

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 7.
HUMAN HEALTH CARE AND SAFETY.

CHAPTER 13.
RIGHTS OF CITIZENS WITH INTELLECTUAL
DISABILITIES.

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DISTRICT OF COLUMBIA OFFICIAL CODE

CHAPTER 13. RIGHTS OF CITIZENS WITH INTELLECTUAL DISABILITIES.

TABLE OF CONTENTS

Subchapter I. Statement of Purpose; Definitions.

- § 7-1301.01. [Reserved]
- § 7-1301.02. Statement of purpose.
- § 7-1301.03. Definitions.

Subchapter II. Determination of Need for Intellectual Disability Facilities and Services in the District.[Repealed]

- § 7-1302.01. Determination of need for mental retardation facilities and services in the District.[Repealed]

Subchapter III. Admission, Commitment, Discharge, Transfer, Respite Care.

- § 7-1303.01. Competence of individual to refuse commitment.
- § 7-1303.02. Voluntary admission.
- § 7-1303.03. Application by individual for out-patient nonresidential habilitation.
- § 7-1303.04. Petition for commitment of individual 14 years of age or older filed by parent or guardian or by the District.
- § 7-1303.05. Application by parent or guardian for nonresidential habilitation.
- § 7-1303.06. Petition for commitment of individual under 14 years of age filed by parent or guardian.
- § 7-1303.07. Immediate discharge from facility upon request by individual.
- § 7-1303.08. Discharge from commitment upon request by parent or guardian.
- § 7-1303.09. Transfer of individual from one facility to another.
- § 7-1303.10. Discharge from residential care.
- § 7-1303.11. Payment for habilitation and care.
- § 7-1303.12. Court hearing required prior to commitment.
- § 7-1303.12a. Placement pending petition and commitment proceedings.
- § 7-1303.13. Effect of determination of incompetency to refuse commitment.
- § 7-1303.14. Rules and regulations governing respite care.

Subchapter IV. Hearing and Review Procedures.

- § 7-1304.01. Commencement of commitment proceedings; filing of written petition.
- § 7-1304.02. Representation by counsel.
- § 7-1304.03. Comprehensive evaluation report and individual habilitation plan required; contents; copies.
- § 7-1304.04. Payment for independent comprehensive evaluation and habilitation plan.
- § 7-1304.05. Hearing conducted promptly.
- § 7-1304.06. Hearings conducted in informal manner; procedural rights at hearing.
- § 7-1304.06a. Hearing and determination by Court or jury.
- § 7-1304.07. Standard of proof.
- § 7-1304.08. Hearings closed to public; request for open hearing.
- § 7-1304.09. Disposition orders by Court.

- § 7-1304.10. Appeal of commitment order.
- § 7-1304.11. Periodic review of commitment order.
- § 7-1304.12. Payment of costs and expenses.
- § 7-1304.13. Advocate for a person with an intellectual disability.

Subchapter V. Rights of Persons with Intellectual Disabilities.

- § 7-1305.01. Habilitation and care; habilitation program.
- § 7-1305.02. Living conditions; teaching of skills.
- § 7-1305.03. Least restrictive conditions.
- § 7-1305.04. Comprehensive evaluation and individual habilitation plan.
- § 7-1305.05. Visitors; mail; access to telephones; religious practice; personal possessions; privacy; exercise; diet; medical attention; medication.
- § 7-1305.06. Prohibited psychological therapies.
- § 7-1305.06a. Informed consent.
- § 7-1305.06b. Review panel for administration of psychotropic medications.
- § 7-1305.06c. Psychotropic medication review.
- § 7-1305.07. Essential surgery in medical emergency.[Repealed]
- § 7-1305.07a. Health-care decisions policy, annual plan, and quarterly reports.
- § 7-1305.08. Sterilization.
- § 7-1305.09. Experimental research.
- § 7-1305.10. Mistreatment, neglect or abuse prohibited; use of restraints; seclusion; "time-out" procedures.
- § 7-1305.11. Performance of labor.
- § 7-1305.12. Maintenance of records; information considered privileged and confidential; access; contents.
- § 7-1305.13. Initiation of action to compel rights; civil remedy; sovereign immunity barred; defense to action; payment of expenses.
- § 7-1305.14. Deprivation of civil rights; public or private employment; retention of rights; liability; immunity; exceptions.
- § 7-1305.15. Coordination of services for dually diagnosed individuals.

Subchapter VI. Miscellaneous Provisions; Effective Date.

- § 7-1306.01. Increased financial responsibility.[Repealed]
- § 7-1306.02. Severability.
- § 7-1306.03. Appropriations.
- § 7-1306.03a. Rules for implementation.
- § 7-1306.04. Authority of Board of Education unchanged.
- § 7-1306.05. Effective date.

CHAPTER 13. RIGHTS OF CITIZENS WITH INTELLECTUAL DISABILITIES.

SUBCHAPTER I. STATEMENT OF PURPOSE; DEFINITIONS.

§ 7-1301.01. [RESERVED]

§ 7-1301.02. STATEMENT OF PURPOSE.

(a) It is the intent of the Council of the District of Columbia to:

- (1) Assure that residents of the District of Columbia with intellectual disabilities shall have all the civil and legal rights enjoyed by all other citizens of the District of Columbia and the United States;
- (2) Secure for each resident of the District of Columbia with intellectual disability, regardless of ability to pay, such habilitation as will be suited to the needs of the person, and to assure that such habilitation is skillfully and humanely provided with full respect for the person's dignity and personal integrity and in a setting least restrictive of personal liberty;
- (3) Encourage and promote the development of the ability and potential of each person with an intellectual disability in the District to the fullest possible extent, no matter how severe his or her degree of disability;
- (4) Promote the economic security, standard of living and meaningful employment of persons with intellectual disabilities;
- (5) Maximize the assimilation of persons with mental retardation into the ordinary life of the community in which they live; and
- (6) Provide a mechanism for the identification of persons with mental retardation at the earliest age possible.

(b) To accomplish these purposes, the Council of the District of Columbia finds and declares that the design and delivery of care and habilitation services for persons with mental retardation shall be directed by the principles of normalization, and therefore:

- (1) Community-based services and residential facilities that are least restrictive to the personal liberty of the individual shall be established for persons with mental retardation at each stage of life development;
- (2) The use of institutionalization shall be abated to the greatest extent possible;
- (3) Whenever care in an institution or residential facility is required, it shall be in the least restrictive setting; and
- (4) Individuals placed in institutions shall be transferred to community or home environments whenever possible, consistent with professional diagnoses and recommendations.

(Mar. 3, 1979, D.C. Law 2-137, § 102, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(a), 42 DCR 3684; Apr. 24, 2007, D.C. Law 16-305, § 26(a), 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 17(c), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1901.

1973 Ed., § 6-1651.

Effect of Amendments

D.C. Law 16-305, in subsec. (a)(3), substituted "person with mental retardation" for "mentally retarded person"; and substituted "persons with mental retardation" for "mentally retarded persons" throughout the section.

D.C. Law 19-169, in pars. (1) and (4), substituted "intellectual disabilities" for "mental retardation"; in par. (3), substituted "an intellectual disability" for "mental retardation".

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(a) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency Act Amendments

For temporary amendment of section, see § 505(a) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary (90-day) provisions directing implementation of Medicaid waiver conversion, see § 3002 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 3002 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative History of Laws

Law 2-137, the "Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978," was introduced in Council and assigned Bill No. 2-108, which was referred to the Committee on Human Resources and Aging. The Bill was adopted on first and second readings on September 19, 1978 and October 3, 1978, respectively. Signed by the Mayor on November 8, 1978, it was assigned Act No. 2-297 and transmitted to both Houses of Congress for its review.

Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Law 13-172, the "Fiscal Year 2001 Budget Support Act of 2000," was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 18, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

For Law 16-305, see notes following § 7-531.01.

For history of Law 19-169, see notes under § 7-761.02.

Miscellaneous Notes

Section 3002 of D.C. Law 13-172 provides:

"The Department of Human Services and the Department of Health shall coordinate the full implementation of the Medicaid Home and Community Based Waiver and abolish the Community Residential Facilities for the Mentally Retarded and Developmentally Disabled ('MRDD') level of care and convert all MRDD clients previously served by Community Residential Facilities ('CRF') for the Mentally Retarded and Developmentally Disabled to the Home and Community Based Waiver. The Mayor shall submit quarterly reports to the Council detailing the progress of the implementation of the Medicaid Home and Community Based Waiver."

Establishment--D.C. Mental Retardation and Developmental Disabilities Administration (MRDDA) Fatality Review Committee, see Mayor's Order 2001-27, February 14, 2001 (48 DCR 2180).

Section 35 of D.C. Law 19-169 provides:

"Sec. 35. No provision of this act shall impair any right or obligation existing under law."

Delegation of Authority

Delegation of Authority to the Administration of the Mental Retardation and Developmental Disabilities Administration and Requirements for Inter-Agency Cooperation, see Mayor's Order 2006-101, July 26, 2006 (53 DCR 6393).

§ 7-1301.03. DEFINITIONS.

As used in this chapter:

- (1) "Admission" means the voluntary entrance by an individual with an intellectual disability into an

institution or residential facility.

(1A) "Advanced practice registered nurse" includes a nurse-practitioner or clinical nurse specialist, licensed pursuant to § 3-1202.04 and Chapter 59 or Chapter 60 of Title 17 of the District of Columbia Municipal Regulations, who has been certified as a specialist in psychiatry and mental health.

(1B) "Advocate for a person with an intellectual disability" means a member of the group of advocates created pursuant to § 7-1304.13..

(2) "At least a moderate intellectual disability" means a person who is found, following a comprehensive evaluation, to be impaired in adaptive behavior to a moderate, severe or profound degree and functioning at the moderate, severe or profound intellectual level in accordance with standard measurements as recorded in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition.

(2A) "Behavioral plan" means a written plan that, at a minimum:

- (A) Identifies challenging or problematic behavior;
- (B) States the working hypothesis about the cause of the customer's behavior and uses the working hypothesis as the basis for the selected intervention;
- (C) Identifies strategies to teach or encourage the customer to adopt adaptive behavior as an alternative to the challenging or problematic behavior;
- (D) Considers the potential for environmental or programmatic changes that could have a positive impact on challenging or problematic behaviors; and
- (E) Addresses the customer's need for additional technological or supervisory assistance to adapt or cope with day-to-day activities.

(2B) "Best interests" means promoting personal well-being by assessing:

- (A) The reason for the proposed action, its risks and benefits, and any alternatives considered and rejected; and
- (B) The least intrusive, least restrictive, and most normalizing course of action possible to provide for the needs of the customer.

(2C) "Cause injury to others as a result of the individual's intellectual disability" means cause injury to others as a result of deficits in adaptive functioning associated with an intellectual disability.

(3) "Chief Program Director" means an individual with special training and experience in the diagnosis and habilitation of persons with intellectual disabilities, and who is a qualified developmental disability professional appointed or designated by the Director of a facility for persons with intellectual disabilities to provide or supervise habilitation and care for customers of the facility.

(4) "Commitment" means the placement in a facility, pursuant to a court order, of an individual who has at least a moderate intellectual disability at the request of the individual's parent or guardian without the consent of the individual or of an individual found incompetent in a criminal case at the request of the District; except it shall not include placement for respite care.

(5) "Community-based services" means non-residential specialized or generic services for the evaluation, care and habilitation of persons with intellectual disabilities, in a community setting, directed toward the intellectual, social, personal, physical, emotional or economic development of a person with an intellectual disability. Such services shall include, but not be limited to, diagnosis, evaluation, treatment, day care, training, education, sheltered employment, recreation, counseling of the person with an intellectual disability and his or her family, protective and other social and socio-legal services, information and referral, and transportation to assure delivery of services to persons of all ages who have intellectual disabilities.

(5A) "Competent" means to have the mental capacity to appreciate the nature and implications of a decision to enter a facility, choose between or among alternatives presented, and communicate the choice in an unambiguous manner.

(6) "Comprehensive evaluation" means an assessment of a person with an intellectual disability by persons with special training and experience in the diagnosis and habilitation of persons with intellectual disabilities, which includes a documented sequence of observations and examinations intended to determine the person's strengths, developmental needs, and need for services. The initial comprehensive evaluation shall include documentation of:

- (A) A physical examination that includes the person's medical history;
- (B) An educational evaluation, vocational evaluation, or both;
- (C) A psychological evaluation, including an evaluation of cognitive and adaptive functioning levels;
- (D) A social evaluation;
- (E) A dental examination;

- (F) An evaluation by the interdisciplinary team of whether the person currently:
 - (i) Has the capacity to grant, refuse, or withdraw consent to any ongoing medical treatment; and
 - (ii) Has executed or could execute a durable power of attorney in accordance with § 21-2205; and
- (G) A determination of whether the person has an individual reasonably available, mentally capable, and willing to provide substituted consent pursuant to § 21-2210.
- (7) "Council" means the Council of the District of Columbia.
- (8) "Court" means the Superior Court of the District of Columbia.
- (8A) "Crime of violence" has the same meaning as in § 23-1331(4).
- (8B) "Customer" means a person admitted to or committed to a facility pursuant to subchapter III of this chapter for habilitation or care.
- (8C) "Department on Disability Services" or "DDS" means the Department on Disability Services established by § 7-761.03.
- (9) "Department of Human Services" means the Department of Human Services of the District of Columbia.
- (10) "Director" means the administrative head of a facility, or community-based service and includes superintendents.
- (11) "District" means the District of Columbia government.
- (11A) "DSM-IV" means the most recent version of the Diagnostic and Statistical Manual of Mental Disorders.
- (11B) "DSM-IV 'V' Codes" means "V" codes as defined in the most recent version of the Diagnostic and Statistical Manual of Mental Disorders.
- (12) "Education" means a systematic process of training, instruction and habilitation to facilitate the intellectual, physical, social and emotional development of a person with an intellectual disability.
- (13) "Facility" means a public or private residence, or part thereof, which is licensed by the District as a skilled or intermediate care facility or a community residential facility (as defined in D.C. Regulation 74-15, as amended) and also includes any supervised group residence for persons with intellectual disabilities under 18 years of age. For persons committed or for whom commitment may be sought under § 7-1304.06a, the term "facility" may include a physically secure facility or a staff-secure facility, within or without the District of Columbia. The term "facility" does not include a jail, prison, other place of confinement for persons who are awaiting trial or who have been found guilty of a criminal offense, or a hospital for people with mental illness within the meaning of § 24-501.
- (14) "Habilitation" means the process by which a person is assisted to acquire and maintain those life skills which enable him or her to cope more effectively with the demands of his or her own person and of his or her own environment, including, in the case of a person committed under § 7-1304.06a, to refrain from committing crimes of violence or sex offenses, and to raise the level of his or her physical, intellectual, social, emotional and economic efficiency. "Habilitation" includes, but is not limited to, the provision of community-based services.
- (14A) "Human Rights Advisory Committee" means the committee of the Department on Disability Services that provides guidance and oversight regarding matters pertaining to the human rights of individuals receiving services through the Department on Disability Services and reviews allegations of human rights violations.
- (14B) "ICD-9-CM" means the most recent version of the International Classification of Diseases Code Manual.
- (14C) "Individual found incompetent in a criminal case" means an individual who:
 - (A) Has at least a mild intellectual disability;
 - (B) Is charged with a crime of violence or sex offense;
 - (C) Has been found incompetent to stand trial, or to participate in sentencing or transfer proceedings; and
 - (D) Has been found not likely to gain competence in the foreseeable future.
- (15) "Informed consent" means consent voluntarily given in writing with sufficient knowledge and comprehension of the subject matter involved to enable the person giving consent to make an understanding and enlightened decision, without any element of force, fraud, deceit, duress or other form of constraint or coercion.
- (15A) "Intellectual disability" or "persons with intellectual disabilities" means a substantial limitation in capacity that manifests before 18 years of age and is characterized by significantly below-average intellectual functioning, existing concurrently with 2 or more significant limitations in adaptive

functioning.

(16) "Least restrictive alternative" means that living and/or habilitation arrangement which least inhibits an individual's independence and right to liberty. It shall include, but not be limited to, arrangements which move an individual from:

- (A) More to less structured living;
- (B) Larger to smaller facilities;
- (C) Larger to smaller living units;
- (D) Group to individual residences;
- (E) Segregated from the community to integrated with community living and programming; and/or
- (F) Dependent to independent living.

(17) "Mayor" means the Mayor of the District of Columbia.

(17A) "Mental illness" means a diagnosable mental, behavioral, or emotional disorder (including those of biological etiology) which substantially impairs the mental health of the person or is of sufficient duration to meet diagnostic criteria specified within the DSM-IV or its ICD-9-CM equivalent (and subsequent revisions) with the exception of DSM-IV "V" codes, substance abuse disorders, intellectual disability, and other developmental disorders, or seizure disorders, unless those exceptions co-occur with another diagnosable mental illness.

(18) Repealed.

(19) Repealed.

(19A) Repealed.

(20) "Normalization principle" means the principle of aiding persons with intellectual disabilities to obtain a lifestyle as close to normal as possible, making available to them patterns and conditions of everyday life which are as close as possible to the patterns of mainstream society.

(20A) "Psychotropic medication" means a medication prescribed for the treatment of symptoms of mental or emotional disorders or to influence and modify behavior, cognition, or affective state. The term "psychotropic medication" includes the following categories of medications:

- (A) Antipsychotics or neuroleptics;
- (B) Antidepressants;
- (C) Agents for control of mania or depression;
- (D) Antianxiety agents;
- (E) Sedatives, hypnotics, or other sleep-promoting drugs; and
- (F) Psychomotor stimulants..

(21) "Qualified developmental disability professional" means:

- (A) A psychologist with at least a master's degree from an accredited program and with specialized training or 1 year of experience in intellectual disabilities; or
- (B) A physician licensed by the Commission on Licensure to Practice the Healing Arts to practice medicine in the District and with specialized training in intellectual disabilities or with 1 year of experience in treating persons with intellectual disabilities; or
- (C) An educator with a degree in education from an accredited program and with specialized training or 1 year of experience in working with persons with intellectual disabilities; or
- (D) A social worker with:
 - (i) A master's degree from a school of social work accredited by the Council on Social Work Education (New York, New York), and with specialized training in intellectual disabilities or with 1 year of experience in working with persons with intellectual disabilities; or
 - (ii) With a bachelor's degree from an undergraduate social work program accredited by the Council on Social Work Education who is currently working and continues to work under the supervision of a social worker as defined in sub-subparagraph (i) of this subparagraph, and who has specialized training in intellectual disabilities or 1 year of experience in working with persons with intellectual disabilities; or
- (E) A rehabilitation counselor who is certified by the Commission on Rehabilitation Counselor Certification (Chicago, Illinois) and who has specialized training in intellectual disabilities or 1 year of experience in working with persons with intellectual disabilities; or
- (F) A physical or occupational therapist with a bachelor's degree from an accredited program in physical or occupational therapy and who has specialized training or 1 year of experience in working with persons with intellectual disabilities; or

(G) A therapeutic recreation specialist who is a graduate of an accredited program and who has specialized training or 1 year of experience in working with persons with intellectual disabilities.

(22) "Resident of the District of Columbia" means a person who maintains his or her principal place of abode in the District of Columbia, including a person with an intellectual disability who would be a resident of the District of Columbia if the person had not been placed in an out-of-state facility by the District. A person with an intellectual disability who is under 21 years of age shall be deemed to be a resident of the District of Columbia if the custodial parent of the person with an intellectual disability is a resident of the District of Columbia.

