

## Advance Healthcare Directives (AHDs) in Ireland: Capacity, Coercion and Staff Responsibilities

This document is designed for training staff in nursing homes and other residential care settings. It explains the legal requirements for Advance Healthcare Directives (AHDs) in Ireland, with a focus on decision-making capacity, coercion, and the duties of healthcare professionals. It is based on Irish legislation and national guidance.

### 1. Legal basis

Advance Healthcare Directives in Ireland are governed by the Assisted Decision-Making (Capacity) Act 2015.

The Act is built on the presumption of capacity and the principle that all decisions must be made freely, with appropriate supports provided where required.

### 2. Requirement that an AHD is made freely

For an AHD to be legally valid, it must be made voluntarily and without pressure, coercion, or undue influence.

Examples of coercion or undue influence include:

- Pressure from family members, carers, or institutions
- Fear of consequences (e.g. withdrawal of care or support)
- Emotional manipulation or intimidation
- Being rushed to sign during illness or crisis

If an AHD is not made freely, it is not legally valid and may be challenged or disregarded.

### 3. Capacity at the time of making an AHD

A person must have decision-making capacity at the time they make an AHD.

Under the Assisted Decision-Making (Capacity) Act 2015, a person has capacity if they can:

- Understand information relevant to the decision
- Retain that information long enough to make the decision
- Use or weigh the information as part of the decision-making process
- Communicate their decision by any means

Capacity may be affected by illness, medication, cognitive impairment, distress, or fatigue. Capacity can fluctuate and must be assessed at the time the decision is made.

### 4. Questioning capacity or voluntariness after an AHD is made

If concerns arise that a person:

- Lacked capacity when the AHD was made, or
- Was subject to coercion or undue influence

Healthcare professionals must not automatically follow the AHD.

In these circumstances:

- A capacity assessment may be carried out by a healthcare professional
- Advice may be sought from the Decision Support Service (DSS)
- The matter may be referred to the Circuit Court

The court may:

- Declare the AHD invalid
- Decide that some or all of the AHD does not apply
- Direct treatment based on the person's best interests

5. Red flags staff should be alert to

Staff should be alert to the following red flags:

- An AHD made during a medical or emotional crisis
- Dependence on the person who encouraged the AHD
- Lack of independent witnesses
- Evidence the person did not understand the consequences
- Signs of fear, distress, or reluctance
- The AHD primarily benefits someone else by reducing care responsibilities

6. Duties and protections for healthcare staff

Healthcare professionals have a legal duty not to follow an AHD if they reasonably believe:

- It was not made voluntarily, or
- The person lacked capacity at the time it was made

Staff are legally protected when they act in good faith and in accordance with the Act, even where an AHD is not followed due to valid concerns.

7. What staff should do if concerns arise

If staff have concerns about an AHD:

- Do not rely on the AHD until concerns are addressed
- Document observations and concerns clearly
- Raise concerns with senior clinical staff or management
- Seek guidance from the Decision Support Service
- Follow safeguarding and escalation procedures

8. Safeguarding considerations

Ongoing pressure, coercion, or manipulation related to healthcare decisions may constitute a safeguarding issue.

Such concerns should be escalated in line with national safeguarding policies for vulnerable adults.

### **Key References (Ireland)**

- Assisted Decision-Making (Capacity) Act 2015
- Decision Support Service (DSS), Code of Practice on Advance Healthcare Directives
- Health Service Executive (HSE) – National Consent Policy
- HSE Guidance on Advance Healthcare Directives
- HIQA National Standards for Residential Care Settings for Older People in Ireland
- HSE Safeguarding Vulnerable Persons at Risk of Abuse – National Policy and Procedures (2014)