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To: House Human Services Committee
From: Christopher Dodson, Co-Director
Date: March 12, 2025
Re: Senate Bill 2297 - Informed Consent for Minors and Incapacitated Patients

The North Dakota Catholic Conference supports Senate Bill 2297 because it improves and clarifies important statutory language.

Section 23-12-13 of the North Dakota Century Code:

- (1) Codifies the legal principle that a health care provider must receive informed consent before a health care procedure, even if the patient is a minor or an incapacitated adult;
- (2) Ensures that if the patient is a minor or an incapacitated adult, informed consent is received from the individual closest to the patient in a descending order;
- (3) Requires the health care provider to make reasonable efforts to locate an individual authorized to provide informed consent before moving to the next individual on the list; and
- (4) Requires the individual who provides informed consent to determine in good faith that the patient, if not incapacitated, would consent to the proposed health care. If a determination cannot be made, the decision must be in the patient's best interests.

It is a good statute that ensures that patients can receive necessary health care and have their rights and wishes respected, even when they lack the ability or competence to consent.

The purpose of SB 2297, as introduced, was only to add a healthcare interdisciplinary team at the bottom of the list of persons who can provide informed consent. The North Dakota Catholic Conference originally had no position on the addition of the interdisciplinary team, but had concerns about some other changes in the bill that would have had unintended consequences. (The Conference now supports the addition of an interdisciplinary team.)

Fixing those changes gave the Senate Human Services Committee an opportunity to clean up language in the existing law that is grammatically inconsistent or unclear. In addition, the existing statute jumps back and forth between language that applies only to minors, only to incapacitated adults, and to both. The engrossed bill, with the additional amendments brought forth by the bill's sponsor, greatly improves the statute, making it more understandable to health care professionals and, hopefully, the general public.

Except for the addition of an interdisciplinary team at the end of the list, SB 2297 does not change who can provide informed consent to medical treatment or the priority of the listed individuals. To make it clearer, the statute would now have two lists: one for incapacitated adults and one for minors. Although the language describing individuals on the lists has changed in some cases, these changes are not substantive. Senate Bill 2297 changes only the descriptions, not the law.

The amendments offered today were missed when the Senate worked on the bill. With the adoption of those amendments, Senate Bill 2297 greatly improves the language of the statute, clarifies the priority of parents in the case of minors, and adds an interdisciplinary team for those rare cases when no one is available to provide informed consent.

The North Dakota Catholic Conference asks for a **Do Pass** recommendation on Senate Bill 2297.