

**2025 SENATE HUMAN SERVICES**

**SB 2297**

# 2025 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Fort Lincoln Room, State Capitol

SB 2297  
2/4/2025

Relating to informed consent of incapacitated individuals.
--

9:45 a.m. Chairman Lee opened the hearing.

Members Present: Chairman Lee, Vice-Chairman Weston, Senator Van Oosting, Senator Clemens, Senator Hogan, Senator Roers.

### Discussion Topics:

- Demographics of patients
- Healthcare directives
- Guardian authority

9:46 a.m. Senator Roers introduced the bill.

9:48 a.m. Dr Steven Mitchell, Sanford Fargo Ethics committee, testified in favor and submitted testimony #34240.

9:57 a.m. Joel Larson, Deputy General Counsel Altru Health System, testified in favor and submitted testimony #34365.

9:58 a.m. Melissa Hauer, General Counsel of the North Dakota Hospital Association, testified in favor and submitted testimony #34075.

9:59 a.m. Christopher Dodson, Executive Director at North Dakota Catholic Conference, testified in opposition and submitted testimony #33895.

10:10 a.m. Chairman Lee closed hearing.

*Andrew Ficek, Committee Clerk*



*Representing the Diocese of Fargo  
and the Diocese of Bismarck*

103 South Third Street  
Suite 10  
Bismarck ND 58501  
701-223-2519  
ndcatholic.org  
ndcatholic@ndcatholic.org

**To:** Senate Human Services Committee  
**From:** Christopher Dodson, General Counsel  
**Date:** February 4, 2025  
**Re:** Senate Bill 2297 - Informed Consent for Incapacitated Individuals

The North Dakota Catholic Conference does not oppose amending the informed consent statute to include an interdisciplinary team to the the list of who can provide informed consent for an incapacitated individual. However, we have concerns about other parts of the bill could have unintended consequences.

In order by line number:

Page 1, lines 13-15:

The existing language states that the first person of priority to give informed consent is: “The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions . . .” The bill adds “or has been identified as an agent in a health care directive with the authority to make health care decisions . . .”

This new language merely restates the existing language in a different way. Under North Dakota law, the only way an individual can have a “durable power of attorney that encompasses the authority to make health care decisions” is through a health care directive that appoints an agent. Moreover, an agent appointed through a health care directive, by definition, has a durable power of attorney to make health care decisions. See N.D.C.C. Section 23-06.5-03.

There was discussion in 2005 about changing the language in Section 23-12-13 - the section before you - to replace “durable power of attorney that encompasses the authority to make health care decisions” with language using “health care directive” and “agent,” but there were some who thought that using new language would be interpreted as excluding health care decision-making authority that was given under the pre-2005 law, which used “durable power of attorney for health care.”

The existing language is sufficient. If, however, the committee wants to replace the old language with new language, the new language should be revised to “identified as an agent in a health care directive.” The words “with the authority to make health care decisions” are superfluous and should not be used. An agent appointed through a health care directive, by definition, has authority to make health care decisions for the principal (patient).

While the use of repetitive and superfluous language may seem benign, North Dakota courts apply the maxim that the legislature does not engage in an idle act. In other words, the presumption is that when the legislature amends an existing law it intends to change the law. No change is necessary in this section of the law, but the bill's language signals that the legislature intends to change the law.

Page 1, lines 16-17:

This new language on these two lines creates three problems.

Firstly, under the existing language a health care agent has priority over a guardian unless the court order appointing the guardian authorizes the guardian to make health care decisions for the patient/ward. This accords with Section 23-06.5-13(1) of the health care directive law: "Unless a court of competent jurisdiction determines otherwise, the appointment of an agent in a health care directive executed pursuant to this chapter takes precedence over any authority to make medical decisions granted to a guardian pursuant to chapter 30.1-28."

Rather than giving priority to a guardian who has legal authority to make health care decisions, the proposed language would appear to require the court's order to specifically say that has priority over a health care directive. That would limit the scope of which guardians would be given priority over a health care agent and create confusion for those guardians who are given general health care decision authority.

If the language is intended to make clear that guardians with clear health care decision-making authority have priority over health care agents, the language is unnecessary. The law already provides for that.

Secondly, the proposed language is problematic in that it appears to require the court order to direct the guardian to ignore a health care directive in all respects. A health care directive becomes invalid only under rare circumstances. A guardian, even one who is given health care decision-making authority, has an obligation to follow the instructions and wishes expressed in a valid health care directive.

Subsection 3 of Section 23-12-13 states: "Before any person authorized to provide informed consent pursuant to this section exercises that authority, the person 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."

The primary reason for a health care directive is to give the decision-maker at any level of priority direction as to whether the patient would consent to the proposed health care. A guardian is not, and should not, be excused from this obligation.



Thirdly, the proposed language on line 17 uses “durable power of attorney” instead of “durable power of attorney for health care.” They are two different things. Only a durable power of attorney for health care authorizes a person to make health care decisions for an incapacitated person.

Finally, with regards to the addition of an interdisciplinary team, the language implies that an interdisciplinary team would only be used when the patient is incapacitated. The section, however, also applies to who can provide informed consent for a minor who is not incapacitated. We suggest that “In the case of an incapacitated individual,” be added at the beginning of Page 2, line 11.