(23) "Respite care" means temporary overnight care provided to a person with an intellectual disability in a hospital or facility, upon application of a parent, guardian or family member, for the temporary relief of such parent, guardian or family member, who normally provides for the care of the person.

(24) "Respondent" means the person whose commitment or continued commitment is being sought in any proceeding under this chapter.

(24A) "Screening" means an assessment of a person with an intellectual disability in accordance with standards issued by the Council on Quality and Leadership, which is designed to determine if a further evaluation of the person with an intellectual disability or other interventions are indicated.

(24B) "Sex offenses" means offenses in Chapter 30 of Title 22, but does not include any offense described in § 22-4016(b).

(24C) "Substituted judgment" means making a decision that conforms as closely as possible with the decision that the customer would have made, based upon knowledge of the beliefs, values, and preferences of the customer.

(25) "Time out" means time out from positive reinforcement, a behavior modification procedure in which, contingent upon undesired behavior, the resident is removed from the situation in which positive reinforcement is available.

(26) "Transfer proceedings" means the proceedings pursuant to § 16-2307 to transfer an individual less than 18 years of age from Family Court to Criminal Court in the Superior Court of the District of Columbia to face adult criminal charges.

(Mar. 3, 1979, D.C. Law 2-137, § 103, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(b), 42 DCR 3684; Oct. 17, 2002, D.C. Law 14-199, § 2(a), 49 DCR 7647; Mar. 14, 2007, D.C. Law 16-264, § 301(a), 54 DCR 818; Apr. 24, 2007, D.C. Law 16-305, § 26(b), 53 DCR 6198; Oct. 22, 2008, D.C. Law 17-249, § 5(a), 55 DCR 9206; Mar. 25, 2009, D.C. Law 17-353, § 205, 56 DCR 1117; Sept. 26, 2012, D.C. Law 19-169, § 17(d), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1902.

1973 Ed., § 6-1652.

Effect of Amendments

D.C. Law 14-199 added par. (2A); in par. (4), substituted "consent of the individual or of an individual found incompetent in a criminal case at the request of the District;" for "consent of the individual;"; redesignated par. (8A) as (8B); added new par. (8A); added pars. (11A) and 11(B); in par. (13), substituted "18 years of age. For persons committed or for whom commitment may be sought under § 7-1304.06a, the term 'facility' may include a physically secure facility or a staff-secure facility, within or without the District of Columbia. The term 'facility' does not include a jail, prison, other place of confinement for persons who are awaiting trial or who have been found guilty of a criminal offense, or a hospital for the mentally ill within the meaning of § 24-501" for "18 years of age."; in par. (14), substituted "own environment, including, in the case of a person committed under § 7-1304.06a, to refrain from committing crimes of violence or sex offenses," for "own environment"; added pars. (14A), (14B), and (17A); rewrote par. (19); and added pars. (19A), (24B), and (26). Prior to amendment, par. (19) had read as follows:

"(19) 'Mentally retarded' means a significantly subaverage general intellectual level determined in accordance with standard measurements as recorded in the Manual of Terminology and Classification in Mental Retardation, 1973, American Association on Mental Deficiency, existing concurrently with impairment in adaptive behavior, which originates during the development period."

D.C. Law 16-264 added par. (8C) and repealed par. (19A), which formerly read:

"(19A) 'MRDDA' means the Mental Retardation and Developmental Disabilities Administration of the District of Columbia, Department of Human Services."

D.C. Law 16-305 substituted "person with mental retardation" for "mentally retarded person", "persons with mental retardation" for "mentally retarded persons", "have mental retardation" for "are mentally retarded", and "persons with mental retardation" for "mentally retarded".

D.C. Law 17-353, in par. (4), substituted "has at least moderate mental retardation" for "is at least moderately mentally retarded"; and validated a previously made technical correction in par. (21)(B).

D.C. Law 17-249 inserted pars. (1A), (2A), (2B), (14A), (20A), and (24C); redesignated former pars. (2A), (14A), and (14B) as pars. (2C), (14B), and (14C), respectively; and rewrote par. (6), which had read as follows:

"(6) 'Comprehensive evaluation' means an assessment of a person with mental retardation by persons with special training and experience in the diagnosis and habilitation of persons with mental retardation, which includes a sequence of observations and examinations intended to determine the person's strengths, developmental needs, and need for services. The initial comprehensive evaluation shall include, but not be limited to, a physical examination that includes the person's medical history; an educational evaluation, vocational evaluation, or both; a psychological evaluation, including an evaluation of cognitive and adaptive functioning levels; a social evaluation; and a dental examination."

D.C. Law 19-169 rewrote the section, which formerly read:

"As used in this chapter:

"(1) 'Admission' means the voluntary entrance by an individual who is at least moderately mentally retarded into an institution or residential facility.

"(1A) 'Advanced practice registered nurse' includes a nurse-practitioner or clinical nurse specialist, licensed pursuant to § 3-1202.04 and Chapter 59 or Chapter 60 of Title 17 of the District of Columbia Municipal Regulations, who has been certified as a specialist in psychiatry and mental health.

"(2) 'At least moderately mentally retarded' means a person who is found, following a comprehensive evaluation, to be impaired in adaptive behavior to a moderate, severe or profound degree and functioning at the moderate, severe or profound intellectual level in accordance with standard measurements as recorded in the Manual of Terminology and Classification in Mental Retardation, 1973, American Association on Mental Deficiency.

"(2A) 'Behavioral plan' means a written plan that, at a minimum:

"(A) Identifies challenging or problematic behavior;

"(B) States the working hypothesis about the cause of the customer's behavior and uses the working hypothesis as the basis for the selected intervention;

"(C) Identifies strategies to teach or encourage the customer to adopt adaptive behavior as an alternative to the challenging or problematic behavior;

"(D) Considers the potential for environmental or programmatic changes that could have a positive impact on challenging or problematic behaviors; and

"(E) Addresses the customer's need for additional technological or supervisory assistance to adapt or cope with day-to-day activities.

"(2B) 'Best interests' means promoting personal well-being by assessing:

"(A) The reason for the proposed action, its risks and benefits, and any alternatives considered and rejected; and

"(B) The least intrusive, least restrictive, and most normalizing course of action possible to provide for the needs of the customer.

"(2C) 'Cause injury to others as a result of the individual's mental retardation' means cause injury to others as a result of deficits in adaptive functioning associated with mental retardation.

"(3) 'Chief Program Director' means an individual with special training and experience in the diagnosis and habilitation of persons with mental retardation, and who is a Qualified Mental Retardation Professional appointed or designated by the Director of a facility for persons with mental retardation to provide or supervise habilitation and care for customers of the facility.

"(4) 'Commitment' means the placement in a facility, pursuant to a court order, of an individual who has at least moderate mental retardation at the request of the individual's parent or guardian without the consent of the individual or of an individual found incompetent in a criminal case at the request of the District; except it shall not include placement for respite care.

"(5) 'Community-based services' means non-residential specialized or generic services for the evaluation, care and habilitation of persons with mental retardation, in a community setting, directed toward the intellectual, social, personal, physical, emotional or economic development of a person with mental retardation. Such services shall include, but not be limited to, diagnosis, evaluation, treatment, day care, training, education, sheltered employment, recreation, counseling of the person with mental retardation and his or her family, protective and other social and socio-legal services, information and referral, and transportation to assure delivery of services to persons of all ages who have mental retardation.

"(5A) 'Competent' means to have the mental capacity to appreciate the nature and implications of a decision to enter a facility, choose between or among alternatives presented, and communicate the choice in an

unambiguous manner.

"(6) 'Comprehensive evaluation' means an assessment of a person with mental retardation by persons with special training and experience in the diagnosis and habilitation of persons with mental retardation, which includes a documented sequence of observations and examinations intended to determine the person's strengths, developmental needs, and need for services. The initial comprehensive evaluation shall include documentation of:

"(A) A physical examination that includes the person's medical history;

"(B) An educational evaluation, vocational evaluation, or both;

"(C) A psychological evaluation, including an evaluation of cognitive and adaptive functioning levels;

"(D) A social evaluation;

"(E) A dental examination;

"(F) An evaluation by the interdisciplinary team of whether the person currently:

"(i) Has the capacity to grant, refuse, or withdraw consent to any ongoing medical treatment; and

"(ii) Has executed or could execute a durable power of attorney in accordance with § 21-2205; and

"(G) A determination of whether the person has an individual reasonably available, mentally capable, and willing to provide substituted consent pursuant to § 21-2210.

"(7) 'Council' means the Council of the District of Columbia.

"(8) 'Court' means the Superior Court of the District of Columbia.

"(8A) 'Crime of violence' has the same meaning as in § 23-1331(4).

"(8B) 'Customer' means a person admitted to or committed to a facility pursuant to subchapter III of this chapter for habilitation or care.

"(8C) 'Department on Disability Services' or 'DDS' means the Department on Disability Services established by § 7-761.03.

"(9) 'Department of Human Services' means the Department of Human Services of the District of Columbia.

"(10) 'Director' means the administrative head of a facility, or community-based service and includes superintendents.

"(11) 'District' means the District of Columbia government.

"(11A) 'DSM-IV' means the most recent version of the Diagnostic and Statistical Manual of Mental Disorders.

"(11B) 'DSM-IV 'V' Codes' means 'V' codes as defined in the most recent version of the Diagnostic and Statistical Manual of Mental Disorders.

"(12) 'Education' means a systematic process of training, instruction and habilitation to facilitate the intellectual, physical, social and emotional development of a person with mental retardation.

"(13) 'Facility' means a public or private residence, or part thereof, which is licensed by the District as a skilled or intermediate care facility or a community residential facility (as defined in D.C. Regulation 74-15, as amended) and also includes any supervised group residence for persons with mental retardation under 18 years of age. For persons committed or for whom commitment may be sought under § 7-1304.06a, the term 'facility' may include a physically secure facility or a staff-secure facility, within or without the District of Columbia. The term 'facility' does not include a jail, prison, other place of confinement for persons who are awaiting trial or who have been found guilty of a criminal offense, or a hospital for the mentally ill within the meaning of § 24-501.

"(14) 'Habilitation' means the process by which a person is assisted to acquire and maintain those life skills which enable him or her to cope more effectively with the demands of his or her own person and of his or her own environment, including, in the case of a person committed under § 7-1304.06a, to refrain from committing crimes of violence or sex offenses, and to raise the level of his or her physical, intellectual, social, emotional and economic efficiency. 'Habilitation' includes, but is not limited to, the provision of community-based services.

"(14A) 'Human Rights Advisory Committee' means the committee of the Department on Disability Services that provides guidance and oversight regarding matters pertaining to the human rights of individuals receiving services through the Department on Disability Services and reviews allegations of human rights violations.

"(14B) 'ICD-9-CM' means the most recent version of the International Classification of Diseases Code Manual.

"(14C) 'Individual found incompetent in a criminal case' means an individual who:

"(A) Is at least mildly mentally retarded;

"(B) Is charged with a crime of violence or sex offense;

"(C) Has been found incompetent to stand trial, or to participate in sentencing or transfer proceedings; and

"(D) Has been found not likely to gain competence in the foreseeable future.

"(15) 'Informed consent' means consent voluntarily given in writing with sufficient knowledge and comprehension of the subject matter involved to enable the person giving consent to make an understanding and enlightened decision, without any element of force, fraud, deceit, duress or other form of constraint or coercion.

"(16) 'Least restrictive alternative' means that living and/or habilitation arrangement which least inhibits an individual's independence and right to liberty. It shall include, but not be limited to, arrangements which move an individual from:

"(A) More to less structured living;

"(B) Larger to smaller facilities;

"(C) Larger to smaller living units;

"(D) Group to individual residences;

"(E) Segregated from the community to integrated with community living and programming; and/or

"(F) Dependent to independent living.

"(17) 'Mayor' means the Mayor of the District of Columbia.

"(17A) 'Mental illness' means a diagnosable mental, behavioral, or emotional disorder (including those of biological etiology) which substantially impairs the mental health of the person or is of sufficient duration to meet diagnostic criteria specified within the DSM-IV or its ICD-9-CM equivalent (and subsequent revisions) with the exception of DSM-IV 'V' codes, substance abuse disorders, mental retardation, and other developmental disorders, or seizure disorders, unless those exceptions co-occur with another diagnosable mental illness.

"(18) 'Mental retardation advocate' means a member of the group of advocates created pursuant to § 7-1304.13.

"(19) 'Mental retardation' or 'persons with mental retardation' means a substantial limitation in capacity that manifests before 18 years of age and is characterized by significantly subaverage intellectual functioning, existing concurrently with 2 or more significant limitations in adaptive functioning.

"(19A) Repealed.

"(20) 'Normalization principle' means the principle of aiding persons with mental retardation to obtain a lifestyle as close to normal as possible, making available to them patterns and conditions of everyday life which are as close as possible to the patterns of mainstream society.

"(20A) 'Psychotropic medication' means a medication prescribed for the treatment of symptoms of mental or emotional disorders or to influence and modify behavior, cognition, or affective state. The term 'psychotropic medication' includes the following categories of medications:

"(A) Antipsychotics or neuroleptics;

"(B) Antidepressants;

"(C) Agents for control of mania or depression;

"(D) Antianxiety agents;

"(E) Sedatives, hypnotics, or other sleep-promoting drugs; and

"(F) Psychomotor stimulants..

"(21) 'Qualified mental retardation professional' means:

"(A) A psychologist with at least a master's degree from an accredited program and with specialized training or 1 year of experience in mental retardation; or

"(B) A physician licensed by the Commission on Licensure to Practice the Healing Arts to practice medicine in the District and with specialized training in mental retardation or with 1 year of experience in treating persons with mental retardation; or

"(C) An educator with a degree in education from an accredited program and with specialized training or 1 year of experience in working with persons with mental retardation; or

"(D) A social worker with:

"(i) A master's degree from a school of social work accredited by the Council on Social Work Education (New York, New York), and with specialized training in mental retardation or with 1 year of experience in working with persons with mental retardation; or

"(ii) With a bachelor's degree from an undergraduate social work program accredited by the Council on Social Work Education who is currently working and continues to work under the supervision of a social worker as defined in sub-subparagraph (i) of this subparagraph, and who has specialized training in mental retardation or 1 year of experience in working with persons with mental retardation; or

"(E) A rehabilitation counselor who is certified by the Commission on Rehabilitation Counselor Certification (Chicago, Illinois) and who has specialized training in mental retardation or 1 year of experience in working with persons with mental retardation; or

"(F) A physical or occupational therapist with a bachelor's degree from an accredited program in physical or occupational therapy and who has specialized training or 1 year of experience in working with persons with mental retardation; or

"(G) A therapeutic recreation specialist who is a graduate of an accredited program and who has specialized training or 1 year of experience in working with persons with mental retardation.

"(22) 'Resident of the District of Columbia' means a person who maintains his or her principal place of abode in the District of Columbia, including a person with mental retardation who would be a resident of the District of Columbia if the person had not been placed in an out-of-state facility by the District. A person with mental retardation who is under 21 years of age shall be deemed to be a resident of the District of Columbia if the custodial parent of the person with mental retardation is a resident of the District of Columbia.

"(23) 'Respite care' means temporary overnight care provided to a person with mental retardation in a hospital or facility, upon application of a parent, guardian or family member, for the temporary relief of such parent, guardian or family member, who normally provides for the care of the person.

"(24) 'Respondent' means the person whose commitment or continued commitment is being sought in any proceeding under this chapter.

"(24A) 'Screening' means an assessment of a person with mental retardation in accordance with standards issued by the Accreditation Council for Services for People with Developmental Disabilities, which is designed to determine if a further evaluation of the person with mental retardation or other interventions are indicated.

"(24B) 'Sex offenses' means offenses in Chapter 30 of Title 22, but does not include any offense described in § 22-4016(b).

"(24C) 'Substituted judgment' means making a decision that conforms as closely as possible with the decision that the customer would have made, based upon knowledge of the beliefs, values, and preferences of the customer.

"(25) 'Time out' means time out from positive reinforcement, a behavior modification procedure in which, contingent upon undesired behavior, the resident is removed from the situation in which positive reinforcement is available.

"(26) 'Transfer proceedings' means the proceedings pursuant to § 16-2307 to transfer an individual less than 18 years of age from Family Court to Criminal Court in the Superior Court of the District of Columbia to face adult criminal charges."

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(b) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 4(a) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2005 (D.C. Law 16-46, February 9, 2006, law notification 53 DCR 1454).

For temporary (225 day) amendment of section, see § 4(a) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2006 (D.C. Law 16-194, March 2, 2007, law notification 54 DCR 2492).

For temporary (225 day) amendment of section, see § 4(a) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2007 (D.C. Law 17-100, February 2, 2008, law notification 55 DCR 3407).

Emergency Act Amendments

For temporary amendment of section, see § 505(b) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary (90 day) amendment of section, see § 2(a) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(a) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

For temporary (90 day) amendment of section, see § 4(a) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005 (D.C. Act 16-190, October 28, 2005, 52 DCR 10021).

For temporary (90 day) amendment of section, see § 4(a) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005 (D.C. Act 16-190, October

28, 2005, 52 DCR 10021).

For temporary (90 day) amendment of section, see § 4(a) of Health-Care Decisions for Persons with Mental Retardation and Development Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-262, January 26, 2006, 53 DCR 795).

For temporary (90 day) amendment of section, see § 4(a) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 4(a) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 301(a) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

For temporary (90 day) amendment of section, see § 4(a) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 4(a) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) amendment, see § 5(a) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Law 14-199, the "Civil Commitment of Citizens with Mental Retardation Amendment Act of 2002", was introduced in Council and assigned Bill No. 14-616, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on June 4, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 17, 2002, it was assigned Act No. 14-432 and transmitted to both Houses of Congress for its review. D.C. Law 14-199 became effective on October 17, 2002.

Law 16-264, the "Developmental Disabilities Service Management Reform Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-334, which was referred to Committee on Human Services. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-620 and transmitted to both Houses of Congress for its review. D.C. Law 16-264 became effective on March 14, 2007.

For Law 16-305, see notes following § 7-531.01.

For Law 17-353, see notes following § 7-161.

For Law 17-249, see notes following § 7-1203.03.

For history of Law 19-169, see notes under § 7-761.02.

SUBCHAPTER II. DETERMINATION OF NEED FOR INTELLECTUAL DISABILITY FACILITIES AND SERVICES IN THE DISTRICT.[REPEALED]

§ 7-1302.01. DETERMINATION OF NEED FOR MENTAL RETARDATION FACILITIES AND SERVICES IN THE DISTRICT.[REPEALED]

(Mar. 3, 1979, D.C. Law 2-137, § 201, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506 (c), 42 DCR 3684.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1911.

1973 Ed., § 6-1653.

Temporary Amendments of Section

For temporary (225 day) repeal of section, see § 505(c) of Multiyear Budget Spending Reduction and Support

Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency Act Amendments

For temporary repeal of section, see § 505(c) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary repeal of section, see § 506(c) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Transfer of Functions

The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

The functions of the Department of General Services were transferred, in part, to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, and transferred, in part, to the Department of Administrative Services by Reorganization Plan No. 5 of 1983, effective March 1, 1984.

SUBCHAPTER III. ADMISSION, COMMITMENT, DISCHARGE, TRANSFER, RESPITE CARE.

§ 7-1303.01. COMPETENCE OF INDIVIDUAL TO REFUSE COMMITMENT.

