

Guideline

Application Process for South Australian Civil and Administrative Tribunal (SACAT)

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1. Name of guideline

Application Process for South Australian Civil and Administrative Tribunal (SACAT)

2. Relationship to parent policy

The [Managing Transfer or Discharge of Patients Policy](#) is the parent policy to this Application Process for SACAT Guideline.

3. Guideline statement

SA Health is committed to providing the community with safe and equitable access to health care services and upholding the principles of the Australian Commission on Safety and Quality in Health Care.

In instances where a patient lacks capacity to make decisions or advocate for themselves, SA Health is committed to ensuring the rights and interests of the patient are protected and upheld.

This may include undertaking an application to SACAT for the legal appointment of a guardian and/or administrator to the role of third-party decision maker where no formal, or adequate informal, arrangements are already in place.

An application to SACAT is a legal step towards the appointment of a guardian to make decisions on behalf of an individual who lacks capacity to make their own decisions.

It is essential an application to SACAT is preceded with effective due diligence and not used as a mechanism to manage patient flow and/or discharge.

This Guideline seeks to advise SA Health employees on how to manage applications to SACAT in line with the [Managing Transfer or Discharge of Patients Policy](#).

4. Applicability

This Guideline applies to all employees and contractors of SA Health; that is all employees and contractors of the Department for Health and Wellbeing (DHW), Local Health Networks (LHNs) including state-wide services aligned with those Networks and SA Ambulance Service (SAAS).

This Guideline does not apply in relation to children and adolescents under 18 years of age.

5. Guideline details

5.1 Communicating with Patients

To ensure good communication and the best health outcomes for patients, it is important to consider a patient's health literacy, culture, religion, and any potential language barrier.

It is essential the treating hospital team take the necessary steps to overcome any communication barriers, by:

- > Ensuring an interpreter, cultural support person, or family member is present during discussions.
- > Avoiding jargon or complex medical terms.
- > Using language that can be easily understood by most non-medically trained people.
- > Confirming the patient understands the information provided.

5.2 Capacity Assessment

When providing treatment or care to a patient, it may become apparent to the treating hospital team that the patient lacks capacity to make decisions regarding their health care, accommodation, lifestyle and/or finances.

If a patient's capacity is in question, a Senior Clinician should advise the patient and undertake a capacity assessment (refer to Attachment 1). This should be clearly documented in the patient medical record by the assessing doctor.

The capacity assessment should be supported by:

- > Objective cognitive testing.
- > Neurological imaging.
- > Collateral history.
- > A qualified interpreter where English is not the patient's first language.
- > An Aboriginal Health Worker to ensure the process is receptive, responsive to, and culturally safe for Aboriginal and Torres Strait Islander people.
- > A cultural support person to ensure the process is receptive, responsive to, and culturally safe for patients of diverse backgrounds.

When assessing capacity, the Senior Clinician should:

- > Always presume an adult has capacity.
- > Recognise capacity as being decision and time specific.
- > Provide the patient with the support and information they need to make and communicate decisions.
- > Assess the patient's decision-making ability rather than the decision they made.
- > Respect the patient's dignity and privacy.

5.3 Assessment of Patient Supports

If it is determined a patient lacks capacity for specific decision making, further assessment of the patient's circumstances should be undertaken in line with [Table 1](#) to establish whether an appropriate third-party decision maker is in place.

