

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 and minors.

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;~~

- 1 ~~\_\_\_\_\_ c. The patient's spouse who has maintained significant contacts with the~~  
2 ~~incapacitated personindividual;~~
- 3 ~~\_\_\_\_\_ d. ChildrenA child of the patient who areis at least eighteen years of age and who~~  
4 ~~havehas maintained significant contacts with the incapacitated personindividual;~~
- 5 ~~\_\_\_\_\_ e. ParentsA parent of the patient, including a stepparent who has maintained~~  
6 ~~significant contacts with the incapacitated personindividual;~~
- 7 ~~\_\_\_\_\_ f. Adult brothers and sistersAn adult brother or sister of the patient who havehas~~  
8 ~~maintained significant contacts with the incapacitated personindividual;~~
- 9 ~~\_\_\_\_\_ g. GrandparentsA grandparent of the patient who havehas maintained significant~~  
10 ~~contacts with the incapacitated personindividual;~~
- 11 ~~\_\_\_\_\_ h. GrandchildrenA grandchild of the patient who areis at least eighteen years of age~~  
12 ~~and who havehas maintained significant contacts with the incapacitated person;~~  
13 ~~orindividual;~~
- 14 ~~\_\_\_\_\_ i. A close relative or friend of the patient who is at least eighteen years of age and~~  
15 ~~who has maintained significant contacts with the incapacitated personindividual;~~  
16 ~~or~~
- 17 ~~\_\_\_\_\_ j. An interdisciplinary team consisting of at least two health care professionals.~~
- 18 ~~\_\_\_\_\_ (1) The interdisciplinary team may include an employee or agent of a health~~  
19 ~~care provider treating the incapacitated individual, including a member of~~  
20 ~~the ethics committee, provided that no member of the team may be directly~~  
21 ~~involved with the treatment of the incapacitated individual.~~
- 22 ~~\_\_\_\_\_ (2) If consent is provided under subdivision j,a health care provider shall~~  
23 ~~continue good faith efforts to identify and locate an individual in a preceding~~  
24 ~~level of priority.~~

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

27 **23-12-13. ~~Persons~~Individuals authorized to provide informed consent to health care**  
28 **for incapacitated ~~persons~~patients and minors - Priority.**

- 29 1. ~~Informed consent for health care for a minor patient or a patient who is determined by~~  
30 ~~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:

a. "Incapacitated patient" means 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.

b. "Minor" means an individual under eighteen years of age. ~~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 valid 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~~ under chapter 30.1-28 or a similar instrument executed in another jurisdiction in accordance with the law in that jurisdiction;

~~c. 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~~

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

1 e. A grandparent of the minor who has maintained significant contact with the minor;

2 f. A close relative or friend of the minor who is at least eighteen years of age and  
3 who has maintained significant contact with the minor; or

4 g. 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 a minor, including a member of the ethics committee,  
7 provided a member of the team is not directly involved with the treatment of  
8 the minor.

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 4. A ~~physician~~health care provider seeking informed consent for proposed health care for  
13 ~~a minor patient or a patient who is an incapacitated person and~~an incapacitated  
14 patient or a minor who is unable to consent must make reasonable efforts to locate  
15 and secure authorization for the health care from a competent ~~person~~individual in the  
16 first or succeeding class identified in subsection ~~4~~2 for an incapacitated patient or  
17 subsection 3 for a minor. If the ~~physician~~health care provider is unable to locate such  
18 ~~person~~individual, authorization may be given by any ~~person~~individual in the next class  
19 in the order of descending priority. ~~A person~~An individual identified in subsection ~~4~~2 for  
20 ~~an incapacitated patient or subsection 3 for a minor~~ may not provide informed consent  
21 to health care if ~~a person~~an individual of higher priority has refused to give such  
22 authorization.

23 ~~3.5.~~ Before any ~~person~~individual authorized to provide informed consent ~~pursuant to~~under  
24 this section exercises that authority, the ~~person~~individual must first determine in good  
25 faith that the patient, if not incapacitated, would consent to the proposed health care. If  
26 such a determination cannot be made, the decision to consent to the proposed health  
27 care may be made only after determining that the proposed health care is in the  
28 patient's best interests.

29 ~~4. No person~~

30 6. An individual authorized to provide informed consent ~~pursuant to~~in accordance with  
31 this section may not provide consent for sterilization, abortion, or psychosurgery or for

1 admission to a state mental health facility for a period of more than forty-five days  
2 without a mental health proceeding or other court order.

3 ~~5.7.~~ If a patient who is determined by a physician to be an incapacitated ~~person~~patient, or  
4 ~~a person~~an individual interested in the patient's welfare, objects to a determination of  
5 incapacity made ~~pursuant to~~in accordance with this section, a court hearing pursuant  
6 to chapter 30.1-28 must be held to determine the issue of incapacity.