(a) Except as provided in subsection (b) of this section, no individual 14 years of age or older who has or is believed to have an intellectual disability shall be committed to a facility if the individual is determined by the Court to be competent to refuse such commitment. For purposes of this chapter, persons 14 years of age and older shall be presumed competent to refuse commitment.

(b) The Court may commit an individual pursuant to § 7-1304.06a irrespective of the individual's competence to refuse such commitment.

(Mar. 3, 1979, D.C. Law 2-137, § 301, 25 DCR 5094; Oct. 17, 2002, D.C. Law 14-199, § 2(b), 49 DCR 7647; Apr. 24, 2007, D.C. Law 16-305, § 26(c), 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 17(e), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1921.

1973 Ed., § 6-1654.

Effect of Amendments

D.C. Law 14-199 redesignated the section as subsec. (a); in subsec. (a), substituted "Except as provided in subsection (b) of this section, no individual" for "No individual"; and added subsec. (b).

D.C. Law 16-305, in subsec. (a), substituted "has or is believed to have mental retardation" for "is or is believed to be mentally retarded".

D.C. Law 19-169, in subsec. (a), substituted "an intellectual disability" for "mental retardation".

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(b) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(b) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For Law 14-199, see notes following § 7-1301.03.

For Law 16-305, see notes following § 7-531.01.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1303.02. VOLUNTARY ADMISSION.

(a) Any individual 14 years of age or older who has an intellectual disability, may have an intellectual disability, or has been diagnosed with an intellectual disability may apply to a Director of a facility for voluntary admission to that facility for habilitation and care. The Director may admit the individual; provided, that the Director has determined that the individual is at least 14 years of age.

(b) Within 10 days of the admission, the Director shall notify the Court of the admission and shall certify to the Court that a comprehensive evaluation shall be conducted and an individual habilitation plan developed within 30 days of the admission.

(c)(1) The Court shall promptly appoint an appropriate officer to determine whether the individual is competent to admit himself or herself to the facility and whether the admission is voluntary.

(2) The determination of competency shall consider, but not be limited to, an inquiry into the individual's understanding of what habilitation and care will be provided in the facility, and what alternative means of habilitation and care are available from community-based services.

(3) If the officer determines that there is a substantial question regarding either the voluntariness of the admission or the competency of the individual, the officer shall so advise the Court, and the Court shall promptly conduct a hearing in accordance with the procedures established in subchapter IV of this chapter to resolve the issues of competency and/or voluntariness.

(4) If the Court determines that the admission is not voluntary, the Court shall order that the individual be discharged from the facility. If the Court finds that the individual is not competent to admit himself or herself, it may order that that person be discharged if it determines that discharge would be in the individual's best interest, or it may appoint a guardian ad litem to represent the individual in a subsequent hearing to be held promptly to determine the appropriate placement, if any, of the individual. The individual may remain in the facility until the Court hearing unless the Court decides that this would not be in the individual's best interest.

(Mar. 3, 1979, D.C. Law 2-137, § 302, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(d), 42 DCR 3684; Apr. 24, 2007, D.C. Law 16-305, § 26(d), 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 17(f), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1922.

1973 Ed., § 6-1655.

Effect of Amendments

D.C. Law 16-305, in subsec. (a), substituted "has mental retardation, may have mental retardation, or has been diagnosed with mental retardation" for "is, may be, or has been diagnosed mentally retarded".

D.C. Law 19-169, in subsec. (a), substituted "an intellectual disability" for "mental retardation".

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(d) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency Act Amendments

For temporary amendment of section, see § 505(d) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

For Law 16-305, see notes following § 7-531.01.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1303.03. APPLICATION BY INDIVIDUAL FOR OUT-PATIENT NONRESIDENTIAL HABILITATION.

Any individual 14 years of age or older who has an intellectual disability, may have an intellectual disability, or has been diagnosed with an intellectual disability may apply to any hospital, clinic or facility, or other community-based service owned or operated by, or under contract with, the District for out-patient

nonresidential habilitation. Applications shall be made to the Director of the hospital, clinic, facility or service, or to the Department on Disability Services. If an application is filed with a Director and the Director determines that the particular hospital, clinic, facility or community-based service cannot provide the necessary habilitation, he or she shall refer the individual to the Department on Disability Services, and the Department on Disability Services shall assist the individual in locating a facility, hospital, clinic or service which can provide the necessary habilitation.

(Mar. 3, 1979, D.C. Law 2-137, § 303, 25 DCR 5094; Mar. 14, 2007, D.C. Law 16-264, § 301(b), 54 DCR 818; Apr. 24, 2007, D.C. Law 16-305, § 26(e), 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 17(g), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1923.

1973 Ed., § 6-1656.

Effect of Amendments

D.C. Law 16-264 substituted "Department on Disability Services" for "Department of Human Services" throughout the section.

D.C. Law 16-305 substituted "has mental retardation, may have mental retardation, or has been diagnosed with mental retardation" for "is, may be, or has been diagnosed mentally retarded".

D.C. Law 19-169 substituted "an intellectual disability" for "mental retardation".

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 301(b) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For Law 16-264, see notes following § 7-1301.03.

For Law 16-305, see notes following § 7-531.01.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1303.04. PETITION FOR COMMITMENT OF INDIVIDUAL 14 YEARS OF AGE OR OLDER FILED BY PARENT OR GUARDIAN OR BY THE DISTRICT.

(a) A written petition by a parent or guardian may be filed with the Court to have an individual 14 years of age or older, who is or is believed to have an intellectual disability, committed to a facility. Upon the filing of such petition, the Court shall promptly conduct a hearing in accordance with the procedures set forth in subchapter IV of this chapter. If the Court determines that the individual is competent to refuse such commitment and the individual so refuses, the Court shall dismiss the petition and order that the individual not be committed to a facility.

(b) If, on a petition filed pursuant to subsection (a) of this section, the Court determines that the individual is not competent to refuse commitment, the Court shall determine whether to order the commitment. The Court shall order the commitment only if it determines beyond a reasonable doubt that:

- (1) Based on a comprehensive evaluation of the individual performed within one year prior to the hearing, the individual has at least a moderate intellectual disability and requires habilitation;
- (2) Commitment to a facility is necessary in order for the individual to receive the habilitation indicated by the individual habilitation plan required and defined under § 7-1304.03;
- (3) The facility to which commitment is sought, its sponsoring agency, or the Department on Disability Services is capable of providing the required habilitation; and
- (4) Commitment to that facility would be the least restrictive means of providing the habilitation.

(b-1) For an individual found incompetent in a criminal case, a written petition by the District may be filed with the Court to have the individual committed to a facility. Upon the filing of the petition, the Court shall promptly conduct a hearing in accordance with the procedures set forth in subchapter IV of this chapter.

(c) The facility, its sponsoring agency, or the Department on Disability Services shall provide a written certification to the Court, before commitment to the facility is ordered, that the habilitation indicated by the individual habitation plan will be implemented.

(Mar. 3, 1979, D.C. Law 2-137, § 304, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(e), 42 DCR

3684; Oct. 17, 2002, D.C. Law 14-199, § 2(c), 49 DCR 7647; Mar. 14, 2007, D.C. Law 16-264, § 301(c), 54 DCR 818; Apr. 24, 2007, D.C. Law 16-305, § 26(f), 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 17(h), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1924.

1973 Ed., § 6-1657.

Effect of Amendments

D.C. Law 14-199, in the section heading, substituted "guardian or by the District" for "guardian"; in subsec. (b), substituted "If, on a petition filed pursuant to subsection (a) of this section, the Court" for "If the Court"; and added subsec. (b).

D.C. Law 16-264, in subsecs. (b)(3) and (c), substituted "Department on Disability Services" for "Department of Human Services".

D.C. Law 16-305, in subsec. (a), substituted "have mental retardation" for "be mentally retarded".

D.C. Law 19-169, in subsec. (a), substituted "an intellectual disability" for "mental retardation"; and, in subsec. (b)(1), substituted "the individual has at least a moderate intellectual disability" for "the individual is at least moderately mentally retarded".

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(e) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency Act Amendments

For temporary amendment of section, see § 505(e) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary (90 day) amendment of section, see § 2(c) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(c) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

For temporary (90 day) amendment of section, see § 301(c) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

For Law 14-199, see notes following § 7-1301.03.

For Law 16-264, see notes following § 7-1301.03.

For Law 16-305, see notes following § 7-531.01.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1303.05. APPLICATION BY PARENT OR GUARDIAN FOR NONRESIDENTIAL HABILITATION.

Any parent or guardian may apply on behalf of an individual under 14 years of age who is or is believed to have an intellectual disability to any hospital, clinic, facility or community-based service owned or operated by, or under contract with, the District for nonresidential habilitation. Applications shall be made to the Director of the hospital, clinic, or service, or to the Department on Disability Services. If an application is filed with a Director and the Director determines that the particular hospital, clinic, facility or community-based service cannot provide the necessary habilitation, he or she shall refer the parent or guardian to the Department on Disability Services, and the Department on Disability Services shall assist the parent or guardian in locating a facility, hospital, clinic or service which can provide the required habilitation.

(Mar. 3, 1979, D.C. Law 2-137, § 305, 25 DCR 5094; Mar. 14, 2007, D.C. Law 16-264, § 301(d), 54 DCR 818; Apr. 24, 2007, D.C. Law 16-305, § 26(g), 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 17(i), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1925.

1973 Ed., § 6-1658.

Effect of Amendments

D.C. Law 16-264 substituted "Department on Disability Services" for "Department of Human Services" throughout the section.

D.C. Law 16-305 substituted substituted "have mental retardation" for "be mentally retarded"..

D.C. Law 19-169 substituted "an intellectual disability" for "mental retardation".

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 301(d) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For Law 16-264, see notes following § 7-1301.03.

For Law 16-305, see notes following § 7-531.01.

For history of Law 19-169, see notes following § 7-761.02.

§ 7-1303.06. PETITION FOR COMMITMENT OF INDIVIDUAL UNDER 14 YEARS OF AGE FILED BY PARENT OR GUARDIAN.

(a) A parent or guardian may file a written petition with the Court to have an individual under 14 years of age who is or is believed to have an intellectual disability committed to a facility. The Court shall promptly conduct a hearing in accordance with the procedures set forth in subchapter IV of this chapter to determine whether the Court shall order the commitment. The Court shall order such commitment only if it determines beyond a reasonable doubt that:

(1) Based on a comprehensive evaluation of the individual performed within one year prior to the hearing, the individual has at least a moderate intellectual disability and requires habilitation;

(2) Commitment to a facility is necessary in order for the individual to receive the habilitation indicated by the individual habilitation plan required under § 7-1304.03;

(3) The facility to which commitment is sought, its sponsoring agency, or the Department on Disability Services is capable of providing the required habilitation; and

(4) Commitment to that facility would be the least restrictive means of providing the habilitation.

(b) The facility, its sponsoring agency, or the Department on Disability Services shall provide a written statement to the Court, before commitment to the facility is ordered, that the habilitation indicated by the individual's habilitation plan will be implemented.

(Mar. 3, 1979, D.C. Law 2-137, § 306, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(f), 42 DCR 3684; Mar. 14, 2007, D.C. Law 16-264, § 301(e), 54 DCR 818; Sept. 26, 2012, D.C. Law 19-169, § 17(j), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1926.

1973 Ed., § 6-1659.

Effect of Amendments

D.C. Law 16-264, in subsecs. (a)(3) and (b), substituted "Department on Disability Services" for "Department of Human Services".

D.C. Law 19-169, in the lead-in language of subsec. (a), substituted "have an intellectual disability" for "be mentally retarded"; and, in subsec. (a), substituted "the individual has at least a moderate intellectual disability" for "the individual is at least moderately mentally retarded".

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(f) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency Act Amendments

For temporary amendment of section, see § 505(f) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary (90 day) amendment of section, see § 301(e) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

For Law 16-264, see notes following § 7-1301.03.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1303.07. IMMEDIATE DISCHARGE FROM FACILITY UPON REQUEST BY INDIVIDUAL.

Any individual 14 years of age or older who is admitted to a facility shall have the right to immediate discharge from the facility upon written request to the Director of the facility.

(Mar. 3, 1979, D.C. Law 2-137, § 307, 25 DCR 5094.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1927.

1973 Ed., § 6-1660.

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

§ 7-1303.08. DISCHARGE FROM COMMITMENT UPON REQUEST BY PARENT OR GUARDIAN.

Individuals committed pursuant to § 7-1303.04(b) or § 7-1303.06 shall be discharged if the parent or guardian who petitioned for the commitment requests the individual's release in writing to the Court and the Court determines, based on consultation with the individual, his or her counsel and the individual's advocate for a person with an intellectual disability, if one has been appointed, that the individual consents to such release. Such individuals also shall be discharged upon their own request when they have gained competence to make such a decision and have reached their 14th birthday. A hearing may be conducted pursuant to provisions of subchapter IV of this chapter to determine the question of competence.

(Mar. 3, 1979, D.C. Law 2-137, § 308, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(g), 42 DCR 3684; Oct. 17, 2002, D.C. Law 14-199, § 2(d), 49 DCR 7647; Sept. 26, 2012, D.C. Law 19-169, § 17(k), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1928.

1973 Ed., § 6-1661.

Effect of Amendments

D.C. Law 14-199 substituted "§ 7-1303.04(b)" for "§ 7-1303.04".

D.C. Law 19-169 substituted "individuals" for "customers", "individual's" for "customer's", "individuals" for "customers", and "advocate for a person with an intellectual disability" for "mental retardation advocate".

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(g) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency Act Amendments

For temporary amendment of section, see § 505(g) of the Multiyear Budget Spending Reduction and Support

Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary (90 day) amendment of section, see § 2(d) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14- 383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(d) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

For Law 14-199, see notes following § 7-1301.03.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1303.09. TRANSFER OF INDIVIDUAL FROM ONE FACILITY TO ANOTHER.

(a) The Department on Disability Services may recommend to the Court that an individual committed to the facility be transferred to another facility if the Department on Disability Services determines that it would be beneficial and consistent with the habilitation needs of the individual to do so. Notice of the recommendation shall be served on the individual, the individual's counsel, the individual's parent or guardian who petitioned for the commitment and the individual's advocate for a person with an intellectual disability, if one has been appointed. If the proposed transfer is determined by the Court to be a transfer to a more restrictive facility, a mandatory hearing shall be conducted promptly in accordance with the procedures established in subchapter IV of this chapter. If the Court determines that the proposed transfer would be to a less restrictive facility, a Court hearing shall be held only if the individual, the individual's parent or guardian, or, in the case of an individual committed under § 7-1304.06a, the District requests a hearing by petitioning the Court in writing within 10 days of being notified by the Court of its determination. The hearing shall be held promptly following the request for the hearing. In deciding whether to authorize the transfer, the Court shall consider whether the proposed facility can provide the necessary habilitation and whether it would be the least restrictive means of providing such habilitation. In the case of an individual committed under § 7-1304.06a, the Court shall also consider whether the proposed placement can provide sufficient supervision or security to prevent the individual from causing injury to others as a result of the individual's intellectual disability. Due consideration shall be given to the relationship of the individual to his or her family, guardian, or friends so as to maintain relationships and encourage visits beneficial to the relationship.

(b) An individual admitted to a facility can be transferred to another facility if the individual consents to the transfer.

(c) Nothing in this section shall be construed to prohibit transfer of an individual to a health care facility without prior Court approval in an emergency situation when the life of the individual is in danger. In such circumstances, consent of the individual, or parent or guardian who sought the commitment shall be obtained prior to the transfer. In the event the individual cannot consent and there is no person who can be reasonably contacted, such transfer may be made upon the authorization of the Department on Disability Services, with notice promptly given to the parent or guardian. Consent of the individual, parent, or guardian is not required if the District sought commitment. The parent, guardian, counsel for the individual, and advocate for a person with an intellectual disability shall be notified promptly of the transfer.

(Mar. 3, 1979, D.C. Law 2-137, § 309, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(h), 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-255, § 14(a), 44 DCR 1271; Oct. 17, 2002, D.C. Law 14-199, § 2(e), 49 DCR 7647; Mar. 14, 2007, D.C. Law 16-264, § 301(f), 54 DCR 818; Sept. 26, 2012, D.C. Law 19-169, § 17(l), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1929.

1973 Ed., § 6-1662.

Effect of Amendments

D.C. Law 14-199 rewrote the section which had read as follows:

"§ 7-1303.09. Transfer of customer from one facility to another.

"(a) The Department of Human Services may recommend to the Court that a customer committed to the facility be transferred to another facility if the Department of Human Services determines that it would be beneficial and consistent with the habilitation needs of the customer to do so. Notice of the recommendation

shall be served on the customer, the customer's counsel, the customer's parent or guardian who petitioned for the commitment and the customer's mental retardation advocate, if one has been appointed. If the proposed transfer is determined by the Court to be a transfer to a more restrictive facility, a mandatory hearing shall be conducted promptly in accordance with the procedures established in subchapter IV of this chapter. If the Court determines that the proposed transfer would be to a less restrictive facility, a Court hearing shall be held only if the customer or his or her parent or guardian requests a hearing by petitioning the Court in writing within 10 days of being notified by the Court of its determination. The hearing shall be held promptly following the request for the hearing. In deciding whether to authorize the transfer, the Court shall consider whether the proposed facility can provide the necessary habilitation and whether it would be the least restrictive means of providing such habilitation. Due consideration shall be given to the relationship of the customer to his or her family, guardian or friends so as to maintain relationships and encourage visits beneficial to the relationship.

"(b) A customer admitted to a facility can be transferred to another facility if the customer consents to the transfer.

"(c) Nothing in this section shall be construed to prohibit transfer of a customer to a health care facility without prior Court approval in an emergency situation when the life of the customer is in danger. In such circumstances, consent of the customer, or parent or guardian who sought the commitment shall be obtained prior to the transfer. In the event the customer cannot consent and there is no person who can be reasonably contacted, such transfer may be made upon the authorization of the Department of Human Services, with notice promptly given to the parent or guardian."

D.C. Law 16-264, in subsecs. (a) and (c), substituted "Department on Disability Services" for "Department of Human Services".

D.C. Law 19-169 substituted "advocate for a person with an intellectual disability" for "mental retardation advocate"; and substituted "result of the individual's intellectual disability" for "result of the individual's mental retardation".

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(h), (i)) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency Act Amendments

For temporary amendment of section, see § 505(h) and (i) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary (90 day) amendment of section, see § 2(e) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(e) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

For temporary (90 day) amendment of section, see § 301(f) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

For Law 14-199, see notes following § 7-1301.03.

For Law 16-264, see notes following § 7-1301.03.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1303.10. DISCHARGE FROM RESIDENTIAL CARE.

(a) The Director shall discharge any resident admitted or committed pursuant to this subchapter if, in the judgment of the Director, the results of a comprehensive evaluation, which shall be performed at least annually, indicate that residential care is no longer advisable. In the case of an individual committed under § 7-1304.06a, the Director shall also consider whether the individual would be likely to cause injury to others as a result of his or her intellectual disability if the individual were to be discharged from residential care.

(b) Notice of the proposed discharge under subsection (a) of this section shall be served on the resident, the resident's parent or guardian, the resident's counsel, the advocate for a person with an intellectual disability, and, in the case of an individual committed under § 7-1304.06a, the District at least 30 days prior to the proposed discharge. If the resident, the resident's parent or guardian, the resident's counsel, the advocate for a person with an intellectual disability, or, in the case of an individual committed under § 7-1304.06a, the District objects to the discharge, he or she, or the District, may file a petition with the Court requesting a hearing in accordance with the procedures set forth in subchapter IV of this chapter. Any objecting party shall file the petition requesting a hearing with the Court within 10 days of receiving the notice. The hearing, if one is requested, shall be held on or before the discharge date. The resident shall not be discharged prior to the hearing.

