Testimony of Susan E. Johnson-Drenth, J.D.[1], CELA[2]
Before the Senate Human Services Committee
On SB 2125

Chairperson and members of the committee, my name is Susan Johnson-Drenth, an attorney with JD Legal Planning in Fargo, North Dakota. I am the only Certified Elder Law Attorney in North Dakota. Prior to practicing law, I worked as a Registered Nurse for ten (10) years in various intensive care units, with my last employment as a Registered Nurse in the cardiac intensive care unit at MeritCare Hospital in Fargo. I give you my background information to help you understand my passion for empowering individuals with the knowledge and ability to create a proper Health Care Directive and to have the terms of the Health Care Directive honored by their treating providers and health care institutions.

In a Health Care Directive, an individual names an agent(s) and alternate agents to make health care decisions upon the inability or unwillingness of the individual to communicate their own decisions. Additionally, a Health Care Directive allows an individual to state their wishes regarding important end-of-life decisions.

Once the Health Care Directive is properly signed by the principal, a copy of it should be provided to the medical institution for placement in an individual's medical chart. Recently, however, a medical institution, namely Sanford in Fargo, is refusing to accept Health Care Directives validly signed by the principal unless **all** agents (primary and contingent) have previously signed their acceptances on the Health Care Directive.

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Currently, North Dakota Century Code Section 23-06.5-06 states that in order for a Health Care Directive validly signed by the principal to even be effective, the agent(s) **must** accept their appointments in writing.

In the twenty-five (25) years that I have practiced estate planning in North Dakota, it is most common that there will be more than one (1) health care agent named. For example, a principal with four (4) children may name each of them as first through fourth alternate agents. These four (4) children likely live in different locations, making it cumbersome, if not impossible, to obtain the written acceptances of all four (4) children as agents before the principal needs to timely provide the Health Care Directive to their medical institution.

Waiting until all acceptances are signed in writing by all the agents before a medical institution may accept a Health Care Directive causes unnecessary delay in the administration of health care for an incapacitated principal. This unnecessary delay can be alleviated by removing the statutory requirement that, in order for a Health Care Directive to be effective, all agents must accept their appointments in writing. Other states, including Minnesota, do not have a statutory requirement that a health care agent must sign a written acceptance.

Interestingly, an individual named as attorney-in-fact in a Durable Power of Attorney does not need to sign a written acceptance under North Dakota Century Code Chapter 30.1-30. Therefore, it is illogical that a written acceptance is required by a medical agent in a Health Care Directive, but not by a financial agent (aka attorney-in-fact) in a Durable Power of Attorney.

Why would North Dakota want to cause a potential delay in the administration of life saving medical decisions, just because the agent failed to sign the back of the Health Care Directive form?

For those reasons, I strongly urge a DO PASS recommendation for SB 2125.

I am available for any questions the committee may have. Thank you.