Table 1: Third-party Decision Makers

Category	Types of Decisions/Responsibilities
Formal	<ul style="list-style-type: none"> > Advanced Care Directive (ACD) (accommodation/lifestyle/medical decisions). > Enduring Power of Attorney (EPOA) (financial decisions)*. > Enduring Power of Guardianship (EPoG) (accommodation/lifestyle/medical decisions)*. > Medical Power of Guardianship / Medical Power of Attorney (medical decisions). > SACAT guardianship order (accommodation/lifestyle/medical decisions) > SACAT administration order (financial decisions). > Anticipatory direction (medical decisions)*. <p><i>*Note: while existing arrangements are still legally effective, these will be replaced in operation by the Advance Care Directives Act 2013 if a person enacts an ACD.</i></p>
Informal	<ul style="list-style-type: none"> > Informal measures which are in place and working well should not be disturbed. > The multidisciplinary team should support the existing third-party decision maker (guided by the provisions of the Guardianship and Administration Act 1993 and Consent to Medical Treatment and Palliative Care Act 1995) to make appropriate decisions respecting the patient's current and past expressed wishes (e.g., Advanced Care Plan). > Refer to the Office of the Public Advocate (OPA) SA "Informal arrangements for people with impaired decision-making capacity" Information Sheet.

In many situations, a patient who lacks capacity for specific decision making can manage well in the community with the support of family, friends, and service providers.

In instances where there is conflict between the treating hospital team and the third-party decision maker or the parent/guardian of a child under 16 years of age, the treating hospital team may consider dispute resolution in line with [Table 2](#).

The Dispute Resolution Service (DRS) is a service provided by the Office of the Public Advocate (OPA) to help people work through disagreements about health, accommodation, and lifestyle decisions.

Table 2: Dispute Resolution Service (DRS)

Organisation	Issue	Strategy
Office of the Public Advocate (OPA)	<ul style="list-style-type: none"> > There is disagreement and a high level of conflict between the third-party decision maker, the treating hospital team, and/or the family which is impacting a suitable outcome regarding care and/or discharge of the patient. 	<ul style="list-style-type: none"> > Under the Advance Care Directives Act 2013, and the Consent to Medical Treatment and Palliative Care Act 1995, the OPA provide a DRS which can assist in working through disagreements regarding health, accommodation, and lifestyle decisions. > Contact the OPA enquiry service for advice on complex situations via 1800 066 969.

In instances where liaison with the OPA DRS is not successful, the hospital team may consider an application to SACAT for guardianship and/or administration in line with [Table 3](#).

Table 3: Reasons for SACAT application

Organisation	Issue	Strategy
SACAT	<ul style="list-style-type: none"> > The patient lacks capacity for specific decision making and there is no third-party decision maker. > There is conflict amongst the patient/family prohibiting consensus. > Informal arrangements are not working. > There continues to be disagreement between the treating team and a patient's third-party decision maker which is impacting a suitable outcome regarding treatment, care and/or discharge. > Risk identified (i.e., evidence of abuse/harm, behaviour that places patient or others at risk). > Current or existing guardian/ third-party decision maker not acting in patient's best interest or no longer wishes to continue in the role of third-party decision maker. > Complex financial decisions need to be made (payment to a residential care facility) and there is no EPoA in place. > Patient requires restrictive practices in hospital and on discharge (eg. Chemical restraint, placement in a locked memory support unit in a RACF (Section 32 powers will be required +/- SACAT application for guardianship)). 	<ul style="list-style-type: none"> > An application to SACAT may be the necessary next step (refer to Application Process for SACAT Flowchart). > Refer to <i>Information for Clinicians – Types of SACAT Orders</i> and Section 5.3 (SACAT Application Process) of this Guideline.

5.4 SACAT Application Process

If an application to SACAT is found to be necessary, relevant evidence should be gathered to support the SACAT application in line with [Table 4](#), and with reference to [SACAT Fact Sheet for Professional Applicants](#).

