

Client Alert

Family and Mental Capacity Law

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The Advance Decision on Life-sustaining Treatment Bill

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On 20 November 2024, the Legislative Council passed the Advance Decision on Life-sustaining Treatment Bill (the “**Bill**”). The Bill and relevant legislative amendments seek to set the legislative framework for safeguarding the patients, medical professionals and rescuers regarding the use of advanced medical directive (“**AMD**”) and do-not-attempt-cardiopulmonary resuscitation (“**DNACPR**”) order, as well as facilitating the choice of dying in place for terminally ill patients in residential care homes (“**RCHs**”).

Under the Bill, an AMD is defined as “*an instrument made by a person that contains one or more instructions that if that person is mentally incapable of deciding on a life-sustaining treatment and the specified precondition of the instruction is met, the person is **not** to be subjected to any life-sustaining treatment specified in the instruction*”. (emphasis added).

Whilst the Advance Directive forms used by the Hospital Authority are recognised under common law, the presence of specific legislation would indeed provide safeguard and more clarity to medical and healthcare professionals as well as respecting the wishes of AMD makers.

In gist, the Ordinance provides that:

AMDs

- Any person aged 18 or above who is mentally capable of deciding on a life-sustaining treatment may make an AMD to specify their refusal of life-sustaining treatments under specified pre-conditions.
- The AMD must be made in writing, signed by the maker and witnessed by at least 2 witnesses, with one being a registered medical practitioner (“**RMP**”).
- The Ordinance provides AMD model forms but AMDs which do not adopt the model forms will still be effective as long as they comply with the requirements under the Ordinance.
- An AMD can be revoked at any time when the maker is mentally capable of deciding on a life-sustaining treatment by verbal/written means or destruction.
- A scanned and digitalised copy of the paper form AMD can be stored in a designated electronic system.

DNACPR Orders

- DNACPR order is defined as “*an instrument that has a continuing effect and directs not to perform cardiopulmonary resuscitation (CPR) on a person who is in cardiopulmonary arrest*”.
- It must be made in writing using the statutory form made by two RMP, one of whom must be a specialist
- Similar to an AMD, a DNACPR Order made on the basis of an instruction of refusing CPR in an AMD can be revoked when the maker is mentally capable of deciding on a life-sustaining treatment by verbal/written means or destruction.

Dying in place

- To facilitate the choice of dying in place for terminally ill patients in RCHs, there will be proposed amendments to the Coroners Ordinance (Cap.504) and the Births and Deaths Registration Ordinance (Cap. 174).

Other related amendments

- Currently the Fire Services Department is bound by the Fire Services Ordinance (Cap. 95) to assist any person who appears to need prompt or immediate medical attention by resuscitating or sustain his/her life regardless of whether a DNACPR order has been made.

- Under the Mental Health Ordinance (Cap.136) an RMP may provide treatment to a mentally incapacitated person (“MIP) without consent given by a guardian of the MIP if the RMP considers as a matter of urgency that treatment is necessary and in the best interest of the MIP.
- The relevant provisions in Cap 95 and Cap.136 will need to be amended to remove any conflict with the new legislative framework for AMDs and DNACPR Orders.

Deacons’ Family, Mental Capacity and Vulnerable Client Practice team, headed by Sherlynn Chan, is experienced in handling family and mental capacity related matters. Please reach out to Sherlynn Chan or Hazel Wong if you would like to know more.

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