

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 7.
HUMAN HEALTH CARE AND SAFETY.

CHAPTER 12A.
MENTAL HEALTH CONSUMERS' RIGHTS
PROTECTION.

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DISTRICT OF COLUMBIA OFFICIAL CODE
CHAPTER 12A. MENTAL HEALTH CONSUMERS'
RIGHTS PROTECTION.

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CHAPTER 12A. MENTAL HEALTH CONSUMERS' RIGHTS PROTECTION.

§ 7-1231.01. SHORT TITLE.

This chapter may be cited as the "Mental Health Consumers' Rights Protection Act of 2001".
(Dec. 18, 2001, D.C. Law 14-56, § 201, 48 DCR 7674.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 201 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative History of Laws

Law 14-56, the "Department of Mental Health Establishment Amendment Act of 2001", was introduced in Council and assigned Bill No. 14-136, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 26, 2001, and July 10, 2001, respectively. Signed by the Mayor on July 24, 2001, it was assigned Act No. 14-119 and transmitted to both Houses of Congress for its review. D.C. Law 14-56 became effective on December 18, 2001.

§ 7-1231.02. DEFINITIONS.

For the purposes of this chapter, the term:

- (1) "Abuse" means any knowing, reckless, or intentional act or omission by a provider that causes or is likely to cause or contribute to, or which caused or is likely to have caused or contributed to, injury, death, or financial exploitation of a consumer.
- (2) "Attorney-in-fact" means a person provided with a consumer's durable power of attorney for health care in accordance with § 21-2205(a).
- (3) "Capacity" means the ability to understand and appreciate the nature and consequences of the proposed treatment, including the benefits and risks of, and alternatives to, the proposed treatment, and to make and communicate a decision regarding the proposed treatment.
- (4) "Consumers" means adults, children, or youth who seek or receive mental health services or mental health supports in the District of Columbia under Chapter 5 of Title 21, without regard to voluntary, non-protesting, or involuntary status.
- (5) "Court" means the Superior Court of the District of Columbia.
- (6) "Declaration of advance instructions" means a statement of a consumer's treatment preferences, including his or her informed choice to accept or forego particular mental health services and mental health supports.
- (7) "Department of Mental Health" or "Department" means the Department of Mental Health established pursuant to Chapter 11A of this title.
- (8) "Director" means the Director of the Department of Mental Health.
- (8A) "Domestic partnership" shall have the same meaning as provided in § 32- 701(4)).
- (9) "Drug used as a restraint" means a medication that is used in addition to or in place of the consumer's regular, prescribed drug regimen to control extreme behavior during an emergency, but does not include medications that comprise the consumer's regular, prescribed medical regimen and that are part of the consumer's service plan, even if their purpose is to control ongoing behavior.
- (10) "Emancipated minor" means any minor who is living separate and apart from his or her parent(s) or legal guardian, with or without the consent of the parent(s) or legal guardian and regardless of the

duration of such separate residence, and who is managing his or her own personal and financial affairs, regardless of the source or extent of the minor's income.

(11) "Emergency" means a situation in which a consumer is experiencing a mental health crisis and in which the immediate provision of mental health treatment is, in the written opinion of the attending physician, necessary to prevent serious injury to the consumer or others.

(11A) "Gender identity or expression" shall have the same meaning as provided in § 2-1401.02(12A).

(12) "Grievance" means a description by any individual of his or her dissatisfaction with the Department or other provider, including the denial or abuse of any consumer right or protection provided in this chapter or in other law.

(13) "IDEA" means the Individuals with Disabilities Education Act, approved June 4, 1997 (111 Stat. 37; 20 U.S.C. § 1400 *et seq.*).

(14) "Individual Plan of Care" means the individualized service plan for the care of a child or youth with or at risk of mental health problems, including processes for the appropriate transition of youth receiving mental health services and mental health supports from the system of care for children, youth, and their families into the system of care for adults.

(15) "Individual Recovery Plan" means the individualized service plan for the treatment of a person with mental illness.

(16) "Mental health services" means services delivered in the District of Columbia for the purpose of addressing mental illness or mental health problems.

(17) "Mental health supports" means supports delivered in the District of Columbia for the purpose of addressing mental illness or mental health problems.

(18) "Minor" means a person under 18 years of age, but shall not include a person who is an emancipated minor or who is married.

(19) "Neglect" means any act or omission by a provider which causes or is likely to cause or contribute to, or which caused or is likely to have caused or contributed to, the injury, death, or financial exploitation of a consumer.

