



Advance Health Directive and Enduring Power of Guardianship Procedure

1. Purpose

The Western Australia Country Health Service (WACHS) recognises and fully supports people's rights to participate in advance care planning. Advance care planning (ACP) is a voluntary process of planning for future health and personal care whereby the person's values, beliefs and preferences are made known to guide decision-making at a future time when that person cannot make or communicate their decisions¹.

The purpose of this procedure is to provide WACHS staff with information about their roles and responsibilities in relation to the documentation, collection, storage and use of Western Australian (WA) statutory instruments for ACP (Advance Health Directives, Enduring Power of Guardianship (EPG)).

The *Guardianship and Administration Act 1990* (the Act)² outlines the requirements in relation to a treatment decision in respect to an AHD. Part 9A of the Act also sets out the rules governing the execution and operation of an EPG.

As per the WA Health [WA Clinical Alert \(MedAlert\) Policy](#) – MP 0053/17, if a patient or resident has an AHD, a clinical alert should be raised in the Patient Administration System (webPAS).

2. Procedure

2.1 AHD, EPG and other advance care planning documents

Advance Health Directive

- An AHD is a legal document that enables a person who has reached 18 years of age and who has full legal capacity to make decisions about the treatment they do or do not want to receive in the future.
- The term 'treatment' is defined under the Act Section 3 and includes medical and surgical treatment (including palliative care and life-sustaining measures); dental treatment; other health care; and in some circumstances medical research.
- The AHD must have at least one treatment decision within Part 4 completed to be considered a valid document.
- A treatment decision in an AHD becomes operational if it applies to treatment a person requires, and only if the person becomes incapable of making or communicating their decisions.
- Health professionals must follow the directions of a valid AHD if the person becomes incapable of making or communicating their decisions, except in circumstances outlined in [Enacting AHDs and EPGs](#).
- An AHD will remain valid:
 - until the person dies; or
 - they revoke their AHD; or

- while the treatment options listed in the AHD remain relevant. The AHD will not apply to treatment options that may become available after the person completes their AHD.
- An AHD **cannot** be used to:
 - request Voluntary Assisted Dying. This is a separate process. Refer to [Voluntary Assisted Dying Policy](#)
 - request or authorise a health professional to take active steps to unnaturally end life
 - request specific interventions that are not clinically indicated or treatment that is considered medically futile
 - record decisions about organ and tissue donation. These decisions are registered on the Australian Government Organ and Tissue Authority [DonateLife](#) website.

Enduring Power of Guardianship

- An EPG is a legal document in which a person (“the appointer”) appoints another person(s) to make personal, lifestyle and medical treatment decisions on the appointer’s behalf if the appointor loses the capacity to do so.
- An EPG is different from an Enduring Power of Attorney (EPA) whereby a person(s) is appointed to only make decisions in respect of financial and / or property matters.
- A person can nominate more than one Enduring Guardian (EG); however, these individuals must act jointly (i.e. they must reach agreement on any decisions they make on the appointor’s behalf).
- A person may also appoint a substitute EG who would take over decision-making responsibilities in the event one or more of the original EGs was unable to continue in the role.
- The appointed EG may only make decisions on behalf of the person where the person becomes incapable of making or communicating their own decisions.
- An EPG may limit the circumstances in which an EG can act; the functions of the EPG; and include directions about how the EG may perform any of his or her functions.
- An EG can only make treatment decisions where they are clinically appropriate.



ATTENTION

Clinicians are to seek legal advice and / or contact the State Administrative Tribunal if a person has an Advance Care Directive, AHD or EPG form from another state or territory.

Other advance care planning documents

The other ACP documents endorsed for use in WA by the Department of Health WA are:

- [Advance care plan for someone with insufficient decision-making capacity](#)
- [My Values and Preferences Form: Planning for my future care.](#)

These documents are non-statutory (not recognised by specific WA legislation) but are still important documents to guide treating health professionals and family members as to how a person wishes to be treated. Copies of the documents should be stored in health records where appropriate.