Table 4: SACAT application process and actions

Steps	Process	Actions
Applying	<ul style="list-style-type: none"> > SACAT applications are completed online via the SACAT website. > Consider using a generic login to ensure emails can be monitored and the application process will not be interrupted due to staff absence. > Consider the requirement for (with reference to <i>Information for Clinicians – Types of SACAT Orders</i>): <ul style="list-style-type: none"> ○ Limited Orders (for a person who is coping well in most areas of their life but lacks capacity for specific decision making); or ○ Special Powers (for directed residence/enforceable environmental restraint, detention or seclusion of the person in the place in which he or she is directed to reside, or physical restraint/use of force in care or treatment). 	<ul style="list-style-type: none"> > Upon completing the application, the applicant will receive a tracking code. > The name and address of all interested parties is to be included in the contact list, even if the person listed is opposed to the application. > The applicant may nominate a suggested person (or persons) to be the guardian and/or administrator. These appointments can be a joint position where there is more than one suitable and willing person and are to be discussed with the patient, if possible, to gauge their preferred Guardian if one had to be appointed as this will be considered by SACAT. > Upon acceptance of the application, a SACAT worker will be assigned to the case.
	<ul style="list-style-type: none"> > Consider the requirement for an Urgent Interim Tribunal Hearing: <ul style="list-style-type: none"> ○ Under Section 66 of the Guardianship and Administration Act 1993, SACAT can conduct interim applications without any, or sufficient, notice in urgent circumstances. ○ In these circumstances, urgent orders last for 21 days to allow for procedural fairness and a full tribunal hearing. 	<ul style="list-style-type: none"> > Extended length of stay in a hospital bed while awaiting a tribunal hearing is not, in and of itself, a reason to request an urgent tribunal hearing. > The urgency relates to the medical, physical safety and/or financial welfare of the person or of people who may be affected by the person's conduct.
Document ation/ Evidence	<ul style="list-style-type: none"> > A SACAT Medical and Psychological Report is to be completed following an in-person assessment (refer to Attachment 4 and 5). > Under section 57 of Guardianship and Administration Act 1993, SACAT requires an updated Medical and Psychological Report for: <ul style="list-style-type: none"> ○ Variation and revocation applications. ○ Reviews of existing orders. 	<ul style="list-style-type: none"> > Where the SACAT Medical and Psychological Report is completed by a Trainee Medical Officer, it is to be countersigned by a Senior Clinician. > The Medical and Psychological Report: <ul style="list-style-type: none"> ○ Gives a diagnosis; and ○ demonstrates that the patient lacks capacity for specific decision making. ○ Refer to Attachment 4 and 5.

Steps	Process	Actions
	<ul style="list-style-type: none"> > A SACAT support letter should be completed by the social worker or key worker (refer to Attachment 6 and 7). > Other relevant supporting reports may include: <ul style="list-style-type: none"> o Social Work report. o Occupational Therapy report. o Aged Care Assessment Team report. o Medical Specialist reports. o Financial documents relating to the person. 	<ul style="list-style-type: none"> > All reports should assess current and past services, relevant supports, the patient's responses to their situation and the reason services and informal supports have not been able to address the safety concerns identified (e.g., patient refusal of services, patient needs exceeding limits of services available). > All reports should be objective and include relevant and necessary information to reflect the concerns identified as part of the assessments conducted. > Refer to Attachment 6 and 7
Patient Notification	<ul style="list-style-type: none"> > At least 7 days before a scheduled tribunal hearing, the applicant needs to take the patient through the application to explain its content and purpose. > Failure to ensure the patient is informed of their rights could lead to a Tribunal adjournment. All attempts to explain the patient their rights are to be documented in the patient's medical record. > The patient has the right to seek legal representation at their own cost or have a nominated advocate to assist them. 	<ul style="list-style-type: none"> > Patient to be provided with a copy of the SACAT application. If there is concern that releasing the medical report or other information to the patient may result in serious risk of harm to the patient or another person, contact SACAT to discuss the possibility of a non-disclosure order (under Section 60 of the South Australian Civil and Administrative Tribunal Act 2013.) > Patient to be advised of their legal rights. > If the patient or their family choose to engage legal representation, it is best that the hospital applicant (if relevant) ceases any/all email dialogue with the person/family and notifies their direct line manager and LHN Risk Manager.
Patient Transfers	<ul style="list-style-type: none"> > The applicant attending the SACAT hearing may differ/change from the applicant listed in the online SACAT application in the following circumstances: <ul style="list-style-type: none"> o Transfer of patient between services (e.g., Royal Adelaide Hospital to Brain Injury Rehabilitation Unit). o Transfer of patient between ward/unit (e.g., General Medicine Ward to Rehabilitation Ward). o Transfer of patient from hospital to a community setting (e.g., Residential Aged Care Facility or National Disability Insurance Scheme provider). o 	<ul style="list-style-type: none"> > Notify SACAT via email of any changes to the person taking on the responsibilities of applicant, noting that in cases of high complexity the original applicant may also be required to attend to ensure all relevant evidence is presented.

