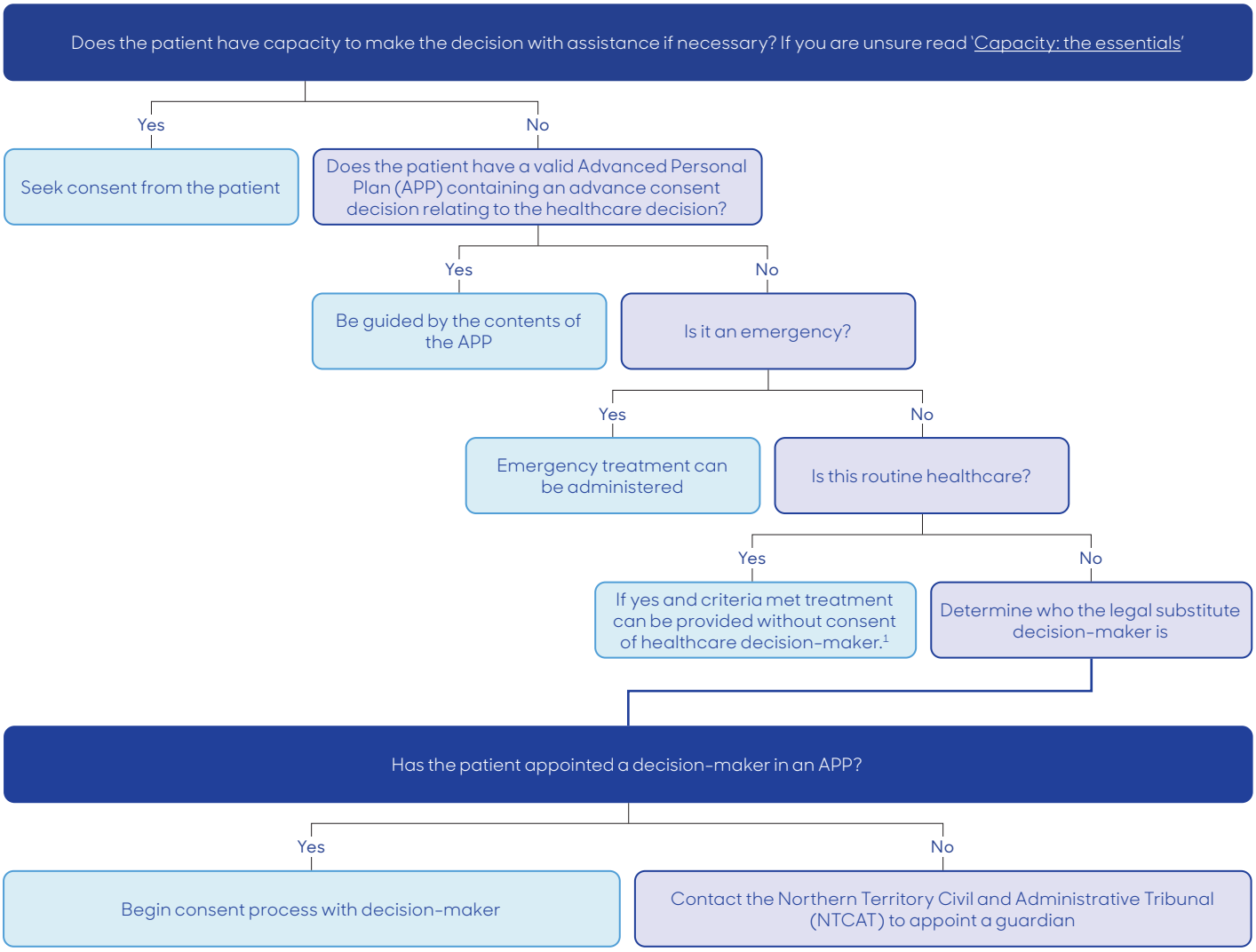
Substitute decision-makers for healthcare Northern Territory

You may need to provide care for a patient who has limited or no capacity to make healthcare decisions for themselves. For these situations, the law has established mechanisms for you to seek consent to provide treatment. You need to understand which person, document or institution to turn to in these circumstances. Use this decision-making flowchart to assist you.