2.2 Documenting AHD / EPGs

A person completing an AHD and / or EPG must:

- be at least 18 years of age, and in the case of an appointed EG, the EG must also be at least 18 years of age
- do so voluntarily and without inducement or coercion
- have full legal capacity to understand the nature and effect of the AHD / EPG
- prepare the document(s) themselves (unless the person is not able to write) and have the AHD or EPG witnessed by two people (one of whom must be legally authorised to witness statutory declarations)
- prepare the documents using the WA prescribed form(s), including any additional forms for the AHD, such as:
 - additional pages for Part 4.2 (other treatment decisions) of the AHD
 - translator statement (if a person used the services of a translator when making the AHD)
 - marksman clause (for using marks of any kind, other than a signature, to sign an AHD).

Persons preparing an AHD or EPG at a WACHS facility

A person who is an inpatient or resident at a WACHS facility can prepare an AHD and / or EPG. This may be particularly helpful when the person is an inpatient and is either unlikely to be discharged or may lose capacity before discharge. If a patient is soon to be discharged, encourage the patient to prepare the AHD or EPG at home if appropriate.

The person's current legal capacity must be verified by the treating senior doctor and the capacity assessment documented in the healthcare record. There is no specific capacity assessment required in this regard, but the following are to be considered:

- A person is presumed to have full legal capacity unless proven otherwise.
- A person knows and understands what these documents are, what authority they are giving via an AHD and / or EPG and the circumstances in which they apply.
- A person knows and understands what medical treatment options they are requesting or refusing and the consequences of doing so.

If the treating team is uncertain about the person's capacity to complete an AHD or EPG, they should refer to colleagues with appropriate skills in capacity assessment.

WACHS staff can support the person preparing the document(s) by:

- reviewing their current Goals of Patient Care or Residential Goals of Care form to aid their thinking about future treatment decisions
- directing them to the following resources:
 - 'A Guide to Making an Advance Health Directive in Western Australia', and current form(s) available on the HealthyWA [Advance Health Directive](#) website and / or
 - Enduring Power of Guardianship information kit (includes form) that is available on the Office of the Public Advocate [Enduring Power of Guardianship](#) website
- considering referral to social work to support the person and their family in these conversations
- recommending they talk with their treating team about their illness, prognosis and future treatment options
- supporting them to obtain independent advice if practical (e.g. from their own GP or accessing advice via Telehealth)

- assisting them to access an interpreter if required
- informing them that the document(s) can be uploaded to their My Health Record (MHR) if they have one.

WACHS staff witnessing of AHD and EPG documents

WACHS staff may assist a person / family / carers to organise appropriate witnesses for the relevant document(s). WACHS staff members should only consider being a witness to document signing after other suitable options have been explored.

WACHS staff can witness the signing of AHD and EPG documents if they meet the document's witness criteria and feel comfortable to do so. The following process applies:

- An AHD and / or EPG must be signed in the presence of 2 witnesses.
- The person making the document(s) and the witnesses must be present at the same time to witness the person signing the document.
- Each of the witnesses must be at least 18 years of age and have full legal capacity.
- WACHS supports staff members acting as witnesses if they are senior clinicians (refer to [Definitions](#)).
- If the WACHS staff member is acting as the authorised witness as set out under [Schedule 2 of the Oaths, Affidavits and Statutory Declarations Act 2005](#) WA, they should:
 - confirm the identity of the person
 - confirm with the person that the document is their AHD / EPG
 - ask the person if they have read the document, understood it and wish to sign it
 - be comfortable that the person is voluntarily signing the AHD / EPG.

2.3 Recording and Storing AHD and EPGs

Members of the treating team should check if a person has an AHD, EPG or other ACP document when the person presents to hospital or is admitted to a WACHS aged care facility. WACHS staff should ask the person, their family, their General Practitioner and / or check if a copy has been uploaded to the person's MHR. A person may have an alert card that notifies health professionals to the existence of an AHD/EPG.

