



2025 SB 2297
House Human Services Committee
Representative Matthew Ruby, Chairman
March 12, 2025

Chairman Ruby and members of the House Human Services Committee, I am Melissa Hauer, General Counsel/VP, of the North Dakota Hospital Association (NDHA). I am here to testify in support of engrossed Senate Bill 2297 and ask that you give this bill a **Do Pass** recommendation.

We also support further amendments that we understand will be proposed by the bill sponsor to clarify when a guardian has priority over a health care agent and by the North Dakota Health and Human Services to clarify that, in addition to a physician, a psychologist may also make a determination of a patient's incapacity.

This bill will help hospitals care for patients who do not have decision-making capacity and do not have a family member, friend, or guardian to serve as a decision maker. In those situations, there is no one to decide whether the patient should receive health care treatment, what type, how much, or when to stop. When faced with important medical decisions for these patients, there is nobody to give informed consent. This is an ethical quandary that hospitals encounter surprisingly often.

This bill would add an interdisciplinary medical team to the list of those who may make informed decisions for such a patient. Under current North Dakota law, that is not an option. The bill would add new subsections to N.D.C.C. § 23-12-13 which would allow an interdisciplinary health team to be a last resort decision-maker for both minors and incapacitated adults when there is no one with a higher priority to make decisions. The others in the list would still maintain priority over the interdisciplinary health team. We expect the need for such an interdisciplinary team to be temporary, until someone higher in the priority list can be found or a guardian appointed.

An interdisciplinary health team would consist of at least three health care professionals, provided that no member of the team may be directly involved with the treatment of the

patient. A health care provider would also be required to continue good faith efforts to identify and locate an individual in a preceding level of priority. We believe that an interdisciplinary team would more accurately and appropriately represent an unrepresented patient's wishes, without the conflicts or biases that a treating provider might have or appear to have. A collaborative, interdisciplinary approach to the problem of treating unrepresented patients, although imperfect, is preferable to other more unilateral approaches such as when a health care provider is faced with critical treatment needs of a minor or an incapacitated adult but has nowhere to turn for decision making.

Taking this collaborative, team based approach creates a multifaceted decision-making method, involving layers of ethical safeguards, thus making it likely the best possible solution to this difficult ethical dilemma. We believe this bill represents the best compromise to help those patients who can't make their own decisions and who have no one to make these important choices for them.

In summary, we support the engrossed bill with the amendments proposed today as noted above and hope that you will give it a **Do Pass** recommendation.

I would be happy to respond to any questions you may have. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel/VP
North Dakota Hospital Association