In summary, the North Dakota Catholic Conference does not oppose adding an interdisciplinary team to the end of the list of who can provide informed consent for health care. We ask, however, that the committee address the identified language problems.



**2025 SB 2297**  
**Senate Human Services Committee**  
**Senator Judy Lee, Chairman**  
**February 4, 2025**

Chairman Lee and members of the Senate Human Services Committee, I am Melissa Hauer, General Counsel/VP, of the North Dakota Hospital Association (NDHA). I am here to testify in support of Senate Bill 2297. I ask that you give this bill a **Do Pass** recommendation.

When hospitals care for a patient who does not have decision-making capacity and does not have a family member, friend, or guardian to serve as a decision maker, there is no one to decide whether the patient should receive health care treatment, what type, how much, or when to stop. When faced with important medical decisions for these patients, there is nobody to give informed consent. This is an ethical quandary that hospitals encounter surprisingly often.

This bill would add an interdisciplinary medical team to the list of those who may make informed decisions for such a patient. Under current North Dakota law, that is not an option. The bill would add a new subsection to N.D.C.C. 23-12-13(1) which would add the interdisciplinary health team as a last resort decision-maker. The others in the list would still maintain priority over the interdisciplinary health team. We expect the need for such an interdisciplinary team to be temporary, until someone higher in the priority list can be found or a guardian appointed.

The interdisciplinary health team would consist of at least two health care professionals, provided that no member of the team may be directly involved with the treatment of the incapacitated patient. A health care provider would also be required to continue good faith efforts to identify and locate an individual in a preceding level of priority. We believe that an interdisciplinary team would more accurately and appropriately represent an unrepresented patient's wishes, without the conflicts or biases that a treating provider might have or appear to have. A collaborative, interdisciplinary approach to the problem of treating unrepresented patients, although imperfect, is preferable to other more unilateral

approaches such as when a health care provider is faced with critical treatment needs of an incapacitated individual but has nowhere to turn for decision making.

Taking this collaborative, team based approach creates a multifaceted decision-making method, involving layers of ethical safeguards, thus making it likely the best possible solution to this difficult ethical dilemma. We believe this bill represents the best compromise to help those patients who can't make their own decisions and who have no one to make these important choices for them.

In summary, we support the bill and hope that you will give it a **Do Pass** recommendation.

I would be happy to respond to any questions you may have. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel/VP  
North Dakota Hospital Association



**Senate Human Services Committee**  
**Senator Judy Lee, Chair**  
**February 4, 2025**  
**SB 2297**

Chair Lee and members of the Senate Human Services Committee. I am Dr. Steven Mitchell, a retired neuroradiologist. I completed my medical training at the University of North Dakota School of Medicine and spent the majority of my career working for Sanford Health Fargo. I have served on Sanford Fargo's ethics committee for 14 years and serve as emeritus chair. I also help teach medical ethics for the UND 3<sup>rd</sup> year medical students.

Thank you for your consideration of Senate Bill 2297, a bill designed to help medical providers care for individuals who do not have the capacity to make medical decisions nor have anyone to do so for them.

We are seeing increasing numbers of patients in our hospitals that do not have decision-making capacity, do not have an advance care directive, and do not have any family or close friends available to represent them as a substitute decision-maker. A person in this situation is often referred to as an "unrepresented patient."

Our care teams are sometimes unable to provide proper care to these individuals when that care needs a procedure that requires informed consent. We search diligently to find a decision-maker, but if one does not exist, we cannot perform that procedure unless it is an emergency.

I can give you an example of a patient scenario where a medical decision needs to be made, but there is nobody to make one on the patient's behalf: a homeless patient with significantly infected foot ulcer that is also infecting the bone. Due to confusion and/or a mental health condition, the patient is not able to make a decision about their own care. Despite our best efforts, we cannot find a close friend or family member willing to make decisions for this individual. We could treat the soft tissue infection with intravenous antibiotics and discharge the patient to a homeless shelter. However, if the underlying bone infection is severe, the proper treatment may be a partial foot amputation which cannot be done because it is neither life threatening nor an emergency. As a result, this individual may have repeated hospitalizations for improperly treated bone infection due to the inability to get consent for the correct procedure.

Some states allow a "two-physician rule" for situations like this. If the attending physician and the surgeon both agree that surgery should be done, the surgeon proceeds. Nobody speaks on behalf of the patient. Our ethics team and many other ethicists across the country believe the best practice is for an

interdisciplinary medical team, not directly involved in the patients care, to make careful and informed decisions on the patient's behalf. However, under current North Dakota law, that is not an option. SB 2297 adds a new subsection to North Dakota law that would add an interdisciplinary health team as a last resort decision-maker.

We, and other hospitals in North Dakota, are committed to good-faith efforts to find relatives or friends willing and able to make medical decisions for patients, but for those patients for whom none can be found, we would sincerely appreciate a yes vote on SB 2297.

Thank you for your consideration. I would welcome any questions you might have.