Steps	Process	Actions
Tribunal Hearing	<ul style="list-style-type: none"> > Following submission of the application, SACAT will email the tribunal hearing date to the applicant (the hospital team) and other interested parties, where there will be a period of natural justice as per the Guardianship and Administration Act 1993 (approximately a minimum of 10-14 days from date of receipt). 	<ul style="list-style-type: none"> > The applicant will: <ul style="list-style-type: none"> o Plan for the patient to attend the tribunal hearing (in person or via phone/video link); and o co-ordinate attendance of relevant multidisciplinary team members. > If the patient is unable to attend due to medical/behavioural reasons, the applicant is to request in writing via email a patient exemption from the tribunal hearing and arrange with SACAT for someone to visit the patient in hospital to ascertain their views and report back to the tribunal.

Following the period of natural justice (approximately a minimum of 10-14 days from date of application receipt) there are three potential outcomes of a SACAT hearing as listed in [Table 5](#).

Table 5: SACAT hearing outcomes and actions

Outcome	Action
SACAT does not appoint a guardian or administrator	<ul style="list-style-type: none"> > Hospital team to continue with appropriate discharge plan.
SACAT appoints family / friend as guardian or administrator	<ul style="list-style-type: none"> > Hospital team to liaise with appointed guardian and/or administrator regarding discharge plans.
SACAT appoints: <ul style="list-style-type: none"> > The OPA as guardian (this can occur jointly with a family member / friend); and/or > The Public Trustee as administrator 	<ul style="list-style-type: none"> > Applicant/key worker to actively pursue these appointments to ensure timely response. > Applicant/key worker to liaise with duty officer at the OPA to progress discharge plans while awaiting formal appointment.

5.5 Applications to Vary or Revoke SACAT Orders

In the following circumstances SACAT may consider an application to vary (change) or revoke an order:

- > The private administrator or guardian lacks capacity or is deceased.
- > The private administrator or guardian is no longer willing to continue in their role.
- > The patient has regained capacity for specific decision making.
- > The administrator has misappropriated funds of the patient.
- > A pre-existing EPoA, EPoG or ACD has been located which was not available at the time of the hearing.

To apply for a variation or to revoke an administration or guardianship order, the applicant will need to demonstrate there has been a change in circumstances of the protected person or of the private guardian or administrator, in line with [SACAT Fact Sheet - Applications to Vary or Revoke Orders](#).

If the treating hospital team disagrees with the decision made by SACAT, it is not appropriate to make an application to vary or revoke an order, however an application for internal review (an appeal) of a SACAT decision may be lodged.

