Introduction
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 unable to make their own personal decisions. Licensed Practical Nurses (LPNs) may be asked by employers to participate in bringing a client’s personal directive into effect i.e., when a personal directive comes into effect, another individual is legally authorized to make personal decisions on behalf of the client.

If an LPN is asked to complete a capacity assessment, it is important to clarify the type of capacity assessment being asked to complete. LPNs have the competence to conduct a capacity assessment under the Personal Directives Act however, as will be presented in this document, LPNs are not recognized capacity assessors under the Adult Guardian and Trusteeship Act.

As with all aspects of nursing practice the LPN is reminded to apply the LPN profession’s Standard of Practice and Code of Ethics, and work within the competencies outlined in the Competency Profile for LPNs, Edition.

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 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, except for financial matters and decisions about medical assistance in dying.

It is important to note that individuals may also choose to create a personal directive that leaves instructions but does not designate an agent.

A personal directive is 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.

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 health care 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 health care decisions.

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.7

When Can a Personal Directive Be Brought into Effect? If a maker has a serious illness or injury and becomes temporarily or long-term, a personal directive gives the maker’s agent the legal authority to make personal decisions for the individual. LPNs may see personal directives in all practice settings but more so may become aware of a client’s personal directive when providing nursing care in home care, supportive living and long-term care settings.

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.”8

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.

The LPN Role in Declaring a Client’s 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. The two ways are:

1. 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; or

2. When the maker of a personal directive does not designate a specific person to determine 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 health service provider.

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.

It is important that the LPN 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.

Determining Regained Capacity The 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 individual and agrees that the individual may have regained capacity over personal matters where incapacity was previously designated.

In making an assessment of regained capacity the LPN must complete the appropriate Schedule. The Schedule sets out the steps to be taken when making an assessment of regained capacity. 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 and specific information on capacity assessments visit the following link: http://www.humanservices.alberta.ca/guardianship-trusteeship/personal-directives-how-it-works.html.

**Capacity Assessments under the Adult Guardian and Trusteehip Act** It is important for LPNs to know that capacity assessments under the Adult Guardian and Trusteehip Act are different and more complex than capacity assessments under the Personal Directives Act. LPNs are not authorized capacity assessors for the purposes of capacity assessments under the Adult Guardian and Trusteehip Act.

Under the Adult Guardian and Trusteehip Act, an individual’s capacity is determined by the Courts. These capacity assessments are clinical opinions provided to the Courts by trained and government approved capacity assessors. “Capacity” under the

**Adult Guardian and Trusteehip Act** is a legal decision made by the Court based on evidence from the capacity assessment report. The Adult Guardian and Trusteehip Act lists physicians, psychologists, social workers, occupational therapists, registered nurses and registered psychiatric nurses as authorized capacity assessors once they have met certain eligibility requirements, such as additional education and training which are set out in the Regulations.

With the Adult Guardian and Trusteehip Act, if the client does not have a personal directive and they lose the capacity to make personal decisions, a friend or family member may apply to the court to become the client’s legal guardian. Applying for guardianship is a complex and potentially lengthy process through the Court system. The client does not initiate this process.

**Making Decisions in Time-Sensitive Situations** The LPN should be aware that in some cases where an adult client 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: http://www.humanservices.alberta.ca/guardianship-
If after reading this document you have questions about the LPN’s role in activating a client’s personal directive please contact a CLPNA Practice Consultant at practice@clpna.com, 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 client has a personal directive.
✓ Obtain a copy of the client’s personal directive or a copy of the Declaration of Incapacity, if there is one.
✓ Place a copy of it on the client’s chart and document.
✓ As part of ongoing client assessment, determine whether the client has capacity to make decisions about their daily care; if so, obtain consent for the service or treatment from the client.
✓ Consult with a supervisor and collaborative team members if there is any reason to be unsure of a client’s capacity.
✓ Meet with the client 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 client and completed their portion of the appropriate Schedule. A second capacity assessment is required before a client’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; so capacity should be assessed at all times. 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 who is a physician or psychologist.
PUBLISHED SUPPORTIVE DOCUMENTS

This Practice Guideline is linked to other supportive documents:

Interpretive Documents: Professional Responsibility & Accountability

Fact Sheet: Scope of Practice for Licensed Practical Nurses

REFERENCES

2. Personal Directives Act (Ministerial) Regulation, Alta Reg 26/98.