Advance Health Directive and Enduring Power of Guardianship Guideline

1. Guiding Principles

State legislation introduced in February 2010, provides instruments (Advance Health Directive or Enduring Power of Guardianship) for people to plan in advance for circumstances **when they may become unable to make decisions for themselves (this includes, personal, lifestyle and health care)**.

If a patient has an Advance Health Directive (AHD) a clinical alert should be raised for the patient. Refer to the WA Health Mandatory Policy 0053/17 WA Clinical Alert (MedAlert) Policy

2. Guideline

2.1 What is an Advance Health Directive (AHD)?

- An AHD is a legally binding document that contains a person's decisions about future treatment in anticipation of a time when they may be unable to make reasonable judgments for themselves. Treatment includes medical, surgical and dental treatment and other health care
- Treatment decisions contained within the AHD can only be enacted if they are clinically appropriate
- The AHD outlines treatment decisions in which a person consents to, or refuses to consent to, future treatment according to specified circumstances
- The document DOES NOT include decisions about organ donation. People, who wish to donate their organs and tissues, can register on the Australian Government Organ and Tissue Authority 'donate life' website (external website).

2.2 What is an Enduring Power of Guardianship (EPG)?

- An EPG is a legal document in which a person appoints another person to make personal, lifestyle and health care treatment decisions on their behalf in the event that they are unable to make reasonable judgments about these matters in the future
- Treatment decisions made by the EPG can only be enacted if they are clinically appropriate
- This is different from an Enduring Power of Attorney (EPA) whereby a person is appointed to only make decisions on financial and/ or property issues
- The scope of decisions can be limited by the appointer and should be specified in the EPG form.

NOTE

- The validity in other states and territories of an AHD or EPG is dependent on the laws applying in that jurisdiction
- AHDs or EPGs from other states must be validated by the State Administrative Tribunal or re-enacted by the patient in accordance with WA Legislation

- AHDs or EPGs can be used to direct treatment to be withheld
- AHDs or EPGs cannot be used to dictate a specific treatment e.g. voluntary assisted dying

2.3 How is an AHD / EPG made?

- Must be at least 18 years of age and in the case of an appointed EPG, they must be at least 18 years of age
- Must be made voluntarily and without inducement or coercion
- Person making AHD / EPG must have capacity to understand the nature and effect of the AHD / EPG
- Must be prepared by the person themselves (unless the person is not able to write) and witnessed by two people (one of whom must be authorised to witness statutory declarations)
- Must be prepared in WA using the prescribed forms (https://healthywa.wa.gov.au/Articles/J_M/Making-an-Advance-Health-Directive). AHDs or EPGs from other states must be validated by the State Administrative Tribunal.

3. WA Country Health Service (WACHS) Guidelines and Frequently Asked Questions for AHD or EPG and Treatment Decisions

3.1 AHD Clinical Alert on the Patient Administration System (webPAS)

- When a patient presents to hospital (whether as an emergency presentation or a direct admission) it is important to identify if the patient has an AHD and ensure the presence of the patient's AHD is recorded as a clinical alert and filed within the patient's medical record
- The presence of an AHD alert (M11.01) on the webPAS provides a flag that identifies that an AHD exists for the patient. The details of the AHD are not stored on the webPAS. The alert must be communicated to the clinicians caring for the patient
- On identifying an AHD alert, the medical practitioner must discuss the AHD with the patient or the family/carer to determine the content and currency of the AHD.

3.2 Receipt and storage of an already prepared AHD or EPG

The patient provides the health care professional with an already prepared AHD /EPG at any time during hospital stay:

- Ensure that the patient retains their original document and they are giving you a copy (preferably a certified copy). If they have given you their original, then make a copy and return the original back to them
- Ensure that the Medical Officer and Nurse/Midwife in charge of the patient's care are made aware
- The copy should be placed at the front of the patient's medical record in the Alert Divider
- Where multiple forms of the same number are present, file in reverse chronological order
- Alert forms/correspondence without MR numbers are to be filed at the back of the alert divider in reverse chronological order

- Alternatively, patients may bring an alert card which can be used to alert health professionals to the existence of an AHD/EPG.

