

## 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 ~~physician~~an 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 person~~individual 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 person~~individual;
- 3 ~~\_\_\_\_\_ d. Children~~A child of the patient who ~~are~~is at least eighteen years of age and who  
4 ~~have~~has maintained significant contacts with the incapacitated personindividual;
- 5 ~~\_\_\_\_\_ e. Parents~~A parent of the patient, including a stepparent who has maintained  
6 significant contacts with the incapacitated personindividual;
- 7 ~~\_\_\_\_\_ f. Adult brothers and sisters~~An adult brother or sister of the patient who ~~have~~has  
8 maintained significant contacts with the incapacitated personindividual;
- 9 ~~\_\_\_\_\_ g. Grandparents~~A grandparent of the patient who ~~have~~has maintained significant  
10 contacts with the incapacitated personindividual;
- 11 ~~\_\_\_\_\_ h. Grandchildren~~A grandchild of the patient who ~~are~~is at least eighteen years of age  
12 and who ~~have~~has maintained significant contacts with the incapacitated person;  
13 ~~or~~individual;
- 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 person~~individual;  
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~~  
23 ~~provider shall continue good faith efforts to identify and locate an individual~~  
24 ~~in a preceding 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 - 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~~  
31 ~~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 ~~4~~2. 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 ~~4~~2 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

1 care may be made only after determining that the proposed health care is in the  
2 patient's best interests.

3 ~~4.5. No person~~An individual authorized to provide informed consent ~~pursuant to~~in  
4 accordance with this section may not provide consent for sterilization, abortion, or  
5 psychosurgery or for admission to a state mental health facility for a period of more  
6 than forty-five days without a mental health proceeding or other court order.

7 ~~5.6.~~ If a patient who is determined by a physician to be an incapacitated ~~person~~patient, or  
8 ~~a person~~an individual interested in the patient's welfare, objects to a determination of  
9 incapacity made ~~pursuant to~~in accordance with this section, a court hearing pursuant  
10 to chapter 30.1-28 must be held to determine the issue of incapacity.