- The existence of an AHD, EPG or other ACP document must be communicated to the clinicians caring for the person.
- On identifying an AHD exists, the medical practitioner must discuss the AHD with the person or the family/carer to determine the content and currency of the AHD.
- An [MR00H.1 State Goals of Patient Care](#) or [MR00H.1P WACHS Paediatric Goals of Patient Care](#) should be completed with the person to reflect the information outlined in the AHD / EPG.
- The existence of the AHD and / or EPG is included in relevant documents, including goals of care, clinical handovers, inter / intrahospital transfers, discharge summaries, referrals and outpatient correspondence.

AHD Clinical Alert on the Patient Administration System (webPAS)

- The presence of the person's AHD is recorded as a Clinical Alert on the appropriate document (e.g. MR Alert 2, relevant regional form or process), entered as an alert in webPAS and filed within the health record.
- The details of the AHD are not stored on webPAS.

Receipt and storage of an already prepared AHD or EPG

If the person provides a WACHS staff member with an already prepared AHD and / or EPG at any time during an admission, ensure that the person retains their original document and confirm they are giving you a copy. The document does not need to be a certified copy however, it is recommended by the Office of the Public Advocate WA. If they have given you their original document, make a copy and return the original to the person, recording the date the copy was made in the healthcare record.

If the person has uploaded a copy of their document(s) to their MHR, authorised staff should view and obtain a copy of the document(s) from the person's MHR (link accessible via clinical applications). A printed version should be filed in the person's health record, stating that it is a copy from MHR and the date the copy was retrieved from MHR.

When filing a copy of the AHD or EPG in the health record:

- Copies of the document should be placed behind the Alert Divider in the physical health record
- Where multiple forms of the same number are present, file in reverse chronological order
- Other ACP documents that are not AHDs or EPGs and do not have an MR number are to be filed at the back of the alert divider in reverse chronological order

If a health service has the capability of uploading ACP documents to a person's MHR on their behalf, the health professional can offer this service to the person. Refer to local HIMS office to confirm capability.

If an EPG exists, the appointed guardian(s) must be recorded as the primary contact for the person.

If a person forwards an AHD / EPG to the health service by mail:

- The documents are forwarded to the Medical Records Department for priority filing in the health record and the presence of the person's AHD is recorded as a clinical alert on the webPAS as above.
- In the event that the person is not registered on webPAS, 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 person should be advised that the document can be uploaded onto the person's own MHR, which can be viewed by hospital staff if required.
- In the event that the person is registered on webPAS but does not have a health record on site, the AHD / EPG is to be accepted by the site, filed in a new health record and alert added to webPAS if an AHD.

If an AHD and / or EPG is received with incomplete information, WACHS staff should follow any regional procedures or guidelines to communicate with the document owner. At a minimum, the document owner should be directed to the Department of Health WA Advance Care Planning Information line or the Office of the Public Advocate for further assistance (refer [Consumer Information](#)).

AHD and refusal of Cardiopulmonary Resuscitation (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 health record for each new admission, as a more recognisable communication tool within the hospital or facility:

- Adult patients – [MR00H.1 State Goals of Patient Care Summary](#) (refer to the [Goals of Patient Care Guideline](#) for additional information)
- Residents living in WACHS Aged Care facilities - [RC 00H.1 Residential Goals of Care](#) (refer to the [Residential Goals of Care Guideline](#) for additional information)
- Paediatric or neonate patients - [MR00H.1P WACHS Paediatric Goals of Patient Care](#) (refer to [Goals of Patient Care Guideline](#) for additional information).

