

Advance Decision to Refuse Treatment - also known as a 'Living Will'

Frequently Asked Questions

Q. What is an advance decision to refuse medical treatment?

A. An advance decision allows a person aged 18 or over to refuse a specific treatment in the future when they lack capacity to consent to, or refuse, that treatment. It usually takes the form of a written statement that can be given to individuals involved in your treatment or care.

Under the Mental Capacity Act 2005 a person who lacks capacity has the right to refuse medical treatment in this way.

Q. What does 'lack capacity' mean?

A. It means a person is unable to make a particular decision about a particular action at the time that the decision needs to be taken.

For example, you may know that you would not want to be artificially ventilated if you were unconscious and your condition was terminal. If you are unconscious you lack the capacity to make the decision. You could write an advance decision to make clear what your wishes would be in this situation.

Q. Can doctors overrule or ignore an advance decision?

A. If the treatment you wish to refuse, and in what circumstances you want to refuse it, are clearly written at a time when you had capacity to make that decision, then it is difficult for a doctor to refuse to act in line with your wishes.

As long as the advance decision is valid and applicable to the circumstances, the advance decision gives you the same right to make a decision to refuse treatment as if you had capacity.

Q. Does an advance decision have to be registered like a lasting power of attorney?

A. No, but there are certain conditions that should be met to ensure that an advance decision is valid. If the advance decision is to refuse life sustaining treatment it must be in writing and include a declaration that makes clear you understand that not having the treatment will be a risk to life. It must be signed by the person making the advance decision and a witness.

There is no one way to write an advance decision but there are templates and advice available through charities such as Compassion in Dying and Marie Curie. You do not need the assistance of a lawyer to make a valid advance decision although some people do take legal advice.

Q. Is an advance decision valid for mental health?

A. There is a complicated relationship between the Mental Capacity Act 2005, which is the legislation for a patient's right to refuse treatment, and the Mental Health Act 1983. In general, you can make an advance decision to refuse treatment as long as it doesn't relate to treatment when under mental health section.

Q. Do advance decisions work?

A. Doctors must always act in the best interests of the patient when making decisions about health and welfare and take their wishes into account. There are occasions when a doctor/healthcare professional may challenge whether the advance decision is valid and applicable and apply to the Court of Protection to make a decision.

It is important that you share a copy of your advance decision with family, doctors, trusted friends or carers, who may be involved in decisions about your healthcare.

Q. Does an advance decision override a health and welfare lasting power of attorney?

A. The one made most recently is valid.

Q. What happens if you only lose your capacity temporarily?

A. The advance decision would still come into effect but it would depend on what was specified. You should specify when you don't want to have treatment as well as what treatment you want to refuse.

Q. What happens if your advance decision doesn't take account of recent medical treatments?

A. It is recommended that you review your advance decision at least every two years. A doctor may challenge the validity of the decision if it is too old.