

Effective 1/1/2026

75A-9-107 Power of attorney for health care.

- (1) An individual may create a power of attorney for health care to appoint an agent to make health care decisions for the individual.
- (2) An individual is disqualified from acting as agent for an individual who lacks capacity to make health care decisions if:
 - (a) a court finds that the potential agent poses a danger to the individual's well-being, even if the court does not issue a protective order against the potential agent; or
 - (b) the potential agent is an owner, operator, employee, or contractor of a nursing home or assisted living facility in which the individual resides or is receiving care, unless the owner, operator, employee, or contractor is a family member of the individual, the cohabitant of the individual, or a descendant of the cohabitant.
- (3) A health care decision made by an agent is effective without judicial approval.
- (4) A power of attorney for health care must be in a record, signed by the individual creating the power, and signed by an adult witness who:
 - (a) reasonably believes the act of the individual to create the power of attorney is voluntary and knowing;
 - (b) is not:
 - (i) the agent appointed by the individual;
 - (ii) the agent's spouse or cohabitant; or
 - (iii) if the individual resides or is receiving care in a nursing home or assisted living facility, the owner, operator, employee, or contractor of the nursing home or assisted living facility; and
 - (c) is present when the individual signs the power of attorney or when the individual represents that the power of attorney reflects the individual's wishes.
- (5) A witness under Subsection (4) is considered present if the witness and the individual are:
 - (a) physically present in the same location;
 - (b) using electronic means that allow for real time audio and visual transmission and communication in real time to the same extent as if the witness and the individual were physically present in the same location; or
 - (c) able to speak to and hear each other in real time through audio connection if:
 - (i) the identity of the individual is personally known to the witness; or
 - (ii) the witness is able to authenticate the identity of the individual by receiving accurate answers from the individual that enable the authentication.
- (6) A power of attorney for health care may include a health care instruction.

Enacted by Chapter 439, 2025 General Session