

75-2a-105 Capacity to complete an advance health care directive.

- (1) An adult is presumed to have the capacity to complete an advance health care directive.
- (2) An adult who is found to lack health care decision making capacity under the provisions of Section 75-2a-104:
 - (a) lacks the capacity to give an advance health care directive, including Part II of the form created in Section 75-2a-117, or any other substantially similar form expressing a health care preference; and
 - (b) may retain the capacity to appoint an agent and complete Part I of the form created in Section 75-2a-117.
- (3) The following factors shall be considered by a health care provider, attorney, or court when determining whether an adult described in Subsection (2)(b) has retained the capacity to appoint an agent:
 - (a) whether the adult has expressed over time an intent to appoint the same person as agent;
 - (b) whether the choice of agent is consistent with past relationships and patterns of behavior between the adult and the prospective agent, or, if inconsistent, whether there is a reasonable justification for the change; and
 - (c) whether the adult's expression of the intent to appoint the agent occurs at times when, or in settings where, the adult has the greatest ability to make and communicate decisions.

Amended by Chapter 107, 2008 General Session