立法會
Legislative Council

LC Paper No. CB(4)1129/2023(02)

Ref : CB4/BC/12/23

Bills Committee on
Advance Decision on Life-sustaining Treatment Bill

Background brief

Purpose

This paper gives background information on the Advance Decision on Life-sustaining Treatment Bill ("the Bill") and summarizes the major views and concerns of members of the Panel on Health Services ("the Panel") on the Bill and related matters.

Background

2. At present, Hong Kong has no legislation that provides for the legal status of advance medical directives ("AMDs") and do-not-attempt cardiopulmonary resuscitation ("DNACPR") orders. Nevertheless, AMDs are considered legally binding under the common law. According to paragraphs 3 and 5 of the Legislative Council ("LegCo") Brief (File Ref.: HHB CR 2/581/23), both AMD makers and healthcare professionals may encounter practical difficulties and legal concerns in implementing an AMD, including whether or not an AMD may supersede statutory provisions when in conflict. In light of the increasing acceptance of AMDs by patients, their families and healthcare professionals reflected by the growing number of AMDs made, the 2018 Policy Address (see paragraph 195) set out the Administration's plan to allow terminally ill patients more options for their own treatment and a relevant public consultation was then conducted in 2019. The Bill is introduced to implement the relevant legislative proposals.

The Bill

3. The Bill was published in the Gazette on 24 November 2023 and was introduced into the LegCo on 6 December 2023. It seeks to specify that any person aged 18 or above and who is mentally capable of deciding on a life-sustaining treatment may make an AMD. Upon meeting the specified precondition of the instruction stated in the AMD, no medical professionals can perform any life-sustaining treatment specified in the

instructions at the time the person concerned is mentally incapable of deciding on a life-sustaining treatment.

4. The Bill consists of two main parts: (i) the legislative framework for AMDs, to be implemented with the inclusion of model forms,[1] and (ii) the legislative framework for DNACPR orders, to be implemented with the inclusion of statutory forms.[2]

Major views and concerns raised by the Panel on Health Services

5. The Administration briefed members on the legislative framework for end-of-life care legislative proposals with regard to AMDs at the Panel meetings on 8 November and 13 December 2019, and 12 May 2023 respectively. Members in general were supportive to the proposal of introducing clear provisions for AMDs such that if an AMD was both valid and applicable, it had the same effect as a contemporaneous refusal of treatment by a mentally competent person (i.e. the treatment could not be lawfully given). However, members expressed views and concerns on the following issues.

Difference between advance medical directives and euthanasia

6. Some members sought clarification from the Administration about the difference between AMDs and euthanasia, given that a prior instruction to not to receive life-sustaining treatment would have the effect of shortening the life of the maker of an AMD.

7. The Administration explained that AMDs were completely unrelated to euthanasia which was an illegal act of direct intentional killing of a person as part of the medical care. No one in Hong Kong could indicate a wish for receiving euthanasia in an AMD. Healthcare professionals should not act as instructed even if such a wish was expressly requested.

Promotion of advance medical directives

8. Some members were of the view that the Government should promote public awareness and understanding of the concept of AMDs; enhance life-and-death education in the school setting; and endeavour to enlist the support of relevant bodies such as the Medical Council of Hong Kong and Hospital Authority ("HA") in the campaign. Enquiries were raised as to

---

[1] The AMD model forms will be included in Schedule 1 to the Bill. Although the Administration encourages makers to use the model forms, AMDs not adopting the model forms will be effective as long as they comply with the requirements under the Bill.

[2] As defined in the Bill, a DNACPR order is an instrument that directs not to perform cardiopulmonary resuscitation on a person suffering from cardiopulmonary arrest. The statutory forms of a DNACPR order will be included in Schedule 2 to the Bill. DNACPR orders which are not made in accordance with the statutory forms will not be effective.

whether the Administration would consider requiring all patients planning to undergo operation to make AMDs.

9. The Administration advised that it would work with HA to consult and disseminate information about AMDs to the healthcare sector, legal profession, patient groups and non-governmental organizations providing healthcare-related services for patients, with a view to enhancing public understanding of the concept and enabling an informed choice by those who wished to make AMDs. The Administration however had no plan to actively advocate or encourage the making of AMDs as it remained voluntary.

Introduction of an electronic and centralized registration system for advance medical directives

10. A number of members considered that the Administration should introduce an electronic and centralized registration system for AMDs, which would not only facilitate access by healthcare professionals in case of emergency and effective record-keeping, but also prevent forgery and use of invalid copies of directives as well as unauthorized revocation of directives by third parties, thereby avoiding disputes and confusion.

11. The Administration advised that AMDs would be made under the principle of "cautious making, easy revoking" to provide stringent protection to the maker and facilitate its revocation. The Administration proposed that the instructions be made in paper form, and if patients changed their minds, they could choose not to display, delete their signature, tear, burn, or destroy the instructions in other ways. Patients could also revoke their instructions orally in the presence of witnesses. As to how to prevent forgery and the use of invalid copies of instructions, the Administration advised that copies had to be certified as true copies by a medical practitioner or solicitor. Each copy was numbered to facilitate the maker to check the number of copies and revoke them as necessary.

