

**Sixty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2025**

SENATE BILL NO. 2297
(Senators Roers, Barta, Lee, Sorvaag)
(Representative O'Brien)

AN ACT to amend and reenact subsection 3 of section 23-06.5-03 and section 23-12-13 of the North Dakota Century Code, relating to the determination of incapacity and informed consent of incapacitated patients and minors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

SECTION 2. 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 and minors - Priority.

1. ~~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:
 - 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, psychiatrist, or psychologist and filed in the patient's medical record.
 - b. "Minor" means an individual under eighteen years of age.
2. Unless a court of competent jurisdiction determines otherwise, 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;~~
 - b. The appointedA 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;
 - b. 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~~A spouse of the patient who has maintained significant ~~contacts~~contact with the ~~incapacitated person~~patient;
- d. ~~Children~~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~~A parent of the patient, including a stepparent who has maintained significant ~~contacts~~contact with the ~~incapacitated person~~patient;
- f. ~~Adult brothers and sisters~~An adult sibling of the patient who ~~have~~has maintained significant ~~contacts~~contact with the ~~incapacitated person~~patient;
- g. ~~Grandparents~~A grandparent of the patient who ~~have~~has maintained significant ~~contacts~~contact with the ~~incapacitated person~~patient;
- h. ~~Grandchildren~~A grandchild 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; or
- i. A close relative or friend of the patient who is at least eighteen years of age and who has maintained significant ~~contacts~~contact with the ~~incapacitated person~~patient; or
- j. An interdisciplinary team consisting of at least three health care professionals.
 - (1) An interdisciplinary team may include an employee or agent of a health care provider treating an incapacitated patient, including a member of the ethics committee, provided a member of the team is not directly involved with the treatment of the incapacitated patient.
 - (2) If consent is provided under this subdivision, a health care provider shall continue good faith efforts to identify and locate an individual in a preceding level of priority.

2-3. Unless otherwise determined by court order, a parent may make health care decisions for the parent's minor child. Individuals in the following classes and in the following order of priority may provide informed consent to health care on behalf of a minor patient if a parent is unable to provide informed consent:

- a. A guardian acting under a court order specifically authorizing the guardian to make health care decisions for the minor;
- b. An appointed guardian or custodian of the minor;
- c. A noncustodial parent of the minor, including a stepparent who has maintained significant contact with the patient;
- d. An adult sibling of the minor who has maintained significant contact with the minor;
- e. A grandparent of the minor who has maintained significant contact with the minor;
- f. A close relative or friend of the minor who is at least eighteen years of age and who has maintained significant contact with the minor; or
- g. An interdisciplinary team consisting of at least three health care professionals.
 - (1) An interdisciplinary team may include an employee or agent of a health care provider treating a minor, including a member of the ethics committee, provided a member of the team is not directly involved with the treatment of the minor.
 - (2) If consent is provided under this subdivision, a health care provider shall continue good faith efforts to identify and locate an individual in a preceding level of priority.

4. A ~~physician~~health care provider seeking informed consent for proposed health care for ~~a minor patient or a patient who is an incapacitated person and an incapacitated patient or a minor who~~ is unable to consent must make reasonable efforts to locate and secure authorization for the health care from a competent ~~person~~individual in the first or succeeding class identified in subsection 42 for an incapacitated patient or subsection 3 for a minor. If the ~~physician~~health care provider is unable to locate such ~~person~~individual, authorization may be given by any ~~person~~individual in the next class in the order of descending priority. ~~A person~~An individual identified in subsection 42 for an incapacitated patient or subsection 3 for a minor may not provide informed consent to health care if a ~~person~~an individual of higher priority has refused to give such authorization.
- 3-5. Before any ~~person~~individual authorized to provide informed consent ~~pursuant to~~under this section exercises that authority, the ~~person~~individual must first determine in good faith that the patient, if not incapacitated, would consent to the proposed health care. If 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. ~~No person~~
6. 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.
- 5-7. If a patient who is determined by a physician, psychiatrist, or psychologist 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.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2297.

Senate Vote: Yeas 46 Nays 1 Absent 0

House Vote: Yeas 90 Nays 3 Absent 1

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2025.

Approved at _____ M. on _____, 2025.

Governor

Filed in this office this _____ day of _____, 2025,

at _____ o'clock _____ M.

Secretary of State