

LPN Role in Bringing a Personal Directive into Effect

Effective: December 2020

INTRODUCTION

The College of Licensed Practical Nurses and Health Care Aides of Alberta (CLHA) has the authority under the *Health Professions Act* (HPA) to carry out its activities and govern Licensed Practical Nurses (LPNs)* in a manner that protects and serves the public interest.

In Alberta, the *Personal Directives Act* and the *Personal Directives (Ministerial) Regulation* allow individuals over the age of 18 to make a personal directive.

A personal directive enables individuals to name someone they trust to make personal decisions for them if they become incapacitated and are unable to make their own personal decisions.

Healthcare professionals, including LPNs, may be asked to complete a capacity assessment to establish if a personal directive should be in effect.

All LPNs are responsible and accountable for adhering to the *HPA*, the *Licensed Practical Nurses and Health Care Aides Profession Regulation* (LPN and HCA Profession Regulation), *Standards of Practice for Licensed Practical Nurses in Canada*, *Standards of Practice on Restricted Activities, Advanced Practice, and Supervision*, and the *Code of Ethics for Licensed Practical Nurses*. These documents establish the foundation of LPN professionalism in the provision of practical nursing services.

PURPOSE

The purpose of this interpretive document is to guide the LPN involved in the care of a client with a personal directive and to clarify the role of the LPN in bringing a personal directive into effect.

This document is not a substitute for legal advice.

INTERPRETATION

Healthcare professionals may be capacity assessors under the *Personal Directives Act* and *Adult Guardian and Trusteeship Act*. If an LPN is asked to complete a capacity assessment, it is important to clarify the type of capacity assessment they are being asked to complete.

LPNs have the competence and ability to conduct a capacity assessment under the *Personal Directives Act*. However, LPNs are *not* recognized capacity assessors under the *Adult Guardian and Trusteeship Act*.

*In this document, "LPN(s)" has the same meaning as "regulated member(s)" in the *Health Professions Act*.

The purpose of capacity assessments under the *Personal Directives Act* is to determine when a client's pre-existing personal directive will come into effect.

Capacity assessments under the *Adult Guardian and Trusteeship Act* focus on establishing capacity or incapacity of a client to make personal decisions. If a client lacks capacity to make decisions, the *Adult Guardian and Trusteeship Act* transfers the legal authority to make personal decisions from the client to a guardian through the Court system.

In situations where a client's capacity is in question, healthcare professionals must understand their professional and legal responsibilities. LPNs may encounter personal directives in a variety of care settings and it is important to have a clear understanding of the LPN role and responsibilities related to capacity assessments and the specific steps required by legislation.

What is a Personal Directive?

A personal directive is a legal document written by a person as a way to plan for the personal (but non-financial) decisions they may be asked to make in the future. A personal directive comes into effect if the person (the "maker") is found to lack the capacity to make their own personal care decisions.

Who is the 'Maker' or 'Agent' in a Personal Directive?

The person who makes the personal directive is referred to as the 'maker.' The person who the maker names to make personal decisions for the maker is called the 'agent.' When a personal directive is in effect, unless the personal directive provides otherwise, the agent has authority to make decisions on all personal matters of the maker, with the exception of financial matters and decisions about medical assistance in dying.

Individuals may also choose to create a personal directive that provides instructions but does not designate an agent.

As part of person-centered care, the LPN respects and advocates for a care-plan that respects the decisions in a client's personal directive.

What Types of Personal Decisions Can an Agent Make for the Maker?

Under the *Personal Directives Act*, the agent can make personal decisions for the maker of a non-financial nature, including the healthcare they receive, where they live, who can visit them, participation in social activities, and legal matters.

The agent must only make decisions that the maker cannot make themselves. For instance, the maker may be able to make their own decisions about day-to-day matters but not be capable of making major healthcare decisions.ⁱ

A personal directive does not authorize the agent to make financial decisions for the maker. The maker would need to prepare another legal document called an Enduring Power of Attorney for someone to make financial decisions on their behalf.ⁱⁱ

What is "Capacity" Under the Personal Directives Act?