The patient forwards an AHD / EPG to the health service by mail:

- The documents are forwarded to the Medical Records Department for priority filing in the medical record and the presence of the patient's AHD is recorded as a clinical alert on the webPAS
- In the event that the person is not registered on webPAS (does not have a medical record), the AHD / EPG is to be returned to the sender with advice that it is not able to be filed by the hospital at that time. However, the document can be uploaded onto the person's own Health Record, which can be viewed by hospital staff if required.

3.3 Patient wishes to prepare an AHD or EPG during their stay in hospital

If the patient is to be discharged (and where appropriate) encourage the patient to prepare the AHD or EPG at home.

If the patient has no prospects of discharge, or may lose capacity before discharge:

- The patient's current legal capacity must be verified. The capacity assessment is to be documented in the progress notes
- Refer to 'A Guide for Health Professionals to the *Acts Amendment (Consent to Medical Treatment) Act 2008*'
- The patient/family should be encouraged to obtain independent advice (e.g. from their own GP) and be provided with a copy of 'Preparing an Advance Health Directive' and an Advance Directive form (available on the Healthy WA Making an Advance Health Directive website) and/or Enduring Power of Attorney guide or information kit (includes form) (available on the Office of the Public Advocate Enduring Power of Attorney website)
- It is encouraged that staff assist the patient/family/carers to organise appropriate witnesses as outlined in the relevant documents (links above)
- One witness must be authorised to witness statutory declarations under Schedule 2 of the Oaths, Affidavits and Statutory Act 2005
- Under the *Statutory Declarations Regulation Act* 2018 (Cth), employees of a State authority with more than 5 years continuous service are authorised to witness statutory declarations
- It is recognised that in certain situations where no other option is practical, a WACHS staff member may be called upon to witness an AHD or EPG. In these circumstances the issue must be escalated to the Regional Medical Director and the Regional Director.

3.4 When should an AHD or EPG be used?

- ONLY to be used when the patient is unable to make a treatment decision in relation to the circumstances specified in the AHD or EPG
- An AHD comes into effect only if the patient is unable to make reasonable judgments about a treatment decision at the time that the treatment is required. In these circumstances, the AHD acts as the patient 'voice'
- The medical practitioner providing the treatment is to ensure that the AHD / EPG has been appropriately completed and witnessed
- Treatment decisions contained within the AHD can only be enacted if they are clinically appropriate.

3.5 Who makes the decision regarding treatment for the incompetent patient (i.e. patient is unconscious, anaesthetised, sedated or has an altered mental state?)

- The Hierarchy of Decision-Makers for Treatment (see Appendix 1) must be used to make treatment decisions (including AHD and EPG). If treatment is urgent and it is not possible to determine if an AHD exists, or to locate a substitute decision maker – continue to treat*
- The attending medical practitioner must determine, where practical and if time permits, if an AHD / EPG exists (refer to attending relatives, medical record, phone call to care facility)
- If non-urgent treatment required, refer to Appendix 1: Hierarchy of Decision-Makers for Treatment Flowchart. Under state law if an EPG exists, they must be the primary contact for the patient.
- See also notes regarding the State Administrative Tribunal (SAT) at section 3.9.

* The law will protect all care professionals acting in good faith and on reasonable grounds

3.6 When to use Goals of Patient Care with Residents of WACHS Aged Care Facilities

- If a resident has an AHD this remains in effect and current unless the person wishes to revise their AHD following an admission to hospital. If the resident does not have an AHD/ACP in place, and where relevant, GoPC can be used as a starting point for AHD/ACP (refer to the WACHS Use of Advance Care Planning, Advance Health Directives and Goals of Patient Care in Residential Facilities Flowchart)
- Should a resident experiences an acute episode and require transfer to hospital a GoPC may be completed for this acute episode
- Resident's values, beliefs and preferences should be put into context for this acute episode
- The completed GoPC form should include any limitations to medical treatment. This can be validated for up to 12 months. Note: Goals of Patient Care (GoPC) MR00H.1 does not take the place of an AHD
- Note that a copy of GoPC if completed must be included in the transfer documents; ensuring section 4 is completed and filed in resident's file.

