

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

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 1 of section 23-12-13 of the North Dakota~~
2 ~~Century Code, relating to informed consent of incapacitated individuals.~~for an Act to amend and
3 reenact section 23-12-13 of the North Dakota Century Code, relating to informed consent of
4 incapacitated patients.

5 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

6 ~~—SECTION 1. AMENDMENT. Subsection 1 of section 23-12-13 of the North Dakota Century~~
7 ~~Code is amended and reenacted as follows:~~

8 ~~—1.— Informed consent for health care for a minor patient or a patient who is determined by~~
9 ~~a physicianan expert examiner, as defined in section 30.1-01-06 to be an~~
10 ~~incapacitated person, as defined in subsection 2 of section 30.1-26-01, and unable to~~
11 ~~consent may be obtained from a person authorized to consent on behalf of the patient.~~
12 ~~Persons in the following classes and in the following order of priority may provide~~
13 ~~informed consent to health care on behalf of the patient:~~

14 ~~—a.— The individual, if any, to whom the patient has given a durable power of attorney~~
15 ~~that encompasses the authority to make health care decisions or has been~~
16 ~~identified as an agent in a health care directive with the authority to make health~~
17 ~~care decisions, unless a court of competent jurisdiction specifically authorizes a~~
18 ~~guardian to make medical decisions for the incapacitated personindividual with~~
19 ~~priority over any existing, valid durable power of attorney or health care directive;~~

20 ~~—b.— The appointed guardian or custodian of the patient, if any;~~

- ~~c. The patient's spouse who has maintained significant contacts with the incapacitated person~~individual;
- ~~d. Children~~A child of the patient who ~~are~~is at least eighteen years of age and who have~~has~~ maintained significant contacts with the incapacitated person~~individual~~;
- ~~e. Parents~~A parent of the patient, including a stepparent who has maintained significant contacts with the incapacitated person~~individual~~;
- ~~f. Adult brothers and sisters~~An adult brother or sister of the patient who have~~has~~ maintained significant contacts with the incapacitated person~~individual~~;
- ~~g. Grandparents~~A grandparent of the patient who have~~has~~ maintained significant contacts with the incapacitated person~~individual~~;
- ~~h. Grandchildren~~A grandchild of the patient who ~~are~~is at least eighteen years of age and who have~~has~~ maintained significant contacts with the incapacitated person;
~~or~~individual;
- ~~i. A close relative or friend of the patient who is at least eighteen years of age and who has maintained significant contacts with the incapacitated person~~individual;
~~or~~
- ~~j. An interdisciplinary team consisting of at least two health care professionals.~~
- ~~(1) The interdisciplinary team may include an employee or agent of a health care provider treating the incapacitated individual, including a member of the ethics committee, provided that no member of the team may be directly involved with the treatment of the incapacitated individual.~~
- ~~(2) If consent is provided under subdivision j, a health care provider shall continue good faith efforts to identify and locate an individual in a preceding level of priority.~~

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

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

- ~~Informed consent for health care for a minor patient or a patient who is determined by a physician to be an incapacitated person, as defined in subsection 2 of section 30.1-26-01, and unable to consent may be obtained from a person authorized to~~

~~consent on behalf of the patient~~ For purposes of this section, "incapacitated patient" means:

a. A minor; or

b. An adult unable to understand and appreciate the nature and consequence of a health care decision, including the benefits, harms, and reasonable alternatives to proposed health care, and unable to communicate a health care decision, as certified by the patient's attending physician and filed in the patient's medical record. ~~Persons~~

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

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

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

c. An appointed guardian or custodian of the patient, ~~if any;~~

~~e. The patient's~~

d. A spouse of the patient who has maintained significant ~~contacts~~ contact with the ~~incapacitated person~~ patient;

~~d. Children~~

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

~~e. Parents~~

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

~~f. Adult brothers and sisters~~

g. An adult sibling of the patient who ~~have~~ has maintained significant ~~contacts~~ contact with the ~~incapacitated person~~ patient;

- 1 ~~g. Grandparents~~
- 2 h. A grandparent of the patient who ~~have~~has maintained significant ~~contacts~~contact
- 3 with the ~~incapacitated person~~patient;
- 4 ~~h. Grandchildren~~
- 5 i. A grandchild of the patient who ~~are~~is at least eighteen years of age and who
- 6 ~~have~~has maintained significant ~~contacts~~contact with the ~~incapacitated-~~
- 7 ~~person~~patient; ~~or~~
- 8 ~~i.j.~~ A close relative or friend of the patient who is at least eighteen years of age and
- 9 who has maintained significant ~~contacts~~contact with the ~~incapacitated-~~
- 10 ~~person~~patient; or
- 11 k. An interdisciplinary team consisting of at least two health care professionals.
- 12 (1) An interdisciplinary team may include an employee or agent of a health care
- 13 provider treating an incapacitated patient, including a member of the ethics
- 14 committee, provided a member of the team is not directly involved with the
- 15 treatment of the incapacitated patient.
- 16 (2) If consent is provided under subdivision k, a health care provider shall
- 17 continue good faith efforts to identify and locate an individual in a preceding
- 18 level of priority.
- 19 ~~2.3.~~ A ~~physician~~health care provider seeking informed consent for proposed health care for
- 20 ~~a minor patient or a patient who is an incapacitated person and~~an incapacitated
- 21 ~~patient who~~ is unable to consent must make reasonable efforts to locate and secure
- 22 authorization for the health care from a competent ~~person~~individual in the first or
- 23 succeeding class identified in subsection ~~42~~. If the ~~physician~~health care provider is
- 24 unable to locate such ~~person~~individual, authorization may be given by any
- 25 ~~person~~individual in the next class in the order of descending priority. ~~A person~~An
- 26 individual identified in subsection ~~42~~ may not provide informed consent to health care
- 27 if ~~a person~~an individual of higher priority has refused to give such authorization.
- 28 ~~3.4.~~ Before any ~~person~~individual authorized to provide informed consent ~~pursuant to~~under
- 29 this section exercises that authority, the ~~person~~individual must first determine in good
- 30 faith that the patient, if not incapacitated, would consent to the proposed health care. If
- 31 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.

~~4.5. No person~~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.

~~5.6. If a patient who is determined by a physician 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.