

aras



aged rights advocacy service inc.

45 Flinders St
Adelaide
Ph: 8232 5377 or 1800 700 600
(country toll free)
aras@agedrights.asn.au
www.agedrights.asn.au

INFORMATION SHEET: PARTICIPATING IN DECISION MAKING IN AGED CARE HOMES

Quality care for residents is the focus of the accreditation standards. The standards are clear in their expectations that the needs of individual residents be identified and responded to. Residents and their representatives should be consulted about their satisfaction with their quality of service and quality of life including being actively involved in all decisions about individual matters involving the residents' daily care, and consulted about more general matters within the home.

Information is provided overleaf to indicate ways in which a person who is mentally capable can plan ahead and appoint someone to manage various aspects of their lives –represent them - should they become unable to do so themselves in the future.

The role of representatives is recognized as important in the decision making process where the person is no longer capable or competent to make decisions themselves. A representative is usually someone who knows the person best and is closest to them, for example spouses, partners, adult sons and daughters, trusted friends or relatives. Any decisions made or actions taken by a representative need to be in the best interests of the older person.

Generally if mental capacity is lost, making necessary decisions about a person's welfare is informally assumed by others. However if this informal process stops working because of disagreement then the Guardianship Board can be approached to delegate someone to legally make decisions on behalf of that person.

Under Section 96.5 of the Aged Care Act 1997 where a person lacks the physical or mental capacity to enter an agreement with the home, another person authorized to act on behalf of the potential resident may enter the agreement on their behalf.

The terms 'authorized' or 'representing' used in the Act do not imply that an Enduring Power of Attorney (EPA) or an Administration Order (AO) is required. The terms mean that a close friend or relative can represent the person when completing an admission application or entering an agreement with an aged care home. *Informal arrangements are a legal way of arranging entry to aged care homes for mentally incapacitated persons in South Australia.*

However there are occasions where informal arrangements will be inadequate

- In relation to accommodation bonds, the person's assets may need to be declared and a representative is unable to access the information required by the home, or feels uncomfortable doing so without an EPA or and AO.
- A representative of an older person can decide which aged care home will become the older persons residence. An older person who lacks mental capacity refuses to enter a home and their representative decides that it is in their best interest to do so. This matter is then referred to the Guardianship Board.

GUARDIANSHIP

Where a person is competent;

A person can plan ahead by appointing an Enduring Guardian to make personal/lifestyle decisions in the event that he/she loses competence at some time in the future. An Enduring Power of Guardianship complements the Enduring Power of Attorney which deals only with financial/legal decisions and management. An Enduring Guardian can make personal decision including giving or refusing consent for medical treatment.

Where the person is no longer competent to make that decision;

The Guardianship and Administrative Act 1993 provides for delegated guardianship. The Guardianship Board will give the responsibility of making some or all personal decisions on behalf of a person with mental incapacity to a relative(s) or friend(s) who will act as a substitute decision maker on behalf of the person concerned. If there is no suitable person available the Board can appoint the Public Advocate as guardian.

ADMINISTRATION

Where a person is competent;

A person can appoint an Enduring Power of Attorney to allow their financial affairs to be looked after if they suffer a mental incapacity in the future. In addition the person may complete the form so that it allows their affairs to be handled while they are of sound mind but suffering a physical incapacity eg bedridden. For this to be valid the person giving the power must be competent at the time of signing the document. Only Enduring Powers of Attorney continue to operate if the person loses their mental capacity; ordinary Powers of Attorney cease automatically.

Where a person is no longer competent to make that decision;

The Guardianship Board can appoint an administrator to manage the financial welfare of a person. There are now increased choices and opportunities regarding who can be appointed eg family members, private trustee companies, accountants, solicitors etc as well as the Public Trustee.

MEDICAL

Where a person is competent;

The person can appoint representatives known as Medical Agents to make decisions about treatment on their behalf if they are not able to do so. The document which authorises the medical agent to act on their behalf is called a Medical Power of Attorney. It is also possible to make an advanced directive about palliative care.

Where the person is no longer competent to make that decision;

Guardianship law now has a simpler system of consent for medical/dental treatment for persons with a mental incapacity including the provision for specified relatives to give substitute consent on behalf of the person with mental incapacity.

CONTACTS FOR FURTHER INFORMATION

Health Commission SA Ph: (08) 8226 6000

Office of Public Advocate Phone: (08) 8269 7575; Country callers Toll Free 1800 066 969

Forms for Enduring Power of Attorney, Medical Power of Attorney and Enduring Guardianship are available from:

- State Information 77 Grenfell Street Adelaide Ph: (08) 82041900 or
Country Callers Toll Free 1800 182 234