3.7 In the event of suicide attempt?

- If the treating medical practitioner reasonably suspects the patient has attempted to commit suicide and needs treatment as a consequence, the treating medical practitioner may provide this treatment despite a contrary decision in an AHD or EPG.

3.7 Revocation of an AHD or EPG

A patient (of capacity) can choose to revoke their AHD / EPG at any time - verbally or in writing, with the preference to be in writing.

3.7.1 Admitted Patient

The attending medical practitioner is to:

- document 'REVOKED by (patient's name) on (date)' across front page of the AHD / EPG and sign, date and print their name
- advise the patient that the AHD / EPG are no longer valid and will not be used

- advise the patient that should they wish to have an AHD / EPG they will need to prepare a new one
- the revoked document should be retained in the medical record

3.8 Amendments to an AHD or EPG

- An AHD / EPG cannot be amended
- If a patient wishes to change their AHD / EPG, the preceding document should be revoked, and the patient advised to prepare a new one. Creating a new document will require the individual to comply with the witnessing requirements.

3.9 AHD and refusal of CPR

- If an AHD indicates refusal of CPR in the event of cardiac arrest, it is recommended that the following documents be completed and inserted into the medical record for each new admission, as a more recognisable communication tool within the hospital setting:
  - For adults – an MR00H.1 Goals of Patient Care Summary (refer to the WACHS Goals of Patient Care Guideline for additional information)
  - For paediatric/neonates –the WACHS Not for Cardiopulmonary Resuscitation Form Paediatric-Neonate (refer to the WACHS Paediatric-Neonate Not for Cardiopulmonary Resuscitation Policy for additional information).

3.10 Under what circumstances should issues be referred to the State Administrative Tribunal (SAT) and how should this be done?

- Where there is confusion regarding the validity of an AHD/ EPG or the appropriate decision hierarchy for an incompetent-to-consent patient
- Where decisions made by the EPG (or other substitute decision-maker as per the Treatment Hierarchy – Appendix 1) conflict with what the medical practitioner considers is likely to be in the patient's best interest
- Where a patient is deemed to lack capacity and there is no substitute decision maker as outlined by the Treatment Hierarchy (Appendix 1) or when the substitute decision makers cannot reach a unanimous decision (See WACHS Adults with Impaired Decision-Making Capacity Procedure)
- The attending medical practitioner should contact SAT by phone 1300 306 017
- Both the senior medical practitioner in the facility and hospital management should be informed of any issue requiring SAT referral
- Further advice can be sought from Legal Services Department or the Executive on-call (out of hours) if a treating team has concerns about the validity of an AHD/EPG.

4. Definitions

AHD	Advance Health Directive.
Appointer	The person requesting the EPG.
Capacity	Capacity is the cognitive ability to understand and appreciate the context, choices and consequences of our decisions. It is also a person's performance on measures of decision-making ability.

Clinically appropriate	Medical treatment that is provided in a timely manner and meets professionally recognised standards of acceptable medical care and delivered in an appropriate medical setting.
EPG	Enduring Power of Guardianship.
Goals of Patient Care form (GoPC)	GoPC establishes the most medically appropriate, realistic, agreed goals of patient care that will apply in the event of clinical deterioration, during an episode of care. This clinical care planning process facilitates proactive shared discussion and decision making between the clinician, patient and family/carer, so clear ceilings of care and end of life wishes can be established.
Oaths, Affidavits and Statutory Act 2005	Under this Act all registered health professionals are authorised to witness statutory declarations (note this does not include social workers)
Reasonable Judgement	Decision founded on knowledge, skills, abilities, qualifications and competencies, after careful review, analysis and consideration of the relevant subject matter and all relevant facts and circumstances that are known or available to the person.
Statutory Declarations Regulations 2018 (Cth)	Under this act, employees of a State authority with more than 5 years continuous service are authorised to witness statutory declarations.
Treatment	any medical or surgical treatment including a life sustaining measure, palliative care, dental treatment or other health care.

