

Effective until 5/1/2024

75-2a-104 Capacity to make health care decisions -- Presumption -- Overcoming presumption.

- (1) An adult is presumed to have:
 - (a) health care decision making capacity; and
 - (b) capacity to make or revoke an advance health care directive.
- (2) To overcome the presumption of capacity described in Subsection (1)(a), a physician, an APRN, or, subject to Subsection (6), a physician assistant who has personally examined the adult and assessed the adult's health care decision making capacity must:
 - (a) find that the adult lacks health care decision making capacity;
 - (b) record the finding in the adult's medical chart including an indication of whether the adult is likely to regain health care decision making capacity; and
 - (c) make a reasonable effort to communicate the determination to:
 - (i) the adult;
 - (ii) other health care providers or health care facilities that the person who makes the finding would routinely inform of such a finding; and
 - (iii) if the adult has a surrogate, any known surrogate.
- (3)
 - (a) An adult who is found to lack health care decision making capacity in accordance with Subsection (2) may, at any time, challenge the finding by:
 - (i) submitting to a health care provider a written notice stating that the adult disagrees with the physician's finding; or
 - (ii) orally informing the health care provider that the adult disagrees with the finding.
 - (b) A health care provider who is informed of a challenge under Subsection (3)(a), shall, if the adult has a surrogate, promptly inform the surrogate of the adult's challenge.
 - (c) A surrogate informed of a challenge to a finding under this section, or the adult if no surrogate is acting on the adult's behalf, shall inform the following of the adult's challenge:
 - (i) any other health care providers involved in the adult's care; and
 - (ii) the health care facility, if any, in which the adult is receiving care.
 - (d) Unless otherwise ordered by a court, a finding, under Subsection (2), that the adult lacks health care decision making capacity, is not in effect if the adult challenges the finding under Subsection (3)(a).
 - (e) If an adult does not challenge the finding described in Subsection (2), the health care provider and health care facility may rely on a surrogate, pursuant to the provisions of this chapter, to make health care decisions for the adult.
- (4) A health care provider or health care facility that relies on a surrogate to make decisions on behalf of an adult has an ongoing obligation to consider whether the adult continues to lack health care decision making capacity.
- (5) If at any time a health care provider finds, based on an examination and assessment, that the adult has regained health care decision making capacity, the health care provider shall record the results of the assessment in the adult's medical record, and the adult can direct the adult's own health care.
- (6) A physician assistant may not make a finding described in Subsection (2), unless the physician assistant is permitted to make the finding under the physician assistant's delegation of services agreement, as defined in Section 58-70a-102.