ENROLLED ORIGINAL

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on a temporary basis, Chapter 20 of Title 21 of the District of Columbia Official Code to clarify presumption of incapacity, to add definitions of “best interests”, "emergency care", “incapacitated individual for health-care decisions”, and “substituted judgment”, to amend the definition of “guardian”, to permit the court to waive the appointment of a visitor and examiner in certain circumstances, to prohibit the appointment of a guardian with a conflict of interest, to require guardians to limit their caseload, to require the court to appoint the type of guardian which is least restrictive to the individual, to authorize the court to appoint a health-care guardian, to clarify the powers and duties of guardians, and to clarify the reasons that the court may remove a guardian; to amend Chapter 22 of Title 21 of the District of Columbia Official Code to authorize psychologists to certify incapacity to make a health-care decision, to provide that nothing in this chapter condones mercy-killing or conflicts with the Emergency Medical Treatment and Labor Act, to permit court-appointed mental retardation advocates to provide substituted consent for health-care decisions for incapacitated customers, and to authorize a health-care provider, the District of Columbia, or an interested person to file a petition for the appointment of a limited guardian if there is no individual who can act as a substitute health-care decision-maker for an incapacitated customer; and to amend the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978 to add definitions of “behavioral plan”, “best interests”, “comprehensive evaluation”, “psychotropic medication”, and “substituted judgment”, to repeal a provision providing a process for authorizing emergency medical surgery for a customer that is inconsistent with federal law, and to require initial and periodic evaluations of the decision-making capacity of and the availability of health-care decision-making supports for Mental Retardation and Developmental Disabilities Administration (“MRDDA”) customers, to require informed consent for services and to establish a process for informed consent for psychotropic medications, to require MRDDA to complete a comprehensive review of psychotropic medication use for all MRDDA customers within one year, to establish an MRDDA health-care decisions policy and to require the MRDDA Administrator to issue reports on those evaluations and the agency’s health-care decision-making activities.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Health-Care Decisions for Persons with Developmental Disabilities Temporary Amendment Act of 2006".

Sec. 2. Chapter 20 of Title 21 of the District of Columbia Official Code is amended as follows:

(a) Section 21-2002 is amended by adding a new subsection (d) to read as follows: **Note, § 21-2002**

"(d) An individual shall be presumed competent and to have the capacity to make legal, health-care, and all other decisions for himself or herself, unless certified otherwise under section 21-2204 or deemed incapacitated or incompetent by a court. Incapacity shall not be inferred from the fact that an individual:

"(1) Has been voluntarily or involuntarily hospitalized for mental illness pursuant to Chapter 5 of Title 21; or

"(2) Has mental retardation or has been determined by a court to be incompetent to refuse commitment under Chapter 13 of Title 7.".

(b) Section 21-2011 is amended as follows: **Note, § 21-2011**

(1) Redesignate paragraph (1) as paragraph (1A).

(2) A new paragraph (1) is added to read as follows:

"(1) "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 individual.".

(3) A new paragraph (5C) is added to read as follows:

"(5C) "Emergency care" means immediate treatment, including diagnostic treatment, provided in response to a sudden, acute, and unanticipated medical crisis in order to avoid injury, extreme pain, impairment, or death.".

(4) Paragraph (8) is amended to read as follows:

"(8) "Guardian" means a person other than a guardian ad litem who has qualified as a guardian of an incapacitated individual pursuant to court appointment, and includes:

"(A) A limited guardian whose powers are limited by the court as described in section 21-2044(c);

"(B) A temporary guardian appointed as described in section 21-2046 for a finite period of time to serve as:

"(i) An emergency guardian whose authority may not extend beyond 15 days and who may exercise any powers granted by court order and not prohibited by law;

"(ii) A health-care guardian whose authority is granted for up to 90 days and may be extended for up to an additional 90 days to provide substituted consent in accordance with section 21-2210 for an individual certified as incapacitated for a health-care

decision; or

"(iii) A provisional guardian whose authority is granted for a specified period not to exceed 6 months, upon the court's finding that any guardian is not effectively performing duties and that the welfare of the incapacitated individual requires immediate action; and

"(C) A general guardian not limited by the court in scope as described in section 21-2044(c) or in time as described in section 21-2046.".

