Urgent Medical Treatment

There are times when a decision about life-sustaining medical treatment must be made in an emergency. Sometimes there is not enough time to obtain a treatment decision from a person's substitute decision-maker. This factsheet explains the law on urgent (or emergency) medical treatment. It also discusses whether a person should be transferred to hospital for urgent treatment.

Clarifying the law

This factsheet explains:

- When urgent treatment can be provided
- Whether consent to that treatment is required, and who can consent
- Whether a person can refuse treatment in an emergency
- The law relating to resuscitation plans and orders

When can urgent treatment be provided?

Decisions about treatment in emergencies occur regularly in aged care, particularly when a person is approaching the end of life. Many of these decisions relate to providing life-sustaining treatment i.e. treatment that is needed to prolong a person's life. Common examples of this type of treatment in an emergency situation include cardiopulmonary resuscitation, assisted ventilation, and blood transfusions.

In aged care, a decision may also be needed urgently about whether a person should be taken to hospital for treatment.

When consent cannot be obtained

The law about when urgent treatment can be provided if neither a person nor their substitute decision-maker can consent differs between States and Territories.

Generally, it is **lawful for a health professional or personal care worker to provide treatment without consent to a person who does not have capacity if there is an urgent need for treatment e.g. to save a person's life, prevent serious damage to health, or prevent significant pain and distress**.

The treatment given must be necessary to protect the person's life or health at that time.

When consent can be obtained

It may still **be possible in an emergency, before treatment is provided, to obtain consent** either from a **person with capacity, or their substitute decision-maker if the person does not have capacity**.

Consent to treatment may also be given before an emergency situation arises e.g. in a person's Advance Care Directive, or noted on a resident's file. The guardianship and medical treatment decision-making legislation in some States and Territories requires a **health professional to make reasonable efforts (if practical) to find out whether the person has an Advance Care Directive** before giving urgent treatment.

In **South Australia, Western Australia**, the **Northern Territory**, and in some circumstances in **Queensland**, where a person does not have capacity and needs treatment urgently, health professionals must **seek consent from the person's substitute decision-maker if it is possible to do so (e.g. a decision-maker can be located and is available and willing)**.

Though not required by the legislation of other States and Territories, it is still **good practice to obtain a substitute decision-maker's consent if possible**.

If there is a reasonable opportunity to obtain consent and a health professional does not do so, treating the person could result in civil or criminal liability.

Learn more about consent to treatment and capacity in the **End of Life Law Toolkit factsheet** Overview: *Capacity and Consent to Medical Treatment*. (https://www.eldac.com.au/Toolkits/End-of-Life-Law/Capacity-and-Consent-to-Medical-Treatment)

Can urgent treatment be refused?

Urgent treatment **cannot be provided if it has been lawfully refused**:

- by the person if they have capacity (this may be done verbally),
- in a valid Advance Care Directive, or
- by a substitute decision-maker.

A health professional who provides treatment contrary to a lawful refusal commits an assault on the person.

The guardianship and medical treatment legislation in some States and Territories requires health professionals to consider whether the person has previously refused the treatment.

If it is an emergency situation and a health professional does not know whether a refusal of treatment is valid, treatment may be provided while this is being checked.

The law on urgent treatment differs across Australia. Learn more about the law in your **State or Territory** at *End of Life Law in Australia*. (https://end-of-life.qut.edu.au/treatment-decisions/adults/state-and-territory-laws)

Urgent treatment and transfers to hospital

In emergency situations it is not uncommon for health professionals or personal care workers to be uncertain about **whether or not an older person should receive treatment, and/or be transferred to hospital**. This dilemma may occur when, for example:

- A **person with capacity** states they do not want to go to hospital, and/or refuses treatment.
- A **person does not have capacity** and their substitute decision-maker:
  - demands treatment be provided, despite an earlier decision that treatment should not be given; and/or
  - instructs an aged care facility to transfer the resident to hospital for treatment, despite previously deciding the resident should not be transferred.

Remember!

Hospital transfers and treatment provided against the wishes of a person (or which is not in their best interests) may result in unwanted, burdensome or non-beneficial treatment, and can cause distress to the person, their family, and health professionals.

Treatment against a person's wishes may be an assault and can also lead to criminal or civil liability for the health professionals involved.

What you can do

It is important to know how to act in an emergency situation by doing the following:

Aged care facilities

- Upon the resident entering aged care, **have a conversation about Advance Care Planning** with them, or, if the resident does not have capacity, their substitute decision-maker.
- **Discuss what treatment the resident wants or does not want** if an emergency situation arises.
- If the resident wants to **document their end of life decision, learn how this can be done** by reading the End of Life Law Toolkit *Advance Care Directives* factsheet (https://www.eldac.com.au/Toolkits/End-of-Life-Law/Advance-Care-Directives) or visiting *Advance Care Planning Australia* (https://www.advancecareplanning.org.au/#/).
- **If the person already has Advance Care Planning documentation** (e.g. an Advance Care Directive or a resuscitation plan) **ensure it is made known to staff, it is placed in the resident's records, and can be easily located**.