(Mar. 3, 1979, D.C. Law 2-137, § 310, 25 DCR 5094; Oct. 17, 2002, D.C. Law 14-199, § 2(f), 49 DCR 7647; Sept. 26, 2012, D.C. Law 19-169, § 17(m), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1930.

1973 Ed., § 6-1663.

Effect of Amendments

D.C. Law 14-199 rewrote the section which had read as follows:

"§ 7-1303.10. Discharge from residential care.

"The Director shall discharge any resident admitted or committed pursuant to this subchapter if, in the judgment of the Chief Program Director, the results of a comprehensive evaluation, which shall be performed at least annually, indicate that residential care is no longer advisable. If the resident, the resident's parent or guardian, the resident's counsel, or the mental retardation advocate objects to the discharge, he or she may file a petition with the Court requesting a hearing in accordance with the procedures set forth in subchapter IV of this chapter. The resident shall not be discharged prior to the hearing."

D.C. Law 19-169, in subsec. (a), substituted "intellectual disability" for "mental retardation"; and, in subsec. (b), substituted "advocate for a person with an intellectual disability" for "mental retardation advocate".

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(f) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14- 383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(f) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For Law 14-199, see notes following § 7-1301.03.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1303.11. PAYMENT FOR HABILITATION AND CARE.

(a) A person with an intellectual disability, or the father, mother, spouse, or adult child of a person with an intellectual disability, who receives habilitation, care, or both from the District pursuant to this chapter, shall pay to the District the costs of habilitation, care, or both received by the person with an intellectual disability if the person with an intellectual disability, or the father, mother, spouse, or adult child of the person with an intellectual disability, or the estate of the person with an intellectual disability is able to pay the costs of habilitation, care, or both received.

(b) If any person made liable by subsection (a) of this section does not pay the costs of habilitation, care, or both received by the person with an intellectual disability, the court shall issue to the liable person a citation to show cause why that person should not be adjudged to pay a portion or all of the expenses of habilitation, care, or both of the person with an intellectual disability. The citation shall be served at least 10 days before the show cause hearing. If, upon the hearing, it appears to the court that the person made liable by subsection (a) of this section does not have sufficient resources to pay the full costs of habilitation, care, or both received by the person with an intellectual disability, the court may order the payment of a reasonable amount of the costs of habilitation, care, or both received based on the liable person's resources. The court may order the liable person to make payments quarterly, monthly, or at any other interval deemed appropriate by the court. The order may be enforced against any property of the liable person as if the order were an order for temporary alimony in a divorce case.

(c) The Mayor may examine, under oath, the father, mother, spouse, adult child, and the executor of the estate of the person with an intellectual disability who receives habilitation, care, or both if the person lives in the District of Columbia, to ascertain the person's ability, or the ability of the estate, to pay the full costs or contribute to the costs of habilitation, care, or both of the person with an intellectual disability.

(d)(1) Notwithstanding any other provision of this chapter, effective January 1, 2012, a person with an intellectual disability who is otherwise eligible to receive supports and services from the District pursuant to this chapter must either pay the full cost of such supports and services directly to the provider or become District Medicaid-eligible and maintain District Medicaid eligibility in order to receive supports and services under this chapter from a District Medicaid-eligible provider. This requirement shall not apply to a person:

(A) Who is a former resident of Forest Haven;

(B) Whose needs cannot reasonably be met by a District Medicaid provider;

(C) Who is eligible for enrollment in the D.C. Healthcare Alliance; or

(D) Whose representative payee for the purposes of Social Security benefits is the Department of Disability Services or a provider agency who is contracted with the District to provide supports and services for that person, if the reason the person lost Medicaid eligibility is due to a failure by the representative payee.

(2) The Department of Disability Services shall work with and support the person to become District Medicaid-eligible and to maintain District Medicaid eligibility, and the person and his or her representatives, estate, or both shall fully cooperate in such efforts.

(Mar. 3, 1979, D.C. Law 2-137, § 311, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(i), 42 DCR 3684; Sept. 14, 2011, D.C. Law 19-21, § 5002(a), 58 DCR 6226; Sept. 26, 2012, D.C. Law 19-169, § 17(n), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1931.

1973 Ed., § 6-1664.

Effect of Amendments

D.C. Law 19-21 added subsec. (d).

D.C. Law 19-169 substituted "an intellectual disability" for "mental retardation".

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(j) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 4(a) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency Act Amendments

For temporary amendment of section, see § 505(j) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary amendment of section, see § 4(a) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(a) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 506(i) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

For history of Law 19-21, see notes under § 7-731.

For history of Law 19-169, see notes under § 7-761.02.

Miscellaneous Notes

Short title: Section 5001 of D.C. Law 19-21 provided that subtitle A of title V of the act may be cited as "Intellectual Disability Services Medicaid Maximization Reform Amendment Act of 2011".

§ 7-1303.12. COURT HEARING REQUIRED PRIOR TO COMMITMENT.

Except as provided in § 7-1303.12a, no person with an intellectual disability shall be committed to a facility under this chapter prior to the Court hearing required under this subchapter.

(Mar. 3, 1979, D.C. Law 2-137, § 312, 25 DCR 5094; Oct. 17, 2002, D.C. Law 14-199, § 2(g), 49 DCR 7647; Apr. 24, 2007, D.C. Law 16-305, § 26(h), 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 17(o), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1932.

1973 Ed., § 6-1665.

Effect of Amendments

D.C. Law 14-199 substituted "Except as provided in § 7-1303.12a, no" for "No".

D.C. Law 16-305 substituted "person with mental retardation" for "mentally retarded person".

D.C. Law 19-169 substituted "an intellectual disability" for "mental retardation".

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(g) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14- 383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) addition of § 7-1303.12a, see § 2(h) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(g) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

For temporary (90 day) addition of § 7-1303.12a, see § 2(h) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For Law 14-199, see notes following § 7-1301.03.

For Law 16-305, see notes following § 7-531.01.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1303.12A. PLACEMENT PENDING PETITION AND COMMITMENT PROCEEDINGS.

(a) In the case of an individual found incompetent in a criminal case, the District shall have no more than 30 days from the date on which the finding is made that the individual is incompetent and not likely to gain competence in the foreseeable future in which to file a petition pursuant to § 7- 1303.04(b-1). For extraordinary cause shown, the Court may extend the period of time within which the petition must be filed.

(b) In the case of an individual found incompetent in a criminal case prior to October 17, 2002, the District shall have 60 days following October 17, 2002, in which to file a petition pursuant to § 7-1303.04(b-1) for commitment of an individual who is committed pursuant to § 7-1303.04(a), or of an individual whom the Court, within 365 days prior to October 17, 2002, found incompetent and not likely to gain competency in the foreseeable future.

(c) While awaiting the District's decision pursuant to subsection (a) of this section and during the pendency of any resultant commitment proceedings, the Court may order the individual placed with DDS for placement in a setting that DDS preliminarily determines can provide habilitation services consistent with the individual's needs and supervision or security sufficient to prevent the individual from causing injury to others as a result of his or her an intellectual disability.

(d) If the Court or DDS places the person in a setting that does not meet the definition of a facility contained in § 7-1301.03(13), the hearing pursuant to § 7-1304.06a shall commence no later than 90 days from the date on which the finding is made that the individual is incompetent and not likely to gain competence in the foreseeable future. If the hearing does not commence before the expiration of the 90-day time period, the Court shall place the individual with the DDS for placement in a facility that does satisfy § 7-1301.03(13) and that DDS preliminarily determines can provide habilitation services consistent

with the individual's needs and supervision or security sufficient to prevent the individual from causing injury to others as a result of the individual's an intellectual disability.

(Mar. 3, 1979, D.C. Law 2-137, § 312a, as added Oct. 17, 2002, D.C. Law 14-199, § 2(h), 49 DCR 7647; Mar. 14, 2007, D.C. Law 16-264, § 301(g), 54 DCR 818; Sept. 26, 2012, D.C. Law 19-169, § 17(p), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 16-264 substituted "DDS" for "MRDDA" throughout the section.

D.C. Law 19-169 substituted "an intellectual disability" for "mental retardation".

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 301(g) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative History of Laws

For Law 14-199, see notes following § 7-1301.03.

For Law 16-264, see notes following § 7-1301.03.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1303.13. EFFECT OF DETERMINATION OF INCOMPETENCY TO REFUSE COMMITMENT.

A determination by the Court under this subchapter that an individual 14 years of age or older is incompetent to refuse commitment shall not be relevant to a determination of the individual's competency with respect to other matters not considered by the Court.

(Mar. 3, 1979, D.C. Law 2-137, § 313, 25 DCR 5094.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1933.

1973 Ed., § 6-1666.

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

§ 7-1303.14. RULES AND REGULATIONS GOVERNING RESPITE CARE.

(a) The Department on Disability Services shall promulgate rules and regulations governing the provision of respite care for persons with intellectual disabilities. These shall provide that periods of respite care shall not exceed 42 days in a 12-month period without specific authorization by the Court after a hearing conducted in accordance with subchapter IV of this chapter.

(b) Should any person be detained for respite care for a period exceeding 42 days in a 12-month period without specific authorization by the Court after a hearing conducted in accordance with subchapter IV of this chapter, he or she shall be promptly discharged.

(Mar. 3, 1979, D.C. Law 2-137, § 314, 25 DCR 5094; Mar. 14, 2007, D.C. Law 16-264, § 301(h), 54 DCR 818; Apr. 24, 2007, D.C. Law 16-305, § 26(i), 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 17(q), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1934.

1973 Ed., § 6-1667.

Effect of Amendments

D.C. Law 16-264, in subsec. (a), substituted "Department on Disability Services" for "Department of Human Services".

D.C. Law 16-305, in subsec. (a), substituted "persons with mental retardation" for "mentally retarded persons".

D.C. Law 19-169 substituted "an intellectual disabilities" for "mental retardation".

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 301(h) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For Law 16-264, see notes following § 7-1301.03.

For Law 16-305, see notes following § 7-531.01.

For history of Law 19-169, see notes under § 7-761.02.

References in Text

The Department of Human Resources was replaced by the Department of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

SUBCHAPTER IV. HEARING AND REVIEW PROCEDURES.

§ 7-1304.01. COMMENCEMENT OF COMMITMENT PROCEEDINGS; FILING OF WRITTEN PETITION.

Proceedings for the commitment of an individual pursuant to subchapter III of this chapter shall be commenced by the filing of a written petition with the Court in the manner and form prescribed by the Court. The petition may be filed by a parent or guardian with respect to an individual who is or is believed to have an intellectual disability. If filed by the parent or guardian, a copy of the petition shall be served on the respondent and on his or her counsel, retained or appointed pursuant to § 7-1304.02. The petition may be filed by the District in the case of an individual with an intellectual disability found incompetent in a criminal case. If filed by the District, a copy of the petition shall be served on the individual, the individual's counsel, the individual's parent or guardian, and the individual's advocate for a person with an intellectual disability.

(Mar. 3, 1979, D.C. Law 2-137, § 401, 25 DCR 5094; Oct. 17, 2002, D.C. Law 14-199, § 2(i), 49 DCR 7647; Apr. 24, 2007, D.C. Law 16-305, § 26(j), 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 17(r), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1941.

1973 Ed., § 6-1668.

Effect of Amendments

D.C. Law 14-199 added the last sentence.

D.C. Law 16-305 substituted "have mental retardation" for "be mentally retarded".

D.C. Law 19-169 substituted "have an intellectual disability" for "have mental retardation", "with an intellectual disability" for "with mental retardation", and "individual's advocate for a person with an intellectual disability" for "individual's mental retardation advocate".

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(i) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(i) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For Law 14-199, see notes following § 7-1301.03.

For Law 16-305, see notes following § 7-531.01.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1304.02. REPRESENTATION BY COUNSEL.

Individuals whose admission to a facility under § 7-1303.02 has been questioned on grounds of their competency or the voluntariness of the admission, have the right to be represented by counsel, retained or appointed by the Court, in any proceeding held before the Court in accordance with § 7-1303.02(c), and they shall be informed by the Court of this right. Respondents shall be represented by counsel in any proceeding before the Court, and shall be so informed by the Court. If an individual whose admission is questioned requests the appointment of counsel or if a respondent fails or refuses to obtain counsel, the Court shall appoint counsel to represent the individual or respondent. Whenever possible, counsel shall be appointed who has had experience in the intellectual disability area. Counsel appointed to represent respondents, and counsel appointed to represent individuals whose admission has been questioned but who are unable to pay for such counsel, shall be awarded compensation by the Court for his or her services in an amount determined by the Court to be fair and reasonable.

(Mar. 3, 1979, D.C. Law 2-137, § 402, 25 DCR 5094; Sept. 26, 2012, D.C. Law 19-169, § 17(s), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1942.

1973 Ed., § 6-1669.

Effect of Amendments

D.C. Law 19-169 substituted "intellectual disability" for "mental retardation".

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1304.03. COMPREHENSIVE EVALUATION REPORT AND INDIVIDUAL HABILITATION PLAN REQUIRED; CONTENTS; COPIES.

(a) If a petition filed in accordance with § 7-1304.01 is not accompanied by a comprehensive evaluation report based on an evaluation which has been performed within 6 months prior to the hearing and an individual habilitation plan which has been prepared within 30 days of the filing of the petition, the Court shall immediately order that a comprehensive evaluation be conducted and an individual habilitation plan be written.

(b) A written report setting forth the results of the comprehensive evaluation and a copy of the habilitation plan shall be submitted to the Court. The report shall indicate:

- (1) Whether or to what degree the individual or respondent has an intellectual disability;
- (2) What habilitation is needed; and
- (3) The record of habilitation and care, if any.

(c) The individual habilitation plan shall be developed by the same persons who conduct the comprehensive evaluation (except where the comprehensive evaluation has been performed by persons not geographically accessible to the District) working jointly with the person who is the subject of the plan, and such person's parent or guardian who petitioned for the commitment. In cases where the comprehensive evaluation has been performed by persons not geographically accessible to the District, the Court shall designate other appropriate and professionally qualified persons to develop the plan. The plan shall contain the following:

- (1) A statement of the nature of the specific strengths, limitations and specific needs of the person who is the subject of the plan;
- (2) A description of intermediate and long-range habilitation goals with a projected timetable for their attainment;
- (3) A statement of, and an explanation for, the plan of habilitation designed to achieve these intermediate and long-range goals;

(4) A statement of the objective criteria, and an evaluation procedure and schedule for determining whether the goals are being achieved;

(5) A statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals; and

(6) Criteria for release to less restrictive settings for habilitation and living, including criteria for discharge and a projected date for discharge if commitment is recommended by the plan.

(d) A copy of the report and the plan shall be provided to the individual or respondent and his or her counsel, and to the parent or guardian if the petition was filed under § 7-1303.04 or § 7-1303.06, at least 10 days prior to the hearing. If the petition was accompanied by a comprehensive evaluation and plan, copies of the report and plan shall be provided to the respondent and his or her counsel within 3 days of the filing of the petition.

(Mar. 3, 1979, D.C. Law 2-137, § 403, 25 DCR 5094; Apr. 24, 2007, D.C. Law 16-305, § 26(k), 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 17(t), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1943.

1973 Ed., § 6-1670.

Effect of Amendments

D.C. Law 16-305 substituted "has mental retardation" for "is mentally retarded".

D.C. Law 19-169, in subsec. (b)(1), substituted "an intellectual disability" for "mental retardation".

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For Law 16-305, see notes following § 7-531.01.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1304.04. PAYMENT FOR INDEPENDENT COMPREHENSIVE EVALUATION AND HABILITATION PLAN.

If the respondent demonstrates that a comprehensive evaluation of a person with an intellectual disability failed to comply substantially with accepted professional standards and that sound professional judgement was not exercised in the performance of the evaluation, the court, upon a motion of the respondent, may order an independent comprehensive evaluation of the person or an individual habilitation plan at the District's expense if the person is unable to pay.

(Mar. 3, 1979, D.C. Law 2-137, § 404, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(j), 42 DCR 3684; Sept. 26, 2012, D.C. Law 19-169, § 17(u), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1944.

1973 Ed., § 6-1671.

Effect of Amendments

D.C. Law 19-169 substituted "an intellectual disability" for "mental retardation".

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 4(b) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency Act Amendments

For temporary amendment of section, see § 4(b) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(b) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 506(j) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1304.05. HEARING CONDUCTED PROMPTLY.

(a) The hearing in commitment proceedings shall be conducted promptly after filing of the petition pursuant to § 7-1303.04(a).

(b) A status hearing shall be held promptly after filing of the petition pursuant to § 7-1303.04(b-1).

(Mar. 3, 1979, D.C. Law 2-137, § 405, 25 DCR 5094; Oct. 17, 2002, D.C. Law 14-199, 2(j), 49 DCR 7647.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1945.

1973 Ed., § 6-1672.

Effect of Amendments

D.C. Law 14-199 designated subsec. (a), and in that subsection, substituted "petition pursuant to § 7-1303.04(a)" for "petition"; and added subsec. (b).

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(j) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14- 383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(j) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For Law 14-199, see notes following § 7-1301.03.

§ 7-1304.06. HEARINGS CONDUCTED IN INFORMAL MANNER; PROCEDURAL RIGHTS AT HEARING.

Except as provided in § 7-1304.06a, hearings shall be conducted in as informal a manner as may be consistent with orderly procedure. Individuals whose admission has been questioned or respondents have the right to be present during hearings and to testify, but shall not be compelled to testify, and shall be so advised by the Court. They shall have the right to call witnesses and present evidence, and to cross-examine opposing witnesses. The presence of the respondent may be waived only if the Court finds that the respondent has knowingly and voluntarily waived his or her right to be present, or if the Court determines that the respondent is unable to be present by virtue of his or her physical disability.

(Mar. 3, 1979, D.C. Law 2-137, § 406, 25 DCR 5094; Oct. 17, 2002, D.C. Law 14-199, § 2(k), 49 DCR 7647; Sept. 26, 2012, D.C. Law 19-169, § 17(v), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1946.

1973 Ed., § 6-1673.

Effect of Amendments

D.C. Law 14-199 substituted "Except as provided in § 7-1304.06a, hearings" for "Hearings".

D.C. Law 19-169 substituted "physical disability" for "physically handicapping condition".

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(k) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14- 383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) addition of § 7-1304.06a, see § 2(l) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(k) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

For temporary (90 day) addition of § 7-1304.06a, see § 2(l) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For Law 14-199, see notes following § 7-1301.03.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1304.06A. HEARING AND DETERMINATION BY COURT OR JURY.

(a) For a commitment hearing on a petition filed pursuant to § 7-1303.04(b-1), an individual found incompetent in a criminal case may demand a jury trial, and shall be so informed of this right. The demand shall be made at the status hearing held pursuant to § 7-1304.05(b). If a timely demand for jury trial is not made, the Court shall serve as the factfinder at the hearing. A hearing by the Court or jury shall be accorded with all reasonable speed.

(b) The comprehensive evaluation report and individual habilitation plan required by § 7-1304.03 shall be completed prior to the hearing.