12. According to the LegCo Brief, having taken into account the abovementioned suggestions made by members, the Bill now provides for the digital storage of AMDs in an electronic system designated by the Secretary for Health, and allows for a scanned and digitized copy of the paper form AMD stored in such a designated electronic system to be accepted as proof of validity of instructions in the AMD. Furthermore, the Health Bureau was also exploring the feasibility of enabling the making of AMD direct in digital form.

No less than two witnesses should be in attendance when making an advance medical directive

13. Some members expressed concern that since it was proposed that both witnesses for making an AMD should not have an interest in the estate of the person making the AMD, those immediately family members of a patient who had interest in the estate of the patient might hence not be aware of the AMD of the patient. This might cause disputes among family members regarding the patient's wishes.

14. The Administration and HA replied that when patients received end-of-life treatment, their families would be involved and aware of the patients' wish to make an AMD. HA's "Guidelines on Advance Care Planning for Hospital Authority" also emphasized the communication process, which was believed to avoid unawareness or disputes afterwards.

15. Some members enquired whether the future legislative proposal in respect of AMDs would include a definition of "family member". The Administration explained that the only proposed requirements concerning the two witnesses of an AMD were that one witness had to be a medical practitioner, and both persons had no interest in the estate of the maker of an AMD. The witness did not need to be a family member.

Requirements for persons making advance medical directives

16. There was concern over the arrangement of AMDs for mentally incompetent persons. According to the Administration, its proposal was that only those AMDs made by a person who was aged 18 or above and was mentally competent would be legally valid. An AMD did not require formal assessment of the person's mental capacity by psychiatrists unless circumstances suggested it.

17. Some members suggested that the Administration should provide clear guidelines on how to assess whether a patient was "mentally competent" when a medical practitioner acted as a witness. They considered that it was sufficient for a medical practitioner to make a simple assessment to satisfy himself that the maker was mentally competent at the time the direction was made. The Administration responded that it would include relevant details in the Ordinance to facilitate the enforcement of the legislation.

Arrangements of making and revoking advance medical directives

18. There was concern that the Government would introduce in the Bill the modes of revoking AMDs and making new ones, instead of the

arrangements of modifying AMDs as proposed in the consultation report. Pointing out that as re-making of an AMD required two witnesses, members raised concern as to whether it would hinder the maker from amending an AMD and suggested the Administration to consider streamlining the relevant process. The Administration noted members' suggestion.

Whether or not to accept an electronic form or copy of do-not-attempt cardiopulmonary resuscitation orders

19. Regarding whether or not to accept an electronic form or copy of DNACPR orders, according to the LegCo Brief, a DNACPR order must be made by two registered medical practitioners. The order must be made in writing, and a statutory form must be used for the making of a DNACPR order to achieve easy identification and verification. Electronic form or copy of DNACPR orders is considered impracticable given that DNACPR orders would be invoked outside hospital settings in emergency situations, where split-second decisions are required to be made and the use of physical statutory form in writing provides medical carers and rescuers with greater certainty and clarity.

Latest position

20. At the House Committee meeting on 8 December 2023, Members agreed to form a Bills Committee to scrutinize the Bill.

Relevant papers

21. A list of relevant papers is in the **Appendix**.

Council Business Division 4
Legislative Council Secretariat
2 January 2024

Appendix

Bills Committee on Advance Decision on Life-sustaining Treatment Bill

List of relevant papers

Committee	Date of meeting	Paper
Panel on Health Services	19 July 2004	Agenda (Item VI): Consultation Paper on Substitute Decision-making and Advance Directives in relation to Medical Treatment Minutes
	8 December 2008	Agenda (Item IV): Advance directives in relation to medical treatment Minutes
	8 November 2019	Agenda (Item III): End-of-life care: Legislative proposals on advance directives and dying in place Minutes
	13 December 2019	Agenda (Item V): Meeting with deputations on legislative proposals on advance directives and dying in place Minutes
	24 July 2020*	Information paper provided by the Administration on the outcome and way forward of the public consultation on end-of-life care legislative proposals regarding advance directives and dying in place
Joint Subcommittee on Long-term Care Policy	12 December 2017	Agenda (Item II): Hospice services Minutes Follow-up paper
Research Office of the Information Services Division of the Legislative Council Secretariat	6 June 2019*	Essentials entitled "Advance healthcare directives of patients"

Committee	Date of meeting	Paper
Introduction of the Advance Decision on Life-sustaining Treatment Bill into the Legislative Council	6 December 2023	Bill Legislative Council Brief Legal Service Division Report

* *Issue date*

Council meeting	Paper
28 June 2023	Question 6: Making the "Three Instruments of Peace"

Council Business Division 4
Legislative Council Secretariat
2 January 2024