

Medical Treatment Planning and Decisions Act 2016 - Overview

Health practitioners need a patient's consent before providing medical treatment.

The Medical Treatment Planning and Decision Act 2016 commenced on 12th March 2018. It set out steps for health practitioners to follow when a patient is unable to consent.

The Act applies to all health practitioners

The Act applies to all registered health practitioners in the following professions:

- Medical
- Dental
- Physiotherapy
- Occupational therapy
- Chiropractic
- Pharmacy
- Optometry
- Psychology
- Nursing and midwifery
- Medical radiation practice
- Osteopathy
- Chinese medicine
- Aboriginal and Torres Strait Islander health practice

In addition, the Act applies to the following, who are also health practitioners under the Act:

- Paramedics
- Non-emergency patient transport staff.

Medical treatment

Medical treatment is treatment by a health practitioner that is for one or more of the purposes and one of the forms of treatment listed below.

Purpose	Treatment
<ul style="list-style-type: none">• Diagnosing a physical or mental condition• Preventing disease• Restoring or replacing bodily function in the face of disease or injury• Improving comfort and quality of life	<ul style="list-style-type: none">• Treatment with physical or surgical therapy• Treatment for mental illness• Treatment with<ul style="list-style-type: none">- prescription pharmaceuticals- an approved medicinal cannabis product• Dental treatment• Palliative care

Emergency treatment

Consent is not needed in an emergency.

Emergency treatment must not proceed if the health practitioner is aware that the patient has refused the particular treatment in an instructional directive (one kind of advance care directive), or there is a relevant refusal of medical treatment certificate made before 12th March 2018.

In an emergency, a health practitioner is not required to search for an advance care directive that is not readily available.

Record-keeping

A health practitioner needs to record on the patient's clinical records the reasons they were satisfied the patient did not have decision-making capacity.

MBS items that support ACP

There is no dedicated MBS Item for ACP however several MBS items can support ACP as part of other health interventions.

<https://nwmpn.org.au/page/2/?s=Advance+Care+Planning>

Palliative care

A health practitioner is able to administer palliative care to a patient who does not have decision-making capacity for that care, despite any decision of their medical treatment decision maker (or any statement in an advance care directive). However, the health practitioner must have regard to the patient's expressed preferences and values and must consult with their medical treatment decision maker, if any.

Futile treatment

Health practitioners assess whether or not to offer a particular medical treatment, and whether a particular treatment is futile or non-beneficial.

Significant and routine treatment

A health practitioner must seek consent from the Public Advocate to provide significant treatment to a patient who:

- does not have decision making capacity for the medical treatment decision and
- does not have:
 - a medical treatment decision maker or
 - an advance care directive with a relevant instructional directive.

Significant treatment means any medical treatment of a patient that involves any of the following:

- A significant degree of bodily intrusion
- A significant risk to the patient
- Significant side effects
- Significant distress to the patient

For Clinical Guidelines about what constitutes significant treatment <https://www2.health.vic.gov.au/hospitals-and-health-services/patient-care/end-of-life-care/advance-care-planning/medical-treatment-planning-and-decisions-act>

Routine treatment is any treatment that is not significant treatment under the Act. A health practitioner can administer routine treatment without consent if there is no medical treatment decision maker. If they do so, the health practitioner will need to set out in the patient's clinical records the details of:

- The health practitioners attempts to locate an advance care directive and a medical treatment decision maker
- The exact nature of the routine treatment and the reason for the decision to administer it.

Notifications to the Public Advocate

A health practitioner must notify the Public Advocate if:

- The medical treatment decision maker of a patient refuses significant treatment and
- The health practitioner reasonably believes that the preferences and values of the patient are not known, or are unable to be known or inferred.

The health practitioner then awaits the response of the Public Advocate.

More information

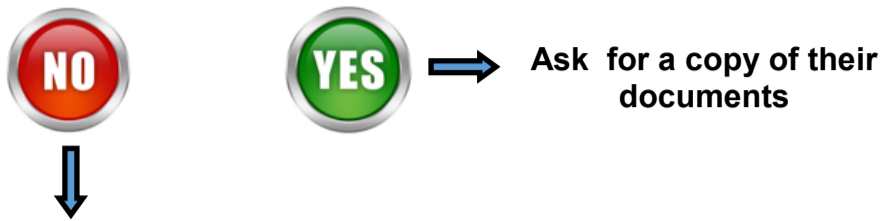
For more information about the Medical Treatment Planning and Decisions Act, visit the OPA website at:

www.publicadvocate.vic.gov.au

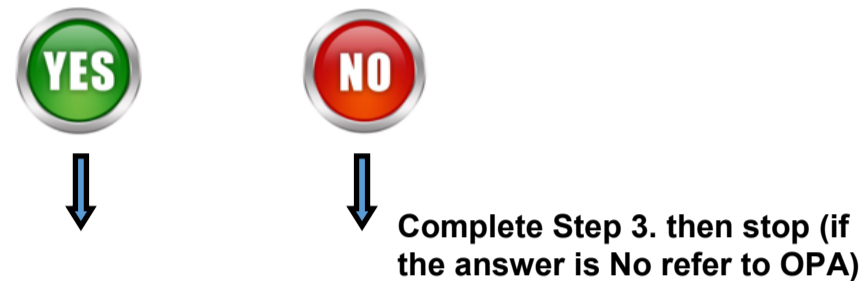
Advance care planning process in general practice

(This document is designed to be used in conjunction with the ACP General Practice Guidelines)

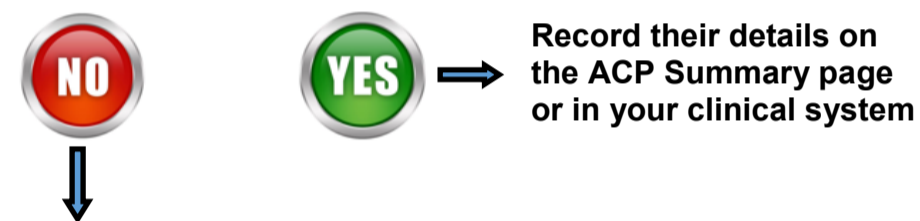
1. Does the patient have existing ACP documentation?



2. Is the patient competent to participate in ACP?



3. Is the person in the patient's MTDM hierarchy appropriate?



4. Does the person want to complete ACP documentation?



5. Storing the plan

Use practice software to record discussions and create alerts

Keep a certified copy in the patient's file—if files are electronic scan it to create a PDF (see below "Communicating the Plan")

Have an agreed processes to code ACDs within practice software so that you can search for patients with an ACD

Store or file ACDs in a designated place – e.g. care plans

6. Communicating the plan

Certified copies are recommended to be distributed to:

1. Local hospital
2. Patient's MTDM and other family/friends
3. With all referrals for specialist care
4. Assist the patient to create a PDF to upload their ACP into MyHealthRecord <https://www.myhealthrecord.gov.au/>
5. A certified copy for paramedics — recommended to be stored on the patient's fridge at home or with their medications

ACP documentation includes evidence of their:

1. MTDM (including previous MEPOAs, POA for personal matters, Guardianship see Note** below)
2. Advance Care Directive

Ensure the documents are valid.

Decision-making capacity

The patient is able to understand the information relevant to the decision, retain the information to the extent necessary to make the decision, use or weigh that information as part of the process of making the decision, and communicate their decision in some way.

Sometimes a relevant specialist may be required to make a capacity assessment.

Medical treatment decision maker list

The first person, 18 years of age or older, in the list below, is the patient's medical treatment decision maker. They must be reasonably available and willing and able to make the decision.

1. An appointed medical treatment decision maker
2. A guardian appointed by VCAT to make decisions about the patient's medical treatment
3. The first person in the list below who is in a close and continuing relationship with the patient:
 - a. spouse or domestic partner
 - b. primary carer (not a paid service provider)
 - c. adult child
 - d. parent
 - e. adult sibling.

If there are two or more relatives who are first on this list, it is the eldest person.

Witnessing documents

For more information and factsheets:

<http://www.publicadvocate.vic.gov.au/medical-consent/information-for-witnesses>

ACD	Appointment of MTDM and support person
For an advance care directive, two adult witnesses are required.	For an appointment of medical treatment decision maker, two adult witnesses are required.
One must be a registered medical practitioner.	One must be a registered medical practitioner or authorised to witness affidavits.
Neither witness can be an appointed medical treatment decision maker for the person.	See the Department of Justice & Regulation website for a list of people authorised to witness affidavits.
	Neither witness can be a person who is being appointed in the document.

Remember the patient owns these documents

Ensure all original documents are returned to the patient once completed and copied as per storing and communicating the plan.

Do not under any circumstances destroy any original documentation.

Local hospital contact details:

Bendigo Health

E-mail: acp@bendigohealth.org.au

Fax: 5454 6435

(Recommended setting 9600 baud, ECM OFF)

Postal address:

PO Box 126

Bendigo

Vic 3552

**Note: Before the Medical Treatment Planning and Decisions Act commenced in 2018, patients may have appointed someone to make their medical treatment decisions in a medical enduring power of attorney, an enduring power of attorney, or enduring power of guardianship. These appointments are still valid.