Revocation of an AHD or EPG

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

If the person is admitted to hospital or aged care facility at the time they chose to revoke their AHD / EPG, the attending medical practitioner is to:

- advise the person that the AHD / EPG that revoking the AHD/EPG means that it is no longer valid and will not be used
- advise the person that should they wish to have an AHD / EPG, they need to prepare a new one
- complete the following on the Health Service's copy of the document:
 - write 'REVOKED by (person's name) on (date)' across front page of the AHD / EPG and sign, date and print their name
 - retain the revoked document in the health record.

If the person has provided a new valid AHD with the box ticked: "In making this Advance Health Directive, I revoke all prior Advance Health Directives made by me", this is confirmation of the revoking of previous AHD(s) on record at the Health Service. The WACHS staff member should note the person has revoked previous versions of AHDs on Health Service copies of the documents, by writing 'REVOKED by (person's name) on (date)' across front page of the AHD and / or EPG and sign, date and print their name.

Amendments to an AHD or EPG

An AHD / EPG cannot be amended after it is signed and witnessed. If a person wishes to change information documented in their AHD / EPG, the preceding document should be revoked (refer [Revocation of an AHD or EPG](#)) and the person advised to prepare a new one (refer [Documenting AHD / EPGs](#)).

2.4 Enacting AHD and EPGs

An AHD / EPG **only** comes into effect if / when the person is unable to make or communicate decisions at a time when a treatment decision is required. The medical practitioner providing the treatment is to ensure that the AHD and / or EPG has been appropriately completed and witnessed.

If a person with a valid EPG form loses capacity to make lifestyle, personal and medical treatment decisions for themselves, a member of the treating team must notify the EG or EGs (if jointly appointed).

Treatment decisions contained within the AHD can only be enacted if they are clinically appropriate.

Health professionals must follow the decisions in the AHD, except in some limited exceptions:

- circumstances relevant to the person's treatment decision have changed since they made the treatment decision, and
- they could not have reasonably anticipated those changes when they made their AHD, and
- it is likely that a reasonable person with knowledge of the change of circumstances would change their mind about the treatment decision.

If a person's EG appears to be struggling with their role, the appropriate WACHS staff member should talk to them about their concerns. Refer the EG to the [Guide to Enduring Power of Guardianship in Western Australia](#) to assist them in their role. EGs can also contact the Office of the Public Advocate's Telephone Advisory Service (Ph. 1300 858 455).

Decisions regarding treatment for the incompetent patient (i.e. unconscious, anaesthetised, sedated or has an altered mental state)

If treatment is urgent, necessary and it is not possible to determine if an AHD exists or a substitute decision maker cannot be located, continue to treat.

Where practical, and if time permits, the attending medical practitioner must determine if an AHD / EPG exists (e.g. refer to attending relatives, health record, check the person's MHR, phone call to care facility).

Refer to the Hierarchy of Decision-Makers for Treatment (Appendix A) when making non-urgent treatment decisions. Further information is provided in the [Adults with Impaired Decision-Making Capacity Procedure](#).

Treatment in the event of suicide attempt

If the treating medical practitioner reasonably suspects the person has made a suicide attempt and needs treatment as a consequence, the treating medical practitioner may provide this treatment despite a contrary decision in an AHD or EPG.

Circumstances that should be referred to the State Administrative Tribunal (SAT)

The health care team may consider submitting a SAT application in relation to AHDs and EPGs in a range of situations. These include:

- Where there is confusion or doubt regarding the validity of a person's AHD / EPG (for example, if there are reported or known concerns of coercion, misrepresentation of signature(s) and / or dates on documents)
- When there is significant family conflict and disagreement over an existing AHD / EPG (for example, disagreements about the lifestyle and medical decisions stated within the AHD/EPG)
- When the EG is unable to carry out their responsibilities effectively
- Where decisions made by the EG conflict with what the medical practitioner considers is likely to be in the person's best interest
- Where there is reason to believe that an EG is acting in a way that is abusing or neglecting the appointor or not making decisions which are in their best interests and talking with the EG has not resolved concerns.

