

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2297

Introduced by

Senators Roers, Barta, Lee, Sorvaag

Representative O'Brien

1 A BILL for an Act to amend and reenact section 23-12-13 of the North Dakota Century Code,
2 relating to informed consent of incapacitated patients and minors.

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

4 **SECTION 1. AMENDMENT.** Section 23-12-13 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **23-12-13. ~~Persons~~Individuals authorized to provide informed consent to health care**
7 **for incapacitated ~~persons~~patients and minors - Priority.**

8 1. ~~Informed consent for health care for a minor patient or a patient who is determined by~~
9 ~~a physician to be an incapacitated person, as defined in subsection 2 of section~~
10 ~~30.1-26-01, and unable to consent may be obtained from a person authorized to~~
11 ~~consent on behalf of the patient~~For purposes of this section:

12 a. "Incapacitated patient" means an adult unable to understand and appreciate the
13 nature and consequence of a health care decision, including the benefits, harms,
14 and reasonable alternatives to proposed health care, and unable to communicate
15 a health care decision, as certified by the patient's attending physician and filed in
16 the patient's medical record.

17 b. "Minor" means an individual under eighteen years of age. Persons

18 2. Individuals in the following classes and in the following order of priority may provide
19 informed consent to health care on behalf of ~~the~~an incapacitated patient:

20 a. ~~The individual, if any, to whom the patient has given a durable power of attorney~~
21 ~~that encompasses the authority to make health care decisions, unless a court of~~
22 ~~competent jurisdiction specifically authorizes a guardian to make medical~~

- 1 ~~decisions for the incapacitated person~~A guardian acting under a valid court order
2 specifically authorizing the guardian to make health care decisions for the patient;
3 b. ~~The appointed~~A health care agent appointed through a health care directive
4 under chapter 23-06.5 or a similar instrument executed in another jurisdiction in
5 accordance with the law in that jurisdiction;
6 c. An appointed guardian or custodian of the patient, ~~if any~~ under chapter 30.1-28
7 or a similar instrument executed in another jurisdiction in accordance with the law
8 in that jurisdiction;
9 e. ~~The patient's~~
10 d. A spouse of the patient who has maintained significant ~~contacts~~contact with the
11 ~~incapacitated person~~patient;
12 d. ~~Children~~
13 e. A child of the patient who ~~are~~is at least eighteen years of age and who ~~have~~has
14 maintained significant ~~contacts~~contact with the ~~incapacitated person~~patient;
15 e. ~~Parents~~
16 f. A parent of the patient, including a stepparent who has maintained significant
17 ~~contacts~~contact with the ~~incapacitated person~~patient;
18 f. ~~Adult brothers and sisters~~
19 g. An adult sibling of the patient who ~~have~~has maintained significant
20 ~~contacts~~contact with the ~~incapacitated person~~patient;
21 g. ~~Grandparents~~
22 h. A grandparent of the patient who ~~have~~has maintained significant ~~contacts~~contact
23 with the ~~incapacitated person~~patient;
24 h. ~~Grandchildren~~
25 i. A grandchild of the patient who ~~are~~is at least eighteen years of age and who
26 ~~have~~has maintained significant ~~contacts~~contact with the ~~incapacitated-~~
27 ~~person~~patient; ~~or~~
28 i.j. A close relative or friend of the patient who is at least eighteen years of age and
29 who has maintained significant ~~contacts~~contact with the ~~incapacitated-~~
30 ~~person~~patient; ~~or~~
31 k. An interdisciplinary team consisting of at least three health care professionals.

1 (1) An interdisciplinary team may include an employee or agent of a health care
2 provider treating an incapacitated patient, including a member of the ethics
3 committee, provided a member of the team is not directly involved with the
4 treatment of the incapacitated patient.

5 (2) If consent is provided under this subdivision, a health care provider shall
6 continue good faith efforts to identify and locate an individual in a preceding
7 level of priority.

8 2.3. Unless otherwise determined by court order, a parent may make health care decisions
9 for the parent's minor child. Individuals in the following classes and in the following
10 order of priority may provide informed consent to health care on behalf of a minor
11 patient if a parent is unable to provide informed consent:

12 a. A guardian acting under a court order specifically authorizing the guardian to
13 make health care decisions for the minor;

14 b. An appointed guardian or custodian of the minor;

15 c. A noncustodial parent of the minor, including a stepparent who has maintained
16 significant contact with the patient;

17 d. An adult sibling of the minor who has maintained significant contact with the
18 minor;

19 e. A grandparent of the minor who has maintained significant contact with the minor;

20 f. A close relative or friend of the minor who is at least eighteen years of age and
21 who has maintained significant contact with the minor; or

22 g. An interdisciplinary team consisting of at least three health care professionals.

23 (1) An interdisciplinary team may include an employee or agent of a health care
24 provider treating a minor, including a member of the ethics committee,
25 provided a member of the team is not directly involved with the treatment of
26 the minor.

27 (2) If consent is provided under this subdivision, a health care provider shall
28 continue good faith efforts to identify and locate an individual in a preceding
29 level of priority.

30 4. A physicianhealth care provider seeking informed consent for proposed health care for
31 a minor patient or a patient who is an incapacitated person andan incapacitated

1 patient or a minor who is unable to consent must make reasonable efforts to locate
2 and secure authorization for the health care from a competent ~~person~~individual in the
3 first or succeeding class identified in subsection 42 for an incapacitated patient or
4 subsection 3 for a minor. If the ~~physician~~health care provider is unable to locate such
5 ~~person~~individual, authorization may be given by any ~~person~~individual in the next class
6 in the order of descending priority. ~~A person~~An individual identified in subsection 42 for
7 an incapacitated patient or subsection 3 for a minor may not provide informed consent
8 to health care if a ~~person~~an individual of higher priority has refused to give such
9 authorization.

10 3.5. Before any ~~person~~individual authorized to provide informed consent ~~pursuant to~~under
11 this section exercises that authority, the ~~person~~individual must first determine in good
12 faith that the patient, if not incapacitated, would consent to the proposed health care. If
13 such a determination cannot be made, the decision to consent to the proposed health
14 care may be made only after determining that the proposed health care is in the
15 patient's best interests.

16 4. ~~No person~~

17 6. An individual authorized to provide informed consent ~~pursuant to~~in accordance with
18 this section may not provide consent for sterilization, abortion, or psychosurgery or for
19 admission to a state mental health facility for a period of more than forty-five days
20 without a mental health proceeding or other court order.

21 5.7. If a patient who is determined by a physician to be an incapacitated ~~person~~patient, or
22 a ~~person~~an individual interested in the patient's welfare, objects to a determination of
23 incapacity made ~~pursuant to~~in accordance with this section, a court hearing pursuant
24 to chapter 30.1-28 must be held to determine the issue of incapacity.