[1] Routine healthcare may be provided without consent from a healthcare decision-maker if:

- The patient lacks decision-making capacity for the treatment;
- The treatment is routine healthcare (minor, low risk, widely accepted, and not controversial);
- The treatment is in the patient's best interests; and
- There is no known advance care statement, advance consent decision, or other indication that the patient would refuse the treatment.

Emergencies

You should assess if the patient requires urgent medical treatment.

Healthcare may be provided without consent where you reasonably believe that:

- the patient has impaired decision-making capacity in relation to the healthcare
- the healthcare is urgently necessary to:
  - save the patient's life
  - prevent serious damage to the patient's health, or
  - prevent the patient suffering, or continuing to suffer, significant pain or distress
- it is not practicable to delay the healthcare to obtain, or attempt to obtain, consent from:
  - the patient, if their impaired decision-making capacity is temporary, or
  - a healthcare decision-maker
- the healthcare is limited to what is necessary as a matter of urgency.

However, healthcare cannot be provided under this emergency provision if the healthcare provider is aware that the patient has refused that healthcare through:

- an advance consent decision contained in an Advance Personal Plan (APP), or
- a previous informed refusal made while the patient had decision-making capacity.

Advance Personal Plans

An APP is a formal record of a person's preferences and decisions about future healthcare if they lose capacity.

An APP is only valid if it was made by an adult who had decision-making capacity at the time.

An APP may include:

- **advance consent decisions**, which provide consent to or refusal of specific future healthcare
- **advance care statements**, which outline a person's values and preferences and can guide decision-making
- the appointment of a **healthcare decision-maker** to make decisions on the person's behalf

If your patient does not have capacity, you should take reasonable steps to determine whether an APP exists and whether it applies to the decision being considered.

Any relevant advance consent decision must be followed if it is valid and applicable. Advance care statements should be used to guide decision-making.

Healthcare decision-maker

If a patient does not have capacity and there is no applicable APP, you will need to identify the appropriate healthcare decision-maker.

As illustrated in the flowchart, this is not automatically the patient's next of kin.

In the Northern Territory, a patient may have:

- appointed a healthcare decision-maker in an APP
- had a guardian appointed by the Northern Territory Civil and Administrative Tribunal

Northern Territory law also recognises that Aboriginal or other customary law may inform who is the appropriate person to make healthcare decisions.

You should make reasonable efforts to identify and contact the appropriate decision-maker for the patient.

Routine healthcare

Routine healthcare may be provided without consent from a healthcare decision-maker if:

- the patient lacks capacity to make the decision
- the treatment is routine (minor, low risk, widely accepted and not controversial)
- the treatment is in the patient's best interests
- there is no known APP, advance consent decision, advance care statement, or other indication that the patient would refuse the treatment

Limits on decision-making

In the Northern Territory, a healthcare decision-maker can make decisions about commencing, continuing, withholding or withdrawing healthcare for a patient who has lost capacity.

However, they cannot consent to certain 'restricted healthcare treatments', including:

- sterilisation
- termination of pregnancy
- tissue donation
- electroconvulsive therapy
- experimental treatments

Consent for these treatments may need to be obtained from the Northern Territory Civil and Administrative Tribunal.

A decision-maker appointed in an APP should act in accordance with any relevant decisions or statements in that plan.

A guardian may make decisions on behalf of the patient in accordance with the authority granted by the Tribunal.

Additional resources

For more information on

- assessing capacity, please see the Avant factsheet: Capacity: the essentials
- advance personal plans, including forms and guidelines, see the NT Government Advance Personal Plan page
- healthcare decision-making in the Northern Territory, see the Office of the Public Guardian
- advance care planning in all states and territories, see QUT End of Life Law for Clinicians or Advance Care Planning Australia

For more information or immediate medico-legal advice, call us on **1800 128 268**, 24/7 in emergencies.
avant.org.au/mlas

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