Steven Mitchell, M.D.  
Sanford Fargo Ethics Committee  
[Steven.Mitchell@SanfordHealth.org](mailto:Steven.Mitchell@SanfordHealth.org)  
701-306-2011

**2025 SB 2297**  
**Senate Human Services Committee**  
**Senator Lee, Chairman**  
**February 4, 2025**

Chairman Lee and members of the Senate Human Services Committee. My name is Joel Larson, and I serve as General Counsel at Altru Health System. I am honored to represent Altru Health System and share my passion for ensuring patients remain at the heart of everything we do in healthcare and proud to be part of improving healthcare for the communities we serve. I write in favor of Senate Bill 2297 and ask that you give this bill a **Do Pass** recommendation.

SB 2297 seeks to provide guidance to health care professionals when caring for an incapacitated individual when unrepresented. An unrepresented patient is an individual that lacks the physical and/or mental ability to make decisions for him or herself, and also does not have any identifiable friends, family, or caregivers who can or will serve as a substitute decision-maker.

At Altru, when our providers, nurses and case managers are caring for an incapacitated, unrepresented patient, we do absolutely everything to identify a next of kin or even neighborhood friend of the patient to help make healthcare decisions for the patient. Although we annually promote the need for having healthcare directives on file at our facility, the grim reality is that we often have unrepresented patients without friends, family or a healthcare directive on file. As a result, the unrepresented patient has no one to help make non-emergent treatment decisions on their behalf, and our healthcare providers cannot provide non-emergent treatment without the informed consent of a decision-maker.

The proposed changes to N.D.C.C. § 23-12-13 would provide an option for an interdisciplinary team of healthcare professionals to be able to consider and consent to treatment in the patient's best interest, while continuing to work tirelessly to find suitable decision-makers for the patient.

We ask that you give a Do Pass recommendation on SB 2297. Thank you for your consideration.

Thank you,

Joel Larson

# 2025 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Fort Lincoln Room, State Capitol

SB 2297  
2/10/2025

Relating to informed consent of incapacitated individuals.
--

3:04 p.m. Chairman Lee opened the hearing.

Members Present: Chairman Lee, Vice-Chairman Weston, Senator Van Oosting, Senator Clemens, Senator Hogan, Senator Roers.

### Discussion Topics:

- Healthcare directives
- Appointed agent
- Applicable code reference
- Parental rights

3:04 p.m. Christopher Dodson, General Counsel with North Dakota Catholic Conference, answered committee questions.

3:38 p.m. Victoria Christian, Legislative Council, answered committee questions.

3:56 p.m. Marnie Walth, Legal Affairs with Sanford Health, answered committee questions.

### Additional written testimony:

Senator Lee submitted testimony in neutral #36809.

3:59 p.m. Chairman Lee closed the hearing.

*Andrew Ficek, Committee Clerk*

25.1234.01001  
Title.

Prepared by the Legislative Council  
staff for Senator Lee  
February 10, 2025

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.

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;~~



- ~~c. The patient's spouse who has maintained significant contacts with the incapacitated person~~individual;
- ~~d. Children~~A child of the patient who ~~are~~is at least eighteen years of age and who ~~have~~has maintained significant contacts with the incapacitated personindividual;
- ~~e. Parents~~A parent of the patient, including a stepparent who has maintained significant contacts with the incapacitated personindividual;
- ~~f. Adult brothers and sisters~~An adult brother or sister of the patient who ~~have~~has maintained significant contacts with the incapacitated personindividual;
- ~~g. Grandparents~~A grandparent of the patient who ~~have~~has maintained significant contacts with the incapacitated personindividual;
- ~~h. Grandchildren~~A grandchild of the patient who ~~are~~is at least eighteen years of age and who ~~have~~has maintained significant contacts with the incapacitated person;  
~~or~~individual;
- ~~i. A close relative or friend of the patient who is at least eighteen years of age and who has maintained significant contacts with the incapacitated person~~individual;  
~~or~~
- ~~j. An interdisciplinary team consisting of at least two health care professionals.~~
- ~~(1) The interdisciplinary team may include an employee or agent of a health care provider treating the incapacitated individual, including a member of the ethics committee, provided that no member of the team may be directly involved with the treatment of the incapacitated individual.~~
- ~~(2) If consent is provided under subdivision j, a health care provider shall continue good faith efforts to identify and locate an individual in a preceding level of priority.~~

**SECTION 1. 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 - Priority.**

- ~~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, "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 ~~42~~. 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 ~~42~~ 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

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

~~4.5. No person~~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.

~~5.6. If a patient who is determined by a physician 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.

# 2025 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Fort Lincoln Room, State Capitol

SB 2297  
2/17/2025

Relating to informed consent of incapacitated individuals.
--

3:12 p.m. Chairman Lee opened the hearing.

Members Present: Chairman Lee, Vice-Chairman Weston, Senator Van Oosting, Senator Clemens, Senator Hogan, Senator Roers.

### Discussion Topics:

- Family involvement in medical decisions

3:15 p.m. Senator Clemens moved Amendment LC#25.1234.01002.

3:15 p.m. Senator Roers seconded the motion.

Senators	Vote
Senator Judy Lee	Y
Senator Kent Weston	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Kristin Roers	Y
Senator Desiree Van Oosting	Y

Motion passed 6-0-0.

3:16 p.m. Senator Roers moved Do Pass as Amended.

