

Capacity v. Competency

“Capacity” and “competency” are terms often used interchangeably. However, in Iowa law and specifically in the context of one’s right to make decisions, the difference is very important. So what is the difference?

Capacity. The ability to understand the nature and effect of one’s acts. Capacity is a fluid concept; an individual may have the requisite capacity in one moment and lack capacity in another. The determination to be made is whether an individual has the ability to understand the nature and effect of his or her acts in a specific moment in time. The level of capacity needed to enter into legal documents, such as a durable power of attorney, contract, or a will, differs based upon the type of transaction.

Capacity to consent to medical procedures is determined by the criteria of informed consent. Does the patient have the ability to:

1. Understand the medical procedure and specifically understand a description of the procedure, its risks, its benefits, and its alternatives?
2. Voluntarily consent?
3. Give consent because he or she is competent (meaning, he/she does not have a guardian)?

Competency. Competency is a *legal* finding. Competency proceedings, including guardianship and conservatorship hearings, are conducted to allow the court to determine the individual’s mental capacity.

Incompetency. The lack of ability to discharge or understand either health care or financial management decisions. An individual is incompetent when declared by the court to be in need of a guardian or conservator. This determination is made only after the individual meets the proper “standards” under Iowa law.

- **Guardianship Standard:** to have decision-making capacity which is so impaired that the person is unable to care for the person’s personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness may occur. Iowa Code § 633.3(23)(a).

Conservatorship Standard: to have a decision-making capacity which is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person’s financial affairs. Iowa Code § 633.3(23)(b).