The *Personal Directives Act* defines "capacity" as "the ability to understand the information that is relevant to the making of a personal decision and the ability to appreciate the

reasonably foreseeable consequences of the decision.”ⁱⁱⁱ In other words, having capacity means that a maker understands what could happen if they choose one thing over another.

Under the *Personal Directives Act*, a capacity assessment is used to evaluate whether a maker is capable of making personal decisions. A capacity assessment should only be initiated if there is reason to believe an individual is unable to understand the information needed to make personal decisions and the consequences of those decisions. For more information about capacity assessments under the *Personal Directives Act*, visit the following link:

<https://www.alberta.ca/capacity-assessment.aspx#toc-4>

When Can a Personal Directive Be Brought into Effect?

It is brought into effect if a healthcare professional performs a capacity assessment and determines a client’s lack of capacity under the *Personal Directive Act*. For example, if a maker has a serious illness or injury and it is determined they are unable to make personal decisions, either temporarily or long-term, a personal directive gives the maker’s agent the legal authority to make personal decisions for the individual.

Declaring a Clients’ Incapacity to Make Personal Decisions

When the maker is incapable of making personal decisions, a personal directive may come into effect in two ways. A physician or psychologist will play a central role in both ways of assessing the maker’s capacity. Other service providers, including LPNs, can also play a role in activating a client’s personal directive as detailed below.

When a Personal Directive Designates a Specific Individual to Determine Capacity

The maker of a personal directive may designate a specific individual to make a determination of lack of capacity. This could be a friend, family member or even a service provider. A physician or psychologist must also assess the maker’s capacity before the individual makes a written declaration that the maker lacks capacity.

When a Personal Directive Does Not Designate a Specific Individual to Determine Capacity

When the maker of a personal directive does not designate a specific person to determine a lack of capacity, two service providers may do so. In this situation, one of the service providers must be a physician or psychologist; the other service provider may be an LPN or other healthcare professional.

What the LPN Needs to Do

The *Personal Directives (Ministerial) Regulation* provides a number of forms called ‘Schedules.’ The Schedules include the steps and considerations that need to be followed when making the determination of lack of capacity to make personal decisions. A summary of the Schedules is available in *Appendix 1*.

When an LPN is making a determination of a lack of capacity, it is important they follow these steps and considerations. For instance, the LPN must be able to specify the areas where the

maker lacks capacity and the reasons leading to that decision and document this in the appropriate Schedule.

Prior to completing the appropriate Schedule, the LPN must also meet with the maker to explain that the maker's capacity is being assessed, that the maker has a right to refuse the assessment, and that a finding of lack of capacity will bring the maker's personal directive into effect.

After making a declaration of lack of capacity, the LPN must provide a copy of the declaration to the maker, the maker's agent, if any, and any other person designated in the maker's personal directive, advising them that a determination of lack of capacity has been made and that the maker may make an application to the Court for a review of the determination.

All LPNs who may be involved in determining a maker's lack of capacity or regained capacity are encouraged to read the *Personal Directives Act* and the *Personal Directives (Ministerial) Regulation*. For more information on personal directives visit:
<https://www.alberta.ca/personal-directive.aspx>

Determining Regained Capacity

An LPN may be involved in determining and documenting when a maker has regained the capacity to make decisions about personal matters. This may occur when the agent and/or a service provider notices a significant change in the client and agrees that the client may have regained capacity over personal matters where incapacity was previously designated.

In making an assessment of regained capacity an LPN must again complete the appropriate Schedule. The Schedule will set out the steps to be taken when assessing regained capacity.

Making Decisions in Time-Sensitive Situations

The LPN should be aware that in some cases where client over the age of 18 has lost the capacity to make personal decisions and they do not have a legal guardian or a personal directive, a physician, nurse practitioner, or dentist providing care may choose a specific decision-maker from a ranked list of the client's relatives to make a one-time, time-sensitive decision about the client's health care and/or temporary admission to or discharge from a residential care facility. For more information on specific decision-making please visit:
<https://www.alberta.ca/specific-decision-making.aspx>

CONCLUSION

This document guides LPNs involved in the care of a client with a personal directive and clarifies the role of LPNs in bringing a personal directive into effect.