(20) "Physical restraint" means any mechanical device, material, or equipment attached or adjacent to the consumer's body, or any manual method, that the consumer cannot easily remove and that restricts his or her freedom of movement or normal access to his or her body.

(21) "Provider" means an individual or entity that:

(A) Is duly licensed or certified to provide mental health services or mental health supports in the District of Columbia; or

(B) Has entered into an agreement with the Department to provide mental health services or mental health supports.

(22) "Residents of the District" means persons who voluntarily live in the District and have no intention of presently removing themselves from the District. The term "residents of the District" shall not include persons who live in the District solely for a temporary purpose. Residency shall not be affected by temporary absence from and the subsequent return or intent to return to the District. Residency shall not depend upon the reason that persons entered the District, except to the extent that it bears upon whether they are in the District for a temporary purpose.

(23) "Restraint" means either a physical restraint or a drug that is being used as a restraint.

(24) "Seclusion" means any involuntary confinement of a consumer alone in a room or an area from which the consumer is either physically prevented from leaving or from which the consumer is led to believe he or she cannot leave at will.

(25) "Service plan" means an Individual Plan of Care or Individual Recovery Plan as defined in this section.

(26) "Substantial change" means a significant change in the type of mental health services or mental health supports being delivered to the consumer, a change in the consumer's service provider, or a change in the consumer's primary service location, but shall not include:

(A) Changes in the routine day-to-day care of the consumer;

(B) Routine or periodic changes or adjustments in the consumer's regular, prescribed drug regimen;

(C) Changes relating to the consumer's routine or minor medical care needs;

(D) Formulation of the consumer's initial service plan; or

(E) Changes specifically contemplated in a service plan regarding which the personal representative has already received notification.

(27) "Substitute health care decision-maker" means an individual authorized to make decisions about

an incapacitated consumer's health care treatment pursuant to § 21-2210(a).

(28) "System of care for adults" means a community support system for persons with mental illness that is developed through collaboration in the administration, financing, resource allocation, training, and delivery of services across all appropriate public systems. Each person's mental health services and mental health supports are based on an Individual Recovery Plan, designed to promote recovery and develop social, community, and personal living skills, and to meet essential human needs, and includes the appropriate integrated, community-based outpatient services and inpatient care, outreach, emergency services, crisis intervention and stabilization, age-appropriate educational and vocational readiness and support, housing and residential treatment and support services, family and caregiver supports and education, and services to meet special needs, which may be delivered by both public and private entities.

(29) "System of care for children, youth, and their families" means a community support system for children or youth with mental health problems and their families, which is developed through collaboration in the administration, financing, resource allocation, training, and delivery of services across all appropriate public systems. Each child's or youth's mental health services and mental health supports are based on a single, child-and youth-centered, and family-focused Individual Plan of Care, encompassing all necessary and appropriate services and supports, which may be delivered by both public and private entities. Prevention, early intervention, and mental health services and mental health supports to meet individual and special needs are delivered in natural, nurturing, and integrated environments, recognize the importance of and support for the maintenance of enduring family relationships, and are planned and developed within the District and as close to the child's or youth's home as possible so that families need not relinquish custody to secure treatment for their children and youth.

(Dec. 18, 2001, D.C. Law 14-56, § 202, 48 DCR 7674; June 25, 2008, D.C. Law 17-177, § 9(a), 55 DCR 3696; Sept. 12, 2008, D.C. Law 17-231, § 17(a), 55 DCR 6758.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 17-177 added par. (11A).

D.C. Law 17-231 added par. (8A).

Emergency Act Amendments

For temporary (90 day) addition of section, see § 202 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative History of Laws

For Law 14-56, see notes following § 7-1231.01.

Law 17-177, the "Prohibition of Discrimination on the Basis of Gender Identity and Expression Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-330, which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on February 5, 2008, and March 4, 2008, respectively. Signed by the Mayor on March 19, 2008, it was assigned Act No. 17-329 and transmitted to both Houses of Congress for its review. D.C. Law 17-177 became effective on June 25, 2008.

For Law 17-231, see notes following § 7-621.

§ 7-1231.03. FORENSIC CONSUMERS.

Nothing in this chapter is intended to abridge the rights of persons committed to the care of the Department by order of the court in a criminal proceeding.

(Dec. 18, 2001, D.C. Law 14-56, § 203, 48 DCR 7674.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 203 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative History of Laws

For Law 14-56, see notes following § 7-1231.01.

