

Sixty-ninth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT
with Conference Committee Amendments
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 subsection 3 of section 23-06.5-03 and section
2 23-12-13 of the North Dakota Century Code, relating to the determination of incapacity and
3 informed consent of incapacitated patients and minors.

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

5 **SECTION 1. AMENDMENT.** Subsection 3 of section 23-06.5-03 of the North Dakota
6 Century Code is amended and reenacted as follows:

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

12 **SECTION 2. AMENDMENT.** Section 23-12-13 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **23-12-13. ~~Persons~~Individuals authorized to provide informed consent to health care**
15 **~~for incapacitated persons~~patients and minors - Priority.**

16 1. ~~Informed consent for health care for a minor patient or a patient who is determined by~~
17 ~~a physician to be an incapacitated person, as defined in subsection 2 of section~~
18 ~~30.1-26-01, and unable to consent may be obtained from a person authorized to~~
19 ~~consent on behalf of the patient. Persons~~For purposes of this section:

20 a. "Incapacitated patient" means an adult unable to understand and appreciate the
21 nature and consequence of a health care decision, including the benefits, harms,
22 and reasonable alternatives to proposed health care, and unable to communicate

1 a health care decision, as certified by the patient's attending physician,
2 psychiatrist, or psychologist and filed in the patient's medical record.

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

4 2. Unless a court of competent jurisdiction determines otherwise, individuals in the
5 following classes and in the following order of priority may provide informed consent to
6 health care on behalf of thean incapacitated patient:

7 a. ~~The individual, if any, to whom the patient has given a durable power of attorney~~
8 ~~that encompasses the authority to make health care decisions, unless a court of~~
9 ~~competent jurisdiction specifically authorizes a guardian to make medical~~
10 ~~decisions for the incapacitated person;~~

11 b. ~~The appointed~~A health care agent appointed through a health care directive
12 under chapter 23-06.5 or a similar instrument executed in another jurisdiction in
13 accordance with the law in that jurisdiction;

14 b. An appointed guardian or custodian of the patient, if any under chapter 30.1-28
15 or a similar instrument executed in another jurisdiction in accordance with the law
16 in that jurisdiction;

17 c. ~~The patient's~~A spouse of the patient who has maintained significant
18 ~~contacts~~contact with the ~~incapacitated person~~patient;

19 d. ~~Children~~A child of the patient who ~~are~~is at least eighteen years of age and who
20 ~~have~~has maintained significant ~~contacts~~contact with the ~~incapacitated~~
21 ~~person~~patient;

22 e. ~~Parents~~A parent of the patient, including a stepparent who has maintained
23 significant ~~contacts~~contact with the ~~incapacitated person~~patient;

24 f. ~~Adult brothers and sisters~~An adult sibling of the patient who ~~have~~has maintained
25 significant ~~contacts~~contact with the ~~incapacitated person~~patient;

26 g. ~~Grandparents~~A grandparent of the patient who ~~have~~has maintained significant
27 ~~contacts~~contact with the ~~incapacitated person~~patient;

28 h. ~~Grandchildren~~A grandchild of the patient who ~~are~~is at least eighteen years of age
29 and who ~~have~~has maintained significant ~~contacts~~contact with the ~~incapacitated~~
30 ~~person~~patient; or

- 1 i. A close relative or friend of the patient who is at least eighteen years of age and
2 who has maintained significant ~~contacts~~contact with the ~~incapacitated~~
3 ~~person~~patient; or
- 4 j. An interdisciplinary team consisting of at least three health care professionals.
5 (1) An interdisciplinary team may include an employee or agent of a health care
6 provider treating an incapacitated patient, including a member of the ethics
7 committee, provided a member of the team is not directly involved with the
8 treatment of the incapacitated patient.
- 9 (2) If consent is provided under this subdivision, a health care provider shall
10 continue good faith efforts to identify and locate an individual in a preceding
11 level of priority.
- 12 2.3. Unless otherwise determined by court order, a parent may make health care decisions
13 for the parent's minor child. Individuals in the following classes and in the following
14 order of priority may provide informed consent to health care on behalf of a minor
15 patient if a parent is unable to provide informed consent:
- 16 a. A guardian acting under a court order specifically authorizing the guardian to
17 make health care decisions for the minor;
- 18 b. An appointed guardian or custodian of the minor;
- 19 c. A noncustodial parent of the minor, including a stepparent who has maintained
20 significant contact with the patient;
- 21 d. An adult sibling of the minor who has maintained significant contact with the
22 minor;
- 23 e. A grandparent of the minor who has maintained significant contact with the minor;
- 24 f. A close relative or friend of the minor who is at least eighteen years of age and
25 who has maintained significant contact with the minor; or
- 26 g. An interdisciplinary team consisting of at least three health care professionals.
27 (1) An interdisciplinary team may include an employee or agent of a health care
28 provider treating a minor, including a member of the ethics committee,
29 provided a member of the team is not directly involved with the treatment of
30 the minor.

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

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

3-5. Before any ~~person~~individual authorized to provide informed consent ~~pursuant to~~under this section exercises that authority, the ~~person~~individual must first determine in good faith that the patient, if not incapacitated, would consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made only after determining that the proposed health care is in the patient's best interests.

4. ~~No person~~

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

5-7. If a patient who is determined by a physician, psychiatrist, or psychologist to be an incapacitated ~~person~~patient, or ~~a person~~an individual interested in the patient's welfare, objects to a determination of incapacity made ~~pursuant to~~in accordance with this section, a court hearing pursuant to chapter 30.1-28 must be held to determine the issue of incapacity.