3:16 p.m. Senator Van Oosting seconded the motion.

Senators	Vote
Senator Judy Lee	Y
Senator Kent Weston	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Kristin Roers	Y
Senator Desiree Van Oosting	Y

Motion passed 6-0-0.

Senator Roers will carry the bill.

3:17 p.m. Chairman Lee adjourned the meeting.

Senate Human Services Committee

SB 2297

02/17/2025

Page 2

*Andrew Ficek, Committee Clerk*

Sixty-ninth  
Legislative Assembly  
of North Dakota

**PROPOSED AMENDMENTS TO**

**SENATE BILL NO. 2297**

Introduced by

Senators Roers, Barta, Lee, Sorvaag

Representative O'Brien

2-17-25

AB 1086

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.

**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;



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 ~~4.2~~ 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 ~~4.2~~ 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

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.

**REPORT OF STANDING COMMITTEE  
SB 2297**

**Human Services Committee (Sen. Lee, Chairman)** recommends **AMENDMENTS** ([25.1234.01002](#)) and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). SB 2297 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

**2025 HOUSE HUMAN SERVICES**

**SB 2297**



# 2025 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Pioneer Room, State Capitol

SB 2297  
3/12/2025

Relating to informed consent of incapacitated patients and minors.
--

9:14 a.m. Chairman M. Ruby opened the hearing.

Members Present: Chairman M. Ruby, Vice-Chairman Frelich, Representatives K. Anderson, Beltz, Bolinske, Davis, Dobervich, Fegley, Hendrix, Holle, Kiefert, Rios, Rohr

### Discussion Topics:

- Patient care without a caretaker
- Psychologists

9:15 a.m. Senator Roers, District 27, introduced the bill.

9:22 a.m. Jonathon Alm, Department of Health and Human Services, testified in favor and submitted testimony, #40883.

9:24 a.m. Melissa Hauer, Vice President and General Counsel for the North Dakota Hospital Association, testified in favor and submitted testimony, #40682.

9:28 a.m. Marnie Walt, Sanford Health, introduced Dr. Steven Mitchell.

9:28 a.m. Dr. Steven Mitchell, from the Sanford Health Ethics Committee, testified in favor and submitted testimony, #40843.

9:39 a.m. Christopher Dodson, Co-Director of the North Dakota Catholic Conference, testified in favor and submitted testimony, #40721.

9:53 a.m. Angela Sersha, Vice President General Counsel of Sanford Health, testified in favor and submitted testimony, #40886.

9:57 a.m. Christopher Dodson, Co-Director of the North Dakota Catholic Conference, testified and answered questions.

10:02 a.m. Dr. Steven Mitchell, from the Sanford Health Ethics Committee, testified and answered questions.

### Additional written testimony:

Brittany Blake, Altru Health System, submitted testimony in favor, #40030.

10:07 a.m. Chairman M. Ruby closed the hearing.

*Jackson Toman, Committee Clerk*

**2025 SB 2297**  
**House Human Services Committee**  
**Representative Ruby, Chairman**  
**March 12, 2025**

Chairman Ruby and members of the House Human Services Committee. My name is Brittney Blake, and I serve as Corporate Counsel at Altru Health System. I am honored to represent Altru Health System and share my passion for ensuring patients remain at the heart of everything we do in healthcare and proud to be part of improving healthcare for the communities we serve. I write in favor of Senate Bill 2297 and ask that you give this bill a **Do Pass** recommendation.

SB 2297 seeks to provide guidance to health care professionals when caring for an incapacitated individual when unrepresented. An unrepresented patient is an individual that lacks the physical and/or mental ability to make decisions for him or herself, and also does not have any identifiable friends, family, or caregivers who can or will serve as a substitute decision-maker.

At Altru, when our providers, nurses and case managers are caring for an incapacitated, unrepresented patient, we do absolutely everything to identify a next of kin or even neighborhood friend of the patient to help make healthcare decisions for the patient. Although we annually promote the need for having healthcare directives on file at our facility, the grim reality is that we often have unrepresented patients without friends, family or a healthcare directive on file. As a result, the unrepresented patient has no one to help make non-emergent treatment decisions on their behalf, and our healthcare providers cannot provide non-emergent treatment without the informed consent of a decision-maker.

The proposed changes to N.D.C.C. § 23-12-13 would provide an option for an interdisciplinary team of healthcare professionals to be able to consider and consent to treatment in the patient's best interest, while continuing to work tirelessly to find suitable decision-makers for the patient.

We ask that you give a Do Pass recommendation on SB 2297. Thank you for your consideration.

Thank you,

Brittney Blake





**2025 SB 2297**  
**House Human Services Committee**  
**Representative Matthew Ruby, Chairman**  
**March 12, 2025**

Chairman Ruby and members of the House Human Services Committee, I am Melissa Hauer, General Counsel/VP, of the North Dakota Hospital Association (NDHA). I am here to testify in support of engrossed Senate Bill 2297 and ask that you give this bill a **Do Pass** recommendation.

We also support further amendments that we understand will be proposed by the bill sponsor to clarify when a guardian has priority over a health care agent and by the North Dakota Health and Human Services to clarify that, in addition to a physician, a psychologist may also make a determination of a patient's incapacity.