(5) A new paragraph (11A) is added to read as follows :

"(11A) "Incapacitated individual for health-care decisions" means an adult individual who lacks sufficient mental capacity to:

"(A) Appreciate the nature and implications of a health-care decision;

"(B) Make a choice regarding the alternatives presented; or

"(C) Communicate that choice in an unambiguous manner.".

(6) A new paragraph (25A) is added to read as follows:

"(25A) "Substituted judgment" means making a decision that conforms as closely as possible with the decision that the individual would have made, based upon knowledge of the beliefs, values, and preferences of the individual.".

(c) Section 21-2041 is amended as follows:

Note, § 21-2041

(1) Subsection (a) is amended by striking the word "limited" and inserting the phrase "limited, temporary," in its place.

(2) Subsection (d) is amended by adding the following sentence at the end: "The court shall waive the appointments of a visitor and examiner if the petition seeks appointment of an emergency guardian or a health-care guardian and the petition is supported by the certification of incapacity made pursuant to section 21-2204.".

(3) Subsection (f) is amended by striking the second and third sentences and inserting the following sentence in their place: "The court may waive the appointment of a visitor and, where a current individual habilitation plan prepared pursuant to section 7-1304.03 is submitted to the court, the court may waive the appointment of an examiner.".

(4) Subsection (g) is amended as follows:

(A) Strike the phrase "other individual" and insert the word "individual" in its place.

(B) Add the following sentence at the end: "For an individual alleged to be incapacitated for health-care decisions, the certification of incapacity made pursuant to section 21-2204 shall be presented as evidence to the court.".

(d) Section 21-2043 is amended as follows:

Note, § 21-2043

(1) A new subsection (a-1) is added to read as follows:

"(a-1)(1) Except as provided in paragraph (2) of this subsection, a person may not be appointed as a guardian if the person:

"(A) Provides substantial services to the incapacitated individual in a professional or business capacity;

"(B) Is a creditor of the incapacitated individual; or

"(C) Is employed by any person or entity that provides services to the incapacitated individual in a professional or business capacity.

"(2) Notwithstanding the provisions of subsection (a-1) of this section, a person may be appointed as a guardian if the person is the incapacitated individual's spouse, domestic partner, adult child, parent, adult sibling, or relative with whom the incapacitated individual has resided for more than 6 months prior to the filing of the petition and the court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the best interests of the incapacitated individual. The court may not appoint a guardian in any other circumstance in which a conflict of interest may occur.".

(2) Subsection (c) is amended by adding a new paragraph (3A) to read as follows:

"(3A) An adult sibling of the incapacitated individual or a person nominated by will of a deceased sibling or by other writing signed by an adult sibling and attested by at least 2 witnesses;".

(3) A new subsection (e) is added to read as follows:

"(e) A guardian shall limit his or her caseload to a size that allows the guardian:

"(1) To accurately and adequately support and protect each ward;

"(2) To make a minimum of one visit per month with each ward; and

"(3) To have regular contact with service providers.".

(e) Section 21-2044(a) is amended to read as follows:

Note, § 21-2044

"(a) The court shall exercise the authority conferred in this subchapter so as to encourage the development of maximum self-reliance and independence of the incapacitated individual. The court, on appropriate findings, may appoint a limited guardian, a temporary guardian, or a general guardian. When the court appoints a guardian, it shall appoint 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.".

(f) Section 21-2046 is amended to read as follows:

Note, § 21-2046

"§ 21-2046. Temporary guardians.

"(a) Temporary guardians are guardians appointed for a finite period of time. Temporary guardians include emergency guardians, health-care guardians, and provisional guardians. All provisions of this chapter apply to temporary guardians unless otherwise specified.

"(b)(1) The court, on appropriate petition, may appoint an emergency guardian, whose authority may not extend beyond 15 days, if:

"(A) An incapacitated individual has no guardian;

"(B) A life-threatening situation or situation involving emergency care exists; and

"(C) No other person appears to have authority to act within the circumstances.

"(2) An emergency guardian appointed pursuant to this subsection may exercise

those powers granted in the order

"(3) Immediately upon receipt of the petition, the court shall appoint counsel for the individual alleged to be incapacitated and provide notice to the individual alleged to be incapacitated and to interested persons, pursuant to section 21-2042.

"(4) The individual alleged to be incapacitated, counsel for that individual, or any other interested person may request a hearing at any time within the period of the temporary guardianship. The hearing shall be held no later than 48 hours after the request.

