

Routine health care guideline

Foreword

This Guideline has been produced by the Public Guardian and Trustee under section 55(d) 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

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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.

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About this Guideline

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

It must followed by any individual who provides health care (health care provider) when administering health care to an adult with impaired decision making capacity.

The *Health Care Decision Making Act 2023* enables health care providers to proceed with health care that will not cause significant distress, pain, side effects or risk when the person is agreeable (routine health care) without consent of the health care decision maker.

This guideline intends to clarify the circumstances in which health care is considered 'routine' and define 'significant' treatment for which consent from a health care decision maker is required.

Consent to 'routine' health care

Consent should be approached in the same way for all people, irrespective of the person's disability or the nature of the health care.

- **Presumption of capacity** - All adults are presumed to have capacity to make health care decisions despite their disability or other impairment unless there is evidence to the contrary¹;
- **Consultation** - All individuals should be directly consulted to understand their views about the health care;
- **Promote autonomy as far as possible** - Reasonable efforts should be made to support the person to understand the health care and communicate their wishes;
- **Provide support to the person to make their own decision** to consent/refuse - Reasonable efforts should be made to provide any practicable support appropriate to the circumstances to assist the adult in making the health care decision.

Administering 'routine' health care to a person with impaired decision making capacity is no different. The person must be consulted directly on the health care to be provided, this may involve consultation with the health care decision maker.

If the person is objecting in any way, the health care provider cannot proceed and must discuss further with the health care decision maker.

If the person is agreeable, implied consent can be accepted and health care provider may proceed without consent of the health care decision maker².

When do I need consent from a health care decision maker?

Consent is required from the **health care decision maker** if:

- The person has impaired decision making capacity for the health care needed and
- The health care is 'significant' (including when the person is objecting to 'routine' health care)³

¹ Section 5 *Health Care Decision Making Act 2023* (NT)

² Section 25 *ibid*

³ Section 25(3) *ibid*

Consent is **not** required from a health care decision maker when the health care is:

- 'Routine' - implied consent from the person must be present to proceed. Gaining implied consent may include consultation with the health care decision maker⁴.
- An emergency - necessary, as a matter of urgency to save the individual's life, prevent serious damage, suffering, pain or distress⁵.

See [Flowchart - Adult health care consent](#)

See [Guideline - Determining the appropriate health care decision maker](#)

Note - Any practice or intervention used to restrict the rights or freedom of movement of people with disability, for the purpose of managing their behaviour in order to protect the person, other people from harm (Restrictive Practice) must be approved in accordance with the HCDM Act and s54 Directions by the Senior Practitioner.

For further information - See [Senior Practitioner Directives](#) on the [NT Health website](#)

What is meant by 'routine' and 'significant' treatment?

'Routine' treatment is defined in the *Health Care Decision Making Act 2023* in relation to the impact the health care has on the person rather than the frequency the procedure is performed within the health care setting. A routinely performed treatment is not necessarily 'routine' for the purposes of understanding consent pathways for a person with impaired decision making capacity.

Significant treatment is any medical treatment of a person that which is:

- (a) is objected to by the adult; or
- (b) consists of an ongoing course of treatment; or
- (c) causes a significant degree of intrusion into the body of the adult; or
- (d) creates a significant risk of harm to the adult; or
- (e) causes significant side-effects to the adult; or
- (f) causes significant pain or distress to the adult.

Routine treatment is any treatment that is not significant treatment and includes hygiene and grooming⁶.

Understanding impact on the person

Possible examples of 'routine' and 'significant' treatment types are listed below, however, the treatment type alone is not the deciding factor in determining whether or not a treatment is considered 'routine' or 'significant' but rather how the treatment impacts the particular person.

For example -

An adult with impaired decision making capacity requires stitches under local anaesthetic. Whilst the health care itself is considered routine, the determination must be made in relation to the impact on the person.

If the person is indicating they want the health care, it doesn't cause them significant distress and the

⁴ Section 25(1) *Health Care Decision Making Act 2023* (NT)

⁵ Section 39 *ibid*

⁶ Section 25 *ibid*

risks are minimal then the health care provider can proceed on the implied consent of the person.

If the same person indicated they didn't want the health care, or it caused them significant distress or represented significant risk then the same health care would be considered 'significant' even though a relatively minor procedure.

The process of understanding the impact of the health care on a person with impaired decision making capacity should involve support to the person to understand information provided about the health care and to communicate their views about it. This may involve providing the person with information and support appropriate to the circumstances such as:

- Complex communication support via modified language, visual aids or other means;
- Use of an interpreter;
- Information tailored to the needs of the person;
- Access to support people or support personnel such as a Social Worker or Aboriginal Liaison Officer;
- more time for explanation, to discuss options and/or to make a decision.

Note - An adult does not have impaired decision-making capacity merely because they need help to understand or retain information or communicate their decision⁷.