§ 7-1231.04. CONDITIONS OF MENTAL HEALTH SERVICE DELIVERY.

(a) The Department and other providers shall, at all times, treat consumers with consideration and respect for the consumer's dignity, autonomy, and privacy. Respectful treatment shall also be extended to the consumer's family members, personal representative, attorney-in-fact, and guardian.

(b) Consumers shall have access to mental health services and mental health supports free of discrimination on the basis of race, color, religion, national origin, language, culture, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, and place of residence.

(c) Consumers shall be free from physical, emotional, sexual, or financial abuse, neglect, harassment, coercion, and exploitation when seeking or receiving mental health services and mental health supports.

(d) Consumers shall receive their individual mental health services and mental health supports in the least restrictive, most integrated setting appropriate to their individual needs.

(e) Consumers in residential, day, or inpatient treatment programs shall have the following additional rights, consistent with the health and safety of the consumer and others:

(1) Free communication with, and reasonable visitation by, their attorneys, attorneys-in-fact, clergy, family members, significant others, personal representatives, and guardians;

(2) Access to telephones to make and receive confidential calls, including free local calls and reasonable access to free long distance calls for indigent consumers, and assistance in calling if requested and needed;

(3)(A) Opportunities to communicate by sealed, uncensored mail or otherwise with officials in the Department, their attorneys, the court, and their personal physicians or qualified psychologists;

(B) All mail or communications other than those referred to in subparagraph (A) of this paragraph may be read only if there is reason to believe, documented in the consumer's clinical record, that such mail or communications contains items, information, or substances which may be harmful to the consumer or others. In such cases, the provider shall notify the consumer of the action taken with regard to the correspondence and the reason therefor. Incoming mail not delivered to the consumer in accordance with this subsection shall be returned to the sender; and

(C) Writing materials and postage stamps shall be made available for use by consumers, and upon request, the provider shall assist the consumer in writing, addressing, and posting letters and other documents;

(4) Freedom to wear their own clothes and to keep and use personal possessions, including toilet articles, unless a physician determines and documents in the consumer's clinical record that specific limitations on these rights are necessary for a clinical purpose;

(5) Freedom to maintain their personal appearance, including head and body hair, in a reasonable manner according to personal taste, unless it adversely affects the health or safety of the consumer or others;

(6) Access to reasonable individual storage space for private use;

(7) Freedom to engage in or abstain from the practice of religion, and freedom from harassment aimed at encouraging the consumer to engage in the religious practices of the provider or other consumers;

(8) Reasonable opportunities for social interaction with members of either sex, unless such interaction is specifically limited or withheld under a consumer's service plan because, in the written opinion of the consumer's physician or qualified psychologist, permitting the consumer to interact freely with others presents a substantial risk of serious harm to the consumer or others or will substantially preclude effective treatment of the consumer; and

(9) Reasonable opportunities for regular physical exercise and freedom to go outdoors at regular and frequent intervals.

(Dec. 18, 2001, D.C. Law 14-56, § 204, 48 DCR 7674; June 25, 2008, D.C. Law 17-177, § 9(b), 55 DCR 3696.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 17-177, in subsec. (b), substituted "sexual orientation, gender identity or expression" for "sexual orientation".

Emergency Act Amendments

For temporary (90 day) addition of section, see § 204 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative History of Laws

For Law 14-56, see notes following § 7-1231.01.

For Law 17-177, see notes following § 7-1231.01.

§ 7-1231.05. SERVICE PLANNING.

(a) Consumers shall have the right to meaningful participation in the development of their service plans, as well as the opportunity to participate in planning for their transition from one provider to another. Such service planning shall include the right to be informed about one's own condition and legal status, and of proposed or current services, treatment, therapies, or other available alternatives. In the course of service planning, no individual mental health service or mental health support shall be conditioned upon agreement to accept another service or support.

(b) Beginning at least one year before a consumer transitions into the system of care for adults, or sooner if required under applicable law such as IDEA, a youth's Individual Plan of Care shall be revised to include a statement regarding the needed transition services for the youth, including, if appropriate, a statement of the interagency responsibilities or any needed linkages with other services and supports.

(c) The opportunities for participation in service planning described in this section shall extend to the consumer's family members or personal representative if the consumer so requests orally or in writing. Family members or personal representatives who are participating in the consumer's service planning, and to whom the consumer has authorized the release of information in accordance with Chapter 12 of this title, shall be notified whenever there is a substantial change in the consumer's services or placement.