(c) The individual found incompetent in a criminal case shall have the right to be present during the trial or hearings and to testify, but shall not be compelled to testify, and shall be so advised by the Court. The individual shall have the right to be represented by counsel, retained or appointed by the Court, in any hearing or trial, and shall be so informed by the Court of this right. The individual shall have the right to call witnesses and present evidence, and to cross-examine opposing witnesses.

(d) If the Court or jury finds that the individual does not have an intellectual disability or that the individual is not likely to cause injury to others as a result of the individual's intellectual disability if allowed to remain at liberty, the Court shall dismiss the petition. If the Court or jury finds that the individual has an intellectual disability and is likely to cause injury to others as a result of the individual's intellectual disability if allowed to remain at liberty, the Court shall order commitment to DDS for placement in a facility that would be the least restrictive means of providing the habilitation indicated by the individual habilitation plan required under § 7-1304.03 and of preventing the individual from causing injury to others as a result of the individual's intellectual disability.

(Mar 3, 1979, D.C. Law 2-137, § 406a, as added Oct. 17, 2002, D.C. Law 14-199, § 2(l), 49 DCR 7647; Mar. 14, 2007, D.C. Law 16-264, § 301(i), 54 DCR 818; Apr. 24, 2007, D.C. Law 16-305, § 27, 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 17(w), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 16-264, in subsec. (d), substituted "DDS" for "MRDDA".

D.C. Law 16-305, in subsec. (d), substituted "does not have mental retardation" for "is not mentally retarded" and "has mental retardation" for "is mentally retarded".

D.C. Law 19-169, in subsec. (d), substituted "have an intellectual disability" for "have mental retardation", "individual's intellectual disability" for "individual's mental retardation", and "has an intellectual disability" for "has mental retardation".

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 301(i) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative History of Laws

For Law 14-199, see notes following § 7-1301.03.

For Law 16-264, see notes following § 7-1301.03.

For Law 16-305, see notes following § 7-531.01.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1304.07. STANDARD OF PROOF.

(a) If the petition was filed pursuant to § 7-1303.04(a), the parent or guardian, or his or her counsel if so represented, shall present evidence which shows beyond a reasonable doubt that the respondent is not competent to refuse commitment.

(b) If the petition was filed pursuant to § 7-1303.04(b-1), the District shall present clear and convincing evidence that shows that the respondent is likely to cause injury to others as a result of an intellectual disability if allowed to remain at liberty.

(Mar. 3, 1979, D.C. Law 2-137, § 407, 25 DCR 5094; Oct. 17, 2002, D.C. Law 14-199, 2(m), 49 DCR 7647; Sept. 26, 2012, D.C. Law 19-169, § 17(x), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1947.

1973 Ed., § 6-1674.

Effect of Amendments

D.C. Law 14-199 designated subsec. (a), and in that subsection, substituted "§ 7-1303.04(a)" for "§ 7-1303.04"; and added subsec. (b).

D.C. Law 19-169, in subsec. (b), substituted "an intellectual disability" for "mental retardation".

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(m) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14- 383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(m) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For Law 14-199, see notes following § 7-1301.03.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1304.08. HEARINGS CLOSED TO PUBLIC; REQUEST FOR OPEN HEARING.

Hearings shall be closed to the public unless the person with an intellectual disability, or his or her counsel, requests that a hearing be open to the public.

(Mar. 3, 1979, D.C. Law 2-137, § 408, 25 DCR 5094; Apr. 24, 2007, D.C. Law 16-305, § 26(l), 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 17(y), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1948.

1973 Ed., § 6-1675.

Effect of Amendments

D.C. Law 16-305 substituted "the person with mental retardation" for "the mentally retarded person".

D.C. Law 19-169 substituted "an intellectual disability" for "mental retardation".

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For Law 16-305, see notes following § 7-531.01.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1304.09. DISPOSITION ORDERS BY COURT.

(a) Upon completion of the hearing on a petition filed pursuant to § 7- 1303.04(a), the Court shall order that a respondent shall not be committed to a facility if the Court finds that:

- (1) The respondent does not have at least a moderate intellectual disability;
- (2) A respondent 14 years of age or older is competent to refuse commitment; or
- (3) The respondent is not a resident of the District of Columbia.

(b) Only if the Court determines that the conditions set forth in § 7-1303.04(b) and § 7-1303.06 are satisfied shall it order commitment to a facility consistent with the comprehensive evaluation and individual habilitation plan of the person with an intellectual disability.

(c) If the Court determines, pursuant to subsections (a) and (b) of this subsection, that a respondent should not be committed to a facility, the Court may order that the respondent undergo such nonresidential habilitation and care as may be appropriate, necessary, and available, or it may order no habilitation and care.

(d) For persons whose admission to facilities has been questioned under § 7-1303.02, the Court shall enter an appropriate order as set forth under that section.

(Mar. 3, 1979, D.C. Law 2-137, § 409, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(k), 42 DCR 3684; Oct. 17, 2002, D.C. Law 14-199, § 2(n), 49 DCR 7647; Apr. 24, 2007, D.C. Law 16-305, § 26(m), 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 17(z), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1949.

1973 Ed., § 6-1676.

Effect of Amendments

D.C. Law 14-199, in subsec. (a), substituted "hearing on a petition filed pursuant to § 7-1303.04(a)" for "hearing"; in subsec. (b), substituted "§ 7-1303.04(b)" for "§ 7-1303.04"; and in subsec. (c), substituted "determines, pursuant to subsections (a) and (b) of this subsection," for "determines".

D.C. Law 16-305, in subsec. (b), substituted "the person with mental retardation" for "the mentally retarded person".

D.C. Law 19-169 rewrote subsec. (a)(1); and, in subsec. (b), substituted "an intellectual disability" for "mental retardation". Prior to amendment, subsec. (a)(1) read as follows:

"(1) The respondent is not at least moderately mentally retarded;"

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(k) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 4(c) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency Act Amendments

For temporary amendment of section, see § 505(k) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary amendment of section, see § 4(c) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(c) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 506(k) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary (90 day) amendment of section, see § 2(n) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(n) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

For Law 14-199, see notes following § 7-1301.03.

For Law 16-305, see notes following § 7-531.01.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1304.10. APPEAL OF COMMITMENT ORDER.

Any commitment order of the Court may be appealed in a like manner as other civil actions.

(Mar. 3, 1979, D.C. Law 2-137, § 410, 25 DCR 5094.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1950.

1973 Ed., § 6-1677.

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

§ 7-1304.11. PERIODIC REVIEW OF COMMITMENT ORDER.

(a) Any decision of the Court ordering commitment of a person with an intellectual disability to a facility pursuant to § 7-1304.09 shall be reviewed in a Court hearing annually. The individual with an intellectual disability shall be discharged unless there is a finding of the following:

- (1) The Court determines that the individual with an intellectual disability has benefited from the habilitation;
- (2) The facility pursuant to § 7-1304.09, its sponsoring agency, or the Department on Disability Services demonstrates that continued residential habilitation is necessary for the habilitation program;
- (3) The person with an intellectual disability is a resident of the District of Columbia; and
- (4) The person meets the requirements for commitment in §§ 7-1303.04(b) and 7-1303.06(a).

(a-1) Any decision of the Court ordering commitment of an individual found incompetent in a criminal case to DDS pursuant to § 7-1304.06a shall be reviewed in a court hearing annually. The individual shall not be discharged if the Court finds that the individual is likely to cause injury to others as a result of his or her intellectual disability if allowed to regain his or her liberty.

(b) If an individual with an intellectual disability is discharged in accordance with the provisions of subsection (a) or subsection (a-1) of this section but continues to evidence the need for habilitation and care, it shall be the responsibility of the Department on Disability Services to arrange for suitable services for the person.

(Mar. 3, 1979, D.C. Law 2-137, § 411, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(l), 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-255, § 14(b), 44 DCR 1271; Oct. 17, 2002, D.C. Law 14-199, § 2(o), 49 DCR 7647; Mar. 14, 2007, D.C. Law 16-264, § 301(j), 54 DCR 818; Apr. 24, 2007, D.C. Law 16-305, § 26(n), 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 17(aa), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1951.

1973 Ed., § 6-1678.

Effect of Amendments

D.C. Law 14-199, in subsec. (a), substituted "facility pursuant to § 7-1304.09" for "facility"; added subsec. (a-1); and in subsec. (b), substituted "subsection (a) or subsection (a-1) of this section" for "subsection (a)(1) of this section".

D.C. Law 16-264, in subsecs. (a) and (b), substituted "Department on Disability Services" for "Department of Human Services"; and, in subsec. (a-1), substituted "DDS" for "MRDDA".

D.C. Law 16-305, in subsec. (a), substituted "person with mental retardation" for "mentally retarded person"; and throughout the rest of the section, substituted "individual with mental retardation" for "mentally retarded individual".

D.C. Law 19-169 substituted "with mental retardation" for "with an intellectual disability"; and, in subsec. (a-1), substituted "his or her intellectual disability" for "his or her mental retardation".

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(l) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 4(d) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency Act Amendments

For temporary amendment of section, see § 505(l) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary amendment of section, see § 4(d) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(d) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 402(b) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(l) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary (90 day) amendment of section, see § 2(o) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14- 383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(o) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

For temporary (90 day) amendment of section, see § 301(j) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 7-1303.09.

For Law 14-199, see notes following § 7-1301.03.

For Law 16-264, see notes following § 7-1301.03.

For Law 16-305, see notes following § 7-531.01.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1304.12. PAYMENT OF COSTS AND EXPENSES.

Costs and expenses of all proceedings held under this chapter shall be paid as follows:

- (1) To expert witnesses designated by the Court, an amount determined by the Court;
- (2) To attorneys appointed under this chapter, fees as authorized under the Criminal Justice Act (§ 11-2601 et seq.);
- (3) To other witnesses, the same fees and mileage as for attendance at Court to be paid upon the approval of the Court.

(Mar. 3, 1979, D.C. Law 2-137, § 412, 25 DCR 5094.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1952.

1973 Ed., § 6-1679.

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

§ 7-1304.13. ADVOCATE FOR A PERSON WITH AN INTELLECTUAL DISABILITY.

(a) Persons with intellectual disabilities who admit themselves to a facility under § 7-1303.02, and persons with an intellectual disability whose commitment is sought under § 7-1303.04 or § 7-1303.06, shall have the assistance of an advocate for a person with an intellectual disability in every proceeding and at each stage in such proceedings under this chapter.

(b) Upon receipt of the petition for commitment or notification of admission as provided in §§ 7-1303.02,

7-1303.04, and 7-1303.06, the Court shall appoint a qualified advocate for a person with an intellectual disability selected from a list of such advocates it maintains.

(c) Advocates for a person with an intellectual disability shall have the following powers and duties:

- (1) To inform persons subject to the procedures set forth in this chapter of their rights;
- (2) To consult with the person, his or her family and others concerned with his or her habilitation and well being;
- (3) To ensure by all means, including case referral to legal services, agencies and other practicing lawyers, that the person is afforded all rights under the law; and
- (4) To guide and assist the person in such a manner as to encourage self-reliance and enable the person to participate to the greatest extent possible in decisions concerning his or her habilitation plan, and the services to be provided under this plan.

(d) The advocate for a person with an intellectual disability shall receive notice and shall have the right to participate in all meetings, conferences or other proceedings relating to any matter affecting provision of services to the person including, but not limited to, comprehensive evaluation, habilitation plan, petition and hearings for commitment and for periodic review of the commitment.

(e) The advocate for a person with an intellectual disability shall have access to all records, reports and documents affecting his or her client.

(f) The advocate for a person with an intellectual disability shall have access to all personnel and facilities responsible for providing care or services to his or her client and shall be permitted to visit and communicate with his or her client in private, and at any reasonable time without prior notice; provided, that he or she shows reasonable cause for visiting at times other than visiting hours.

(g) The advocate for a person with an intellectual disability shall be a person with training and experience in the field of intellectual disability.

(h) Advocates shall be provided directly by the Court or by a contract with individuals or organizations including local associations for individuals with intellectual disabilities; however, the Court shall ensure that contracts and other arrangements for selection and provision of advocates provide that each advocate for a person with an intellectual disability shall be independent of any public or private agency which provides services to persons subject to this chapter.

(i) In the selection, training and development of the advocacy provision of this section, the Court shall explore and seek out potential sources of funding at the federal and District levels.

(j) Advocates shall be provided with facilities, supplies, and secretarial and other support services sufficient to enable them to carry out their duties under this chapter.

(k) All communication between advocates and their clients shall remain confidential and privileged as if between attorney and client.

(l) The Court shall promulgate such rules amplifying and clarifying this section as it deems necessary.

(m) Persons with intellectual disabilities subject to this chapter may knowingly reject the services of an advocate for a person with an intellectual disability and shall be so advised by the Court. Advocates whose services have been rejected by the person with an intellectual disability shall not have the rights set forth in subsections (c), (d), (e), (f) and (j) of this section.

(n) If so authorized by the Court, the advocate for a person with an intellectual disability shall be permitted to grant, refuse, or withdraw consent on behalf of his or her client with respect to the provision of any health-care service, treatment, or procedure, consistent with the provisions of Chapter 22 of Title 21.

(Mar. 3, 1979, D.C. Law 2-137, § 413, 25 DCR 5094; Apr. 24, 2007, D.C. Law 16-305, § 26(o), 53 DCR 6198; Oct. 22, 2008, D.C. Law 17-249, § 5(b), 55 DCR 9206; Sept. 26, 2012, D.C. Law 19-169, § 17(bb), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1953.

1973 Ed., § 6-1680.

Effect of Amendments

D.C. Law 16-305, in subsecs. (a) and (m), substituted "persons with mental retardation" for "mentally retarded persons".

D.C. Law 17-249 added subsec. (n).

D.C. Law 19-169 rewrote the section, which formerly read:

"(a) Persons with mental retardation who admit themselves to a facility under § 7-1303.02, and persons with

mental retardation whose commitment is sought under § 7-1303.04 or § 7-1303.06, shall have the assistance of a mental retardation advocate in every proceeding and at each stage in such proceedings under this chapter.

"(b) Upon receipt of the petition for commitment or notification of admission as provided in §§ 7-1303.02, 7-1303.04, and 7-1303.06, the Court shall appoint a qualified mental retardation advocate selected from a list of such advocates it maintains.

"(c) Mental retardation advocates shall have the following powers and duties:

"(1) To inform persons subject to the procedures set forth in this chapter of their rights;

"(2) To consult with the person, his or her family and others concerned with his or her habilitation and well being;

"(3) To ensure by all means, including case referral to legal services, agencies and other practicing lawyers, that the person is afforded all rights under the law; and

"(4) To guide and assist the person in such a manner as to encourage self-reliance and enable the person to participate to the greatest extent possible in decisions concerning his or her habilitation plan, and the services to be provided under this plan.

"(d) The mental retardation advocate shall receive notice and shall have the right to participate in all meetings, conferences or other proceedings relating to any matter affecting provision of services to the person including, but not limited to, comprehensive evaluation, habilitation plan, petition and hearings for commitment and for periodic review of the commitment.

"(e) The mental retardation advocate shall have access to all records, reports and documents affecting his or her client.

"(f) The mental retardation advocate shall have access to all personnel and facilities responsible for providing care or services to his or her client and shall be permitted to visit and communicate with his or her client in private, and at any reasonable time without prior notice; provided, that he or she shows reasonable cause for visiting at times other than visiting hours.

"(g) The mental retardation advocate shall be a person with training and experience in the field of mental retardation.

"(h) Advocates shall be provided directly by the Court or by a contract with individuals or organizations including local associations for consumers of mental retardation services; however, the Court shall ensure that contracts and other arrangements for selection and provision of advocates provide that each mental retardation advocate shall be independent of any public or private agency which provides services to persons subject to this chapter.

"(i) In the selection, training and development of the advocacy provision of this section, the Court shall explore and seek out potential sources of funding at the federal and District levels.

"(j) Advocates shall be provided with facilities, supplies, and secretarial and other support services sufficient to enable them to carry out their duties under this chapter.

"(k) All communication between advocates and their clients shall remain confidential and privileged as if between attorney and client.

"(l) The Court shall promulgate such rules amplifying and clarifying this section as it deems necessary.

"(m) Persons with mental retardation subject to this chapter may knowingly reject the services of a mental retardation advocate and shall be so advised by the Court. Advocates whose services have been rejected by the person with mental retardation shall not have the rights set forth in subsections (c), (d), (e), (f) and (j) of this section.

"(n) If so authorized by the Court, the mental retardation advocate shall be permitted to grant, refuse, or withdraw consent on behalf of his or her client with respect to the provision of any health-care service, treatment, or procedure, consistent with the provisions of Chapter 22 of Title 21."

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 4(b) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2005 (D.C. Law 16-46, February 9, 2006, law notification 53 DCR 1454).

For temporary (225 day) amendment of section, see § 4(b) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2006 (D.C. Law 16-194, March 2, 2007, law notification 54 DCR 2492).

For temporary (225 day) amendment of section, see § 4(b) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2007 (D.C. Law 17-100, February 2, 2008, law notification 55 DCR 3407).

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 4(b) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005 (D.C. Act 16-190, October 28, 2005, 52 DCR 10021).

For temporary (90 day) amendment of section, see § 4(b) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-262, January 26, 2006, 53 DCR 795).

For temporary (90 day) amendment of section, see § 4(b) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 4(b) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 4(b) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 4(b) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) amendment, see § 5(b) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For Law 16-305, see notes following § 7-531.01.

For Law 17-249, see notes following § 7-1203.03.

For history of Law 19-169, see notes under § 7-761.02.

SUBCHAPTER V. RIGHTS OF PERSONS WITH INTELLECTUAL DISABILITIES.

§ 7-1305.01. HABILITATION AND CARE; HABILITATION PROGRAM.

(a) To the extent that appropriated funds are available to carry out the purposes of this chapter, no District resident with an intellectual disability shall be denied habilitation, care, or both suited to the person's needs regardless of the person's age, degree of intellectual disability, or other disabling condition.

(b) To the extent that appropriated funds are available to carry out the purposes of this chapter, each individual shall be provided a habilitation program that will maximize the individual's human abilities, enhance the individual's ability to cope with the individual's environment, and create a reasonable opportunity for progress toward the goal of independent living.

(c) Notwithstanding subsection (a) of this section, no individual subject to commitment pursuant to § 7-1304.06a shall be denied habilitation, care, or both suited to the person's needs, regardless of the person's age, degree of intellectual disability, or other disabling condition.

(d) Notwithstanding subsection (b) of this section, an individual subject to commitment pursuant to § 7-1304.06a shall be provided a habilitation program that will maximize the person's human abilities, enhance the person's ability to cope with the person's environment, and create a reasonable opportunity for progress toward the goal of independent living.

(e)(1) Notwithstanding the availability of an appropriation to carry out the purposes of this chapter in subsections (a) and (b) of this section, effective January 1, 2012, a District resident with an intellectual disability who is otherwise eligible to receive supports and services from the District pursuant to this chapter must either pay the full cost of such supports and services directly to the provider or become District Medicaid-eligible and maintain District Medicaid eligibility in order to receive supports and services under this chapter from a District Medicaid-eligible provider. This requirement shall not apply to a person:

- (A) Who is a former resident of Forest Haven;
- (B) Whose needs cannot reasonably be met by a District Medicaid provider;
- (C) Who is eligible for enrollment in the D.C. Healthcare Alliance; or
- (D) Whose representative payee for the purposes of Social Security benefits is the Department of Disability Services or a provider agency who is contracted with the District to provide supports and

services for that person, if the reason the person lost Medicaid eligibility is due to a failure by the representative payee.

