

## **Personal Directives Act – Information for Health Care Providers**

The Personal Directives Act took effect April 1, 2010.

### **The Purpose of the Act**

The Personal Directives Act is designed to:

- \* Help individuals prepare for any instance in the future when they may lack capacity to make personal care decisions.
- \* Help individuals who lack capacity for making personal care decisions about health care, continuing care home placement, and home care services.

### **What are Personal Care Decisions?**

Personal care decisions include those regarding:

- \* health care
- \* shelter
- \* social activities
- \* comfort
- \* nutrition
- \* residence
- \* hygiene
- \* recreation
- \* hydration
- \* clothing
- \* safety
- \* support services

And do not include those regarding finances and estates.

### **The Act allows for:**

- 1) Making a personal directive to plan for any instance when the maker lacks capacity to make personal care decisions by:
  - \* appointing someone (a delegate) to make personal care decisions for the maker, and/or
  - \* setting out instructions, values, beliefs or wishes about what or how personal care decisions should be made for the maker.

- 2) Choosing a substitute decision maker for health care, placement in a continuing care home and home care services decisions for someone who lacks capacity and does not have a personal directive.

## **Planning for the Future**

A Personal Directive is one of many planning documents a person may use to ensure their wishes and values related to life decisions are captured and communicated. Others include:

- \* Authorizations made under the Medical Consent Act prior to April 1, 2010 (PDA Section 22(2))
- \* Enduring Power of Attorney
- \* Wills
- \* Valid directives made in other provinces or countries (PDA Section 24).
- \* A personal directive may be combined with an enduring power of attorney in one document (PDA Section 23).

## **A few basic rules**

- \* Any capable individual , including a mature minor, can make a personal directive.
- \* It must be signed, dated and witnessed.
- \* The witness cannot be: a delegate; spouse of a delegate; person who signs on behalf of the maker or spouse of same.
- \* A personal directive is considered a legal document if it meets the above noted criteria.
- \* A personal directive takes effect when the person who created the personal directive becomes incapacitated.

## **Definition of capacity**

- \* Section 2(a): “capacity” with respect to the Personal Directives Act, means the ability to understand the information that is relevant to the making of a personal care decision and the ability to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

### **Capacity with respect to health care:**

- \* Health care providers will continue to ensure each client's informed consent for the service they are providing as they do now as part of professional guidelines and scope of practice.
- \* The common law presumption that persons have the capacity to make health care or treatment decisions does not change.
- \* When a health care provider cannot determine if a client has capacity to consent to the treatment or service they are providing, they may request an assessment of capacity which must be performed by a physician. (PDA Sections 10, 11 and 13) form in regulations)
- \* The assessment, when required, is for capacity to consent to a particular treatment or service. It is not necessary to assess global capacity i.e. for making all decisions.

### **Duties of Health Care Providers (PDA Section 18)**

- \* Health care provider includes (but is not limited to) licensed/registered health care professionals.
- \* Key duties:
  - before seeking a health care decision from a delegate or other substitute decision maker for a person who lacks capacity, ask if there is a personal directive for the person, request a copy and include it in the health record.
  - follow a delegate's instructions
  - follow clear instructions in a personal directive
  - If no personal directive, follow instructions of the substitute decision maker.
- \* Emergency exception continues to apply (PDA Section 19)

### **Delegates in a Personal Directive**

- \* Any capable person 19 years old or over (or a minor spouse) can be appointed a delegate.
- \* Delegates must abide by instructions outlined in personal directive, by

values and wishes of the maker, or if values or wishes are unknown, decisions should be made in the 'best interests' of the maker.

- \* A delegate can be authorized to make all or some personal care decisions. There cannot be joint delegates for the same issue e.g. health care; there can be alternate delegates.
- \* An appointment of the spouse as delegate is revoked when the spouse is no longer a spouse (PDA Section 6).

### **Substitute Decision Maker Hierarchy**

For someone without a personal directive and who lacks capacity to make the healthcare; placement in continuing care home; and/or home care services decisions.

PDA Hierarchy (PDA Sections 2(i) and 14) - in rank order:

- \* guardian (eg. Court appointed) with authority to make such decisions
- \* nearest relative (who, except in the case of a minor spouse, is 19 years of age or older.)
  - spouse
  - child
  - parent
  - person standing in loco parentis
  - sibling
  - grandparent
  - grandchild
  - aunt or uncle
  - niece or nephew
  - other relative
- \* Public Trustee (link to website)

### **Criteria for Nearest Relative Substitute Decision Maker**

- \* Nearest relative cannot be a substitute decision maker for health care decisions unless the nearest relative:
  - a) excepting a spouse, has been in personal contact with the person over the preceding twelve-month period or has been granted a court order to shorten or waive the twelve-month period:

- b) is willing to assume the responsibility for making the decision;
- c) knows of no person of a higher rank in priority who is able and willing to make the decision; and
- d) makes a statement in writing certifying the relationship to the person and the facts and beliefs set out in clauses a) to c). (PDA Section 14(2)).

### **Protections and Limitations**

- \* Liability protection for persons who act in good faith (PDA Section 20)
- \* A personal directive does not permit an illegal act e.g. euthanasia (PDA Section 5(3))
- \* An appointed substitute decision maker or delegate must comply with the requirements set out in the Personal Directives Act with respect to their role and responsibilities (PDA Section 15(4)).
- \* A personal directive will not assure the maker access to services that are above and beyond established program parameters (PDA Section 21).

### **Web Links**

- \* To Personal Directives Act:  
[http://www.gov.ns.ca/legislature/legc/bills/60th\\_2nd/3rd\\_read/b163.htm](http://www.gov.ns.ca/legislature/legc/bills/60th_2nd/3rd_read/b163.htm)
- \* To Personal Directives Act Regulations:  
<http://www.gov.ns.ca/just/regulations/regs/pdpersdir.htm>