See [Guideline - Determining decision making capacity for a health care decision](#) for further information.

Identifying significant distress

Medical treatment that is otherwise routine may become significant, because of the significant distress it causes the person⁸.

Health care providers must assess significant distress according to the particular circumstances of the person. The person's response in light of their ordinary behaviour and their current presentation should be considered in order to determine whether the health care will cause significant distress.

Examples of 'routine' and 'significant' treatments⁹

The below examples provide guidance on treatments that could be considered 'routine' and 'significant'. Noting that all 'routine' treatment examples could become 'significant' depending on the impact on the particular person whereas treatments listed as 'significant' should remain as such regardless of the impact on the person.

Surgical

In considering whether a surgical health care is significant or routine, a health care provider must recognise that just because a health practitioner routinely performs a procedure, this does not mean that it is routine health care.

Where surgery will cause significant distress or significant risk of side effects or harm to the person the surgery will be significant even though it might be an example below of routine health care.

Any surgical treatment that requires general anaesthetic will be significant.

⁷ Section 3 & 4 Health Care Decision Making Act 2023 (NT)

⁸ Section 25(f) *ibid*

⁹ Examples informed by *Significant treatment clinical guidelines for the Medical Treatment Planning and Decisions Act 2016 - For health practitioners*, Department of Health and Human Services, 2017 (VIC)

Possible examples:

<u>Routine health care</u> <i>(could become 'significant' depending on the impact on the particular person)</i>	<u>Significant health care</u> <i>(remain significant regardless of impact on the person)</i>
<ul style="list-style-type: none"> • local anaesthetic • needles - subcutaneous / intramuscular / intravenous (cannula) • suturing a wound • acupuncture • drainage or lancing an abscess • skin lesion removal • indwelling catheter • setting a fracture (unless using a general anaesthetic) • laser treatment • superficial biopsy – skin • enemas 	<ul style="list-style-type: none"> • procedure requiring general anaesthetic • procedure requiring sedation • epidural anaesthetic • cardiac thoracic surgical procedures such as, • coronary artery bypass grafts surgery, valve replacement, cardiac transplant • abdominal surgery-colectomy • cholecystectomy, pancreatectomy, laparotomy • ear, nose and throat surgery, including • tonsillectomy • vertebroplasty • mastectomy with and without axillary clearance • genitourinary tract surgery, such as • nephrectomy, prostatectomy, renal transplant • respiratory surgery, such as lung transplant • lung resection, tracheostomy • joint operations • neurosurgery • eye surgery, including retina repair, enucleation • internal biopsy • cataract surgery

Physical (including allied health)

In considering whether a physical health care is significant or routine, the health care provider must recognise that just because a health practitioner routinely performs a procedure, this does not mean that it is routine health care.

Where physical health care will cause significant distress or significant risk of side effects or harm to the person, the health care will be significant even though it might be an example below of routine health care.

Possible examples:

<u>Routine health care</u> <i>(could become 'significant' depending on the impact on the particular person)</i>	<u>Significant health care</u> <i>(remain significant regardless of impact on the person)</i>
<ul style="list-style-type: none"> • visual examination (not treatment) • dressing a wound • physical examination (touching person) • rehabilitative exercise, including; • physiotherapy, occupational therapy and • speech therapy • ear wax removal • pressure stocking • orthosis, including ankle foot orthosis and others • oxygen therapy • personal care, such as hygiene and grooming¹⁰. 	<ul style="list-style-type: none"> • spinal manipulation • vacuum assisted closure (VAC) dressing • non-invasive ventilation (CPAP/BIPAP) • external cardiac pacing

Pharmaceutical

In considering whether a pharmaceutical health care is significant or routine, the health care provider must recognise that just because a health practitioner routinely provides the pharmaceutical, this does not mean that it is routine health care.

Where pharmaceutical health care will cause significant distress or significant risk of side effects or harm to the person, the health care will be significant even though it might be an example below of routine health care.

Possible examples:

<u>Routine health care</u> <i>(could become 'significant' depending on the impact on the particular person)</i>	<u>Significant health care</u> <i>(remain significant regardless of impact on the person)</i>
<ul style="list-style-type: none"> • standard antibiotics • enema • analgesic-paracetamol, aspirin • vaccinations • anti-platelet therapy • Ventolin and other inhalers • Insulin and oral hypoglycaemics anti-epileptics • oral or rectal aperients 	<ul style="list-style-type: none"> • antibiotics (rarely used, such as for tuberculosis) • chemotherapy • general anaesthetic • antidepressants • antipsychotics • epidural or spinal anaesthesia • immunotherapy • opioids through intrathecal (continuous infusion)

¹⁰ Section 25(2) Health Care Decision Making Act 2023 (NT)

<u>Routine health care</u> <i>(could become 'significant' depending on the impact on the particular person)</i>	<u>Significant health care</u> <i>(remain significant regardless of impact on the person)</i>
	<ul style="list-style-type: none"> • insulin pump • anticoagulants • radiotherapy • hormonal implants • HIV treatment • PICC line insertion

Dental

In considering whether a dental health care is significant or routine, the health care provider must recognise that just because a health practitioner routinely provide the dental health care, this does not mean that it is routine health care.

