End-of-life Care
Legislative Proposals on Advance Directives and Dying in Place

Public Consultation
6 September to 16 December 2019

Agenda

Objectives

Advance Directives

- Background
- Current common law framework
- Government’s position and proposal

Dying in Place

- Background
- Government’s position and proposal
1. Objectives

The Government is committed to providing quality and holistic end-of-life care to persons and families to meet their preferences and needs.

We seek to know public views on:

- codifying the current common law arrangements in respect of an advance directive (AD)
- removing legislative impediments to implementation of ADs by emergency rescue personnel
- amending the relevant provisions to facilitate dying in place in residential care homes for the elderly (RCHEs)
2. Advance Directives

Background and latest development

Local development

the Government should
1) promote the concept of advance directives under
the existing common law framework,
2) review the position in due course once the
community has become more widely familiar with
the concept and should consider the
appropriateness of legislation at that stage.

Law Reform Commission Report

Food and Health Bureau Consultation

2006 2009 2019

Number of advance directives
(with a refusal to CPR)
made in Hospital Authority

Year
2012 2013 2014 2015 2016 2017 2018

Number of advance directives

- 150 325 491 706 937 1,395 1,557

* 21 Aug to 31 Dec

Hospital Authority (2019)
3. Advance Directives

Current common law framework

Currently, Hong Kong has neither statute nor direct case law on the legal status of advance directives, posing legal concerns or creating conflicts with other statutory provisions:

- **Objectives**
  - **Advance Directives**
  - **Dying in place**

**Advantages**

- Lack of legal protection for healthcare professionals
- **Mental Health Ordinance**
  - A doctor or a dentist may provide life-sustaining treatment to a mentally incompetent person without consent
- **Fire Services Ordinance**
  - Ambulance personnel must perform resuscitation on any person who appears to need prompt or immediate medical attention

**4. Advance Directives**

Government’s position and proposal

**What is the government’s position?**

To give a consistent legal framework to remove any conflicting laws and policies.

**Fundamental Principles**

- Respecting a person’s right to self-determination
- Patient’s right to self-determination overrides treatment decisions based on treatment provider’s interpretation of patient’s best interests
- A person should have the primary responsibility of keeping and presenting the original copy of an advance directive
- Sufficient safeguards should be provided to preserve lives
### 4. Advance Directives

#### Government’s position and proposal

**Who can make an advance directive?**
Any mentally competent person who is aged 18 or above.

**What can be refused in an advance directive?**

<table>
<thead>
<tr>
<th>May refuse</th>
<th>Cannot include</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Life-sustaining treatment (e.g. CPR, artificial ventilation, artificial nutrition and hydration)</td>
<td>✗ Basic and palliative care</td>
</tr>
<tr>
<td></td>
<td>✗ Offer of food and drink by mouth</td>
</tr>
<tr>
<td></td>
<td>✗ Anything that is against the law (such as euthanasia)</td>
</tr>
</tbody>
</table>

**How to make, modify or revoke an advance directive?**

<table>
<thead>
<tr>
<th>Make</th>
<th>Modify</th>
<th>Revoke</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>When?</strong></td>
<td>No limitation for healthy individuals</td>
<td>As long as he/she is mentally capable and not under undue influence, a person may revoke or modify anytime</td>
</tr>
<tr>
<td><strong>Should it be in writing?</strong></td>
<td>Must be in writing</td>
<td>Both verbal and written revocations are valid</td>
</tr>
<tr>
<td><strong>Should it be witnessed?</strong></td>
<td>Two witnesses are required, one of whom must be a medical practitioner</td>
<td>No witness is required</td>
</tr>
<tr>
<td></td>
<td>Neither witness should have an interest in the estate of the person making the advance directive</td>
<td></td>
</tr>
</tbody>
</table>
### 4. Advance Directives

**Government’s position and proposal**

**Should the advance directive form be a statutory prescribed form or a non-statutory model form?**

- Use non-statutory model advance directive form

- Validity remains for the following non-model forms:
  - advance directives made overseas
  - advance directives made before enactment of the new legislation