The health care team will discuss the issue(s) and if required, the appropriate health professional will make a SAT application. Social Workers can assist with clarification of issues with SAT and submit applications on behalf of the health care team.

The medical practitioner may consider notifying the senior medical practitioner or hospital manager in the facility of issues requiring a SAT application (include Executive on-call if out of hours). If legal advice is required, follow the process for contacting WACHS General Counsel.

2.5 Consumer Information

The Department of Health WA and Office of the Public Advocate have multiple resources for consumers regarding AHDs and EPGs:

- HealthyWA [A Guide to Making an Advance Health Directive in Western Australia](#)
- HealthyWA [ACP translated consumer resources](#)
- Consumer brochures:
- [Advance Care Planning](#)
- [Your choices to make an Advance Health Directive and appoint an Enduring Guardian](#)
- [Advance Care Planning](#) (for Aboriginal people)
- HealthyWA [End of Life Care](#)
- Department of Health Advance Care Planning Information Line (Ph. 9222 2300 or email ACP@health.wa.gov.au)
- Office of the Public Advocate [Enduring Power of Guardianship](#) information (Ph. 1300 858 455 or email opa@justice.wa.gov.au)
- Australian Digital Health Agency [Advance Care Planning and My Health Record](#)

3. Roles and Responsibilities

Health professionals

- must check if a person presenting to a WACHS facility has an AHD and / or EPG (this includes authorised clinical staff checking if a copy has been uploaded to the person's MHR)
- should ensure (if the person has an AHD) that the presence of the person's AHD is recorded as a clinical alert and filed within the health record (refer Recording and Storing AHD and EPGs)
- are to adhere to AHD and EPG processes outlined in this procedure and be willing to support a person to develop AHDs and EPGs as relevant.

Clerical staff

Are to be aware of the importance of AHDs and 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 standardised within the health record (refer Recording and Storing AHD and EPGs)
- when supporting a patient or resident to complete their Next of Kin (NOK) details, if a person has an EPG, this is recorded in webPAS NOK 1 section as per the [PMI Data Entry Standards](#).

All staff are required to work within policies and guidelines to make sure that WACHS is a safe, equitable and positive place to be.

4. Monitoring and Evaluation

4.1 Monitoring

Monitoring of compliance with this document is captured in the following audit processes:

- Regional palliative care biannual clinical document audit capturing documentation type used to record patient’s end of life wishes.
- WACHS Combined Bedside Risk Assessment (CoBRA) Country audit tool capturing the presence of an AHD, and availability in the patient’s health record (completed weekly by site).

4.2 Evaluation

The WACHS Palliative Care Program collate the following every three years:

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

5. Compliance

This procedure supports the Department of Health WA Clinical Alert MedAlert Policy, [Consent to Treatment Policy](#) and WA Legislation: [Guardianship and Administration Act 1990](#).

Failure to comply with this procedure 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](#) 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 and procedures is mandatory.

6. References

1. Australian Government Department of Health [National framework for advance care planning documents](#).
2. *Guardianship and Administration Act 1990*, [WALW - Guardianship and Administration Act 1990 \(legislation.wa.gov.au\)](#).

