

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

Public Consultation
6 September to 16 December 2019



食物及衛生局
Food and Health Bureau



Agenda

Objectives



Advance Directives

Background	Current common law framework	Government's position and proposal
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Dying in Place

Background	Government's position and proposal
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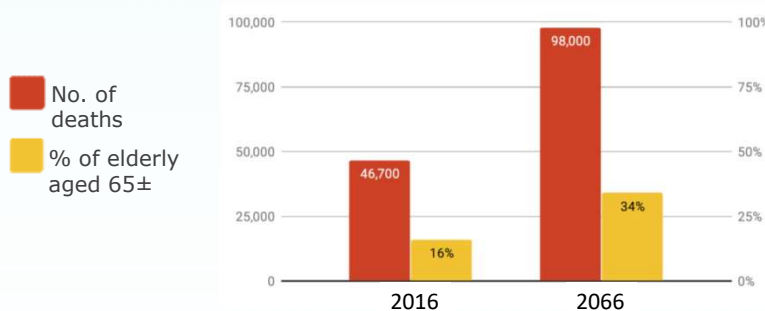
1. Objectives



Objectives

Hong Kong population is ageing rapidly.

Hong Kong Population Projections 2017-2066



Advance Directives



Dying in place



³ Census and Statistics Department (2017)

1. Objectives



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)



Advance Directives



Dying in place

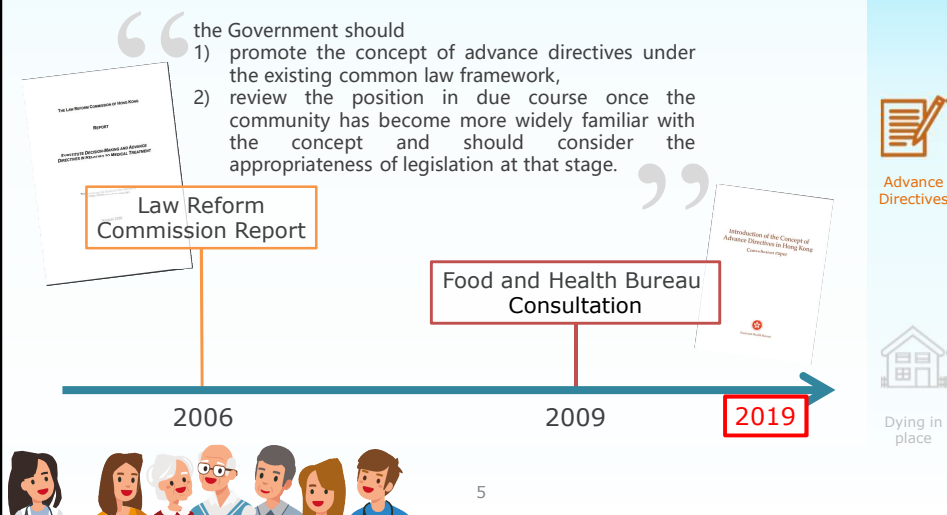


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2. Advance Directives

Background and latest development

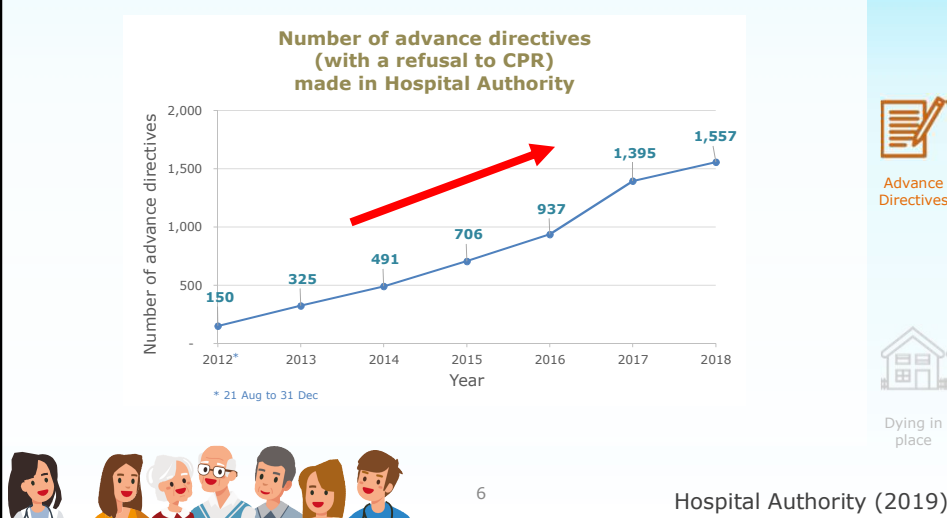
Local development



2. Advance Directives

Background and latest development

Local development



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:

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



Objectives



Advance Directives



Dying in place



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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



Objectives



Advance Directives



Dying in place



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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?

