

Sixtieth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2308

Introduced by

Senators J. Lee, Warner

Representatives Kreidt, Price

1 A BILL for an Act to amend and reenact sections 23-06.5-03 and 23-06.5-05.1 of the North  
2 Dakota Century Code, relating to provisions of a health care directive.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 23-06.5-03 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **23-06.5-03. Health care directive.**

- 7 1. A principal may execute a health care directive. A health care directive may  
8 include one or more health care instructions to health care providers, others  
9 assisting with health care, family members, and a health care agent. A health care  
10 directive may include a power of attorney to appoint an agent to make health care  
11 decisions for the principal when the principal lacks the capacity to make health  
12 care decisions, unless otherwise specified in the health care directive. Subject to  
13 the provisions of this chapter and any express limitations set forth by the principal  
14 in the health care directive, the agent has the authority to make any and all health  
15 care decisions on the principal's behalf that the principal could make.
- 16 2. After consultation with the attending physician and other health care providers, the  
17 agent shall make health care decisions:
- 18 a. In accordance with the agent's knowledge of the principal's wishes and  
19 religious or moral beliefs, as stated orally, or as contained in the principal's  
20 health care directive; or
- 21 b. If the principal's wishes are unknown, in accordance with the agent's  
22 assessment of the principal's best interests. In determining the principal's  
23 best interests, the agent shall consider the principal's personal values to the  
24 extent known to the agent.

3. A health care directive, including the agent's authority, is in effect only when the principal lacks capacity to make health care decisions, as certified in writing by the principal's attending physician and filed in the principal's medical record, and ceases to be effective upon a determination that the principal has recovered capacity.

4. Notwithstanding subsection 3, the principal may authorize in a health care directive that the agent make health care decisions for the principal even though the principal retains capacity to make health care decisions. In that case, the health care directive is in effect as stated in the health care directive under any conditions the principal may impose. The principal's authorization under this subsection may be revoked in the same manner as a health care directive may be revoked under section 23-06.5-07.

5. The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment, or of any proposal to withdraw or withhold treatment.

~~5-~~ 6. Nothing in this chapter permits an agent to consent to admission to a mental health facility or state institution for a period of more than forty-five days without a mental health proceeding or other court order, or to psychosurgery, abortion, or sterilization, unless the procedure is first approved by court order.

**SECTION 2. AMENDMENT.** Section 23-06.5-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**23-06.5-05.1. Suggested health care directive form.** A health care directive may include provisions consistent with this chapter, including:

1. The designation of one or more alternate agents to act if the named agent is not reasonably available to serve;
2. Directions to joint agents regarding the process or standards by which the agents are to reach a health care decision for the principal, and a statement whether joint agents may act independently of one another;
3. Limitations, if any, on the right of the agent or any alternate agents to receive, review, obtain copies of, and consent to the disclosure of the principal's medical records;

- 1           4.    Limitations, if any, on the nomination of the agent as guardian under chapter
- 2                30.1-28;
- 3           5.    A document of gift for the purpose of making an anatomical gift, as set forth in
- 4                chapter 23-06.2 or an amendment to, revocation of, or refusal to make an
- 5                anatomical gift;
- 6           6.    Limitations, if any, regarding the effect of dissolution or annulment of marriage on
- 7                the appointment of an agent; ~~and~~
- 8           7.    Health care instructions regarding artificially administered nutrition or hydration;
- 9                and
- 10          8.    The designation of an agent authorized to make health care decisions for the
- 11                principal even though the principal retains the capacity to make health care
- 12                decisions.