7. Definitions

Term	Definition
Advance Health Directive (AHD)	Advance Health Directive is a legal document completed by a competent adult that contains decisions regarding future medical treatment as defined under the <i>Guardianship and Administration Act 1990 (WA)</i> s 3.
Appointer	The person appointing an EG under an 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
Enduring Guardian (EG)	Enduring Guardian is a person who is legally appointed to make decisions on behalf of another person as defined under the <i>Guardianship and Administration Act 1990 (WA)</i> s 3
Enduring Power of Guardianship (EPG)	Enduring Power of Guardianship allows a competent adult with full legal capacity to appoint another person to make personal decisions on their behalf as defined under the <i>Guardianship and Administration Act 1990 (WA)</i> s 3
Goals of Patient Care form (GoPC) / Residential Goals of Care (RGoC)	Goals of care establish the most medically appropriate, realistic, agreed goals of 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/resident and family/carer, so clear ceilings of care and end of life wishes can be established
Oaths, Affidavits and Statutory Declarations Act 2005 (WA)	Schedule 2 of this Act prescribes that Chiropractors; Dentists; Doctors; Midwives; Nurses; Paramedics; Physiotherapists; Podiatrists; and Psychologists; who are registered under the Health Practitioner Regulation National Law (Western Australia) in their respective profession are authorised to witness statutory declarations.
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
Senior clinician	All types of medical officers, senior nursing and senior allied health staff at the WACHS site / clinical service (e.g. regional palliative care team). Depending on the size of the WACHS site, a senior nurse may be a nursing shift coordinator, aged care nurse manager, after hours Nurse Manager, Clinical Nurse Manager, after hours Clinical Nurse Manager or Director of Nursing / Health Service Manager

8. Document Summary

Coverage	WACHS wide
Audience	All Medical, Nursing and Allied Health staff providing care to WACHS patients and residents Health Information and clerical staff
Records Management	Health Record Management Policy
Related Legislation	Guardianship and Administration Act 1990 Oaths, Affidavits and Statutory Declarations Act 2005 (WA)
Related Mandatory Policies / Frameworks	Clinical Handover Policy – MP 0095 Consent to Treatment Policy – MP 0175/22 WA Clinical Alert (MedAlert) Policy – MP 0053/17
Related WACHS Policy Documents	Adults with Impaired Decision Making Capacity Goals of Patient Care Guideline Residential Goals of Care Guideline
Other Related Documents	Aboriginal End-of-Life and Palliative Care Framework
Related Forms	MR00H Advance Health Directive MR00H.1 Values and Preferences MR00H.1 State Goals of Patient Care Summary MR00H.1P WACHS Paediatric Goals of Patient Care RC 00H.1 Residential Goals of Care MR723A State CPDP Inpatient – Continuing Goals of Care MR723.2 State CPDP Community – Continuing Goals of Care
Related Training Packages	N/A
Aboriginal Health Impact Statement Declaration (ISD)	ISD Record ID: 2286
National Safety and Quality Health Service (NSQHS) Standards	2.6, 2.7, 5.9, 5.17
Aged Care Quality Standards	1(c), 1(d), 2(b)
National Standards for Mental Health Services	N/A

9. Document Control

Version	Published date	Current from	Summary of changes
5.00	18 Sept 2023	18 Sept 2023	<ul style="list-style-type: none"> Change of document type from guideline to procedure Updated to reflect release of new WA Advance Health Directive form