6. Supporting information

- > [Advance Care Directives Act 2013](#)
- > Allied Health SACAT Support Letter (draft for use)
- > [Consent to Medical Treatment and Health Care Guideline](#)
- > [Consent to Medical Treatment and Health Care Policy](#)
- > [Consent to Medical Treatment and Palliative Care Act 1995 \(SA\)](#)
- > [Guardianship and Administration Act 2013](#)
- > Information for Clinicians - Types of SACAT Orders
- > [Office of the Public Advocate \(OPA\) - Informal Arrangements](#)
- > Psychosocial Support Letter (draft for use)
- > SA Health Instructions for SACAT Medical or Psychological Report Form
- > [SACAT Fact Sheet – Applications to Vary or Revoke Orders](#)
- > [SACAT Fact Sheet for Professional Applicants](#)
- > SACAT Medical or Psychological Report Form (example completed by SA Health)
- > [SACAT website](#)

7. Definitions

- > **Applicant:** means the professional applicant on behalf of the treating hospital team and SA Health public hospital or health service, often the Social Worker/Clinician, who will ensure a patient's rights are upheld and the highest standard of application will be presented to SACAT.
- > **Capacity:** means, for the purpose of this Guideline, the term 'capacity' will represent 'mental incapacity' as defined below, as per contemporary clinical literature. Capacity is a legal term referring to the ability to exercise the decision-making process. It is specific to the type of decision to be made and to the timing of when the decision must be made. It can change or fluctuate and can be influenced by the complexity of the decision and the support available to the person at the time the decision is to be made. An adult with capacity has the right to make legally recognised decisions about their life, such as health care choices, support services they may need, where they live, and how they manage their finances. If an adult lacks capacity for making a particular decision, a third-party decision maker is needed to make the decision for them.
- > **Senior Clinician:** means a Senior Consultant or Medical Fellow in a metropolitan public hospital, and a General Practitioner (GP) or lead medical officer in a regional public hospital.
- > **Mental Incapacity:** means a person's inability to look after their own health, safety or welfare or to manage their own affairs, as a result of -
 - any damage to, or any illness, disorder, imperfect or delayed development, impairment or deterioration of, the brain or mind; or
 - any physical illness or condition that renders the person unable to communicate his or her intentions or wishes in any manner whatsoever.
 as described in the [Guardianship and Administration Act 1993](#).
- > **Natural Justice:** means the administrative law principles governing the SACAT application process which include: providing a fair hearing by an impartial decision maker; giving a person who may be affected by the decision sufficient notice of the hearing and what the hearing is about; telling them their rights; giving them sufficient information to prepare and submit their case; and giving them the opportunity to attend the hearing, hear the evidence, produce their own evidence and be heard.
- > **Parent/Guardian:** means the birth or adoptive parent, or legal guardian, with responsibility for the care of a child under 16 years of age.

- > **South Australian Civil and Administrative Tribunal (SACAT):** means the legal entity helping people in South Australia resolve issues within specific areas of law through a decision of the Tribunal at a formal hearing.
- > **Statewide services:** means Statewide Clinical Support Services, Prison Health, SA Dental Service, BreastScreen SA and any other state-wide services that fall under the governance of the Local Health Networks.
- > **Third-party decision maker:** means a person who can make decisions on behalf of a person who lacks capacity for specific decision making. A third-party decision maker can be appointed formally or informally as described below:
 - Formal - in many situations a person will have made plans for a substitute decision maker (SDM) when they still had capacity under a formal arrangement such as an Enduring Power of Attorney or an Advance Care Directive; a full list of formal arrangements can be viewed in Table 1.
 - Informal - a prescribed adult relative (spouse; partner; adult related by blood, marriage, adoption, Aboriginal kinship rules or Torres Strait Islander kinship rules) or adult friend with a close and continuing relationship with the patient who is available and willing to make decisions on the patient's behalf.

8. Document ownership

Guideline owner: Domain Custodian for the Services, Planning and Programs Policy Domain