Health professionals and personal care workers

- **Know if the residents you care for have an Advance Care Directive, a resuscitation plan, and/or substitute decision-maker**, and what the residents' documentation says about treatment.
- **Respect the person's treatment decision**. Remember that it is lawful for a person with capacity to refuse to go to hospital or to receive life-sustaining treatment even if it will result in their death.
- **Know your workplaces' policies and procedures** in relation to emergency situations.
- **Know what the law says about providing treatment**. The following End of Life Law Toolkit factsheets can assist: (https://www.eldac.com.au/Toolkits/End-of-Life-Law):
  - Overview: Capacity and Consent to Medical Treatment
  - Advance Care Directives
  - Substitute Decision-Making
  - Withholding and Withdrawing Life-Sustaining Medical Treatment
  - Legal Protection for Administering Pain and Symptom Relief
  - Futile or Non-Beneficial Treatment
  - Managing Disputes about Medical Treatment Decision-Making
  - Overview of Voluntary Assisted Dying.

Resuscitation plans and the law

Some States and Territories have **forms to guide clinical decision-making about cardiopulmonary resuscitation (CPR) in emergencies**. Examples include Resuscitation Plans (New South Wales) and Acute Resuscitation Plans (Queensland).

These forms are generally completed by hospital clinicians (following discussions with a person or their substitute decision-maker while a person is in hospital) to communicate whether emergency CPR would be futile or burdensome, or whether the person does not want that treatment.

If a resident has a resuscitation plan or similar order which refuses treatment, **whether or not you are required to follow it will depend on the laws of your State or Territory, what decisions are being made about CPR, and by whom**. For example, a form recording a person's refusal of CPR could be evidence of a Common Law Advance Care Directive.

For more information read the **End of Life Law Toolkit** *Advance Care Directives* **factsheet**. (https://www.eldac.com.au/Toolkits/End-of-Life-Law/Advance-Care-Directives)

If you are unsure about following a resuscitation plan, ask questions!

If you are unsure about whether or not you should follow a Resuscitation Plan:

- **Discuss your concerns with your manager**. They may wish to seek legal advice about the appropriate course of action.
- **General Practitioners** can seek advice from their medical insurer or medical defence organisation.
- **Learn more about resuscitation plans in your State or Territory** by reading the End of Life Law Toolkit *Urgent Medical Treatment* resources. (https://www.eldac.com.au/Toolkits/End-of-Life-Law/Emergency-Medical-Treatment/Resources)

Key points to remember

1. Although the law differs between States and Territories, generally treatment can be given in an emergency without consent if neither the person nor their substitute decision-maker can consent and there is an urgent need for the treatment e.g. to save the person's life, prevent serious damage to health, or prevent significant pain or distress.
2. In South Australia, Western Australia, the Northern Territory, and in some circumstances in Queensland, the law requires that consent to urgent treatment be sought from a substitute decision-maker if possible (e.g. where a decision-maker is available). It is good clinical practice in all States and Territories to seek consent from a substitute decision-maker if they are available.
3. In some emergency situations it may still be possible to obtain consent to treatment e.g. from a person with capacity. If a health professional could have obtained consent and did not, they may be liable under civil or criminal law.
4. Urgent treatment can be lawfully refused either by a person with capacity; in an Advance Care Directive; or by a person's substitute decision-maker.
5. A person may have a resuscitation plan which provides instructions about resuscitation in an emergency. The law on this is different in each State and Territory.

Mythbusters: Urgent Medical Treatment

Myth 1: Urgent treatment cannot be provided to a person without capacity unless a substitute decision-maker consents.

No. *If a person does not have capacity, and it is not possible to obtain consent from the person's substitute decision-maker, the law allows treatment to be given without consent if it is needed urgently to save a person's life, prevent serious damage to health, or prevent significant pain and distress.*

Myth 2: A health professional can provide urgent treatment to a person with capacity without their consent.

No. *If a person has capacity, a health professional or personal care worker should obtain consent from the person prior to providing that treatment, even in an emergency situation.*

Myth 3: If a person does not have capacity and requires treatment urgently to save their life, a health professional or personal care worker must arrange to transfer them to hospital for treatment.

No. *A person is able (when they have capacity) to refuse treatment, including life-sustaining treatment, even if it will result in their death. A person is also able to refuse to go to hospital if they do not want to receive treatment.*

If a person does not have capacity, a decision about transfer will depend on:

- *whether the person's preferences about hospital transfer or treatment are known (e.g. documented in an Advance Care Directive, or previously stated), or*
- *if they have a substitute decision-maker, the decision of that person.*

The law in Victoria is different. There, consent is not required to transfer a person to hospital in an emergency.

If the person without capacity has previously decided they do not want to receive treatment, their decision should be respected.

If it is not possible to obtain consent to treatment from either the person or their substitute decision-maker, the law allows treatment to be given urgently to save the person's life, prevent serious damage to health, or prevent significant pain and distress. In this case a hospital transfer may occur if it is necessary to enable the person to receive treatment (so long as they haven't previously refused being transferred to hospital).