5. Roles and Responsibilities

Clinical staff need to be aware of the AHD and EPG processes and be willing to support patients and families in developing and implementing AHDs and EPGs. Any issues in relation to witnessing these documents need to be escalated to the Regional Medical Director and the Regional Director.

Clerical staff need to be aware of the importance of AHDs / EPGs and ensure -

- a clinical alert is raised in webPAS and communicated to clinicians for the presence of an AHD
- filing of AHDs / EPG documents is standard within the medical record
- Next of Kin is documented for each admission i.e. EPG is one exists.

6. Compliance

Failure to comply with this policy document may constitute a breach of the WA Health Code of Conduct (Code). The Code is part of the Integrity Policy Framework issued pursuant to section 26 of the *Health Services Act 2016* (WA) and is binding on all WACHS staff which for this purpose includes trainees, students, volunteers, researchers, contractors for service (including all visiting health professionals and agency staff) and persons delivering training or education within WACHS.

WACHS staff are reminded that compliance with all policies is mandatory.

7. Evaluation

Monitoring of compliance with this document is to be coordinated by the WACHS Palliative Care Program Project Team, every three years using the following means or tools:

- Consumer Feedback Module (Datix) and Care Opinion - complaints associated with either an AHD or EPG.
- Recording of presence of AHD/ACP/EPG prior to death by Regional Palliative Care Coordinators

(WACHS centralised recording and audit process currently in development by WACHS Palliative Care Program Project Team).

8. Standards

National Safety and Quality Health Care Standards
Partnering with Consumers Standard: 2.6 and 2.7
Comprehensive Care Standard: 5.9 and 5.17

Aged Care Quality Standards
Standard 1 Consumer dignity and choice 1c, 1d.
Standard 2 Ongoing assessment and planning Standard 2b

National Consensus Statement: Essential Elements for Safe and High-Quality End-of-Life Care

9. Legislation

Access via: Western Australian Legislation or Commonwealth legislation.
Guardianship and Administration Act 1990
Civil Liability Act 2002
Criminal Code (Compilation Act 1913)
Acts Amendment (Consent to Medical Treatment) Act 2008
Oaths, Affidavits and Statutory Act 2005 Schedule 2

10. References

WA Health Making an Advance Health Directive [Accessed: 28 January 2021]
Office of the Public Advocate Enduring Power of Guardianship [Accessed: 28 January 2021]
New South Wales Government, Attorney General's Department Capacity Toolkit June 2009 [Accessed: 12 March 2020]
WA Health MP 0053/17 WA Clinical Alert (MedAlert) Policy

11. Related Forms

CPDP MR723A State CPDP Inpatient – Continuing Goals of Care
CPDP MR723.2 State CPDP Community – Continuing Goals of Care
MR00H.1 State Goals of Patient Care Summary
MR39 WACHS Not for Cardiopulmonary Resuscitation Form Paediatric - Neonate

12. Consumer Information

Healthy WA Advance Care Planning
Healthy WA End of Life Care

13. Related Policy Documents

WACHS Adults with Impaired Decision Making Capacity
WACHS Goals of Patient Care (Adults) Guideline
WACHS Health Record Management Policy
WACHS Paediatric - Neonate Not for Cardiopulmonary Resuscitation Policy
WACHS State Administrative Tribunal Applications Guideline
WACHS Use of Advance Care Planning, Advance Health Directives and Goals of Patient Care in Residential Facilities Flowchart

14. Related WA Health Policies

OD 0657/16 Consent to Treatment Policy
MP 0053/17 WA Clinical Alert (MedAlert) Policy
MP 0095 Clinical Handover Policy

15. WA Health Policy Framework

Clinical Governance, Safety and Quality Policy Framework
Information Management Policy Framework

16. Appendix

Appendix 1 - Hierarchy of Decision Makers for Treatment Flowchart

This document can be made available in alternative formats on request for a person with a disability

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Appendix 1

Hierarchy of decision-makers for treatment