"(5) The court may extend the authority of an emergency guardian appointed pursuant to this subsection to authorize the emergency guardian to serve as a health-care guardian consistent with subsection (c) of this section.

"(c)(1) The court, on appropriate petition, may appoint a health-care guardian for the individual alleged to be incapacitated for a specified period of time of up to 90 days if:

"(A) An individual has been determined to be incapacitated under section 21-2204;

"(B) The individual has no guardian; and

"(C) No other person appears to have authority to act within the circumstances.

"(2) The health-care guardian shall have the powers and duties set forth at section 21-2047b(b).

"(3) An appropriate petition shall include the certification of incapacity made pursuant to section 21-2204. Immediately upon receipt of the petition, counsel shall be appointed for the individual alleged to be incapacitated, and notice provided to the individual alleged to be incapacitated and to interested persons, pursuant to section 21-2042. The hearing shall be held within 7 days of receipt of the petition.

"(4) The court may extend the authority of a health-care guardian for one additional period of up to 90 days:

"(A) Upon determination of continued incapacity and determination of a continued need for the provision of substituted consent for any health-care service, treatment, or procedure pursuant to section 21-2210; or

"(B) If a petition for a permanent limited guardian or general guardian, pursuant to section 21-2041, has been filed with the court prior to the expiration of the appointment of the temporary guardian.

"(d) If the court finds that any appointed guardian is not effectively performing duties and that the welfare of the ward requires immediate action, it may appoint, with notice to interested parties within 14 day after the appointment, a provisional guardian. The provisional guardian shall have the powers set forth in the previous order of appointment for a specified period not to exceed 6 months. The authority of any permanent guardian previously appointed by the court is suspended as long as a provisional guardian has authority.".

(g) Section 21-2047 is amended as follows:

Note, § 21-2047

(1) The section heading is amended to read as follows:

"§ 21-2047. Powers and duties of general guardian and limited guardian.".

(2) The lead-in text is amended by striking the word "guardian" and inserting the phrase "a general guardian or a limited guardian" in its place.

(3) Subsection (a) is amended as follows:

(A) The lead-in text is amended by striking the word "guardian" and inserting the phrase "general guardian or limited guardian" in its place.

(B) Paragraph (4) is amended by striking the word "and" at the end.

(C) Paragraph (5) is amended by striking the phrase "as required by court rule, but at least semi-annually." and inserting the phrase "on any order of the court, but at least semi-annually;" in its place.

(D) New paragraphs (6) and (7) are added to read as follows:

"(6) Make decisions on behalf of the ward by conforming as closely as possible to a standard of substituted judgment or, if the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, make the decision on the basis of the ward's best interests; and

"(7) Encourage the ward to participate with the guardian in the decision-making process to the maximum extent of the ward's ability in order to encourage the ward to act on his or her own behalf whenever he or she is able to do so, and to develop or regain capacity to make decisions in those areas in which he or she is in need of decision-making assistance, to the maximum extent possible.".

(4) The lead-in text of subsection (b) is amended by striking the word "guardian" and inserting the phrase "general guardian or limited guardian" in its place.

(5) Subsection (c) is repealed.

(h) New sections 21-2047a and 21-2047b are added to read as follows:

Note, § 21-2047

"§ 21-2047a. Limitations on temporary, limited, and general guardians.

"A guardian shall not have the power:

"(1) To consent to an abortion, sterilization, psycho-surgery, or removal of a bodily organ except to preserve the life or prevent the immediate serious impairment of the physical health of the incapacitated individual, unless the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

"(2) To consent to convulsive therapy, experimental treatment or research, or behavior modification programs involving aversive stimuli, unless the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

"(3) To consent to the withholding of non-emergency, life-saving, medical procedures unless it appears that the incapacitated person would have consented to the withholding of these procedures and the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

"(4) To consent to the involuntary or voluntary civil commitment of an incapacitated individual who is alleged to be mentally ill and dangerous under any provision or proceeding occurring under Chapter 5 of Title 21, except that a guardian may function as a petitioner for the commitment consistent with the requirements of Chapter 5 of Title 21 or

Chapter 13 of Title 7;

"(5) To consent to the waiver of any substantive or procedural right of the incapacitated individual in any proceeding arising from an insanity acquittal; or

"(6) To prohibit the marriage or divorce, or consent to the termination of parental rights, unless the power is expressly set forth in the order of appointment or after subsequent hearing and order of the court.