May refuse	Cannot include
<ul style="list-style-type: none"> ✓ Life-sustaining treatment (e.g. CPR, artificial ventilation, artificial nutrition and hydration) 	<ul style="list-style-type: none"> ✗ Basic and palliative care ✗ Offer of food and drink by mouth ✗ Anything that is against the law (such as euthanasia)



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Objectives



Advance Directives



Dying in place

4. Advance Directives

Government's position and proposal

How to make, modify or revoke an advance directive?

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



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Advance Directives



Dying in place

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**

▲ Advance directive form currently used by the Hospital Authority



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Advance Directives



Dying in place

4. Advance Directives

Government's position and proposal

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

Safeguards for validity

Including:

The **original copy** of the advance directive should be presented under normal circumstances.

Safeguards for applicability

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.



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Advance Directives



Dying in place

4. Advance Directives

Government's position and proposal

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

DNACPR Form

DNACPR form **attached** to the advance directive of the patient would **facilitate the emergency rescue personnel** to respect the advance decision of the patient

(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.



Objectives



Advance Directives



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4. Advance Directives

Government's position and proposal

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.



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Advance Directives



Dying in place

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4. Advance Directives

Government's position and proposal

How to provide reasonable legal protection for treatment providers?

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Treatment provider does NOT incur any civil or criminal liability

- The same safeguard is applicable to DNACPR form.

Dying in place

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4. Advance Directives

Government's position and proposal

The relationship between advance directive and other statutory provisions

Continuing Powers of Attorney (CPA)	Mental Health Ordinance
<p>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.</p>	<p>Make specific provisions to state that a valid and applicable advance directive made by the relevant person shall prevail.</p> <p>A registered doctor or dentist or an appointed guardian cannot override a validly made advance directive.</p>

Dying in place

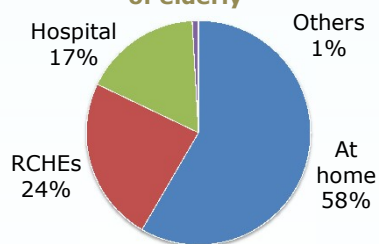
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5. Dying in Place

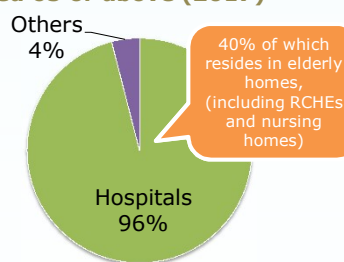
Background

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



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



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Jockey Club School of Public Health and Primary Care, Faculty of Medicine, The Chinese University of Hong Kong (2017)



Objectives



Advance Directives



Dying in place

5. Dying in Place

Background

According to the current arrangements under Coroners Ordinance:

Dying at home due to illness	Diagnosed as having terminal illness	NOT diagnosed as having terminal illness
Attended to by a registered medical practitioner within 14 days prior to death	Reporting requirements to the Coroner are exempted	Reporting requirements to the Coroner are exempted
NOT attended to by a registered medical practitioner within 14 days prior to death	Reporting requirements to the Coroner are exempted	Death need to be reported to the Coroner via the Police



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Objectives



Advance Directives



Dying in place

5. Dying in Place

Background

According to the current arrangements under Coroners Ordinance:

Dying in RCHes due to illness*	Diagnosed as having terminal illness	NOT diagnosed as having terminal illness
Attended to by a registered medical practitioner within 14 days prior to death	Death need to be reported to the Coroner via the Police	Death need to be reported to the Coroner via the Police
NOT attended to by a registered medical practitioner within 14 days prior to death	Death need to be reported to the Coroner via the Police	Death need to be reported to the Coroner via the Police

*excluding hospital, nursing home or maternity home registered under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165).



Objectives



Advance Directives



Dying in place



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6. Dying in Place

Government's position and proposal

Consider amending the Coroners Ordinance, **the reporting requirements to the Coroner should be exempted.**

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Objectives



Advance Directives



Dying in place



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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.



Objectives



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Dying in place



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End

Thank you.



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