(d) The consumer may revoke his or her consent to the participation or authorization for notification described in subsection (c) of this section at any time.

(e) The Department, or other providers as appropriate, shall be responsible for ensuring that a consumer's service plan is implemented.

(Dec. 18, 2001, D.C. Law 14-56, § 205, 48 DCR 7674.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 205 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative History of Laws

For Law 14-56, see notes following § 7-1231.01.

§ 7-1231.06. DURABLE POWER OF ATTORNEY FOR HEALTH CARE; DECLARATION OF ADVANCE INSTRUCTIONS FOR MENTAL HEALTH TREATMENT.

(a) All consumers may execute a durable power of attorney for health care in accordance with Chapter 22 of Title 21. The durable power of attorney for health care may include a statement of the consumer's mental health treatment preferences, which shall be honored by his or her attorney-in-fact in accordance with § 21-2206(c)(1), or by any substitute health care decision-maker in accordance with § 21-2210(b). The consumer's treatment preferences shall be followed by the Department or other provider, except for good cause as documented in the consumer's clinical records, and shall never be overridden for the convenience of the Department or other provider.

(b) For purposes of informing a substitute health care decision-maker about his or her mental health treatment preferences pursuant to § 21-2210(b), a consumer may execute a declaration of advance instructions regarding his or her informed choice to accept or forego particular mental health services and mental health supports. A substitute health care decision-maker shall act in accordance with the consumer's treatment preferences as expressed in the consumer's declaration of advance instructions. The consumer's treatment preferences shall be followed by the Department or other provider, except for good cause as documented in the consumer's clinical records, and shall never be overridden for the convenience of the Department or other provider.

(c) The existence of a consumer's durable power of attorney for health care or declaration of advance instructions for mental health treatment shall not affect his or her right to make decisions about the receipt of particular mental health services and mental health supports when he or she is capable of making such decisions.

(d)(1) The consumer shall provide for delivery of his or her durable power of attorney for health care or declaration of advance instructions for mental health treatment to his or her providers, attorney-in-fact, family members, and personal representative.

(2) If the consumer is comatose, incompetent, or otherwise incapacitated, any other person may deliver the durable power of attorney for health care or declaration of advance instructions for mental health treatment to the consumer's physician or to any health care provider serving the consumer.

(3) Any provider who is notified of the consumer's durable power of attorney for health care or declaration of advance instructions for mental health treatment shall promptly make the durable power of attorney or declaration a part of the consumer's clinical records.

(4) Any provider who has been notified of the existence of a consumer's durable power of attorney for health care or declaration of advance instructions for mental health treatment shall make reasonable efforts to obtain the durable power of attorney or declaration for the purpose of assisting an attorney-in-fact or substituted decision-maker in making decisions about the particular mental health services and mental health supports to be provided to the consumer pursuant to Chapter 22 of Title 21.

(Dec. 18, 2001, D.C. Law 14-56, § 206, 48 DCR 7674.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 206 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative History of Laws

For Law 14-56, see notes following § 7-1231.01.

§ 7-1231.07. CONSENT TO MENTAL HEALTH SERVICES AND MENTAL HEALTH SUPPORTS.

(a) Except in accordance with the procedure described in subsection (c)(3) of this section or as otherwise provided by law, no mental health services or mental health supports shall be provided absent a consumer's informed consent. In seeking a consumer's informed consent, the Department or other provider shall present the consumer with information about the proposed services or supports, including their purpose, side effects, and potential risks and benefits, as well as information about feasible alternative treatments.

(b) If, after providing such information, the consumer's physician is of the opinion that the consumer is incapable of making a decision regarding the provision of particular mental health services and mental health supports, the physician shall seek certification of the consumer's incapacitation in accordance with Chapter 22 of Title 21.