(2) The Department of Disability Services shall work with and support the person to become District Medicaid-eligible and to maintain District Medicaid eligibility, and the person and his or her representatives, estate, or both shall fully cooperate in such efforts.

(Mar. 3, 1979, D.C. Law 2-137, § 501, 25 DCR 5094; Mar. 24, 1998, D.C. Law 12-81, § 9, 45 DCR 745; Oct. 17, 2002, D.C. Law 14-199, § 2(p), 49 DCR 7647; Sept. 14, 2011, D.C. Law 19-21, § 5002(b), 58 DCR 6226; Sept. 26, 2012, D.C. Law 19-169, § 17(dd), 50 DCR 5567; Sept. 26, 2012, D.C. Law 19-171, § 55, 59 DCR 6190.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1961.

1973 Ed., § 6-1681.

Effect of Amendments

D.C. Law 14-199 added subsecs. (c) and (d).

D.C. Law 19-21 added subsec. (e).

D.C. Law 19-169 substituted "an intellectual disability" for "mental retardation", "degree of intellectual disability, or other disabling condition" for "degree of retardation, or handicapping condition", "individual" for "customer", and "individual's" for "customer's".

D.C. Law 19-171 validated a previously made technical correction in the designation of subsec. (e).

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(m) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 4(e) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency Act Amendments

For temporary amendment of section, see § 505(m) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary amendment of section, see § 4(e) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(e) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 506(m) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 506(n) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary (90 day) amendment of section, see § 2(p) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(p) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Law 12-81, the "Technical Amendments Act of 1997," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

For Law 14-199, see notes following § 7-1301.03.

For history of Law 19-21, see notes under § 7-731.

For history of Law 19-169, see notes under § 7-761.02.

For history of Law 19-171, see notes under § 7-242.

§ 7-1305.02. LIVING CONDITIONS; TEACHING OF SKILLS.

Individuals shall be provided with the least restrictive and most normal living conditions possible. Individuals with intellectual disabilities found incompetent in a criminal case shall be provided with the least restrictive and most normal living conditions possible consistent with preventing the individual from causing injury to others as a result of the individual's intellectual disability. This standard shall apply to dress, grooming, movement, use of free time, and contact and communication with the community, including access to services outside of the institution or residential facility. Individuals shall be taught skills that help them learn how to effectively utilize their environment and how to make choices necessary for daily living and, in the case of an individual committed under § 7-1304.06a, to refrain from committing crimes of violence or sex offenses.

(Mar. 3, 1979, D.C. Law 2-137, § 502, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(n), 42 DCR 3684; Oct. 17, 2002, D.C. Law 14-199, § 2(q), 49 DCR 7647; Sept. 26, 2012, D.C. Law 19-169, § 17(ee), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1962.

1973 Ed., § 6-1682.

Effect of Amendments

D.C. Law 14-199 rewrote the section which had read as follows:

"Customers shall be provided with the least restrictive and most normal living conditions possible. This standard shall apply to dress, grooming, movement, use of free time, and contact and communication with the community, including access to services outside of the institution or residential facility. Customers shall be taught skills that help them learn how to effectively utilize their environment and how to make choices necessary for daily living."

D.C. Law 19-169 substituted "Individuals" for "Customers", "with intellectual disabilities" for "with mental retardation", and "individual's intellectual disability" for "individual's mental retardation".

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(n) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency Act Amendments

For temporary amendment of section, see § 505(n) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary (90 day) amendment of section, see § 2(q) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(q) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

For Law 14-199, see notes following § 7-1301.03.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1305.03. LEAST RESTRICTIVE CONDITIONS.

(a) Individuals shall have a right to the least restrictive conditions necessary and available to achieve the purposes of habilitation. To this end, the residential facility shall move individuals from:

- (1) More to less structured living;
- (2) Larger to smaller facilities;
- (3) Larger to smaller living units;
- (4) Group to individual residence;
- (5) Segregated to integrated community living; or

(6) Dependent to independent living.

(b) If at any time the Director decides that an individual should be transferred out of the facility to a less restrictive environment, he or she shall immediately notify the Court pursuant to § 7-1303.09. Notice shall be provided to the individual, the individual's counsel, the individual's advocate for a person with an intellectual disability, if one has been appointed, and the individual's parent or guardian who petitioned for the commitment.

(Mar. 3, 1979, D.C. Law 2-137, § 503, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(o), 42 DCR 3684; Sept. 26, 2012, D.C. Law 19-169, § 17(ff), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1963.

1973 Ed., § 6-1683.

Effect of Amendments

D.C. Law 19-169 rewrote the section, which formerly read:

"Customers shall have a right to the least restrictive conditions necessary and available to achieve the purposes of habilitation. To this end, the institution or residential facility shall move customers from: (1) more to less structured living; (2) larger to smaller facilities; (3) larger to smaller living units; (4) group to individual residence; (5) segregated to integrated community living; or (6) dependent to independent living. If at any time the Director decides that a customer should be transferred out of the facility to a less restrictive environment, he or she shall immediately notify the Court pursuant to § 7-1303.09. Notice shall be provided to the customer, the customer's counsel, the customer's mental retardation advocate, if one has been appointed, and the customer's parent or guardian who petitioned for the commitment."

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(o) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 4(f) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency Act Amendments

For temporary amendment of section, see § 505(o) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary amendment of section, see § 4(f) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(f) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 402(c) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(o) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1305.04. COMPREHENSIVE EVALUATION AND INDIVIDUAL HABILITATION PLAN.

(a)(1) Prior to each individual's commitment under this chapter, the individual shall receive, pursuant to § 7-1304.03, a comprehensive evaluation or screening and an individual habilitation plan. Within 30 days of a individual's admission pursuant to § 7-1303.02, the individual shall have a comprehensive evaluation or screening and an individual habilitation plan.

(2) All individual habilitation plans shall include:

(A) Current information on whether the individual has the capacity to grant, refuse, or withdraw consent to any ongoing medical treatment and:

(i) Has executed or could execute a durable power of attorney in accordance with § 21-2205; or

(ii) Has an individual reasonably available, mentally capable, and willing to provide substituted

consent pursuant to § 21-2210; and

(B) A current durable power of attorney or, in the absence of a durable power of attorney, documentation that the person has been offered an opportunity to execute a durable power of attorney pursuant to § 21-2205 and has declined.

(3) Annual reevaluations or screenings of the individual shall be provided as determined by the individual's interdisciplinary team. Annual reevaluations and screenings shall include a review of and update to the individual habilitation plan on whether the individual:

(A) Has the capacity to grant, refuse, or withdraw consent to any ongoing medical treatment;

(B) Has executed or could execute a durable power of attorney in accordance with § 21-2205;

(C) Has been offered an opportunity to execute a durable power of attorney pursuant to § 21-2205 and declined; or

(D) Has an individual reasonably available, mentally capable, and willing to provide substituted consent pursuant to § 21-2210.

(4) By April 15, 2009, the DDS shall establish written procedures for incorporating a review of all mental-health services, including psychotropic medications, behavioral plans, and any other psychiatric treatments, into the annual reevaluations and screenings conducted by the individual's interdisciplinary team.

(5) Nothing in this subsection shall be construed as requiring any person to execute a durable power of attorney for health care.

(b) Within 10 days of a individual's commitment pursuant to § 7-1304.03, or within 30 days of admission pursuant to § 7-1303.02, the facility, the facility's sponsoring agency, or the Department on Disability Services shall:

(1) Designate each professional or staff member who is responsible for implementing or overseeing the implementation of a individual's individual habilitation plan;

(2) Designate each District agency, private agency, or service responsible for providing the habilitation included in the plan; and

(3) Specify the role and objectives of each District agency, private agency, or service with respect to the plan.

(c) To the extent of funds appropriated for the purposes of this chapter, each individual shall receive habilitation, care, or both consistent with the recommendations included in the individual's individual habilitation plan. The Department on Disability Services shall set standards for habilitation and care provided to such customers, consistent with standards set by the the Council on Quality and Leadership, including staff-individual and professional-individual ratios. In the interests of continuity of care, 1 qualified developmental disability professional shall be responsible for informing the Chief Program Director, or the Director, when the individual should be released to a less restrictive setting and for continually reviewing the plan.

(d)(1) Notwithstanding the availability of an appropriation to carry out the purposes of this chapter, effective January 1, 2012, a District resident with intellectual disability who is otherwise eligible to receive supports and services from the District pursuant to this chapter, consistent with the recommendations included in the individual habilitation plan, must either pay the full cost of such supports and services directly to the provider or become District Medicaid-eligible and maintain District Medicaid eligibility in order to receive supports and services under this chapter from a District Medicaid-eligible provider. This requirement shall not apply to a person:

(A) Who is a former resident of Forest Haven;

(B) Whose needs cannot reasonably be met by a District Medicaid provider;

(C) Who is eligible for enrollment in the D.C. Healthcare Alliance; or

(D) Whose representative payee for the purposes of Social Security benefits is the Department of Disability Services or a provider agency who is contracted with the District to provide supports and services for that person, if the reason the person lost Medicaid eligibility is due to a failure by the representative payee.

(2) The Department of Disability Services shall work with and support the person to become District Medicaid-eligible and to maintain District Medicaid eligibility, and the person and his or her representatives, estate, or both shall fully cooperate in such efforts.

(Mar. 3, 1979, D.C. Law 2-137, § 504, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(p), 42 DCR 3684; Mar. 14, 2007, D.C. Law 16-264, § 301(k), 54 DCR 818; Oct. 22, 2008, D.C. Law 17-249, § 5(c), 55 DCR 9206; Sept. 14, 2011, D.C. Law 19-21, § 5002(c), 58 DCR 6226; Sept. 26, 2012, D.C. Law 19-169, § 17(gg), 59 DCR 5567.)

Prior Codifications

1981 Ed., § 6-1964.

1973 Ed., § 6-1684.

Effect of Amendments

D.C. Law 16-264, in subsecs. (b) and (c), substituted "Department on Disability Services" for "Department of Human Services".

D.C. Law 17-249 rewrote subsec. (a), which had read as follows:

"(a) Prior to each customer's commitment pursuant to § 7-1304.03, the customer shall receive a comprehensive evaluation or screening and an individual habilitation plan. Within 30 days of a customer's admission pursuant to § 7-1303.02, the customer shall have a comprehensive evaluation or screening and an individual habilitation plan. Annual reevaluations or screenings of the customer shall be provided as determined by the customer's interdisciplinary team in accordance with Accreditation Council for Services for People with Developmental Disabilities Standards."

D.C. Law 19-21 added subsec. (d).

D.C. Law 19-169 substituted "individual's" for "customer's" and "individual" for "customer" throughout the section; in subsec. (c), substituted "the Council on Quality and Leadership" for "Accreditation Council for Services for the Mentally Retarded and Other Developmentally Disabled Persons", "qualified developmental disability professional" for "qualified mental retardation professional", and "staff-individual and professional-individual" for "staff-individual and professional-individual"; and, in subsec. (d), substituted "intellectual disability" for "mental retardation".

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(p) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2005 (D.C. Law 16-46, February 9, 2006, law notification 53 DCR 1454).

For temporary (225 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2006 (D.C. Law 16-194, March 2, 2007, law notification 54 DCR 2492).

For temporary (225 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2007 (D.C. Law 17-100, February 2, 2008, law notification 55 DCR 3407).

Emergency Act Amendments

For temporary amendment of section, see § 505(p) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary amendment of section, see § 4(g) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(g) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 402(d) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(p) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 402(e) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(q) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary (90 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005 (D.C. Act 16-190, October 28, 2005, 52 DCR 10021).

For temporary (90 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-262, January 26, 2006, 53 DCR 795).

For temporary (90 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 301(k) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

For temporary (90 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) amendment, see § 5(c) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

For Law 16-264, see notes following § 7-1301.03.

For Law 17-249, see notes following § 7-1203.03.

For history of Law 19-21, see notes under § 7-731.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1305.05. VISITORS; MAIL; ACCESS TO TELEPHONES; RELIGIOUS PRACTICE; PERSONAL POSSESSIONS; PRIVACY; EXERCISE; DIET; MEDICAL ATTENTION; MEDICATION.

(a) Subject to restrictions by a physician for good cause, each individual has the right to receive visitors of his or her own choosing daily. Hours during which visitors may be received shall be limited only in the interest of effective treatment and the reasonable efficiency of the facility, and shall be sufficiently flexible to accommodate the individual needs of the individual and his or her visitors. Notwithstanding the above, each individual has the right to receive visits from his or her attorney, physician, psychologist, clergyman, social worker, parents or guardians, or advocate for a person with an intellectual disability in private at any reasonable time, irrespective of visiting hours, provided the visitor shows reasonable cause for visiting at times other than normal visiting hours.

(b) Writing material and postage stamps shall be reasonably available for the individual's use in writing letters and other communications. Reasonable assistance shall be provided for writing, addressing and posting letters and other documents upon request. The individual shall have the right to send and receive sealed and uncensored mail. The individual has the right to reasonable private access to telephones and, in case of personal emergencies when other means of communications are not satisfactory, he or she shall be afforded reasonable use of long distance calls. A individual who is unable to pay shall be furnished such writing, postage, and telephone facilities without charge.

(c) Each individual shall have the right to follow or abstain from the practice of religion. The facility shall provide appropriate assistance in this connection including reasonable accommodations for religious worship and/or transportation to nearby religious services. Individuals who do not wish to participate in religious practice shall be free from pressure to do so or to accept religious beliefs.

(d) Each individual shall have the right to a humane psychological and physical environment. He or she shall be provided a comfortable bed and adequate changes of linen and reasonable storage space, including locked space, for his or her personal possessions. A record shall be kept of each individual's personal possessions. Except when curtailed for reason of safety or therapy as documented in his or her record by a physician, he or she shall be afforded reasonable privacy in his sleeping and personal hygiene practices.

(e) Each individual shall have reasonable daily opportunities for physical exercise and outdoor exercise and shall have reasonable access to recreational areas and equipment.

(f) Each individual has the right to a nourishing, well-balanced, varied, and appetizing diet, and where ordered by a physician and/or nutritionist, to a special diet.

(g) Each individual shall have the right to prompt and adequate medical attention for any physical ailments and shall receive a complete physical examination upon admission and at least once a year thereafter.

(h) All individuals have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written or verbal order of a licensed physician, noted promptly in the patient's medical record and signed by the physician within 24 hours. Medication shall be administered only by a licensed physician, registered nurse or licensed practical nurse, or by a medical or nursing student under the direct supervision of a licensed physician or registered nurse, or by a Director acting

upon a licensed physician's instructions. The attending physician shall review on a regular basis the drug regimen of each individual under his or her care. All prescriptions for psychotropic medications shall be written with a termination date, which shall not exceed 30 days. Medication shall not be used as a punishment, for the convenience of staff, as a substitute for programs, or in quantities that interfere with the individual's habilitation program.

(Mar. 3, 1979, D.C. Law 2-137, § 505, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(q), 42 DCR 3684; Sept. 26, 2012, D.C. Law 19-169, § 17(hh), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1965.

1973 Ed., § 6-1685.

Effect of Amendments

D.C. Law 19-169 substituted "individual" for "customer", "individual's" for "customer's", and "Individual" for "Customer" throughout the section; and, in subsec. (a), substituted "advocate for a person with an intellectual disability" for "mental retardation advocate".

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(q) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2005 (D.C. Law 16-46, February 9, 2006, law notification 53 DCR 1454).

For temporary (225 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2006 (D.C. Law 16-194, March 2, 2007, law notification 54 DCR 2492).

For temporary (225 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2007 (D.C. Law 17-100, February 2, 2008, law notification 55 DCR 3407).

Emergency Act Amendments

For temporary amendment of section, see § 505(q) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1305.06. PROHIBITED PSYCHOLOGICAL THERAPIES.

No psychosurgery, convulsive therapy, experimental treatment or behavior modifications program involving aversive stimuli or deprivation of rights set forth in this subchapter shall be administered to any resident.

(Mar. 3, 1979, D.C. Law 2-137, § 506, 25 DCR 5094.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1966.

1973 Ed., § 6-1686.

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

§ 7-1305.06A. INFORMED CONSENT.

(a) Except in accordance with the procedures described in subsections (b) and (c) of this section, in § 21-2212, or as otherwise provided by law, no DDS individual shall be given services pursuant to this chapter absent the individual's informed consent. In seeking informed consent, the provider or DDS shall present

the individual with available options and all material information necessary to make the decision, including information about the proposed service, potential benefits and risks of the proposed service, potential benefits and risks of no service, side effects, and information about feasible alternative services, if any.

(b) If the provider or DDS reasonably believes that the individual lacks the capacity to provide informed consent for the proposed service, the provider or DDS promptly shall seek a determination of the individual's capacity in accordance with § 21-2204. If the individual is certified as incapacitated for health-care decisions in accordance with § 21-2204, DDS or the provider shall promptly seek the provision of substituted consent from the individual's attorney-in-fact pursuant to § 21-2206 or, if no attorney-in-fact has been authorized pursuant to § 21-2205 or is reasonably available, mentally capable, and willing to act, from an individual authorized to provide substituted consent pursuant to § 21-2210.

(c) If the individual is certified as incapacitated and unable to consent to the proposed service in accordance with § 21-2204, and no attorney-in-fact or person listed in § 21-2210(a) is reasonably available, mentally capable, and willing to act:

(1) For any proposed services except psychotropic medications, the District shall petition the Court for appointment of a guardian pursuant to Chapter 20 of Title 21. The District's petition shall request the form of guardianship which is least restrictive to the incapacitated individual in duration and scope, taking into account the incapacitated individual's current mental and adaptive limitations or other conditions warranting the procedure. This subsection does not preclude any other party from petitioning the Court for appointment of a guardian.

(2) For all proposed psychotropic medications, except as described under paragraph (3) of this subsection, the provider may administer medication only when the administration of medication is accompanied by a behavioral plan and only after receiving approval from an independent panel appointed by the DDS Administrator pursuant to § 7-1305.06b.

(3) In an emergency in which a individual is experiencing a mental health crisis and in which the immediate provision of mental health treatment, including medication, is, in the written opinion of the attending physician, necessary to prevent serious injury to the individual or others, the provider may administer medication without seeking the individual's prior informed consent only to the extent necessary to terminate the emergency.

(Mar. 3, 1979, D.C. Law 2-137, § 506a, as added Oct. 22, 2008, D.C. Law 17-249, § 5(d), 55 DCR 9206; Sept. 26, 2012, D.C. Law 19-169, § 17(ii), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 19-169 substituted "individual" for "customer" and "individual's" for "customer's".

Temporary Addition of Section

For temporary (225 day) addition, see § 4(d) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2006 (D.C. Law 16-194, March 2, 2007, law notification 54 DCR 2492).

For temporary (225 day) addition, see § 4(d) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2007 (D.C. Law 17-100, February 2, 2008, law notification 55 DCR 3407).

Emergency Act Amendments

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) addition, see § 5(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative History of Laws

For Law 17-249, see notes following § 7-1203.03.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1305.06B. REVIEW PANEL FOR ADMINISTRATION OF PSYCHOTROPIC MEDICATIONS.

(a) The DDS Administrator shall establish an independent panel to review all proposals to administer psychotropic medications to individuals made pursuant to § 7-1305.06a(c)(2) and in accordance with the administrative procedures established by DDS in accordance with subchapter I of Chapter 5 of Title 2. The administrative procedures established by DDS shall be consistent with the requirements of this section.

