctor is making a decision in the best interests of an adult who has not got the capacity to make their own decisions.

## Guidance and the legal basis for advance statements

There are no official guidelines on what should be said in an advance statement. There are, however, many sources of help, and it might be advisable to seek advice.

Doctors must follow the BMA's code of practice *Advanced Statements About Medical Treatment*. This applies to medical treatment in all settings. There is no agreed format or content for an advance statement but it becomes binding on doctors as long as the requests in it meet the conditions listed above, particularly that it is specifically applicable to the person's medical condition.

The BMA says that advance statements 'respect the autonomy of competent patients to refuse life prolonging/sustaining medical treatment and intervention (either contemporary or by advance directive)'. The BMA draws a clear distinction between respecting patients' right to refuse treatment and actively ending their lives. A court order may be needed each time a decision to end a life is required, e.g. to end life support for a person in a 'persistent vegetative state'

Further information and resources on advance statements

- Age Concern information sheet
- Alzheimer's Society information sheet
- Mental Health Foundation Briefing
- Mind information sheet
- Fairweather, M & Border, R (2001) *Living Wills and Enduring Powers of Attorney*, The Stationery Office, London.

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