This bill will help hospitals care for patients who do not have decision-making capacity and do not have a family member, friend, or guardian to serve as a decision maker. In those situations, there is no one to decide whether the patient should receive health care treatment, what type, how much, or when to stop. When faced with important medical decisions for these patients, there is nobody to give informed consent. This is an ethical quandary that hospitals encounter surprisingly often.

This bill would add an interdisciplinary medical team to the list of those who may make informed decisions for such a patient. Under current North Dakota law, that is not an option. The bill would add new subsections to N.D.C.C. § 23-12-13 which would allow an interdisciplinary health team to be a last resort decision-maker for both minors and incapacitated adults when there is no one with a higher priority to make decisions. The others in the list would still maintain priority over the interdisciplinary health team. We expect the need for such an interdisciplinary team to be temporary, until someone higher in the priority list can be found or a guardian appointed.

An interdisciplinary health team would consist of at least three health care professionals, provided that no member of the team may be directly involved with the treatment of the

patient. A health care provider would also be required to continue good faith efforts to identify and locate an individual in a preceding level of priority. We believe that an interdisciplinary team would more accurately and appropriately represent an unrepresented patient's wishes, without the conflicts or biases that a treating provider might have or appear to have. A collaborative, interdisciplinary approach to the problem of treating unrepresented patients, although imperfect, is preferable to other more unilateral approaches such as when a health care provider is faced with critical treatment needs of a minor or an incapacitated adult but has nowhere to turn for decision making.

Taking this collaborative, team based approach creates a multifaceted decision-making method, involving layers of ethical safeguards, thus making it likely the best possible solution to this difficult ethical dilemma. We believe this bill represents the best compromise to help those patients who can't make their own decisions and who have no one to make these important choices for them.

In summary, we support the engrossed bill with the amendments proposed today as noted above and hope that you will give it a **Do Pass** recommendation.

I would be happy to respond to any questions you may have. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel/VP  
North Dakota Hospital Association



*Representing the Diocese of Fargo  
and the Diocese of Bismarck*

103 South Third Street  
Suite 10  
Bismarck ND 58501  
701-223-2519  
ndcatholic.org  
ndcatholic@ndcatholic.org

**To:** House Human Services Committee  
**From:** Christopher Dodson, Co-Director  
**Date:** March 12, 2025  
**Re:** Senate Bill 2297 - Informed Consent for Minors and Incapacitated Patients

The North Dakota Catholic Conference supports Senate Bill 2297 because it improves and clarifies important statutory language.

Section 23-12-13 of the North Dakota Century Code:

- (1) Codifies the legal principle that a health care provider must receive informed consent before a health care procedure, even if the patient is a minor or an incapacitated adult;
- (2) Ensures that if the patient is a minor or an incapacitated adult, informed consent is received from the individual closest to the patient in a descending order;
- (3) Requires the health care provider to make reasonable efforts to locate an individual authorized to provide informed consent before moving to the next individual on the list; and
- (4) Requires the individual who provides informed consent to determine in good faith that the patient, if not incapacitated, would consent to the proposed health care. If a determination cannot be made, the decision must be in the patient's best interests.

It is a good statute that ensures that patients can receive necessary health care and have their rights and wishes respected, even when they lack the ability or competence to consent.

The purpose of SB 2297, as introduced, was only to add a healthcare interdisciplinary team at the bottom of the list of persons who can provide informed consent. The North Dakota Catholic Conference originally had no position on the addition of the interdisciplinary team, but had concerns about some other changes in the bill that would have had unintended consequences. (The Conference now supports the addition of an interdisciplinary team.)

Fixing those changes gave the Senate Human Services Committee an opportunity to clean up language in the existing law that is grammatically inconsistent or unclear. In addition, the existing statute jumps back and forth between language that applies only to minors, only to incapacitated adults, and to both. The engrossed bill, with the additional amendments brought forth by the bill's sponsor, greatly improves the statute, making it more understandable to health care professionals and, hopefully, the general public.

Except for the addition of an interdisciplinary team at the end of the list, SB 2297 does not change who can provide informed consent to medical treatment or the priority of the listed individuals. To make it clearer, the statute would now have two lists: one for incapacitated adults and one for minors. Although the language describing individuals on the lists has changed in some cases, these changes are not substantive. Senate Bill 2297 changes only the descriptions, not the law.

The amendments offered today were missed when the Senate worked on the bill. With the adoption of those amendments, Senate Bill 2297 greatly improves the language of the statute, clarifies the priority of parents in the case of minors, and adds an interdisciplinary team for those rare cases when no one is available to provide informed consent.

The North Dakota Catholic Conference asks for a **Do Pass** recommendation on Senate Bill 2297.



**House Human Services Committee  
Representative Matt Ruby, Chair  
March 12, 2025  
SB 2297**

Chairman Ruby and members of the House Human Services Committee. I am Dr. Steven Mitchell, a retired neuroradiologist. I completed my medical training at the University of North Dakota School of Medicine and spent most of my career working for Sanford Medical Center Fargo. I have served on Sanford Fargo's ethics committee for 14 years and currently serve as emeritus chair. I also help teach medical ethics to the UND 3<sup>rd</sup> year medical students.