(b) The panel shall be comprised of 3 members. The 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. The members of the panel shall not be affiliated with the individual, the provider, or the physician seeking to administer the medication, but shall include:

- (1) A board-certified psychiatrist or an advanced practice registered nurse;
- (2) A licensed professional; and
- (3) A individual, or, if unavailable, a mental retardation advocate or other individual advocate.

(c) The administrative procedure established by DDS for the panel shall include, at a minimum:

- (1) A meeting by the panel no later than one week after DDS receives a request for consent;
- (2) Written and oral notice to the individual not less than 48 hours prior to when the panel will meet;
- (3) The right of the individual to be present when the panel meets and to have a representative present during any such meeting;
- (4) The opportunity, at the meeting of the panel, for the individual and his or her representative to present information and to discuss the wishes of the individual;
- (5) The issuance of a written decision by the panel no later than one week after the meeting of the panel, to be provided to the individual, the individual's representative, and the provider; and
- (6) The right of the individual to request that the DDS Human Rights Advisory Committee or its successor entity review the decision of the panel.

(d) If the individual requests a review by the DDS Human Rights Advisory Committee or its successor entity before the decision of the panel has been implemented, the decision shall not be implemented until after the DDS Human Rights Advisory Committee or its successor entity responds to the requested review. The DDS Human Rights Advisory Committee or its successor entity shall conduct the review at its next meeting or no later than 30 days after the request, whichever is earlier, and shall issue a response promptly.

(e) The panel shall issue a written decision which may grant, refuse, or withdraw consent to the prescription of the proposed psychotropic medication. The panel shall seek to conform as closely as possible to a standard of substituted judgment or, if the individual's wishes are unknown and remain unknown after reasonable efforts to discern them, make the decision on the basis of the individual's best interests. If the panel grants consent, the consent shall be granted for a limited period of time and shall last no longer than 9 consecutive months.

(f) For individuals for whom the panel has provided consent, DDS shall offer the individual the opportunity to execute a durable power of attorney in accordance with § 21-2205 and shall continue to seek to identify one or more individuals listed in § 21-2210(a) who may be reasonably available, mentally capable, and willing to act.

(g) For individuals for whom the panel has provided consent for 3 or more consecutive months, and for whom there is a reasonable likelihood that no decision-maker will become available and that the individual will not achieve capacity during the next 6 months to make decisions regarding psychotropic medications on his or her own behalf, the District shall petition the Court for appointment of a guardian pursuant to Chapter 20 of Title 21. The District's petition shall request the type of guardianship which is least restrictive to the incapacitated individual in duration and scope, taking into account the incapacitated individual's current mental and adaptive limitations or other conditions warranting the procedure. This subsection does not preclude any other party from petitioning the Court for appointment of a guardian.

(h) Refusal to consent to psychotropic medications shall not be used as evidence of a individual's incapacity.

(i) Refusal to consent to services on the basis of a valid religious objection shall not be overridden absent a specific court order requiring the provision of services.

(Mar. 3, 1979, D.C. Law 2-137, § 506b, as added Oct. 22, 2008, D.C. Law 17-249, § 5(d), 55 DCR 9206; Mar. 3, 2010, D.C. Law 18-111, § 7024, 57 DCR 181; Sept. 26, 2012, D.C. Law 19-169, § 17(jj), 59 DCR 5567.)

Effect of Amendments

D.C. Law 18-111, in subsec. (b)(1), deleted ", subject to the availability of funds," following "psychiatrist".

D.C. Law 19-169 substituted "individual" for "customer", "individual's" for "customer's", and "individuals" for "customers" throughout the section; and, in subsec. (b)(3), substituted "an advocate for a person with an intellectual disability" for "a mental retardation advocate".

Temporary Addition of Section

For temporary (225 day) addition, see § 4(d) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2006 (D.C. Law 16-194, March 2, 2007, law notification 54 DCR 2492).

For temporary (225 day) addition, see § 4(d) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2007 (D.C. Law 17-100, February 2, 2008, law notification 55 DCR 3407).

Emergency Act Amendments

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) addition, see § 5(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

For temporary (90 day) amendment of section, see § 7024 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 7024 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative History of Laws

For Law 17-249, see notes following § 7-1203.03.

For Law 18-111, see notes following § 7-736.01.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1305.06C. PSYCHOTROPIC MEDICATION REVIEW.

(a) By April 15, 2009, the DDS shall complete a psychotropic medication review for all individuals served by DDS.

(b) By October 17, 2008, the DDS shall establish written procedures, which shall include timelines and shall identify responsible entities or individuals, for promptly implementing the recommendations for each individual identified by the psychotropic medication review.

(c) The psychotropic medication review shall be conducted by a review team that includes professionals with expertise in the prescription, use, and side effects of psychotropic medications as therapy for individuals who have been dually diagnosed with intellectual disabilities and mental illness.

(d) DDS shall establish in writing:

(1) Procedures for an initial administrative review of psychotropic medication prescriptions for all individuals served by DDS;

(2) Procedures and criteria for determining which individuals receive only an initial administrative review of psychotropic medications, and which individuals also receive a more detailed clinical review of psychotropic medications; and

(3) Criteria for screening and determining the clinical appropriateness of each psychotropic medication prescribed for each individual.

(e) The review team shall complete the initial administrative review of psychotropic medications. The initial administrative review of psychotropic medications shall determine, at minimum, for each individual served by DDS:

- (1) All prescribed psychotropic medications;
 - (2) The diagnosis justifying each prescription;
 - (3) The provision of informed consent for each prescription;
 - (4) The presence of an accompanying behavioral plan; and
 - (5) Any other mental health services being provided to the individual.
- (f) The review team shall conduct a clinical review of psychotropic medications when the initial administrative review meets the review team's criteria indicating that a detailed clinical review of the individual's psychotropic medication is warranted. The clinical review shall seek to determine the clinical appropriateness of each prescribed psychotropic medication and the potential for alternative approaches. The clinical review shall include, at a minimum, interviews with the individual, the prescribing professional, and the individual's residential and day service providers, if any.
- (g) By no later than 30 days after completing a psychotropic medication review of an individual, the review team shall issue a written report, which shall include recommendations for:
- (1) Continued use, modification, or termination of psychotropic medication;
 - (2) Potential use of alternative approaches, including therapies, behavioral plans, skill development, and environmental modifications;
 - (3) Informed consent, if informed consent has not been provided; and
 - (4) Development of a behavioral plan, if no behavioral plan is present.
- (h) A copy of the written report of the review team shall be appended to the individual's individual habilitation plan and shall be provided to:
- (1) The individual;
 - (2) The individual's legal representative, if any;
 - (3) The individual's advocate for a person with an intellectual disability, if any;
 - (4) The individual's DDS case manager;
 - (5) Other persons identified in the individual's individual habilitation plan as reasonably available, mentally capable, and willing to provide substituted consent pursuant to § 21-2210, if any;
 - (6) The individual's residential service provider; and
 - (7) The Quality Trust for Individuals with Disabilities, Inc.

(Mar. 3, 1979, D.C. Law 2-137, § 506c, as added Oct. 22, 2008, D.C. Law 17-249, § 5(d), 55 DCR 9206; Sept. 26, 2012, D.C. Law 19-169, § 17(kk), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 19-169 substituted "all individuals served by DDS" for "all DDS customers", "each individual" for "each customer", "intellectual disabilities" for "mental retardation", "each individual served by DDS" for "which customers", "the individual" for "the customer", "the individual's" for "the customer's", "an individual" for "a customer", and "advocate for a person with an intellectual disability" for "mental retardation advocate"; in subsec. (c), substituted "for individuals" for "for customers"; and rewrote subsec. (h)(5), which formerly read:

"(5) The individuals identified in the customer's individual habilitation plan as reasonably available, mentally capable, and willing to provide substituted consent pursuant to § 21-2210, if any;"

Temporary Addition of Section

For temporary (225 day) addition, see § 4(d) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2006 (D.C. Law 16-194, March 2, 2007, law notification 54 DCR 2492).

For temporary (225 day) addition, see § 4(d) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2007 (D.C. Law 17-100, February 2, 2008, law notification 55 DCR 3407).

Emergency Act Amendments

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental

Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) addition, see § 5(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative History of Laws

For Law 17-249, see notes following § 7-1203.03.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1305.07. ESSENTIAL SURGERY IN MEDICAL EMERGENCY.[REPEALED]

(Mar. 3, 1979, D.C. Law 2-137, § 507, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(r), 42 DCR 3684; Oct. 22, 2008, D.C. Law 17-249, § 5(e), 55 DCR 9206.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1967.

1973 Ed., § 6-1687.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(r) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 3(a) of Mentally Retarded Citizens Substitute Consent for Health Care Decisions and Emergency Care Definition Temporary Amendment Act of 1998 (D.C. Law 12-249, April 20, 1999, law notification 46 DCR 4162).

For temporary (225 day) amendment of section, see § 3(a), (b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 1999 (D.C. Law 13-88, April 12, 2000, law notification 47 DCR 2839).

For temporary (225 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2000 (D.C. Law 13-221, April 3, 2001, law notification 48 DCR 3463).

For temporary (225 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2001 (D.C. Law 14-64, February 27, 2002, law notification 49 DCR 2274).

For temporary (225 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2002 (D.C. Law 14-241, March 25, 2003, law notification 50 DCR 2754).

For temporary (225 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2003 (D.C. Law 15-98, March 10, 2004, law notification 51 DCR 3618).

For temporary (225 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2004 (D.C. Law 15-245, March 17, 2005, law notification 52 DCR 4121).

Temporary Addition of Section

For temporary (225 day) addition, see § 3(b) of Mentally Retarded Citizens Substitute Consent for Health Care Decisions and Emergency Care Definition Temporary Amendment Act of 1998 (D.C. Law 12-249, April 20, 1999, law notification 46 DCR 4162).

For temporary (225 day) addition, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2000 (D.C. Law 13-221, April 3, 2001, law notification 48 DCR 3463).

For temporary (225 day) addition, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2001 (D.C. Law 14-64, February 27, 2002, law notification 49 DCR 2274).

For temporary (225 day) addition, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2002 (D.C. Law 14-241, March 25, 2003, law notification 50 DCR 2754).

For temporary (225 day) addition, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2003 (D.C. Law 15-98, March 10, 2004, law notification 51 DCR 3618).

For temporary (225 day) addition, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2004 (D.C. Law 15-245, March 17, 2005, law notification 52 DCR 4121).

Temporary Repeal of Section

For temporary (225 day) repeal of section, see § 4(d) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2005 (D.C. Law 16-46, February 9, 2006, law notification 53 DCR 1454).

For temporary (225 day) repeal of section, see § 4(e) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2006 (D.C. Law 16-194, March 2, 2007, law notification 54 DCR 2492).

For temporary (225 day) repeal of section, see § 4(e) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2007 (D.C. Law 17-100, February 2, 2008, law notification 55 DCR 3407).

Emergency Act Amendments

For temporary amendment of section, see § 505(r) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary amendment of section, see § 402(f) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(r) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 402(g) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(t) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 506(s) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 3(a) of the Mentally Retarded Citizens Substituted Consent for Health Care Decisions Emergency Amendment Act of 1998 (D.C. Act 12-554, December 30, 1998, 45 DCR 566).

For temporary addition of § 6-1967.1, see § 3(b) of the Mentally Retarded Citizens Substituted Consent for Health Care Decisions Emergency Amendment Act of 1998 (D.C. Act 12-554, December 30, 1998, 45 DCR 566).

For temporary (90-day) amendment of section, see § 3(a) of the Mentally Retarded Citizens Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-56, April 16, 1999, 46 DCR 3858).

For temporary (90-day) addition of § 6-1967.1, see § 3(b) of the Mentally Retarded Citizens Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-56, April 16, 1999, 46 DCR 3858).

For temporary (90-day) amendment of section, see § 3(a) of the Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 1999 (D.C. Act 13-202, December 1, 1999, 47 DCR 134).

For temporary (90-day) addition of § 6-1967.1, see § 3(b) of the Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 1999 (D.C. Act 13-202, December 1, 1999, 47 DCR 134).

For temporary (90-day) amendment of section, see § 3(a) of the Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-285, March 7, 2000, 47 DCR 2033).

For temporary (90-day) addition of § 6-1967.1, see § 3(b) of the Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-285, March 7, 2000, 47 DCR 203).

For temporary (90 day) amendment of section, see § 3(a) of the Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2000 (D.C. Act 13-455, November 7, 2000, 47 DCR 9415).

For temporary (90 day) addition of § 7-1305.07a, see § 3(b) of the Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2000 (D.C. Act 13-455, November 7, 2000, 47 DCR 9415).

For temporary (90 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted

Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-3, February 13, 2001, 48 DCR 2251).

For temporary (90 day) addition of section § 7-1305.07a, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-3, February 13, 2001, 48 DCR 2251).

For temporary (90 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2001 (D.C. Act 14-143, October 23, 2001, 48 DCR 9944).

For temporary (90 day) addition of section § 7-1305.07a, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2001 (D.C. Act 14-143, October 23, 2001, 48 DCR 9944).

For temporary (90 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-246, January 28, 2002, 49 DCR 1040).

For temporary (90 day) addition of § 7-1305.07a, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-246, January 28, 2002, 49 DCR 1040).

For temporary (90 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2002 (D.C. Act 14-514, October 23, 2002, 49 DCR 10480).

For temporary (90 day) addition of § 7-1305.07a, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2002 (D.C. Act 14-514, October 23, 2002, 49 DCR 10480).

For temporary (90 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Second Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-602, January 7, 2003, 50 DCR 684).

For temporary (90 day) addition of § 7-1305.07a, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Second Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-602, January 7, 2003, 50 DCR 684).

For temporary (90 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2003 (D.C. Act 15-234, November 25, 2003, 50 DCR 10734).

For temporary (90 day) addition of section, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2003 (D.C. Act 15-234, November 25, 2003, 50 DCR 10734).

For temporary (90 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-359, February 19, 2004, 51 DCR 2578).

For temporary (90 day) addition of section, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-359, February 19, 2004, 51 DCR 2578).

For temporary (90 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted for Health Care Decisions Emergency Amendment Act of 2004 (D.C. Act 15-558, October 26, 2004, 51 DCR 10375).

For temporary (90 day) addition of section, see § 3(b) of Citizens with Mental Retardation Substituted for Health Care Decisions Emergency Amendment Act of 2004 (D.C. Act 15-558, October 26, 2004, 51 DCR 10375).

For temporary (90 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-6, January 19, 2005, 52 DCR 2683).

For temporary (90 day) addition of section, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-6, January 19, 2005, 52 DCR 2683).

For temporary (90 day) repeal of section, see § 4(d) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005 (D.C. Act 16-190, October 28, 2005, 52 DCR 10021).

For temporary (90 day) repeal of section, see § 4(d) of Health-Care Decisions for Persons with Mental Retardation and Development Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-262, January 26, 2006, 53 DCR 795).

For temporary (90 day) repeal of section, see § 4(e) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) repeal of section, see § 4(e) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) repeal, see § 4(e) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) repeal, see § 4(e) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Act of 2007 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) repeal, see § 5(e) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

For Law 17-249, see notes following § 7-1203.03.

§ 7-1305.07A. HEALTH-CARE DECISIONS POLICY, ANNUAL PLAN, AND QUARTERLY REPORTS.

(a) It shall be the policy of the District government to ensure that all persons who become incapable of making or communicating health-care decisions for themselves have available health-care decision-makers. In addition, it shall be the policy of DDS to ensure that every individual served by DDS has the opportunity to execute a durable power of attorney pursuant to § 21-2205, and has one or more individuals identified as reasonably available, mentally capable, and willing to provide substituted consent pursuant to § 21-2210, if the individual were to become certified as incapacitated to make a health-care decision in accordance with § 21-2204.

(b) The DDS Administrator shall issue by November 1 of each year an annual plan describing how DDS will comply with subsection (a) of this section during the current fiscal year. The plan shall include data from the prior fiscal year for assessing the current and potential health-care decision-making needs of all individuals served by DDS. The plan shall include, at a minimum:

(1) Aggregate statistics summarizing the numbers of individuals served by DDS who:

(A) Have a general guardian, a limited guardian, a health-care guardian, or an emergency guardian as of the end of the prior fiscal year;

(B) At any time during the prior fiscal year, had an emergency guardian authorized to make health-care decisions or a health-care guardian;

(C) Have executed a durable power of attorney in accordance with § 21-2205;

(D) Have been offered an opportunity to execute a durable power of attorney pursuant to § 21-2205 and declined;

(E) Have an individual identified as reasonably available, mentally capable, and willing to provide substituted consent pursuant to § 21-2210; or

(F) Lack any available substitute health-care decision-maker;

(2) Aggregate statistics describing the numbers of individuals taking psychotropic medications as of the end of the previous fiscal year, and an assessment of the degree to which health-care decision-making support for the prescription of psychotropic medication may be required for these individuals;

(3) Aggregate statistics describing the requests for consent reviewed during the prior fiscal year by the independent psychotropic medication panel authorized in § 7-1305.06b, analyzing outcomes, monthly and yearly trends, and requests for review by the DDS Human Rights Committee;

(4) Aggregate statistics describing for the prior fiscal year:

(A) The number of substitute decisions which required intervention by DDS to identify an individual to provide substituted consent pursuant to § 21-2210;

(B) The nature of the health-care needs and medical treatments; and

(C) The average time elapsed between a request for a substituted decision and the provision of substituted consent; and

(5) An analysis of the statistics described in this subsection, identification of yearly and multiyear

trends, and a plan for remedial measures to be taken when the statistics identify process or service deficiencies.

(c) The DDS Administrator shall produce a quarterly report on all substituted consent activities pursuant to subsection (a) of this section until October 2010. Quarterly reports shall be complete by the 15th day of October, January, April, and July and shall include:

(1) Statistics describing:

(A) The number of substitute decisions during the prior quarter which required intervention by DDS to identify an individual to provide substituted consent pursuant to § 21-2210;

(B) The nature of the health-care needs and medical treatments for each substituted decision;

(C) The time elapsed between each request for a substituted decision and the provision of substituted consent; and

(D) If the process for identifying an individual to provide substituted consent pursuant to § 21-2210 is not complete, a summary of the specific barriers currently identified and the specific action needed; and

(2) An analysis of the statistics described in this subsection, and a plan for remedial measures to be taken, when the statistics identify process delays.

(d)(1) The DDS Administrator shall submit the annual plan described in subsection (b) of this section and the quarterly report described in subsection (c) of this section to:

(A) The Committee of the Council under whose purview DDS falls;

(B) The Mayor; and

(C) The designated state protection and advocacy agency for the District of Columbia established pursuant to the Protection and Advocacy for Mentally Ill Individuals Act of 1986, approved May 23, 1986 (100 Stat. 478; 42 U.S.C. § 10801 *et seq.*), and section 509 of the Rehabilitation Act of 1973, approved October 29, 1992 (106 Stat. 4430; 29 U.S.C. § 794e).

(2) The DDS Administrator shall make copies of the annual plan and quarterly reports described in this section available to members of the public upon request.

(e) Nothing in this section shall be construed as requiring any person to execute a durable power of attorney for health care.

(Mar. 3, 1979, D.C. Law 2-137, § 507a, as added Oct. 22, 2008, D.C. Law 17-249, § 5(f), 55 DCR 9206; Sept. 26, 2012, D.C. Law 19-169, § 17(II), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 19-169, in subsec. (a), substituted "every individual served by DDS" for "every DDS customer" and "the individual" for "the customer"; and, in subsec. (b), substituted "individuals served by DDS" for "DDS customers" and "individuals" for "customers".