(c) If a consumer is certified as incapacitated in accordance with § 21-2204, his or her physician shall seek to obtain consent to the provision of particular mental health services and mental health supports as follows:

(1) If the physician is aware that the consumer has executed a durable power of attorney for health care pursuant to § 21-2205, and the consumer's attorney-in-fact is available and willing to make a decision pursuant to § 21-2206 about the provision of particular mental health services and mental health supports, the physician shall seek to obtain consent from the attorney-in-fact. Except in an emergency as described in subsection (c)(3)(A) of this section or as otherwise provided by law, only those particular mental health services and mental health supports to which the attorney-in-fact consents shall be provided;

(2) If the attending physician is unaware that the consumer has executed a durable power of attorney for health care, if the consumer's attorney-in-fact is unavailable or unwilling to make a decision about the provision of particular mental health services and mental health supports, or if no durable power of attorney for health care has been executed by the consumer, the consumer's physician shall seek to obtain consent from a substitute health care decision-maker in accordance with § 21-2210. Except in an emergency as described in subsection (c)(3)(A) of this section or as otherwise provided by law, only those particular mental health services and mental health supports to which the substitute health care decision-maker consents shall be provided;

(3) If no attorney-in-fact or substitute health care decision-maker is available and willing to make a decision about the provision of particular mental health services and mental health supports, no mental health services or mental health supports shall be provided until a decision is made by a guardian sought and appointed by the court pursuant to § 21-2041 to provide such services and supports, except:

(A) In an emergency, when it is the written opinion of the attending physician that delay in obtaining the consent of the consumer, the attorney-in-fact, or a substitute health care decision-maker is likely to result in serious injury to the consumer or others, and mental health services and mental health supports are delivered only to the extent necessary to terminate the emergency; or

(B) After the conclusion of the administrative procedure set forth in § 7- 1231.08.

(4) If, following 30 days from the date of certification of the consumer's incapacitation under this section, a consumer continues to be incapacitated for purposes of making a particular health care decision, and there remains no attorney-in-fact or substitute decision-maker available to make a decision about the delivery of particular mental health services and mental health supports to the consumer, the Department, or other provider as appropriate, shall seek the appointment of a guardian for the consumer in accordance with subchapter V of Chapter 20 of Title 21.

(d) Family members and personal representatives to whom the consumer has authorized release of information in accordance with Chapter 12 of this title shall be notified as soon as possible whenever mental health services and mental health supports are provided without the consent of the consumer pursuant to subsection (c)(3) of this section.

(e) Electroconvulsive treatment shall not be administered to a consumer without the consumer's own informed and written consent unless authorized by an order of the court issued in accordance with §§ 21-2047(c)(2) and 21-2211(b).

(Dec. 18, 2001, D.C. Law 14-56, § 207, 48 DCR 7674.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 207 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative History of Laws

For Law 14-56, see notes following § 7-1231.01.

§ 7-1231.08. ADMINISTRATION OF MEDICATION.

(a) Except as provided in this section, no consumer shall be administered medication for the purpose of mental health treatment without his or her informed consent. In seeking a consumer's informed consent, the Department or other provider shall present the consumer with information about the proposed medication, including the purpose for its administration, possible side effects, and its potential risks and benefits, as well as information about feasible alternative treatments.

(b) If a consumer has been certified as incapacitated for purposes of making a health care decision in accordance with § 21-2204, his or her attorney-in-fact or substitute health care decision-maker may consent to the administration of medication only in accordance with the consumer's treatment preferences as expressed in his or her durable power of attorney for health care or declaration of advance instructions for mental health treatment. This preference may be overridden only after the procedures set forth in subsection (c) of this section are followed.

(c) Except in an emergency or in the absence of an attorney-in-fact or substitute health care decision-maker who is available and willing to make a decision about the administration of medication for the purpose of mental health treatment, a provider may administer medication to the incapacitated consumer only after receiving approval for such action through an administrative procedure established by the Department in accordance with Chapter 5 of Title 2. The administrative procedure established by the Department shall include, at a minimum:

- (1) Written and oral notice to the consumer of available advocacy services;
- (2) The right to a meeting convened by a neutral party within the Department for the purpose of reviewing the necessity for involuntary administration of medication;
- (3) The right of the consumer to not less than 48 hours prior notice of any such meeting;
- (4) The right of the consumer to be present and have representation during any such meeting;
- (5) The opportunity, at the meeting, for the consumer and his or her representative to present information and to discuss the necessity of medication with the physician seeking to administer it;
- (6) A written decision by the neutral party, within a period of time established by the Department, regarding whether the medication may be administered over the objection of the consumer. This decision shall be valid for no more than 30 days if it authorizes the involuntary administration of medication;
- (7) The right to appeal the decision of the neutral party to an independent panel consisting of 3 persons appointed by the Director and convened within 72 hours. The members of the panel shall not be affiliated with the individual consumer, the provider, or the physician seeking to administer the medication, but shall include:

(A) A board-certified psychiatrist;

(B) A licensed practitioner; and

(C) A consumer, or if unavailable, a consumer advocate; and

(8) The right to have any decision of a neutral party that is appealed to the panel stayed pending a determination by the panel regarding whether the decision should stand or be overturned.