Documents are updated frequently. For the most current version and access to related documents and resources, please visit the Knowledge Hub on clha.com.

If after reading this document you have questions, please contact the CLHA's Professional Practice Team via practice@clha.com or 780-484-8886 or 1-800-661-5877 (toll free in Alberta).

The LPN's Duties and Obligations in Bringing a Personal Directive into Effect

The LPN should:

- ✓ Determine if the patient has a personal directive.
- ✓ Obtain a copy of the patient's personal directive or a copy of the Declaration of Incapacity, if there is one.
- ✓ Place a copy of it on the patient's chart and document.
- ✓ As part of ongoing patient assessment, determine whether the patient has capacity to make decisions about their daily care; if so, obtain consent for the service or treatment from the patient.
- ✓ Consult with a supervisor and collaborative team members if there is any reason to be unsure of a patient's capacity.
- ✓ If assessing for capacity, meet with the patient to explain the purpose of the assessment, the right to refuse to be assessed, and document the reasons for performing the capacity assessment.
- ✓ Assess for lack of capacity under the *Personal Directives Act*. The LPN should consult with their supervisor about selecting the appropriate Schedule to complete.
- ✓ Complete the appropriate Schedule.
- ✓ Ensure a physician or psychologist has assessed the patient and completed their portion of the appropriate Schedule. A second capacity assessment is required before a patient's personal directive can be brought into effect.
- ✓ Provide a copy of the declaration to the maker, the maker's agent, if any, and any other person designated in the maker's personal directive, advising them that a determination of lack of capacity has been made and that the maker may make an application to the Court for a review of the determination.
- ✓ Recognize that individuals can fluctuate in and out of capacity; capacity should be assessed throughout care. The LPN may need to complete a declaration of regained capacity.
- ✓ Be familiar with the *Personal Directives Act*, applicable competencies, and sections of the code of ethics and standards of practice that may impact this area of practice.
- ✓ Be aware of any existing regulatory and agency policies related to this topic.

Appendix 1: Summary of Schedules Under the *Personal Directives Act*

Assessing for Incapacity

Schedule 1: Personal Directive Template

Schedule 2: Declaration of Incapacity to Make Decisions about a Personal Matter

- Completed by the person named by the maker in the personal directive to assess the maker's capacity; and
- Completed by a physician or psychologist.

Schedule 3: Declaration of Incapacity to Make Decisions about a Personal Matter

- Used when the maker does not specifically name someone to assess their capacity;
- Completed by a physician or psychologist; and
- Completed by another service provider (i.e., LPN).

Assessing for Regained Capacity

Schedule 4: Determination of Regained Capacity

- Used when an agent notices a significant change in the maker's capacity and the service provider agrees that the maker has regained capacity to make personal decisions.

Schedule 5: Determination of Regained Capacity

- Used when a service provider notices a significant change in the maker's capacity to make personal decisions.

Schedule 6: Determination of Regained Capacity

- Used when the agent and a service provider disagree that the maker has regained the capacity to make personal decisions; to be completed by 2 service providers, one of whom is a physician or psychologist.

REFERENCES

ⁱ Centre for Public Legal Education Alberta, *Making a Personal Directive in Alberta* (2014), <http://www.cplea.ca/wp-content/uploads/2015/12/MakingAPersonalDirective.pdf>.

ⁱⁱ Government of Alberta, *Understanding Personal Directives* (2009/2012), <https://open.alberta.ca/dataset/efe6eaec-25a7-4fb1-ba60-4a37546a4c5a/resource/59c2ad84-87f3-40a3-bb37-dde84d571315/download/opg-personal-directives-publication-opg1646.pdf>.

ⁱⁱⁱ *Personal Directives Act*, s 1(b)