

Initial responsibilities of a health care provider guideline

Foreword

This Guideline has been produced by the Public Guardian and Trustee under section 55(b) of the *Health Care Decision Making Act 2023*. The [Public Guardian and Trustee website](#) provides more information on decision making capacity, the health care decision making principles and information that health care decision makers are entitled to receive prior to making a decision.

Before using this guideline please download the latest version from the Public Guardian and Trustee website.

This guideline does not apply to health care decisions for people under 18 years of age.

Acknowledgement of Country

The Public Guardian and Trustee acknowledges the Aboriginal and Torres Strait Islander peoples with whom we work and for whom we provide a service. We pay our respect to the Ancestors, Elders and Aboriginal communities who are the custodians of this land.

Public Guardian and Trustee Guideline Initial responsibilities of a health care provider

© Public Guardian and Trustee, Northern Territory 2024

The term 'Aboriginal' is used respectfully in this guideline to refer to all people of Aboriginal and Torres Strait Islander descent who are living in the Northern Territory.

You can download this guideline free from our website.

Disclaimer – This guideline provides general information and does not constitute legal advice. The Public Guardian and Trustee expressly disclaims liability in respect of any action taken in reliance on the contents.

About this Guideline

This Guideline is developed pursuant to section 55(b) of the *Health Care Decision Making Act 2023* which commenced on 1 July 2024.

It must be followed by any individual who provides health care (health care provider) before administering health care for a person with impaired decision making capacity.

See full suite of Health Care Decision Making Act resources for health care providers:

[Adult health care consent flowchart](#)

[Determining the appropriate health care decision maker guideline](#)

[Determining decision making capacity for a health care decision guideline](#)

[Routine health care guideline](#)

[Making health care decisions guideline](#)

Am I a health care provider?

A health care provider is any individual who provides 'health care'. Health care is broadly defined as any kind of health care, including the following services or anything provided as part of the following services:

- (a) services provided by a health practitioner under the Health Practitioner Regulation National Law;
- (b) hospital services;
- (c) mental health services;
- (d) pharmaceutical services;
- (e) ambulance services;
- (f) community health services;
- (g) health education services;
- (h) welfare services necessary to implement any services referred to in paragraphs (a) to (g);
- (i) services provided by dietitians, massage therapists, naturopaths, social workers, speech pathologists, audiologists or audiometrists;
- (j) pathology services;
- (k) the removal of tissue from an adult's body in accordance with Part 2 of the *Transplantation and Anatomy Act 1979*
- (l) Assessments conducted by a health care provider for the purpose of assessing current or future health care requirements is taken to be a form of health care. For example, an aged care assessment made in relation to care under the *Aged Care Act 1997* (Cth)

Initial responsibilities of a health care provider

Before administering health care to a person, a health care provider must gain consent from the person or other person with legal authority (unless in an emergency).

It is the responsibility of the health care provider who would administer the health care to determine the person's decision making capacity for the particular decision¹, follow any directions

¹ Section 24 *Health Care Decision Making Act 2023* (NT)

provided in an Advance Personal Plan and contact the health care decision maker(s) when the person cannot consent for themselves².

See [Adult health care consent flowchart](#) for further information.

Health care providers must make 'reasonable efforts' in the circumstances to follow the below steps prior to administering health care to an adult with impaired decision making capacity:

Note – The below responsibilities are subject to s39 of the Health Care Decision Making Act 2023 regarding administration of health care in urgent circumstances.

- 1. Ascertain if the adult made an advance consent decision** in an Advanced Person Plan in relation to the health care³.

Note - a health care provider has authority to administer health care to an adult with impaired decision making capacity in accordance with the adult's advance consent decision in relation to the health care, without the consent of a health care decision maker⁴.

See [Adult health care consent flowchart](#)

- 2. Contact the appropriate health care decision maker** for the adult with impaired decision making capacity (if after reasonable efforts the health care provider is not aware of an advance consent decision)⁵.

Including ascertaining if the person is subject to a Guardianship Order in relation to health care.

Note - Health care providers must keep a written record of the provider's efforts to comply with (1) and (2)⁶.

'Reasonable efforts' means exhausting the below actions where they are appropriate to the situation:

- Asking the person directly
- checking health records including any MyHealth Record
- making enquiries with the person's general practitioner or other relevant health provider
- contacting the Public Trustee who retain a register of Advance Personal Plans
- making enquiries with the person's emergency contact or similar
- making enquires with the person's residence if a supported accommodation such as an aged care facility or disability accommodation
- checking with key contacts in remote communities such as the health clinic or the council if appropriate and/or possible
- asking visitors such as family, friends and carers
- looking for a wallet card identifying the existing of an Advance Personal Plan or equivalent document
- checking personal belongings for a copy

It is recommended that health care providers routinely ask whether a person has an Advance Personal Plan or equivalent interstate advance care document. Where possible, a copy should be retained in the health records.

² Section 23 Health Care Decision Making Act 2023

³ Section 23(1) *ibid*

⁴ Section 23(2) *ibid*

⁵ Section 23(3) *ibid*

⁶ Section 23(4) *ibid*

3. Determine the need for a health care decision maker

The health care provider who would administer the health care must first determine⁷:

- (a) the extent of the adult's impairment in relation to the decision; and
- (b) whether the impairment is likely to be temporary or permanent; and
- (c) whether the health care decision maker needs to exercise authority to make the decision in the circumstances.

This determination must be done in collaboration with the health care decision maker if reasonably practicable⁸.

A health care decision maker may be able to provide important information about the person's communication or support needs that should be addressed prior to a determination of capacity. A person is taken to understand information relevant to the health care decision if they understand it once provided to them in a way that is appropriate to their circumstances⁹. For example, once provided with visual aids or an interpreter.

See [Determining decision making capacity for a health care decision guideline](#)

Note - *If the health care provider determines the adult's impairment to be temporary, any health care provided to the adult must be limited to what is necessary during the expected period of impairment¹⁰.*

Other responsibilities of health care provider¹¹

Nothing in the *Health Care Decision Making Act 2023* affects any other duty of care owed by a health care provider to a person.

Nothing in the *Health Care Decision Making Act 2023* relieves a health care provider from the requirement to comply with any of the following in administering health care under the Act:

- (a) another law of the Territory;
- (b) any requirements applicable to the health care provider by any relevant professional organisation;
- (c) any operational requirements for the administration of the health care.

Liability of health care providers¹²

A health care provider who, in good faith and without negligence, administers or does not administer health care to a person in accordance with the *Health Care Decision Making Act 2023* and believes on reasonable grounds that the requirements of this Act have been complied with is not:

- (a) guilty of an offence; or
- (b) liable for unprofessional conduct or professional misconduct; or
- (c) liable in any civil proceeding; or
- (d) liable for contravention of any code of conduct.

⁷ Section 24 *Health Care Decision Making Act 2023*

⁸ Section 24(2) *ibid*

⁹ Section 8(3) *ibid*

¹⁰ Section 24(3) *ibid*

¹¹ Section 33 *ibid*

¹² Section 57 *Health Care Decision Making Act 2023*