Thank you for your consideration of Senate Bill 2297, a bill designed to help medical providers care for individuals who do not have the capacity to make medical decisions nor have anyone to do so for them.

We are seeing increasing numbers of patients in our hospitals that do not have decision-making capacity, do not have advance care directives, and do not have any family or close friends available to represent them as a substitute decision-maker.

Our care teams are sometimes unable to provide proper care to these individuals when that care needs a procedure that requires informed consent. We search diligently to find a decision-maker, but if one does not exist, we cannot perform that procedure unless it is an emergency.

I can give you an example of a patient scenario where a medical decision needs to be made, but there is nobody to make one on the patient's behalf: a homeless patient with significantly infected foot ulcer that is also infecting the underlying bone. Due to confusion and/or a mental health condition, the patient is not able to make a decision about their own care. Despite our best efforts, we cannot find a family member or close friend willing to make decisions for this individual. We could treat the soft tissue infection with intravenous antibiotics and discharge the patient to a homeless shelter. However, if the underlying bone infection is severe, the proper treatment may be a surgical procedure which cannot be done because it is neither life threatening nor an emergency. As a result, this individual may have repeated hospitalizations for improperly treated bone infection due to the inability to get consent for the correct procedure.

Some states allow a "two-physician rule" for situations like this. If the attending physician and the surgeon both agree that surgery should be done, the surgeon proceeds. Nobody speaks on behalf of the patient. Our ethics team and many other ethicists across the country believe the best practice is for an interdisciplinary team, not directly involved in the patient's care, to make careful and informed decisions

on the patient's behalf. However, under current North Dakota law, that is not an option. SB 2297 adds a new subsection to North Dakota law that would add an interdisciplinary team, not including members of the treating clinical team, as a last resort decision-maker.

We, and other hospitals in North Dakota, are committed to good-faith efforts to find relatives or friends willing and able to make medical decisions for patients, but for those patients for whom none can be found, we would sincerely appreciate a yes vote on SB 2297.

Thank you for your consideration. I would welcome any questions you might have.

Steven Mitchell, M.D.  
Sanford Fargo Ethics Committee  
[Steven.Mitchell@SanfordHealth.org](mailto:Steven.Mitchell@SanfordHealth.org)  
701-306-2011



Health &amp; Human Services

**Testimony**  
**Engrossed Senate Bill No. 2297**  
**House Human Services Committee**  
**Representative Ruby, Chairman**  
March 12, 2025

Chairman Ruby, and members of the House Human Services Committee, I am Jonathan Alm, Chief Legal Officer with the Department of Health and Human Services (Department). I appear before you to present an amendment to Engrossed Senate Bill No. 2297 to incorporate some of the proposed changes in Section 1 of Engrossed Senate Bill No. 2291, which was heard by this committee on Monday, March 10th.

The attached amendment would update who can determine an individual to be an incapacitated patient. The proposed amendment on page 1, lines 12 through 16, would allow a psychologist to determine if an individual is incapacitated. This change would be consistent with the State's civil commitment, fitness to proceed, and lack of criminal responsibility statutes that allows for a physician, which includes a psychiatrist, or psychologist to determine if someone is incapacitated or lacks capacity. The proposed amendment to page 4, lines 21 through 24, reflects the addition of a psychologist to the list of who can determine an individual to be incapacitated.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

## PROPOSED AMENDMENT TO ENGROSSED SENATE BILL NO. 2297

Page 1, lines 12 through 16:

- 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 **or psychologist** and filed in the patient's medical record.

Page 4, lines 21 through 24:

- ~~5.7.~~ If a patient who is determined by a physician **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.





**House Human Services Committee  
Representative Matt Ruby, Chair  
March 12, 2025  
SB 2297**

Chairman Ruby and members of the House Human Services Committee. My name is Angie Sersha and I am the VP General Counsel for Sanford Bismarck.

I am here today speaking in support of SB 2297.

In my role, I have seen a rise in a patient population we refer to as “unrepresented patients.” Unrepresented patients are those who have no advanced care directive and have no one in the currently established statutory hierarchy to serve as a substitution decision maker in their time of need where they are lacking capacity to decide for themselves. The nature of the patient’s incapacity can be based on either a physical or mental condition and without an agent or surrogate decision maker, they fall into a legal gap and as a result are put at a disadvantage to the rest of society.

A person with capacity, or an incapacitated person with a substitute decision-maker, has the legal right to consent to changes in treatment that are in that patient’s best interest. An unrepresented patient has nobody to make these decisions for them, and a healthcare provider cannot provide non-emergent treatment without the informed consent of a decision-maker. Thus, the unrepresented patient is deprived of non-emergent treatment that might be in his or her best interest, but for which there is nobody available to consent.

The proposed changes to N.D.C.C. § 23-12-13 would provide an option for consent to level the playing field. In the proposed legislation, an interdisciplinary team of healthcare professionals (not directly involved in the patient’s care) would be empowered to consider and consent to treatment in the patient’s best interest. This option allows the unrepresented patient to enjoy the same right to needed treatment that the rest of society enjoys, without having to resort to more drastic and permanent remedies, such as guardianship. To be sure, our case management teams work tirelessly to find suitable decision-makers, and proposed subsection (k)(2) reflects that this work will continue at all times. This is a last resort remedy, and our care teams will gladly step aside if an individual already listed in the statutory hierarchy can be found to make decisions.

