

Sixty-ninth
Legislative Assembly
of North Dakota

**FIRST ENGROSSMENT
with House Amendments**

ENGROSSED 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 3 of section 23-06.5-03 and section
2 23-12-13 of the North Dakota Century Code, relating to the determination of incapacity and
3 informed consent of incapacitated patients and minors.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Subsection 3 of section 23-06.5-03 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 3. A health care directive, including the agent's authority, is in effect only when the
8 principal lacks capacity to make health care decisions, as certified in writing by the
9 principal's attending physician, psychiatrist, or psychologist and filed in the principal's
10 medical record, and ceases to be effective upon a determination that the principal has
11 recovered capacity.

12 **SECTION 2. AMENDMENT.** Section 23-12-13 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **23-12-13. ~~Persons~~Individuals authorized to provide informed consent to health care**
15 **for incapacitated ~~persons~~patients and minors - Priority.**

16 1. ~~Informed consent for health care for a minor patient or a patient who is determined by~~
17 ~~a physician to be an incapacitated person, as defined in subsection 2 of section~~
18 ~~30.1-26-01, and unable to consent may be obtained from a person authorized to~~
19 ~~consent on behalf of the patient~~For purposes of this section:

20 a. "Incapacitated patient" means an adult unable to understand and appreciate the
21 nature and consequence of a health care decision, including the benefits, harms,
22 and reasonable alternatives to proposed health care, and unable to communicate

- 1 a health care decision, as certified by the patient's attending physician and filed in
2 the patient's medical record.
- 3 b. "Minor" means an individual under eighteen years of age. Persons
4 2. Unless a court of competent jurisdiction determines otherwise, individuals in the
5 following classes and in the following order of priority may provide informed consent to
6 health care on behalf of thean incapacitated patient:
- 7 a. ~~The individual, if any, to whom the patient has given a durable power of attorney~~
8 ~~that encompasses the authority to make health care decisions, unless a court of~~
9 ~~competent jurisdiction specifically authorizes a guardian to make medical~~
10 ~~decisions for the incapacitated person;~~
- 11 b. The appointedA health care agent appointed through a health care directive
12 under chapter 23-06.5 or a similar instrument executed in another jurisdiction in
13 accordance with the law in that jurisdiction;
- 14 b. An appointed guardian or custodian of the patient, if any under chapter 30.1-28
15 or a similar instrument executed in another jurisdiction in accordance with the law
16 in that jurisdiction;
- 17 e. ~~The patient's~~
- 18 c. A spouse of the patient who has maintained significant ~~contacts~~contact with the
19 incapacitated personpatient;
- 20 ~~d. Children~~
- 21 d. A child of the patient who areis at least eighteen years of age and who havehas
22 maintained significant ~~contacts~~contact with the incapacitated personpatient;
- 23 ~~e. Parents~~
- 24 e. A parent of the patient, including a stepparent who has maintained significant
25 ~~contacts~~contact with the incapacitated personpatient;
- 26 ~~f. Adult brothers and sisters~~
- 27 f. An adult sibling of the patient who havehas maintained significant
28 ~~contacts~~contact with the incapacitated personpatient;
- 29 ~~g. Grandparents~~
- 30 g. A grandparent of the patient who havehas maintained significant ~~contacts~~contact
31 with the incapacitated personpatient;

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

1 (1) An interdisciplinary team may include an employee or agent of a health care
2 provider treating a minor, including a member of the ethics committee,
3 provided a member of the team is not directly involved with the treatment of
4 the minor.

5 (2) If consent is provided under this subdivision, a health care provider shall
6 continue good faith efforts to identify and locate an individual in a preceding
7 level of priority.

8 4. ~~A physician~~health care provider seeking informed consent for proposed health care for
9 a ~~minor patient or a patient who is an incapacitated person and~~an incapacitated
10 patient or a minor who is unable to consent must make reasonable efforts to locate
11 and secure authorization for the health care from a competent ~~person~~individual in the
12 first or succeeding class identified in subsection 42 ~~for an incapacitated patient or~~
13 subsection 3 for a minor. If the ~~physician~~health care provider is unable to locate such
14 ~~person~~individual, authorization may be given by any ~~person~~individual in the next class
15 in the order of descending priority. ~~A person~~An individual identified in subsection 42 ~~for~~
16 an incapacitated patient or subsection 3 for a minor may not provide informed consent
17 to health care if a ~~person~~an individual of higher priority has refused to give such
18 authorization.

19 ~~3-5.~~ Before any ~~person~~individual authorized to provide informed consent ~~pursuant to~~under
20 this section exercises that authority, the ~~person~~individual must first determine in good
21 faith that the patient, if not incapacitated, would consent to the proposed health care. If
22 such a determination cannot be made, the decision to consent to the proposed health
23 care may be made only after determining that the proposed health care is in the
24 patient's best interests.

25 4. ~~No person~~

26 6. An individual authorized to provide informed consent ~~pursuant to~~in accordance with
27 this section may not provide consent for sterilization, abortion, or psychosurgery or for
28 admission to a state mental health facility for a period of more than forty-five days
29 without a mental health proceeding or other court order.

30 ~~5-7.~~ If a patient who is determined by a physician, psychiatrist, or psychologist to be an
31 incapacitated ~~person~~patient, or a ~~person~~an individual interested in the patient's

- 1 welfare, objects to a determination of incapacity made pursuant to in accordance with
- 2 this section, a court hearing pursuant to chapter 30.1-28 must be held to determine the
- 3 issue of incapacity.