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9. Document history

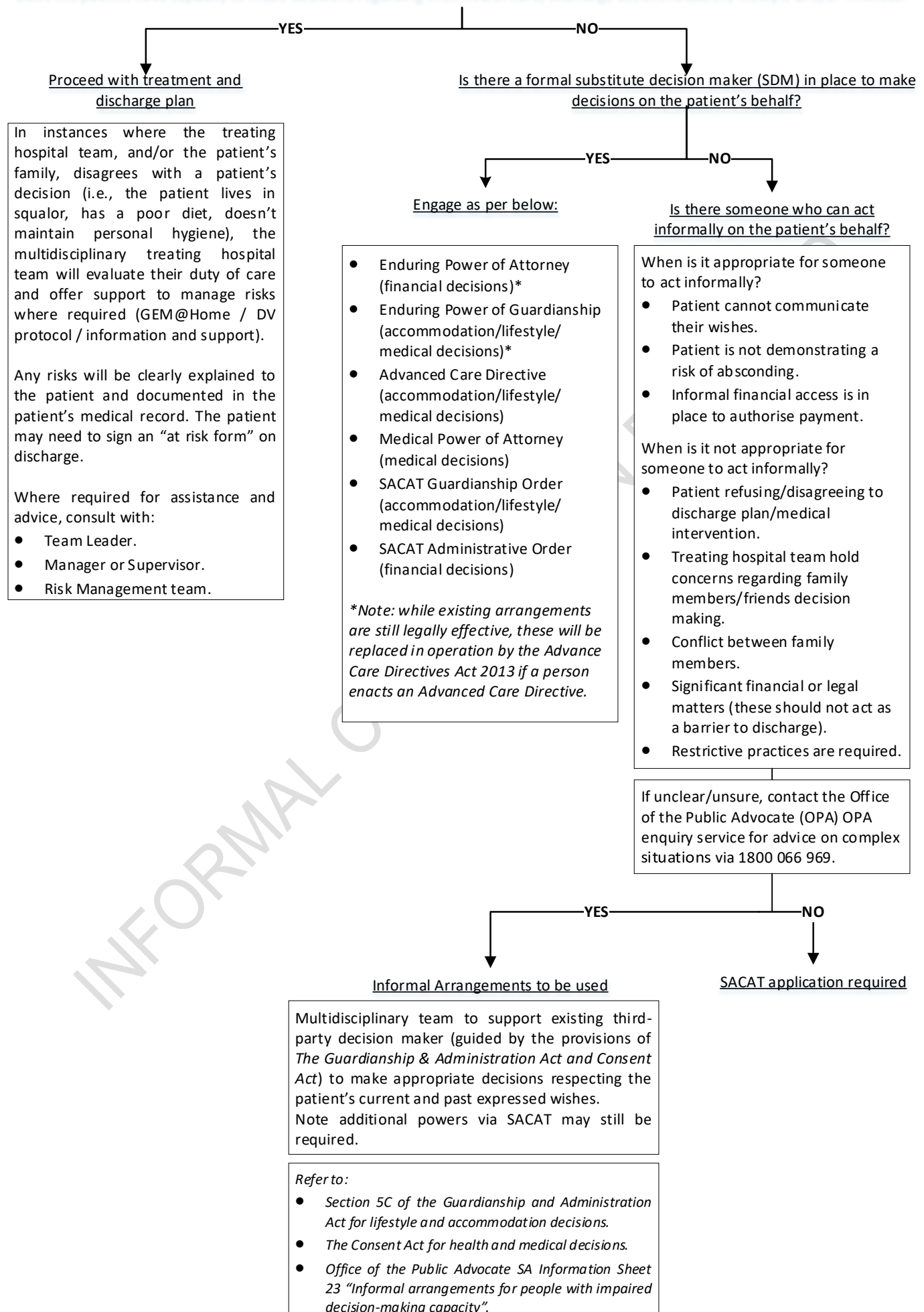
Version	Date approved	Approved by	Amendment notes
1.0	18/12/2023	Chief Executive, DHW	New Guideline

10. Appendices

1. Capacity Assessment Flowchart
2. Application Process for SACAT Flowchart

Appendix 1: Capacity Assessment Flowchart

Does the patient have capacity to make decisions regarding their health care, discharge accommodation, lifestyle and/or finances?



Appendix 2: Application Process for SACAT Flowchart