(d) A consumer's refusal to consent to medication on the basis of a valid religious objection shall not be overridden absent a specific court order requiring the provider to administer the medication.

(e) Family members and personal representatives to whom the consumer has authorized release of information in accordance with Chapter 12 of this title, shall be notified whenever a provider involuntarily administers medication pursuant to subsections (c) or (d) of this section.

(f) The neutral party, and members of the panel and their employers, shall be immune from suit for any claim arising from any good faith act or omission under this section.

(Dec. 18, 2001, D.C. Law 14-56, § 208, 48 DCR 7674.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 208 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative History of Laws

For Law 14-56, see notes following § 7-1231.01.

§ 7-1231.09. FREEDOM FROM SECLUSION AND RESTRAINT.

(a) Consumers have the right to be free from seclusion and restraint of any form that is not medically necessary or that is used as a means of coercion, discipline, convenience, or retaliation by staff.

(b) Seclusion or restraint may only be used by:

(1) Hospitals when administering inpatient services;

(2) Residential treatment facilities licensed pursuant to section 948 of Title 29 of the District of Columbia Municipal Regulations (Standards for Participation of Residential Treatment Centers for Children and Youth); and

(3) Mental health crisis emergency programs certified by the Department, if rules authorizing such use are promulgated by the Department.

(c) Seclusion or restraint can be used only in an emergency when:

(1) The use of seclusion or restraint is, in the written opinion of the attending physician, necessary to prevent serious injury to the consumer or others;

(2) Less restrictive interventions have been considered and determined to be ineffective to prevent serious injury to the consumer or others; and

(3) Pursuant to the written order of the attending physician, which shall never be written as a standing order or on an as-needed basis, and which must be followed by consultation with the consumer's treating physician as soon as possible if the order was not written by the consumer's treating physician.

(d) Any use of seclusion or restraint shall be:

(1) Implemented in the least restrictive manner possible;

(2) Implemented in accordance with safe and appropriate seclusion or restraint techniques;

(3) Continually assessed, monitored, and reevaluated; and

(4) Ended at the earliest possible time.

(e) All staff having direct consumer contact must have ongoing education and training in the proper and safe use of seclusion and restraint techniques and in alternative methods for handling behavior, symptoms, and situations that traditionally have been treated through the use of seclusion or restraint.

(f) Any consumer to whom seclusion or restraint is applied must be seen by his or her attending or treating physician within one hour after the initiation of the seclusion or restraint. The physician shall evaluate the continued need for seclusion or restraint, and upon expiration of the original order, may renew the original order only within the following durational limitations:

(1) Four hours for adults;

(2) Two hours for children and adolescents 9 to 17 years of age; and

- (3) One hour for children under 9 years of age.
- (g) No use of seclusion or restraint may extend beyond a 24-hour period.
- (h) Seclusion and restraint may not be used simultaneously unless the consumer is:
 - (1) Continually monitored face-to-face by an assigned staff member; or
 - (2) Continually monitored by an assigned staff member using both video and audio equipment that is in close proximity to the consumer.
- (i) Providers must report to the Department any death that occurs while a consumer is secluded or restrained and any death that could reasonably have been the result of the use of seclusion or restraint.
- (j) The Department shall establish standards for the use of seclusion and restraint that minimize circumstances giving rise to the use of seclusion and restraint and that maximize safety when seclusion or restraint is used. The standards shall:
 - (1) Require that provider staff receive effective, ongoing, competency-based education and training on:
 - (A) Understanding and appropriately responding to the underlying bases for behaviors exhibited by consumers;
 - (B) The use of de-escalation and other non-physical intervention techniques;
 - (C) The safe use of seclusion and restraint; and
 - (D) The staff's own behaviors and how their behaviors can escalate or diffuse the behaviors of consumers;
 - (2) Require adequate staff levels and configurations, based on a variety of factors, including the physical environment, consumer diagnoses, co-occurring conditions, acuity levels, and age or developmental status of consumers;
 - (3) Establish a post-seclusion and post-restraint process for use by providers, which shall include debriefings with the consumer, the consumer's family members or personal representatives if the consumer so consents, and staff about the events giving rise to the incident and how collection of that information will help prevent recurrences. The process shall include counseling for the consumer and staff for any trauma that may have resulted from the use of seclusion or restraint; and
 - (4) Require providers to establish a performance improvement program, which shall include, at a minimum, the collection and analysis of relevant data for reducing the occurrence of emergency situations that precipitate the use of seclusion and restraint and for increasing its safety when used.