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### 4. Advance Directives

**Government’s position and proposal**

**How to ensure the validity and applicability of an advance directive?**

<table>
<thead>
<tr>
<th>Safeguards for validity</th>
<th>Safeguards for applicability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Including: The original copy of the advance directive should be presented under normal circumstances.</td>
<td>Including: Applicable only when the person suffers from the pre-specified conditions in the advance directive form: (a) terminal illness; (b) persistent vegetative state or a state of irreversible coma, and (c) other end-stage irreversible life-limiting condition, and the treatments to be refused cover life-sustaining treatment.</td>
</tr>
</tbody>
</table>
# 4. Advance Directives

## Government’s position and proposal

### How to facilitate an advance directive being followed outside the hospital?

(a) legislate for advance directives, emergency rescue personnel shall respect a valid and applicable advance directive presented to them.

(b) amend the Fire Services Ordinance, so that the duty to resuscitate or sustain life will be subject to a valid instrument that CPR should not be performed.

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### How to facilitate treatment providers to be aware of an advance directive?

- Store advance directives into Electronic Health Record Sharing System ("eHRSS") on a voluntary basis.
- The original advance directive document should still be required as the proof of a valid advance directive.
4. Advance Directives
Government’s position and proposal

How to provide reasonable legal protection for treatment providers?

1. The same safeguard is applicable to DNACPR form.

Treatment provider does NOT incur any civil or criminal liability

- The same safeguard is applicable to DNACPR form.

4. Advance Directives
Government’s position and proposal

The relationship between advance directive and other statutory provisions

<table>
<thead>
<tr>
<th>Continuing Powers of Attorney (CPA)</th>
<th>Mental Health Ordinance</th>
</tr>
</thead>
<tbody>
<tr>
<td>In the case where the donor has made an advance directive and a CPA, the donor’s decision made in the former will override that of the attorney.</td>
<td>Make specific provisions to state that a valid and applicable advance directive made by the relevant person shall prevail.</td>
</tr>
<tr>
<td></td>
<td>A registered doctor or dentist or an appointed guardian cannot override a validly made advance directive.</td>
</tr>
</tbody>
</table>
5. Dying in Place

Background

Dying in place usually means spending the final days at the place of choice of the patient, be it at home, in RCHE or nursing home, and not necessarily a hospital.

If expected to die in a year, the preferred place for end-of-life care of elderly

- Hospital: 17%
- RCHEs: 24%
- At home: 58%
- Others: 1%

Place of death of elderly patients aged 65 or above (2017)

- Hospitals: 96%
- At home: 58%
- RCHEs: 24%
- Others: 1%

- 40% of which resides in elderly homes, (including RCHEs and nursing homes)

According to the current arrangements under Coroners Ordinance:

<table>
<thead>
<tr>
<th>Dying at home due to illness</th>
<th>Diagnosed as having terminal illness</th>
<th>NOT diagnosed as having terminal illness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attended to by a registered medical practitioner within 14 days prior to death</td>
<td>Reporting requirements to the Coroner are exempted</td>
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<tr>
<td>NOT attended to by a registered medical practitioner within 14 days prior to death</td>
<td>Reporting requirements to the Coroner are exempted</td>
<td>Death need to be reported to the Coroner via the Police</td>
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Jockey Club School of Public Health and Primary Care, Faculty of Medicine, The Chinese University of Hong Kong (2017)
According to the current arrangements under Coroners Ordinance:

<table>
<thead>
<tr>
<th>Dying in RCHEs due to illness*</th>
<th>Diagnosed as having terminal illness</th>
<th>NOT diagnosed as having terminal illness</th>
</tr>
</thead>
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<td>Attended to by a registered medical practitioner within 14 days prior to death</td>
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*excluding hospital, nursing home or maternity home registered under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165).

Consider amending the Coroners Ordinance, the reporting requirements to the Coroner should be exempted.
6. Dying in Place
Government’s position and proposal

Different factors rendering dying in place difficult:
• social taboo
• fear of depreciation of property value if a person died at home,
• inadequate medical support to take care of dying persons at home/RCHEs

As a prerequisite, consideration should be given to revising the relevant legal provisions to provide more options in the place of care for an ageing population.

End
Thank you.