



AN BILLE UM RÉAMHCHINNTÍ CÚRAIM SLÁINTE, 2012
ADVANCE HEALTHCARE DECISIONS BILL 2012

EXPLANATORY MEMORANDUM

Purpose of the Bill

The purpose of this Bill is to make provision for the creation of an Advance Health Care Directive which formally records the wishes of an individual at a time when they have the capacity to do make decisions in relation to future health care decision that may arise in the future and at a time when the person no longer has the capacity to take a decision. Where valid, an advance healthcare decision with have the same force and effect as the contemporaneous refusal of treatment by a patient with capacity. In other words, no one (a clinician, a donee of a power of attorney, or a Court) can supplant the decision of the person.

At present in the State, there is no statutory recognition of “advance health care decisions” (sometimes called “advance statements”, “advance directives” or — more colloquially — “living wills”). The rationale for permitting such a document is that it ensures due regard to a person’s right of dignity, bodily integrity, privacy and autonomy (in accordance with the principles of the *Mental Capacity Bill 2008*) and allows a person to make advance plans covering future treatment, rather than having those plans made by others when the time comes. While there is no statutory recognition of advance statements, the need for such a measure seems to follow from the relevant case law (including the decision of the Supreme Court in *In re a Ward of Court (withholding medical treatment) (No. 2)* (1996) 2 IR 79) and is in keeping with the recommendations of the Law Reform Commission’s 2008 Consultation Paper *Bioethics: Advance Care Directives* (LRC CP 51 — 2008).

The enactment of the Bill would additionally place the State in harmony with international obligations created by the “2006 UN Convention of Persons with Disabilities” and relevant Council of Europe Standards.

It is intended that the Bill will present a workable instrument for those persons interested in planning for their medical treatment decisions. The Bill seeks to respond to the fear of many that, as a result of advancements in medical care, they may be kept alive indefinitely by life-prolonging treatment after they have lost their ability (mental capacity) to decide on their treatment options and to make their own views known. This Bill is compliant with the assumption that decision-making should remain for as long as possible in the hands of the patient involved and account must be taken of the person’s present wishes where they are ascertainable.

Under the proposed legislation, an advance health care directive could include an instruction to refuse life-sustaining treatment and additional safeguards are provided in that scenario.

The Bill also provides for an extension of Powers of Attorney, so that a person can give an attorney (under the Powers of Attorney Act 1996) the power to take certain designated healthcare decisions on his or her behalf.

Provisions of the Bill.

Section 1 is the title and citation section.

Section 2 provides definitions generally within the Bill.

Section 3 provides the specific definition of Advance Healthcare Decisions.

Section 4 provides the specific definition of capacity.

Section 5 provides the form that an advance healthcare decision must take, information that may be included in an advance healthcare statement and sets out the entitlement of a person to withdraw an advance healthcare decision at any time.

Section 6 sets out the consequences of the validity or invalidity of advance healthcare statements and the circumstances in which an advance healthcare statement will not be applicable to treatment including life-sustaining treatment.

Section 7 provides for the effect of a validly made advance healthcare treatment

Section 8 provides for applications that may be made to the High Court where there is doubt about the validity of an advance healthcare statement.

Section 9 provides for the Amendment of the Powers of Attorney Act to allow persons to appoint an attorney with the power to take healthcare decisions.

*Deputy Liam Twomey,
January, 2012.*