10. Approval

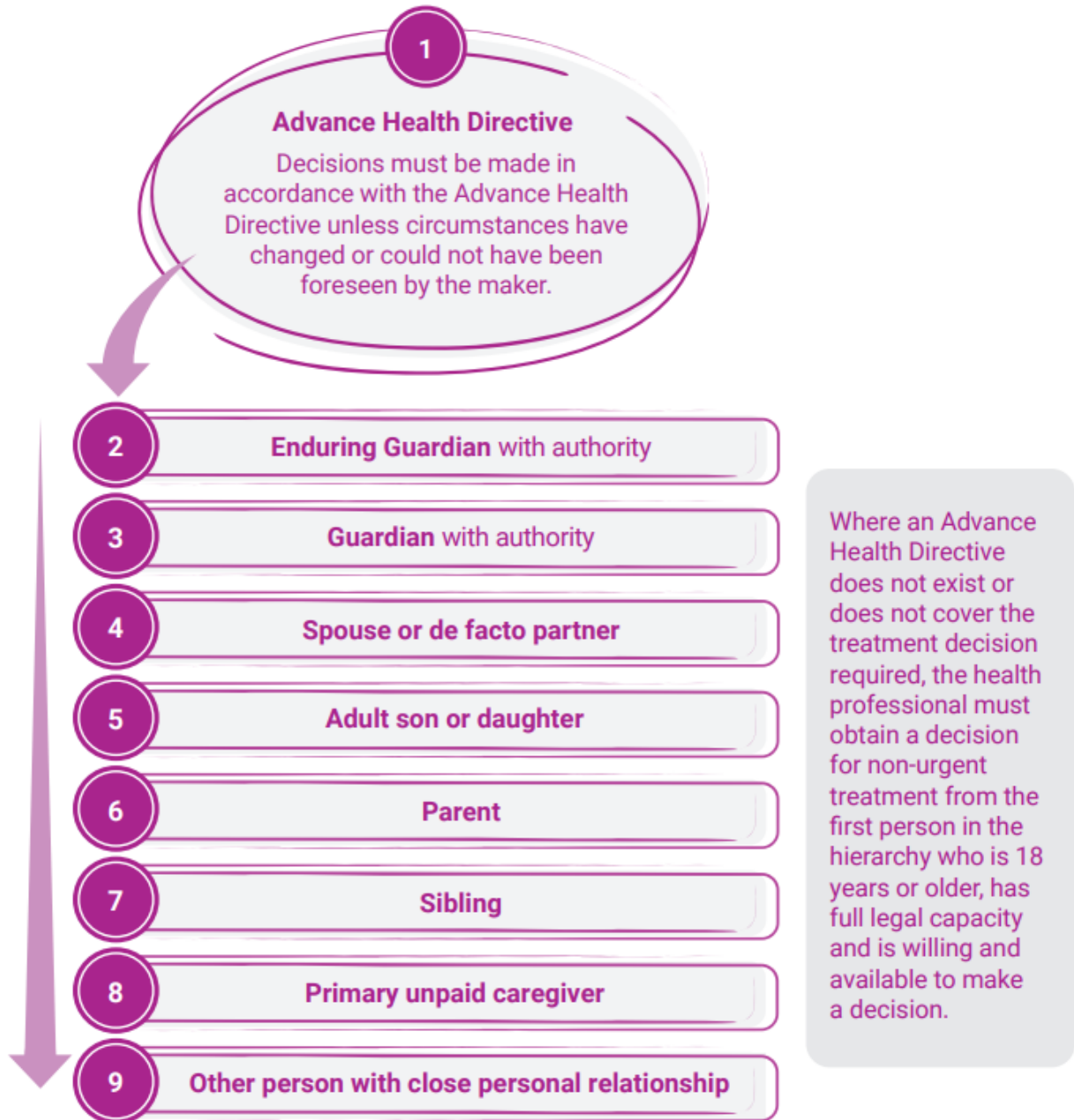
Policy Owner	Chief Operating Officer
Co-approvers	Executive Director Clinical Excellence Executive Director Nursing and Midwifery
Contact	Coordinator of Nursing Palliative Care Program
Business Unit	Aged Care
EDRMS #	ED-CO-14-33015
<p><i>Copyright to this material is vested in the State of Western Australia unless otherwise indicated. Apart from any fair dealing for the purposes of private study, research, criticism or review, as permitted under the provisions of the Copyright Act 1968, no part may be reproduced or re-used for any purposes whatsoever without written permission of the State of Western Australia.</i></p>	

This document can be made available in alternative formats on request.

Appendix A: Hierarchy of treatment decision-makers¹

Further information regarding interpreting the hierarchy is provided by the Office of Public Advocate WA, and can be viewed here: [Making Treatment Decisions: OPA information \(www.wa.gov.au\)](http://www.wa.gov.au)

Hierarchy of treatment decision-makers



¹ [A Guide to Making an Advance Health Directive in Western Australia \(healthywa.wa.gov.au\)](http://healthywa.wa.gov.au)