I urge a do pass on SB 2297. Thank you for your consideration.

Angie Sersha  
VP General Counsel  
Sanford Bismarck

# 2025 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Pioneer Room, State Capitol

SB 2297  
3/19/2025

Relating to informed consent of incapacitated patients and minors.
--

10:32 a.m. Chairman M. Ruby opened the meeting.

Members Present: Chairman M. Ruby, Vice-Chairman Frelich, Representatives K. Anderson, Beltz, Bolinske, Davis, Dobervich, Fegley, Hendrix, Holle, Kiefert, Rios, Rohr

Members Absent: Representatives

### Discussion Topics:

- Committee action
- Determination of incapacity

10:32 a.m. Chairman M. Ruby passed out amendments LC#25.1234.02001, #43071.

10:33 a.m. Christopher Dodson, North Dakota Catholic Conference, provided information on the amendment.

10:39 a.m. Representative Bolinske moved to adopt amendment LC# 25.1234.02001.

10:39 a.m. Representative Dobervich seconded the motion.

10:40 a.m. Voice vote passed.

10:40 a.m. Representative Holle moved a Do Pass as amended.

10:40 a.m. Representative K. Anderson seconded the motion.

Representatives	Vote
Representative Matthew Ruby	Y
Representative Kathy Frelich	Y
Representative Karen Anderson	Y
Representative Mike Beltz	Y
Representative Macy Bolinske	Y
Representative Jayme Davis	AB
Representative Gretchen Dobervich	Y
Representative Cleyton Fegley	Y
Representative Jared Hendrix	Y
Representative Dawson Holle	Y
Representative Dwight Kiefert	Y
Representative Nico Rios	AB
Representative Karen Rohr	N

10:41 a.m. Motion passed 10-1-2.

Representative Hendrix will carry the bill.

10:42 a.m. Chairman M. Ruby closed the meeting.

*Jackson Toman, Committee Clerk*

March 18, 2025

CO  
3/19/25  
1 of 5

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

### 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:

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 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.~~ 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;

~~e.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;

~~e.~~ The patient's

~~d.c.~~ A spouse of the patient who has maintained significant ~~contacts~~ contact with the incapacitated ~~person~~ patient;

~~d.~~ Children

~~e.d.~~ 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.e.~~ A parent of the patient, including a stepparent who has maintained significant ~~contacts~~ contact with the incapacitated ~~person~~ patient;

~~f.~~ Adult brothers and sisters



Sixty-ninth  
Legislative Assembly

- 1 ~~g-f.~~ An adult sibling of the patient who havehas maintained significant  
2 contactscontact with the incapacitated personpatient;
- 3 ~~g-~~ Grandparents
- 4 ~~h-g.~~ A grandparent of the patient who havehas maintained significant contactscontact  
5 with the incapacitated personpatient;
- 6 ~~h-~~ Grandchildren
- 7 ~~i-h.~~ A grandchild of the patient who areis at least eighteen years of age and who  
8 havehas maintained significant contactscontact with the incapacitated  
9 personpatient; or
- 10 ~~i-i.~~ A close relative or friend of the patient who is at least eighteen years of age and  
11 who has maintained significant contactscontact with the incapacitated  
12 personpatient; or
- 13 ~~k-j.~~ 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

Sixty-ninth  
Legislative Assembly

- 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, psychiatrist, or psychologist to be an  
4 incapacitated ~~person~~patient, or a ~~person~~an individual interested in the patient's  
5 welfare, objects to a determination of incapacity made ~~pursuant to~~in accordance with  
6 this section, a court hearing pursuant to chapter 30.1-28 must be held to determine the  
7 issue of incapacity.



**REPORT OF STANDING COMMITTEE  
ENGROSSED SB 2297**

**Human Services Committee (Rep. M. Ruby, Chairman)** recommends **AMENDMENTS** ([25.1234.02001](#)) and when so amended, recommends **DO PASS** (10 YEAS, 1 NAY, 2 ABSENT OR EXCUSED AND NOT VOTING). SB 2297 was placed on the Sixth order on the calendar.

25.1234.02001  
Title.

Prepared by the Legislative Council  
staff for House Human Services  
Committee

March 18, 2025

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

### 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. PersonsIndividuals authorized to provide informed consent to health care**  
15 **for incapacitated personspatients 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:

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

- 1 ~~g.f.~~ An adult sibling of the patient who havehas maintained significant  
2 contactscontact with the incapacitated personpatient;
- 3 g. Grandparents
- 4 ~~h.g.~~ A grandparent of the patient who havehas maintained significant contactscontact  
5 with the incapacitated personpatient;
- 6 h. Grandchildren
- 7 ~~i.h.~~ A grandchild of the patient who areis at least eighteen years of age and who  
8 havehas maintained significant contactscontact with the incapacitated-  
9 personpatient; or
- 10 ~~i.i.~~ A close relative or friend of the patient who is at least eighteen years of age and  
11 who has maintained significant contactscontact with the incapacitated-  
12 personpatient; or
- 13 ~~k.j.~~ 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 ~~42~~ 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 ~~42~~ 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, psychiatrist, or psychologist to be an  
4 incapacitated ~~person~~patient, or ~~a person~~an individual interested in the patient's  
5 welfare, objects to a determination of incapacity made pursuant to in accordance with  
6 this section, a court hearing pursuant to chapter 30.1-28 must be held to determine the  
7 issue of incapacity.