Temporary Addition of Section

For temporary (225 day) addition, see § 4(e) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2005 (D.C. Law 16-46, February 9, 2006, law notification 53 DCR 1454).

For temporary (225 day) addition, see § 4(f) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2006 (D.C. Law 16-194, March 2, 2007, law notification 54 DCR 2492).

For temporary (225 day) addition, see § 4(f) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2007 (D.C. Law 17-100, February 2, 2008, law notification 55 DCR 3407).

Emergency Act Amendments

For temporary (90 day) addition, see § 4(e) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005 (D.C. Act 16-190, October 28, 2005, 52 DCR 10021).

For temporary (90 day) addition, see § 4(e) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-262, January 26, 2006, 53 DCR 795).

For temporary (90 day) addition, see § 4(f) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) addition, see § 4(f) of Health-Care Decisions for Persons with Developmental

Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) addition, see § 4(f) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) addition, see § 4(f) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Act of 2007 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) addition, see § 5(f) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative History of Laws

For Law 17-249, see notes following § 7-1203.03.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1305.08. STERILIZATION.

No individual served at a facility shall be sterilized by any employee of a facility or by any other person acting at the direction of, or under the authorization of, the Director or any other employee of a facility.

(Mar. 3, 1979, D.C. Law 2-137, § 508, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(s), 42 DCR 3684; Sept. 26, 2012, D.C. Law 19-169, § 17(mm), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1968.

1973 Ed., § 6-1688.

Effect of Amendments

D.C. Law 19-169 substituted "individual served at" for "customer of".

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(s) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency Act Amendments

For temporary amendment of section, see § 505(s) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1305.09. EXPERIMENTAL RESEARCH.

Individuals shall have a right not to be subjected to experimental research without the express and informed consent of the individual, or if the individual cannot give informed consent, of the individual's parent or guardian. Such proposed research shall first have been reviewed and approved by the Department on Disability Services before such consent shall be sought. Prior to such approval, the Department shall determine that such research complies with the principles of the statement on the use of human subjects for research of the American Association on Mental Deficiency and with the principles for research involving human subjects required by the United States Department of Health and Human Services for projects supported by that agency.

(Mar. 3, 1979, D.C. Law 2-137, § 509, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(t), 42 DCR 3684; Mar. 14, 2007, D.C. Law 16-264, § 301(l), 54 DCR 818; Sept. 26, 2012, D.C. Law 19-169, § 17(nn), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1969.

Effect of Amendments

D.C. Law 16-264 substituted "Department on Disability Services" for "Department of Human Services".

D.C. Law 19-169 substituted "individual" for "customer", "individual's" for "customer's", and "Individuals" for "Customers".

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(t) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency Act Amendments

For temporary amendment of section, see § 505(t) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary (90 day) amendment of section, see § 301(l) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

For Law 16-264, see notes following § 7-1301.03.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1305.10. MISTREATMENT, NEGLECT OR ABUSE PROHIBITED; USE OF RESTRAINTS; SECLUSION; "TIME-OUT" PROCEDURES.

(a) Mistreatment, neglect or abuse in any form of any individual shall be prohibited. The routine use of all forms of restraint shall be eliminated. Physical or chemical restraint shall be employed only when absolutely necessary to prevent a customer from seriously injuring himself or herself, or others. Restraint shall not be employed as a punishment, for the convenience of staff or as a substitute for programs. In any event, restraints may only be applied if alternative techniques have been attempted and failed (such failure to be documented in the individual's record) and only if such restraints impose the least possible restriction consistent with their purposes. Each facility shall have a written policy defining:

- (1) The use of restraints;
- (2) The professionals who may authorize such use; and
- (3) The mechanism for monitoring and controlling such use.

(b) Only professionals designated by the Director may order the use of restraints. Such orders shall be in writing and shall not be in force for over 12 hours. A customer placed in restraint shall be checked at least every 30 minutes by staff trained in the use of restraints and a written record of such checks shall be kept.

(c) Mechanical restraints shall be designed for minimum discomfort and used so as not to cause physical injury to the customer. Opportunity for motion and exercise shall be provided for a period of not less than 10 minutes during each 2 hours in which restraint is employed.

(d) Seclusion, defined as a placement of a customer alone in a locked room, shall not be employed. Legitimate "time-out" procedures may be utilized under close and direct professional supervision as a technique in behavior-shaping programs. Each facility shall have a written policy regarding "time-out" procedures.

(e) Alleged instances of mistreatment, neglect or abuse of any individual shall be reported immediately to the Director and the Director shall inform the individual's counsel, parent or guardian who petitioned for the commitment, and the individual's advocate for a person with an intellectual disability of any such instances. There shall be a written report that the allegation has been thoroughly and promptly investigated (with the findings stated therein). Employees of facilities who report such instances of mistreatment, neglect, or abuse shall not be subjected to adverse action by the facility because of the report.

(f) An individual's counsel, parent or guardian who petitioned for commitment and an individual's advocate for a person with an intellectual disability shall be notified in writing whenever restraints are used and whenever an instance of mistreatment, neglect or abuse occurs.

(Mar. 3, 1979, D.C. Law 2-137, § 510, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(u), 42 DCR 3684; Sept. 26, 2012, D.C. Law 19-169, § 17(o), 59 DCR 5567.)

Prior Codifications

1981 Ed., § 6-1970.

1973 Ed., § 6-1690.

Effect of Amendments

D.C. Law 19-169 substituted "any individual" for "any customer", "an individual's" for "a customer's", "advocate for a person with an intellectual disability" for "mental retardation advocate", and "the individuals" for "the customers".

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(u) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency Act Amendments

For temporary amendment of section, see § 402(h) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(u) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1305.11. PERFORMANCE OF LABOR.

(a) No individual shall be compelled to perform labor which involves the operation, support, or maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditional upon the performance of such labor. The Mayor shall promulgate rules and regulations governing compensation of individuals who volunteer to perform such labor, which rules and regulations shall be consistent with United States Department of Labor regulations governing employment of patient workers in hospitals and institutions at subminimum wages.

(b) A individual may be required to perform habilitative tasks which do not involve the operation, support or maintenance of the facility if those tasks are an integrated part of the individual's habilitation plan and supervised by a qualified developmental disability professional designated by the Director.

(c) A individual may be required to perform tasks of a housekeeping nature for his or her own person only.

(Mar. 3, 1979, D.C. Law 2-137, § 511, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(v), 42 DCR 3684; Sept. 26, 2012, D.C. Law 19-169, § 17(pp), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1971.

1973 Ed., § 6-1691.

Effect of Amendments

D.C. Law 19-169 substituted "individual" for "customer", "individual's" for "customer's", and "individuals" for "customers"; and, in subsec. (b), substituted "qualified developmental disability professional" for "qualified mental retardation professional".

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(v) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency Act Amendments

For temporary amendment of section, see § 402(i) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(v) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

§ 7-1305.12. MAINTENANCE OF RECORDS; INFORMATION CONSIDERED PRIVILEGED AND CONFIDENTIAL; ACCESS; CONTENTS.

(a) Complete records for each individual shall be maintained and shall be readily available to professional persons and to the staff workers who are directly involved with the particular individual and to the Department on Disability Services without divulging the identity of the individual. All information contained in a individual's records shall be considered privileged and confidential. The individual's parent or guardian who petitioned for the commitment, the individual's counsel, the individual's advocate for a person with an intellectual disability and any person properly authorized in writing by the individual, if such individual is capable of giving such authorization, shall be permitted access to the individual's records. These records shall include:

- (1) Identification data, including the individual's legal status;
- (2) The individual's history, including but not limited to:
 - (A) Family data, educational background and employment record;
 - (B) Prior medical history, both physical and mental, including prior institutionalization;
- (3) The individual's grievances, if any;
- (4) An inventory of the individual's life skills;
- (5) A record of each physical examination which describes the results of the examination;
- (6) A copy of the individual habilitation plan; and any modifications thereto and an appropriate summary which will guide and assist the professional and staff employees in implementing the individual's program;
- (7) The findings made in periodic reviews of the habilitation plan which findings shall include an analysis of the successes and failures of the habilitation program and shall direct whatever modifications are necessary;
- (8) A medication history and status;
- (9) A summary of each significant contact by a professional person with a individual;
- (10) A summary of the individual's response to his or her program, prepared and recorded at least monthly, by the professional person designated pursuant to § 7-1305.04(c) to supervise the individual's habilitation;
- (11) A monthly summary of the extent and nature of the individual's work activities and the effect of such activity upon the individual's progress along the habilitation plan;
- (12) A signed order by a professional person, as set forth in § 7- 1305.10(b), for any physical restraints;
- (13) A description of any extraordinary incident or accident in the facility involving the individual, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of individual's mistreatment;
- (14) A summary of family visits and contacts;
- (15) A summary of attendance and leaves from the facility; and
- (16) A record of any seizures, illnesses, treatments thereof, and immunizations.

(b) Notwithstanding subsection (a) of this section, information contained in a individual's record may be used or disclosed for the purposes of and in accordance with Chapter 2A of this title.

(Mar. 3, 1979, D.C. Law 2-137, § 512, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(w), 42 DCR 3684; Mar. 14, 2007, D.C. Law 16-264, § 301(m), 54 DCR 818; Dec. 4, 2010, D.C. Law 18-273, § 205, 57 DCR 7171; Sept. 26, 2012, D.C. Law 19-169, § 17(qq), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1972.

1973 Ed., § 6-1692.

Effect of Amendments

D.C. Law 16-264, in the lead-in text, substituted "Department on Disability Services" for "Department of Human Services".

D.C. Law 18-273 designated the existing text as subsec. (a); and added subsec. (b).

D.C. Law 19-169 substituted "individual" for "customer" and "individual's" for "customer's" throughout the section; and, in subsec. (a), substituted "advocate for a person with an intellectual disability" for "mental retardation advocate".

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(w) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 2 of Disclosure of Mental Retardation and Developmental Disabilities Fatality Review Committee and Mental Retardation and Developmental Disabilities Incident Management and Investigations Unit Information and Records Temporary Amendment Act of 2006 (D.C. Law 16-143, July 25, 2006, law notification 53 DCR 6686).

Emergency Act Amendments

For temporary amendment of section, see § 402(j) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(w) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary (90 day) amendment of section, see § 2 of Disclosure of the Mental Retardation and Developmental Disabilities Fatality Review Committee and Mental Retardation and Developmental Disabilities Incident Management and Investigations Unit Information and Records Emergency Amendment Act of 2006 (D.C. Act 16-363, April 26, 2006, 53 DCR 3628).

For temporary (90 day) amendment of section, see § 301(m) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

For temporary (90 day) amendment of section, see § 205 of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) amendment of section, see § 205 of Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

For Law 16-264, see notes following § 7-1301.03.

For Law 18-273, see notes following § 7-131.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1305.13. INITIATION OF ACTION TO COMPEL RIGHTS; CIVIL REMEDY; SOVEREIGN IMMUNITY BARRED; DEFENSE TO ACTION; PAYMENT OF EXPENSES.

(a) Any interested party shall have the right to initiate an action in the Court to compel the rights afforded persons with intellectual disabilities under this chapter.

(b) Any individual shall have the right to a civil remedy in an amount not less than \$25 per day from the Director or the District of Columbia, separately or jointly, for each day in which said individual at a facility is not provided a program adequate for habilitation and normalization pursuant to the individual's individual habilitation plan, unless the District is unable to pay the cost of recommended services because available funds appropriated for the purposes of this chapter are insufficient to pay the costs.

(c) Sovereign immunity shall not bar an action under this section.

(d) The good faith belief that an habilitation program was professionally indicated shall be a defense to an action under subsection (b) of this section, despite the program's apparent ineffectiveness. In such circumstances, the habilitation program shall be modified to one appropriate for the individual within 5 days of a Court's decision that the program is inappropriate.

(e) Reasonable attorneys' fees and Court costs shall be available for actions brought under this section.

(Mar. 3, 1979, D.C. Law 2-137, § 513, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(x), 42 DCR 3684; Apr. 24, 2007, D.C. Law 16-305, § 26(p), 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 17(rr), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1973.

1973 Ed., § 6-1693.

Effect of Amendments

D.C. Law 16-305, in subsec. (a), substituted "persons with mental retardation" for "mentally retarded persons".

D.C. Law 19-169 substituted "individual" for "customer" throughout the section; and, in subsec. (a), substituted and "individual disabilities" for "mental retardation"; and, in subsec. (b), substituted "individual's" for "customer's".

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 505(x) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 4(h) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency Act Amendments

For temporary amendment of section, see § 4(h) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(h) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 402(k) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(x) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

For Law 16-305, see notes following § 7-531.01.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1305.14. DEPRIVATION OF CIVIL RIGHTS; PUBLIC OR PRIVATE EMPLOYMENT; RETENTION OF RIGHTS; LIABILITY; IMMUNITY; EXCEPTIONS.

(a) No person shall be deprived of any civil right, or public or private employment, solely by reason of his or her having received services, voluntarily or involuntarily, for an intellectual disability.

(b) Any person who has been admitted or committed to a facility under the provisions of this chapter retains all rights not specifically denied him or her under this chapter, including rights of habeas corpus.

(c) Any person who violates or abuses any rights or privileges protected by this chapter shall be liable for damages as determined by law, for Court costs and for reasonable attorneys' fees. Any person who acts in good faith compliance with the provisions of this chapter shall be immune from civil or criminal liability for actions in connection with evaluation, admission, commitment, habilitative programming, education or discharge of a resident. However, this section shall not relieve any person from liability for acts of negligence, misfeasance, nonfeasance, or malfeasance.

(Mar. 3, 1979, D.C. Law 2-137, § 514, 25 DCR 5094; Sept. 26, 2012, D.C. Law 19-169, § 17(ss), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1974.

1973 Ed., § 6-1694.

Effect of Amendments

D.C. Law 19-169, in subsec. (a), substituted "an intellectual disability" for "mental retardation".

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1305.15. COORDINATION OF SERVICES FOR DUALY DIAGNOSED INDIVIDUALS.

If an individual is committed by the Court to DDS pursuant to this chapter or committed by the Court to the Department of Mental Health pursuant to subchapter IV of Chapter 5 of Title 21, or if an individual is temporarily placed with DDS pursuant to § 7-1303.12a during the pendency of commitment proceedings, and DDS or the Department of Mental Health has reason to believe that the committed individual or the individual temporarily placed with DDS pursuant to § 7-1303.12a is dually diagnosed as having both mental illness and an intellectual disability, DDS and the Department of Mental Health shall collaborate in assessing the individual and shall jointly provide appropriate supports and services for the individual.

(Mar. 3, 1979, D.C. Law 2-137, § 515, as added Oct. 17, 2002, D.C. Law 14-199, § 2(r), 49 DCR 7647; Mar. 14, 2007, D.C. Law 16-264, § 301(n), 54 DCR 818; Sept. 26, 2012, D.C. Law 19-169, § 17(tt), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 16-264 substituted "DDS" for "MRDDA".

D.C. Law 19-169 substituted "an intellectual disability" for "mental retardation".

Emergency Act Amendments

For temporary (90 day) addition of § 7-1305.15, see § 2(p) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) addition of § 7-1305.15, see § 2(r) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

For temporary (90 day) amendment of section, see § 301(n) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative History of Laws

For Law 14-199, see notes following § 7-1301.03.

For Law 16-264, see notes following § 7-1301.03.

For history of Law 19-169, see notes under § 7-761.02.

SUBCHAPTER VI. MISCELLANEOUS PROVISIONS; EFFECTIVE DATE.

§ 7-1306.01. INCREASED FINANCIAL RESPONSIBILITY.[REPEALED]

(1973 Ed., § 6-1695; Mar. 3, 1979, D.C. Law 2-137, § 601, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(y), 42 DCR 3684.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1981.

1973 Ed., § 6-1695.

Temporary Repeal of Section

For temporary (225 day) repeal of section, see § 4(i) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency Act Amendments

For temporary repeal of section, see § 4(i) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834), § 4(i) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014), and § 506(y) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

§ 7-1306.02. SEVERABILITY.

Should any provision of this chapter be declared to be unconstitutional or beyond the statutory authority of the Council, the remaining provisions of this chapter shall remain in effect.

(Mar. 3, 1979, D.C. Law 2-137, § 602, 25 DCR 5094.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1982.

1973 Ed., § 6-1696.

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

§ 7-1306.03. APPROPRIATIONS.

There is hereby authorized to be appropriated such District funds as may be necessary and available to implement the provisions of this chapter, including funds for the development, and the support, of community-based services for persons with intellectual disabilities.

(Mar. 3, 1979, D.C. Law 2-137, § 603, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(z), 42 DCR 3684; Apr. 24, 2007, D.C. Law 16-305, § 26(q), 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 17(uu), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1983.

1973 Ed., § 6-1697.

Effect of Amendments

D.C. Law 16-305 substituted "persons with mental retardation" for "mentally retarded persons".

D.C. Law 19-169 substituted "intellectual disabilities" for "mental retardation".

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 4(j) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency Act Amendments

For temporary amendment of section, see § 4(j) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(j) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 506(z) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

For Law 16-305, see notes following § 7-531.01.

For history of Law 19-169, see notes under § 7-761.02.

§ 7-1306.03A. RULES FOR IMPLEMENTATION.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this chapter.

(Mar. 3, 1979, D.C. Law 2-137, § 603a, as added Sept. 26, 1995, D.C. Law 11-52, § 506(aa), 42 DCR 3684.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1983.1.

Temporary Addition of Section

For temporary (225 day) addition, see § 4(k) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency Act Amendments

For temporary addition of section, see § 4(k) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834), § 4(k) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014), and § 506(aa) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative History of Laws

For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Delegation of Authority

Delegation of authority pursuant to title V of D.C. Law 11-52, the "Omnibus Budget Support Act of 1995", see Mayor's Order 97-53, March 19, 1997 (44 DCR 2162).

Delegation of Authority under D.C. Law 2-137, Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, see Mayor's Order 2004-49, March 30, 2004 (51 DCR 4133).

§ 7-1306.04. AUTHORITY OF BOARD OF EDUCATION UNCHANGED.

Nothing herein shall be construed to extend or diminish the authority or responsibility of the D.C. Board of Education vested pursuant to Title 38 of the District of Columbia Official Code and applicable federal laws and regulations.

(Mar. 3, 1979, D.C. Law 2-137, § 605, 25 DCR 5094.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1984.

1973 Ed., § 6-1698.

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

§ 7-1306.05. EFFECTIVE DATE.

This chapter shall take effect pursuant to the provisions of § 1- 206.02(c)(1). With respect to persons who are residents in facilities on the effective date of this chapter, the provisions of the chapter will take effect immediately, with the exception of the admission and commitment hearing procedures established in subchapters III and IV of this chapter. The Court shall begin hearings under subchapters III and IV of this chapter to review the commitment of such persons, and shall appoint appropriate officers to review the admission of such persons, as soon as possible, but not later than 180 days after the effective date of this chapter. All Court hearings to review the admission or commitment of persons residing in facilities on the effective date of this chapter shall be completed within 3 years of the effective date of this chapter.

(Mar. 3, 1979, D.C. Law 2-137, § 696, 25 DCR 5094.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-1985.

1973 Ed. § 6-1699.

Legislative History of Laws

For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.