(Dec. 18, 2001, D.C. Law 14-56, § 209, 48 DCR 7674.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 209 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative History of Laws

For Law 14-56, see notes following § 7-1231.01.

§ 7-1231.10. INFORMATION PRIVACY.

- (a) Consumers shall be informed of their right to access their mental health information records and may request correction of inaccurate information contained in the records in accordance with Chapter 12 of this title.
- (b) Information and records about a consumer's mental health services and mental health supports shall be treated confidentially in accordance with Chapter 12 of this title.

(Dec. 18, 2001, D.C. Law 14-56, § 210, 48 DCR 7674.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 210 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative History of Laws

For Law 14-56, see notes following § 7-1231.01.

§ 7-1231.11. EVALUATION OF MENTAL HEALTH SERVICES AND SUPPORTS.

Consumers shall have an opportunity to participate in periodic evaluation of mental health services and mental health supports, including evaluation of providers. The opportunity shall extend to members of the consumer's family or personal representative.

(Dec. 18, 2001, D.C. Law 14-56, § 211, 48 DCR 7674.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 211 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative History of Laws

For Law 14-56, see notes following § 7-1231.01.

§ 7-1231.12. GRIEVANCES.

(a) The Department shall, in accordance with Chapter 5 of Title 2, promulgate rules that:

(1) Require providers to adopt a policy and procedure regarding the timely review and resolution of grievances brought to the provider by its consumers. All grievances resolved in this manner shall be reduced to writing and reported to the Department in a manner established by the Department; and

(2) Establish a process for the resolution of grievances, which shall include, at a minimum:

(A) The opportunity for any person to file a grievance with the Department regarding mental health services or mental health supports or violations of or limitations on consumer rights or protections provided by this chapter or other applicable law. Unless a grievance involves an allegation of abuse or neglect of a consumer, a grievance filed by a third party may be reviewed only if the consumer so consents;

(B) Assistance for any consumer who needs help in filing his or her grievance, orally or in writing;

(C) The right of all consumers to be represented throughout the grievance process;

(D) Definite time frames for each stage of the grievance resolution process, including expedited review for any grievance alleging abuse or neglect;

(E) A requirement that mental health services and mental health supports continue without limitation, reduction, or termination pending the resolution of a grievance regarding those services or supports;

(F) Requirements for education and assistance to consumers, provider staff, and third parties about consumer rights and the grievance resolution system; and

(G) Prohibitions on retaliatory actions such as reprisal, restraint, interference, coercion, or discrimination by the Department or other providers against persons who file grievances.

(b)(1) Any grievance filed with the Department shall receive a prompt and impartial review through the Director or the Director's designee, who shall refer the grievance to an external reviewer in accordance with rules established by the Department.

(2) The external reviewer shall conduct a simple and immediate examination of the grievance as follows:

(A) The external reviewer shall facilitate informal resolution of the grievance; or

(B) If such informal resolution is not possible, the external reviewer shall make a determination either sustaining or denying the grievance, which shall include recommendations for remedying the grievance, as appropriate.

(3) The external reviewer shall conduct his or her examination of the grievance in accordance with rules established by the Department, and shall document the outcome of the external review process through a written report submitted to the Director and the parties.

(4) Any party who is dissatisfied with the outcome of the external review process may request a fair hearing, which shall meet the requirements of a contested case proceeding under § 2-509.

(c) Nothing in this section shall be construed to restrict or limit the rights, procedures, and remedies available under federal or local laws protecting the rights of adults or children or youth with mental disabilities. If an aggrieved party files suit in a court of law in pursuit of such otherwise available remedies, action on any related grievance filed by the aggrieved party with the Department shall be stayed pending a final decision by the court.

(Dec. 18, 2001, D.C. Law 14-56, § 212, 48 DCR 7674.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 212 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative History of Laws

For Law 14-56, see notes following § 7-1231.01.

§ 7-1231.13. RETENTION OF CIVIL RIGHTS.

