

# **National Consultation**

## **Draft Codes of Practice on Advance Healthcare Directives**

### **Submission in respect of “A Draft Code of Practice for Designated Healthcare Representatives” by Anne O Loughlin on behalf of the Irish Association of Social Workers (IASW) Special Interest Group in Ageing (SIGA )**

Advance Healthcare Directives.

Code for interacting with Designated Healthcare Representatives

Designated Healthcare Representative:

*a trusted person ...to act on their behalf in relation to healthcare treatment decisions if they lack capacity(1.2)*

*to ensure that the Advance Healthcare Directive is complied with when the Directive Maker has lost capacity (1.4)*

*or to make healthcare treatment decisions for the Directive Maker with reference to what s/he has set out in his/her Advance Healthcare Directive(2.1)*

#### **Making an Advance Healthcare Directive**

While there is no required format it would be advisable to have more clarity on the legal formalities and the publication of directive in order to assist in assessing the validity and applicability of the Advance Healthcare Directive. Without clear guidance it could prove difficult especially in relation to the interaction with the Designated Healthcare Representative.

#### **Request for healthcare treatment**

There is a need to clarify the overlap with the proposed Deprivation of Liberty Safeguards:

How does this apply to ‘deprivation of liberty’ part of the Assisted Decision Making Capacity Act 2015. Is it possible to include in an Advance Healthcare Directive a consent to ‘deprivation of liberty’ or to give the Designated Healthcare Representative the power to have this request complied with or to consent to deprivation of liberty?

#### **Doing something inconsistent with the Advance Healthcare Directive**

The vignette (page 41) illustrates that the Designated Healthcare Representative *was able to advise on her will and preferences with reference to her Advance Healthcare Directive when inconsistent act at the time she had capacity could have been invalidated.*

Interaction with the Designated Healthcare Representative in such situations could be very difficult and challenging. It also states that if the Designated Healthcare Representative does not know the will

and preferences of the Decision Maker they must state this. This is a potentially very difficult scenario especially with the principle of presumption of capacity.

### **Appointment of Designated Healthcare Representative**

While it is possible to appoint more than one Designated Healthcare Representative *for different aspects of his or her health care treatment* this provision could be very challenging if for example it states as is suggested in the code *one for mental health and one for all other aspects of healthcare treatment*. This aspect will need clarity in relation to applicability where as is often the case the aspects of mental and physical healthcare overlap and are closely related. What happens if there is a dispute between Designated Healthcare Representatives interpreting the will and preferences of the Directive Maker and how can the healthcare professional consulting with them resolve the issue.

### **Where Healthcare Professional has concerns about Designated Healthcare Representative**

Clarity and guidance on when to refer to the Decision Support Service.

### **Interaction with family members vis a vis the Designated Healthcare Representative**

This could be very challenging when there is no obligation to inform any family members of the Advance Healthcare Directive or the appointment of Designated Healthcare Representative.

### **Overlap with the Enduring Power of Attorney and role of Attorneys**