Where dental health care will cause significant distress or significant risk of side effects or harm to the person, the health care will be significant even though it might be an example below of routine health care.

Possible examples:

<u>Routine health care</u> <i>(could become 'significant' depending on the impact on the particular person)</i>	<u>Significant health care</u> <i>(remain significant regardless of impact on the person)</i>
<ul style="list-style-type: none"> • examination • teeth cleaning • intra-coronal fillings • dental radiographic imaging • simple tooth (uncomplicated) extraction 	<ul style="list-style-type: none"> • procedure requiring general anaesthetic where the risk of the procedure is moderate to high • surgical tooth extraction • dental implants • extra-coronal fillings • periodontal treatment • other surgical treatments (for example odontogenic cysts, tumours, fractures) • sedation

Investigative and diagnostic

In considering whether investigative and diagnostic procedures are significant or routine, the health care provider must recognise that just because a health practitioner routinely provides the investigative and diagnostic procedure, this does not mean that they are routine health care.

Where investigative and diagnostic health care will cause significant distress or significant risk of side effects or harm to the person, the health care will be significant even though it might be an example below of routine health care.

Treatment for complex cognitive impairment or mental illness under the *Mental Health and Related Services Act 1998* does not fall within the authority of a health care decision maker¹¹.

Possible examples:

<u>Routine health care</u> <i>(could become 'significant' depending on the impact on the particular person)</i>	<u>Significant health care</u> <i>(remain significant regardless of impact on the person)</i>
<ul style="list-style-type: none"> • radiological • x-rays • plain radiographs • computed tomography scans (CT) – no contrast • ultrasounds (including of heart) • dental radiographic imaging • electroencephalogram (EEG) and electrocardiogram (ECG) • exercise/stress testing • respiratory function test • tilt table test – cardiac/hypotension • mammogram • halter monitors • bone mineral density • audiology 	<ul style="list-style-type: none"> • radiological • magnetic resonance imaging (MRI) • computed tomography scans (CT) with contrast • other nuclear medicine • cone beam computerised tomography (CBCT) • scope • bronchoscopy • Colonoscopy • gastroscopy • angiogram, for example cardiac • laparoscopy • transvaginal ultrasound • procedure under sedation • person needs to be anaesthetised to undertake routine health care

Mental health care

In considering whether mental health treatment is significant or routine, the health practitioner must recognise that just because they routinely provide mental health treatment, this does not mean that it is routine treatment.

Where mental health treatment will cause significant distress or significant risk of side effects or harm to the person, the treatment will be significant, even though it might be an example below of routine treatment.

Pharmaceutical mental health treatment is included in about 'Pharmaceutical'.

¹¹ Section 11(2)(b) *Health Care Decision Making Act 2023 (NT)*

<u>Routine health care</u> <i>(could become 'significant' depending on the impact on the particular person)</i>	<u>Significant health care</u> <i>(remain significant regardless of impact on the person)</i>
<ul style="list-style-type: none"> • psychotherapy to adjust to new circumstances. For example: <ul style="list-style-type: none"> - post-stroke psychotherapy - pre- and post-amputation - grief counselling. 	<ul style="list-style-type: none"> • psychotherapy for major psychological disorders.

Palliative Care

Palliative care is defined in the *Health Care Decision Making Act 2023* as¹²:

Reasonable treatment for the relief of pain, suffering and distress provided to an adult:

- (a) *with an active, progressive and advanced disease; and*
- (b) *who has little or no prospect of cure; and*
- (c) *who is expected to die; and*
- (d) *for whom the primary goal is to optimise the quality of life.*

The health care provider must gain consent from the health care decision maker to move from active to palliative treatment.

Once the person is palliative, health care providers must continue to consult with the health care decision maker before administering palliative care to an adult with impaired decision making capacity¹³.

However, a health care decision maker cannot unreasonably refuse palliative comfort care on behalf of the person, if the person has¹⁴:

- an active, progressive and advanced disease; and
- little or no prospect of cure and is expected to die.

In addition to the initial responsibilities of a health care provider (see [Guideline - Initial responsibilities of a health care provider](#)), a health care provider must have regard to any preferences and values of the adult with impaired decision making capacity known to the health care provider when making a decision to administer palliative care¹⁵.

¹² Section 26(4) *Health Care Decision Making Act 2023* (NT)

¹³ Section 26(2) *ibid*

¹⁴ Section 26(1) *ibid*

¹⁵ Section 26(3) *ibid*