**2025 SENATE HUMAN SERVICES**

**SB 2297**

# 2025 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Fort Lincoln Room, State Capitol

SB 2297  
03/31/2025

Relating to the determination of incapacity and informed consent of incapacitated patients and minors.
--

9:06 a.m. Chairman Lee opened the hearing.

Members Present: Chairman Lee, Vice-Chairman Weston, Senator Van Oosting, Senator Clemens, Senator Hogan, Senator Roers.

### **Discussion Topics:**

- Conference Committee

9:06 a.m. Chairman Lee opened committee discussion on concurring with bill.

9:06 a.m. Jonathan Alm, Chief Legal Advisor and General Counsel to Health and Human Services, answered committee questions.

9:07 a.m. Chairman Lee closed the hearing.

*Andrew Ficek, Committee Clerk*



**2025 CONFERENCE COMMITTEE**

**SB 2297**

# 2025 SENATE STANDING COMMITTEE MINUTES

**Human Services Committee**  
Fort Lincoln Room, State Capitol

SB 2297  
4/14/2025  
Conference Committee

Relating to the determination of incapacity and informed consent of incapacitated patients and minors.
--

3:30 p.m. Chairman Clemens opened the hearing.

Members Present: Chairman Clemens, Senator Van Oosting, Senator Roers, Representative Hendrix, Representative Ruby, Representative Rohr.

## **Discussion Topics:**

- Addition of Psychiatrist

3:31 p.m. Representative Ruby opened discussion on Psychiatrist and Psychologist terminology.

3:31 p.m. Jonathan Alm, Chief Legal Officer with Department of Health and Human Services, answered committee questions.

3:33 p.m. Senator Roers moved Amendment LC#25.1234.02002 In Place of Amendment LC#25.1234.02001.

3:33 p.m. Senator Van Oosting seconded the motion.

Motion passed 6-0-0.

Senator Clemens will carry the bill.

Representative Hendrix will carry the bill.

3:34 p.m. Chairman Clemens closed the hearing.

*Andrew Ficek, Committee Clerk*

April 14, 2025

Sixty-ninth  
Legislative Assembly  
of North Dakota

**PROPOSED AMENDMENTS TO  
FIRST ENGROSSMENT**

VC 4/14/25  
1 of 5

**ENGROSSED SENATE BILL NO. 2297**

Introduced by

Senators Roers, Barta, Lee, Sorvaag

Representative O'Brien

*In place of the amendments (25.1234.02001) adopted by the House, Engrossed Senate Bill No. 2297 is amended by amendment (25.1234.02002) as follows:*

A BILL for 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:

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



1 ~~g.f.~~ An adult sibling of the patient who havehas maintained significant  
2 contactscontact with the incapacitated personpatient;

3 ~~g.~~ Grandparents

4 ~~h.g.~~ A grandparent of the patient who havehas maintained significant contactscontact  
5 with the incapacitated personpatient;

6 ~~h.~~ Grandchildren

7 ~~i.h.~~ A grandchild of the patient who areis at least eighteen years of age and who  
8 havehas maintained significant contactscontact with the incapacitated  
9 personpatient; 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 contactscontact with the incapacitated  
12 personpatient; or

13 ~~k.i.~~ 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, psychiatrist, or psychologist to be an
- 4 incapacitated ~~person~~patient, or a ~~person~~an individual interested in the patient's
- 5 welfare, objects to a determination of incapacity made ~~pursuant to~~ in accordance with
- 6 this section, a court hearing pursuant to chapter 30.1-28 must be held to determine the
- 7 issue of incapacity.

## SB 2297 041425 1533 PM Roll Call Vote

### Final Recommendation

**SB 2297**

**Date Submitted:** April 14, 2025, 3:33 p.m.

**Recommendation:** In Place Of

**Amendment LC #:** 25.1234.02002

**Engrossed LC #:** N/A

**Description:**

**Motioned By:** Roers, Kristin

**Seconded By:** Van Oosting, Desiree

**House Carrier:** Hendrix, Jared

**Senate Carrier:** Clemens, David A.

**Emergency Clause:** None

**Vote Results:** 6 - 0 - 0

Sen. Clemens, David A.	Yea
Sen. Roers, Kristin	Yea
Sen. Van Oosting, Desiree	Yea
Rep. Hendrix, Jared	Yea
Rep. Ruby, Matthew	Yea
Rep. Rohr, Karen M.	Yea

**REPORT OF CONFERENCE COMMITTEE  
ENGROSSED SB 2297**

Your conference committee (Sens. Clemens, Roers, Van Oosting and Reps. Hendrix, M. Ruby, Rohr) recommends that in place of amendment [25.1234.02001](#) adopted by the House, Engrossed SB 2297 is amended by amendment [25.1234.02002](#).

Engrossed SB 2297 was placed on the Seventh order of business on the calendar.