Consumers shall be presumed legally competent and retain all civil rights, unless otherwise limited by order of the court. As used in this section, the term "civil rights" shall include, but not be limited to, the rights to:

- (1) Contract;
- (2) Hold a professional, occupational, or motor vehicle driver's license;
- (3) Marry or enter into a domestic partnership, or obtain a divorce, annulment, or dissolution of marriage or a termination of a domestic partnership in accordance with § 32-702(d).
- (4) Make a will;
- (5) Hold or dispose of property;
- (6) Vote;
- (7) Sue and be sued;
- (8) Serve on a jury; and
- (9) Enjoy all benefits and privileges guaranteed by law.

(Dec. 18, 2001, D.C. Law 14-56, § 213, 48 DCR 7674; Sept. 12, 2008, D.C. Law 17-231, § 17(b), 55 DCR 6758.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 17-231 rewrote par. (3), which had read as follows:

"(3) Marry or obtain a divorce, annulment, or dissolution of marriage;"

Emergency Act Amendments

For temporary (90 day) addition of section, see § 213 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative History of Laws

For Law 14-56, see notes following § 7-1231.01.

For Law 17-231, see notes following § 7-621.

§ 7-1231.14. CONSENT OF YOUTH RECEIVING MENTAL HEALTH SERVICES OR MENTAL HEALTH SUPPORTS.

(a) Except for those minors hospitalized pursuant to the emergency provisions in subchapter III of Chapter 5 of Title 21, or pursuant to an order of commitment under § 21-545 or § 16-2315, § 16-2320, or § 16-1321, no minor may be admitted for inpatient mental health services absent the consent of a parent or legal guardian.

(b)(1) A provider may deliver outpatient mental health services and mental health supports other than medication to a minor who is voluntarily seeking such services without parental or guardian consent if the provider determines that:

- (A) The minor is knowingly and voluntarily seeking the services; and
- (B) Provision of the services is clinically indicated for the minor's well-being.

(2) Mental health services and mental health supports provided to a minor without the consent of a parent or guardian pursuant to subsection (b)(1) of this section shall be limited to a period of 90 days. At the end of the 90-day period, the provider shall either:

(A) Make a new determination pursuant to subsection (b)(1) of this section that provision of services to the minor without parental or guardian consent is voluntarily sought by the minor and continues to be clinically indicated;

(B) Terminate the services; or

(C) With the consent of the minor, notify the parent(s) or guardian to obtain consent to provide further outpatient services.

(3) The provider shall fully document the reasons for its determinations regarding delivery of mental health services to minors, and shall include such documentation in the minor's clinical record.

(4) A provider may conduct an initial interview of a minor who appears to be voluntarily seeking outpatient mental health services and mental health supports without parental or guardian consent or involvement in order to determine whether the criteria of subsection (b)(1) of this section are satisfied.

(c)(1) Subject to the provisions in § 7-1231.08, and absent an emergency, a hospital providing inpatient mental health services to a minor who is under 16 years of age may not administer psychotropic medication to the minor without the consent of a parent or guardian or the authorization of the court;

(2) A minor who is 16 years of age or older may consent to the administration of psychotropic medications, without the consent of a parent or guardian or the authorization of the court, only under the following circumstances:

(A) When the minor's parent(s) or guardian is not reasonably available to make a decision regarding the administration of psychotropic medication and the treating physician determines that the minor has capacity to consent, consistent with § 7-1231.08, and that such medications are clinically appropriate;

(B) When requiring consent of the minor's parent(s) or guardian would have a detrimental effect on the minor, and a determination is made by both the treating physician and a non-treating psychiatrist who is not an employee of the provider that the minor has capacity to consent, consistent with § 7-1231.08, and that such medications are clinically indicated;

(C) When the minor's parent(s) or guardian refuses to give such consent, and a determination is made by both the treating physician and a non-treating psychiatrist who is not an employee of the provider that the minor has capacity to consent, consistent with § 7-1231.08, and that such medications are clinically indicated. Notice of the provider's decision to administer medications pursuant to this subsection shall be provided to the parent(s) or guardian in writing.

(Dec. 18, 2001, D.C. Law 14-56, § 214, 48 DCR 7674.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 214 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative History of Laws

For Law 14-56, see notes following § 7-1231.01.

§ 7-1231.15. ENFORCEMENT.

Rights and protections provided in this chapter shall not be construed to create new causes of action for monetary damages beyond those that currently exist in federal and local law.

(Dec. 18, 2001, D.C. Law 14-56, § 215, 48 DCR 7674.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 215 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative History of Laws

For Law 14-56, see notes following § 7-1231.01.