Effective 1/1/2026

75A-9-117 Powers of agent and default surrogate.

(1)

(a) Except as provided in Subsection (3), the power of an agent or default surrogate commences when the individual is found under Subsection 75A-9-103(2) or by a court to lack capacity to make a health care decision.

(b) The power ceases if the individual later is found to have capacity to make a health care decision, or the individual objects under Subsection 75A-9-104(3) to the finding of lack of capacity under Subsection 75A-9-103(2).

(c) The power resumes if:

(i) the power ceased because the individual objected under Subsection 75A-9-104(3); and

(ii) the finding of lack of capacity is confirmed under Subsection 75A-9-104(4)(d) or a court finds that the individual lacks capacity to make a health care decision.

(2) An agent or default surrogate may request, receive, examine, copy, and consent to the disclosure of medical and other health care information about the individual if the individual would have the right to request, receive, examine, copy, or consent to the disclosure of the information.

(3) A power of attorney for health care may provide that the power of an agent under Subsection (1) commences on appointment.

(4)

(a) If no other person is authorized to do so, an agent or default surrogate may apply for public or private health insurance and benefits on behalf of the individual.

(b) An agent or default surrogate who may apply for insurance and benefits does not, solely by reason of the power, have a duty to apply for the insurance or benefits.

(5) An agent or default surrogate may not consent to voluntary admission of the individual to a facility for mental health treatment unless:

(a) voluntary admission is specifically authorized by the individual in an advance health care directive in a record; and

(b) the admission is for no more than the maximum of the number of days specified in the directive.

(6) Except as provided in Subsection (7), an agent or default surrogate may not consent to placement of the individual in a nursing home if the placement is intended to be for more than 100 days if:

(a) an alternative living arrangement is reasonably feasible;

(b) the individual objects to the placement; or

(c) the individual is not terminally ill.

(7) If specifically authorized by the individual in an advance health care directive in a record, an agent or default surrogate may consent to placement of the individual in a nursing home for more than 100 days even if:

(a) an alternative living arrangement is reasonably feasible;

(b) the individual objects to the placement; and

(c) the individual is not terminally ill.

Enacted by Chapter 439, 2025 General Session