

Advance care planning: have the conversation

Module 9: Advance care planning
in the mental health context



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Advance care planning: have the conversation

Module 9: Advance care planning in the mental health context

Healthcare settings: GP practice, hospital, aged care

Target skills: Confidence, knowing your role

Time: 15 mins

9.1 Advance care planning and advance statements

Patients with long-term mental health conditions are at higher risk of developing physical health conditions (Lawrence et al. 2013). Likewise, patients with chronic medical conditions are more at risk of developing mental health conditions (Clarke 2009).

A patient requiring mental health treatment can complete both an advance care directive and an advance statement, as they are separate documents and both documents may be relevant at different times.

Person receiving mental health services should be involved in all decisions about their assessment, treatment and recovery and be supported to make, or participate in, those decisions, and their views and preferences should be respected (the *Mental Health Act 2014*, Section 11(1)(c)).

Advance care planning gives all patients, including those with a comorbid mental illness, the opportunity to appoint a medical treatment decision maker and express their values and preferences for their future care.

An Advance Statement is an option for compulsory patients under the *Mental Health Act 2014*. An Advance Statement documents in writing what treatment patients would like in case they require compulsory mental health treatment. It is designed specifically for a patient with a mental health condition. It sets out their treatment preferences in case they become unwell and need compulsory mental health treatment.

Advance Statements take effect when the patient is receiving compulsory treatment. For other treatments, a patient may also create an advance care directive.

This module outlines the requirements for writing and implementing an advance statement.

9.2 Requirements of advance statements

A patient can make an advance statement under the *Mental Health Act 2014* at any time provided the person understands what an advance statement is and the consequences of making an advance statement.

The authorised psychiatrist must have regard to the views and preferences of the patient about their mental health treatment expressed in their advance statement, when making a treatment decision.

An advance statement must:

- be in writing
- be signed and dated by the patient making the advance statement
- be witnessed by an authorised witness
- include a statement signed by an authorised witness stating that –
 - in their opinion, the patient understands what an advance statement is and the consequences of making an advance statement
 - the witness observed the patient sign the advance statement
 - the witness is an authorised witness

An 'authorised witness' is a registered medical practitioner, a mental health practitioner employed in a designated mental health service or a person who may witness a statutory declaration.

→ An advance statement will be valid if it meets the requirements outlined above.

Follow the communication tips outlined in Module 4 when assisting a patient to complete an advance statement

The *Mental Health Act 2014* does not require that a patient make an advance statement in consultation with his or her treating team, carer or family. However, it is good practice for a patient's treating team, family and carers to be involved in the process of making an advance statement so that they are aware of the patient's treatment preferences.

There is no requirement for a patient to have an advance statement. If a patient does not have an advance statement or does not wish to make an advance statement, they must be supported by the treating team to make or participate in decisions about their treatment. The patient may also be assisted by their carer or family members if appropriate.

9.3 Content of an advance statement

An advance statement sets out a patient's treatment preferences and may include information about:

- treatment the patient finds effective
- treatment that has been less effective in the past
- the patient's views and preferences about treatments

Non-treatment related preferences can be provided alongside the advance statement for consideration and can be discussed with the patient, their nominated person, carer and other support people. However, there is no legal obligation for the authorised psychiatrist to effect these preferences.

An advance statement does not expire unless a new advance statement is made or the patient revokes their advance statement.

It is recommended that a patient considers whether the preferences expressed in their advance statement remain current. An advance statement cannot be amended. If a patient's treatment preferences have changed, they must make a new advance statement. If a patient prepares a new advance statement, they should make relevant people including their treatment team aware of the new advance statement.



9.4 Implement an advance statement

An authorised psychiatrist must have regard to a patient's advance statement whenever they make treatment decisions.

An advance statement will help the authorised psychiatrist make decisions that better align with a patient's treatment preferences.



9.5 Override an advance statement

An authorised psychiatrist may make a treatment decision that is not consistent with the patient's treatment preferences as recorded in the advance statement. The authorised psychiatrist must be satisfied that the treatment specified in the advance statement is not clinically appropriate or is not a treatment ordinarily provided by the designated mental health service.

If the authorised psychiatrist overrides a patient's advance statement, they must tell the patient, explain their reasons and advise the patient (or their substitute decision maker where the patient is not competent) that they can request written reasons for the decision.

If requested, the authorised psychiatrist must provide written reasons with 10 business days after the request has been made.

9.6 Revoke an advance statement

Revocation of an advance statement means that the patient's advance statement has no further effect. A patient can revoke their advance statement at any time provided they understand what an advance statement is, and the consequences of revoking it.

A revocation must:

- be in writing and state that the advance statement is revoked
- be signed and dated by the patient revoking the advance statement
- be witnessed by an authorised witness
- include a statement signed by an authorised witness stating that –
 - in their opinion, the patient understands what an advance statement is and the consequences of revoking it
 - the witness observed the patient revoking the advance statement
 - the witness is an authorised witness.

A revocation will be valid if it meets the above requirements. A form to revoke an advance statement is available on the Victorian Department of Health and Human Services website.

An advance statement must not be amended. Instead, if a patient wants to change his or her preferences expressed in their advance statement they must make a new advance statement.

Making a new advance statement automatically revokes any earlier advance statements made by that patient.

9.7 The role of the authorised witness

A registered medical practitioner, a mental health practitioner or a person who may witness a statutory declaration can be an authorised witness.

An authorised witness is required to state that the patient making or revoking an advance statement understands what the advance statement or revocation is, and the consequences of making or revoking the advance statement.

The authorised witness should check the identity of the patient making or revoking the advance statement by asking them if they are the patient who is making the advance statement.



