

**Progress of the Administration's follow-ups on the recommendations in
Law Reform Commission's Report entitled "Substitute Decision-making and Advance
Directives in Relation to Medical Treatment"**

	LRC's recommendations	Progress of the Administration's follow-ups
1.	<ul style="list-style-type: none"> • The concept of advance directives should be promoted initially by non-legislative means. • The Government should review the position in due course once the community has become more widely familiar with the concept and should consider the appropriateness of legislation at that stage, taking into consideration three factors, namely, how widely the use of advance directives had been taken up; how many disputes had arisen; and the extent to which people had accepted the model form of advance directive. 	<ul style="list-style-type: none"> • We share LRC's views. In Hong Kong, some people still regard it a taboo to discuss the issue of terminal care and death and the public at large are not familiar with the concept of advance directives. As such, we agree that it is not the appropriate time to implement advance directives at this stage through any form of legislation. • In December 2009, the Administration published a consultation paper entitled "Introduction of the Concept of Advance Directives in Hong Kong" to seek the views of the relevant stakeholders.
2.	<ul style="list-style-type: none"> • The publication and wide dissemination of the model form of advance directive LRC proposes. • The use of the model form should be encouraged. 	<ul style="list-style-type: none"> • The model form of advance directives was already included in the Consultation Paper on the "Introduction of the Concept of Advance Directives in Hong Kong". • The Hospital Authority prepared the model form of advance directives in July 2010 and uploaded it onto the Internet for reference by healthcare professionals and the public.
3.	<ul style="list-style-type: none"> • Appropriate publicity should be given to encourage individuals to consider and complete advance 	<ul style="list-style-type: none"> • The making of an advance directive is entirely a personal decision. We must respect individuals' freedom of making

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	<p>directives in advance of any life-threatening illness.</p>	<p>personal decisions and at the same time promote suitable public education on this subject with care and allow sufficient time and room for healthcare professionals and the public to understand and familiarise themselves with the concept of advance directives, with a view to introducing the concept of advance directives in Hong Kong in a gradual and progressive manner.</p> <ul style="list-style-type: none"> ● The Hospital Authority prepared the model form of advance directives in July 2010 and uploaded it onto the Internet for reference by healthcare professionals and the public. ● When discussing arrangements for terminal care with patients who are suffering from terminal or serious irreversible diseases, HA's healthcare professionals will provide information on advance directives and the model form as necessary for reference by the patients.
4.	<ul style="list-style-type: none"> ● The Government should launch publicity programmes to promote public awareness and understanding of the concept of advance directives. ● Department of Health and all District Offices should have available for public reference material which provides general guidance to the public on the making and consequences of an advance directive and should provide copies 	<ul style="list-style-type: none"> ● Same as the above.

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	of the model form of advance directive for public use.	
5.	<ul style="list-style-type: none"> The Government should endeavour to enlist support of the Hong Kong Medical Council, medical associations, the Bar Association, the Law Society, the Hospital Authority, all hospitals and clinics, non-governmental organisations involved in care for the elderly, and religious and community groups in this information campaign about the use and effect of advance directives. 	<ul style="list-style-type: none"> The Administration published the Consultation Paper on "Introduction of the Concept of Advance Directives in Hong Kong" in 2009 and sought the views of the healthcare sector, legal profession, patient groups, and non-governmental organisations providing healthcare-related services for patients.
6.	<ul style="list-style-type: none"> For the purpose of making an advance directive, the terms "terminally ill" and "life-sustaining treatment" should be defined as follows: <ul style="list-style-type: none"> a) the "terminally ill" are patients who suffer from advanced, progressive, and irreversible disease, and who fail to respond to curative therapy, having a short life expectancy in terms of days, weeks or a few months. b) "life sustaining treatment" means any of the treatments which have the potential to postpone the patient's death and includes, for example, cardiopulmonary resuscitation, artificial ventilation, blood products, pacemakers, vasopressors, specialised 	<ul style="list-style-type: none"> The Administration is well aware of LRC's definition of the two terms "terminally ill" and "life-sustaining treatment" for the purpose of making an advance directive.

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	<p>treatments for particular conditions such as chemotherapy or dialysis, antibiotics when given for a potentially life-threatening infection, and artificial nutrition and hydration. Artificial nutrition and hydration means the feeding of food and water to a person through a tube.</p>	
7.	<ul style="list-style-type: none"> • The model form of advance directive requires that it be witnessed by two witnesses, one of whom must be a medical practitioner, neither witness having an interest in the estate of the person making the advance directive. • The Government should encourage bodies such as the Hospital Authority, the Medical Council, the Hong Kong Medical Association and other relevant professional bodies to consider issuing guidelines for doctors witnessing the making of advance directives to ensure consistency of medical practice in this area. The guidelines should also provide guidance for the medical profession (a) as to the effect of advance directives and (b) in assessing the validity of an advance directive. • If in circumstances an individual is unable to make a written advance directive, he should make the oral advance directive before a doctor, 	<ul style="list-style-type: none"> • The Hospital Authority already formulated a guidance note and prepared a model form and a set of concise questions and answers on advance directives in July 2010 for reference by healthcare professionals and the public. • These documents have provided guidance on the requirements relating to witnesses, as well as the applicability, revocation and amendment of advance directives.

