

Effective 1/1/2026

75A-9-102 Capacity.

- (1) An individual has capacity for the purpose of this chapter if the individual:
 - (a) is willing and able to communicate a decision independently or with appropriate services, technological assistance, supported decision making, or other reasonable accommodation; and
 - (b) in making or revoking:
 - (i) a health care decision, understands the nature and consequences of the decision, including the primary risks and benefits of the decision;
 - (ii) a health care instruction, understands the nature and consequences of the instruction, including the primary risks and benefits of the choices expressed in the instruction; and
 - (iii) an appointment of an agent under a health care power of attorney or identification of a default surrogate under Section 75A-9-111, recognizes the identity of the individual being appointed or identified and understands the general nature of the relationship of the individual making the appointment or identification with the individual being appointed or identified.
- (2) The right of an individual who has capacity to make a decision about the individual's health care is not affected by whether the individual creates or revokes an advance health care directive.

Enacted by Chapter 439, 2025 General Session