9.8 Access to a patient's advance statement

A patient making an advance statement should ensure that the people involved in their treatment and care know that they have made an advance statement and where that advance statement can be located. A patient may wish to give a copy of their advance statement to their nominated person, carer and family.

The mental health service provider is responsible for ensuring that the existence of an advance statement is recorded on the CMI/ODS.



9.9. Nominated persons under the *Mental Health Act 2014* (mainly for patients requiring compulsory mental health treatment)

A Nominated Person is chosen by the patient, documented, signed and witnessed to support them and represent their views and interests if they become a compulsory patient.

Any person can be nominated provided they are willing, available and able to fulfil the functions and responsibilities of the role. The nominated person is usually someone who is significant in the life of the person, such as a family member or carer.

There is no requirement for a patient to have a nominated person. If a patient does not have a nominated person or does not wish to make a nomination, they must be supported by the treating team to make or participate in decisions about their treatment. The patient may also be assisted by their carer or family members if appropriate.

9.9.1 Nominated persons

- Appointed under the *Mental Health Act 2014*
- Supports compulsory patients to participate in decisions about treatment
- Cannot make decisions on behalf of a patient
- Cannot refuse medical treatment

9.9.2 Role of the doctor

1. You need to know that to be considered valid, a patient's Advance Statement must be signed by an authorised witness (a doctor, a mental health practitioner, or a person who may witness a statutory declaration).

2. When requested to sign an Advance Statement as an authorised witness, a statement must be included by you that:

- in your opinion, the patient understands what an advance statement is, and the consequences of making the statement; **and**
- the patient signed the advance statement in your presence as a witness.

In the event that a patient wants to revoke their advance statement (which they may do at any time) and you are requested to be an authorised witness, a statement must be included by you that:

- in your opinion, the patient understands the consequences of revoking the advance statement; **and**
- the patient signed the revocation of the advance statement in your presence as a witness.

3. You need to know that if a patient makes a new Advance Statement, it automatically cancels the old Advance Statement.

4. You need to be aware that an Advance Statement cannot be amended and that the patient will have to write a new one.

9.9.3 Role of the authorised psychiatrist

1. Know that the requirements for the authorised psychiatrist to consult with and inform the nominated person and carers apply or become 'active' only when a consumer becomes a compulsory patient under the *Mental Health Act 2014*.
2. The Nominated Person must be informed when:
 - a patient's right to communicate is restricted
 - a patient is absent without leave from a designated mental health service
 - a patient's leave of absence is granted, varied or revoked
 - an Assessment Order (AO), Court Assessment Order, Temporary Treatment Order (TTO) or Treatment Order is made, varied, revoked or expires

A Court Assessment Order is completed

- on commencement of the use of a restrictive intervention (the nature of the restrictive intervention and the reason for using it)
 - the second psychiatric opinion report is made (and reasonable steps must be taken to provide the nominated person with a copy of the report)
 - the Chief Psychiatrist reviews a patient's treatment following an application for review after a second psychiatric opinion report is made (and reasonable steps must be taken to notify the nominated person of the outcome of the review in writing)
 - the Chief Psychiatrist makes a written direction to a designated mental health service in respect of the mental health services provided to the patient
 - the Mental Health Tribunal lists a matter for hearing
 - the Mental Health Tribunal grants or refuses to grant an application for the performance of electroconvulsive treatment
 - the Secretary to the Department of Justice and Regulation grants, varies or revokes monitored leave for a security patient
 - a security or forensic patient is received at or taken to another designated mental health service
 - a security patient is discharged as a security patient.
3. The authorised psychiatrist must, to the extent that it is reasonable in the circumstances, hear and think about the views of the Nominated Person when:
 - a temporary Treatment Order or Treatment Order is made, varied, revoked or expires
 - the setting of a Temporary Treatment Order or Treatment Order is determined or varied
 - the Mental Health Tribunal makes a Treatment Order and determines its setting
 - an authorised psychiatrist grants, varies or revokes a patient's leave of absence
 - an authorised psychiatrist makes a treatment decision for a patient, including a decision about medical treatment
 - a psychiatrist gives a second psychiatric opinion (the psychiatrist must also take reasonable steps to provide the nominated person with a copy of the report)
 - the Chief Psychiatrist reviews the treatment of a patient following an application for review after a second psychiatric opinion is provided (the Chief Psychiatrist must also ensure that reasonable steps are taken to notify the nominated person of the outcome of the review in writing)
 - the authorised psychiatrist makes an application to the Mental Health Tribunal to perform a course of electroconvulsive treatment on a patient or young person

- the Secretary to the Department of Justice and Regulation grants, varies or revokes monitored leave for a security patient
 - the authorised psychiatrist determines whether a security or forensic patient will be taken to another designated mental health service
 - an application is made to the Mental Health Tribunal to transfer a compulsory patient to an interstate mental health facility
4. The authorised psychiatrist must provide the Nominated Person with a copy of the following documents at critical points in the patient's treatment:
- a copy of an Assessment of Temporary Treatment Order (or varied Order); **and**
 - the relevant Statement of Rights; **and**
 - a copy of a second psychiatric opinion report.
5. An authorised psychiatrist can override an Advance Statement if they believe that the treatment a patient would like is not clinically appropriate, or if the treatment is not available to the treating team.

In the event that an Advance Statement is overridden, the authorised psychiatrist must:

- tell the patient about their decision; **and**
- give the patient reasons for the decision; **and**
- tell them that they can ask for written reasons. Where the patient asks for written reasons, the authorised psychiatrist has to provide reasons in writing.