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	lawyer or other independent person who should not have an interest in the estate of the person making the advance directive.	
8.	<ul style="list-style-type: none"> • For the sake of certainty and avoidance of doubt, those wishing to revoke an advance directive should be encouraged to do so in writing. • If an advance directive is revoked in writing, it should be witnessed by an independent witness who should not have an interest in the estate of the person making the revocation. • If an advance directive is revoked orally, the revocation should be made before a doctor, lawyer or other independent person who should not have an interest in the estate of the person making the revocation, and where practicable that witness should make a written record of the oral revocation. • If medical staff learn that an individual has revoked his advance directive, that information should be properly documented in the individual's medical records. 	<ul style="list-style-type: none"> • Same as the above.
9.	<ul style="list-style-type: none"> • The Government should, as part of its public awareness campaign about advance directives, encourage those who wish to make an advance directive to seek legal advice and to discuss the matter first with their 	<ul style="list-style-type: none"> • According to the guidance note of the Hospital Authority, those who wish to make advance directives will be encouraged to discuss the matter first with their family members.

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	family members. Family members should also be encouraged to accompany the individual when he makes the advance directives.	
10.	<ul style="list-style-type: none"> ● It is recommend that the definition of “mentally incapacitated person” for the purposes of the application of Parts II and IVC of the Mental Health Ordinance (Cap. 136) should be amended along the following lines: <ol style="list-style-type: none"> 1. For the purposes of Parts II and IVC, a mentally incapacitated person is a person who is at the material time - <ol style="list-style-type: none"> a) unable by reason of mental disability to make a decision for himself on the matter in question; or b) unable to communicate his decision on that matter because he is unconscious or for any other reason. 2. For the purposes of subsection (1), a person is at the material time unable by reason of mental disability to make a decision if, at the time when the decision needs to be made, he is – <ol style="list-style-type: none"> a) unable to understand or retain the information relevant to the decision, 	<ul style="list-style-type: none"> ● The Administration notes that in these few years there are ongoing developments in the knowledge and concepts in the field of mental health as well as corresponding changes to the relevant terminologies in the legislation under other jurisdictions. ● In addition, there have been new developments in the overall development of mental health services in recent years. The international trend in treatment of mental illness is to gradually focus on community and ambulatory services, and to allow the early discharge of mental patients when their conditions are stabilised for treatment in the community. For example, there are proposals that the Government should introduce the Community Treatment Order, the implementation of which would require amendment of the Mental Health Ordinance. The Administration is studying the proposal and will consider the need to amend relevant legal provisions having regard to the result of the study, in order to cater for local needs and at the same time align with the international development of legislation and medical services of mental health.

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	<p>including information about the reasonably foreseeable consequences of deciding one way or another or of failing to make the decision; or</p> <p>b) unable to make a decision based on that information.</p> <p>3. In subsection (1), "mental disability" means –</p> <p>a) mental illness;</p> <p>b) a state of arrested or incomplete development of mind which amounts to a significant impairment of intelligence and social functioning which is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned;</p> <p>c) psychopathic disorder;</p> <p>d) mental handicap; or</p> <p>e) any other disability or disorder of the mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental</p>	<ul style="list-style-type: none"> • The Administration will examine the definition of the term "mentally incapacitated person" in the overall context of the law in the light of such developments, and consult relevant parties, including mental health experts. Looking ahead, the Administration will consider appropriate legislative changes under a broad and composite proposal in the long term, after a comprehensive review of the relevant mental health legislation, medical and social rehabilitative services.

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	<p>functioning.</p> <p>4. A person shall not be regarded as unable to understand the information referred to in subsection (2)(a) if he is able to understand an explanation of that information in broad terms and in simple language.</p> <p>5. A person shall not be regarded as unable by reason of mental disability to make a decision only because he makes a decision which would not have been made by a person of ordinary prudence.</p> <p>6. A person shall not be regarded as unable to communicate his decision unless all practicable steps to enable him to do so have been taken without success.</p>	
11.	<ul style="list-style-type: none"> ● It is recommend that the definition of "mentally incapacitated person" for the purposes of the application of Part IVB of the Mental Health Ordinance (Cap. 136) should be amended along the following lines: <p>1. For the purposes of Part IVB, a mentally incapacitated person is –</p> <p>a) a person suffering from</p>	<ul style="list-style-type: none"> ● Same as the above.

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	<p>mental disorder;</p> <p>b) a person who is mentally handicapped; or</p> <p>c) a person who is unable to communicate his views and wishes because he is unconscious or for any other reason.</p> <p>2. A person shall not be regarded as unable to communicate his views and wishes unless all practicable steps to enable him to do so have been taken without success.</p>	
12.	<ul style="list-style-type: none"> • The Government should encourage the Hong Kong Medical Council or other relevant professional body to issue guidelines or a code of conduct to enhance consistency of medical practice in relation to - <ol style="list-style-type: none"> 1. the assessment of a person's ability to communicate; 2. the treatment of persons in a vegetative or comatose state; 3. the criteria for basic care; 4. the assessment of the validity of an advance directive; and 5. the implementation of advance 	<ul style="list-style-type: none"> • The Consultation Paper on the "Introduction of the Concept of Advance Directives in Hong Kong" was published in December 2009 to consult stakeholders on whether guidance notes should be formulated on procedural matters relating to advance directives. • The Medical Council of Hong Kong indicated that its Ethics Committee would study the subject in greater details and to consider whether guidelines on executing advance directives should be drawn up for reference by healthcare professionals. • Recently the Medical Council of Hong Kong advised us that its Ethics Committee had encountered a lot of difficulties in drafting the guidelines on

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	directives.	advance directives, e.g. ascertaining the validity of an advance directive. The Medical Council of Hong Kong is of the view that a legal framework should be formulated for advance directives to afford protection for both patients and healthcare professionals. In this connection, we will continue to follow up with the Medical Council of Hong Kong on the matter.