"§ 21-2047b. Powers and duties of emergency and health-care guardians.

"(a) Except as limited by sections 21-2046 and 21-2047a, an emergency guardian or health-care guardian is responsible for providing substituted consent for an incapacitated individual and for any other duties authorized by the court, but is not personally liable to third persons by reason of that responsibility or acts of the incapacitated individual.

"(b) An emergency or health-care guardian shall:

"(1) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of his or her capacities, limitations, needs, opportunities, and physical and mental health;

"(2) Make decisions on behalf of the ward by conforming as closely as possible to a standard of substituted judgment or, if the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, make the decision on the basis of the ward's best interests;

"(3) Encourage the ward to participate with the guardian in the decision-making process to the maximum extent of the ward's ability in order to encourage the individual to act on his or her own behalf whenever he or she is able to do so, and to develop or regain capacity to make decisions in those areas in which he or she is in need of decision-making assistance, to the maximum extent possible; and

"(4) Make any report the court requires.

"(c) An emergency or health-care guardian may:

"(1) Grant, refuse, or withdraw consent to medical examination and health-care treatment for which the individual has been deemed incapacitated pursuant to section 21-2204;

"(2) Obtain medical records for the purpose of providing substituted consent pursuant to section 21-2210; and

"(3) Have the status of a legal representative under Chapter 12 of Title 7.".

(i) Section 21-2049(a) is amended to read as follows:

Note, § 21-2049

"(a)(1) On petition of the guardian, the court, after hearing, may accept a resignation of a guardian.

"(2) The court may remove a temporary guardian at any time.

"(3) On petition of the ward or any interested person, or on the court's own motion, the court, after hearing, may remove a limited guardian or a general guardian for any of the following reasons:

"(A) Failure to discharge his or her duties, including failure to conform as closely as possible to a standard of substituted judgment or, if the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, to make a decision on

the basis of the ward's best interests, pursuant to section 21-2047(a)(6) or 21-2047b(b)(2);

"(B) Abuse of his or her powers;

"(C) Failure to comply with any order of the court;

"(D) Failure to educate or provide for the ward as liberally as the ward's financial situation permits, if education and financial management fall within the scope of the guardianship;

"(E) Interference with the ward's progress or participation in programs in the community; or

"(F) For any other good cause.".

Sec. 3. Chapter 22 of Title 21 of the District of Columbia Official Code is amended as follows:

(a) Section 21-2202 is amended by adding a new paragraph (6A) to read as follows:

Note, § 21-2202

"(6A) "Qualified psychologist" means a person who is licensed pursuant to § 3-1205.01 and has:

"(A) One year of formal training within a hospital setting; or

"(B) Two years of supervised clinical experience in an organized health-care setting, one year of which must be post-doctoral.".

(b) Section 21-2204(a) is amended as follows:

Note, § 21-2204

(1) Strike the word "physicians" wherever it appears and insert the word "professionals" in its place.

(2) Strike the second sentence and insert the sentence "One of the 2 certifying professionals shall be a physician and one shall be a qualified psychologist or psychiatrist." in its place.

(c) Section 21-2210 is amended as follows:

Note, § 21-2210

(1) Subsection (a) is amended to add a new paragraph (1A) to read as follows:

"(1A) A court-appointed mental retardation advocate of the patient, if the ability to grant, refuse, or withdraw consent is within the scope of the advocate's appointment under section 7-1304.13.".

(2) A new subsection (h) is added to read as follows:

"(h) If no person listed in subsection (a) of this section is reasonably available, mentally capable, and willing to act, the health-care provider, or the District of Columbia, for those persons committed or admitted to receive habilitation or other services pursuant to Chapter 13 of Title 7, or any interested person may petition the Superior Court of the District of Columbia for appointment of a health-care guardian pursuant to section 21-2044 or section 21-2046.".

(d) Section 21-2212 is amended to read as follows:

"§ 21-2212. Effect of chapter.

Note, § 21-2212

"(a) Nothing in this chapter shall be construed to condone, authorize, or approve mercy-killing or to permit any affirmative or deliberate act to end a human life other than to permit the natural dying process.

"(b) Nothing in this chapter shall be construed to conflict with or supersede, the

Emergency Medical Treatment and Labor Act, approved April 17, 1986 (100 Stat. 164; 42 U.S.C. § 1395dd).

"(c) Emergency health care may be provided without consent to a patient who is certified incapacitated under § 21-2204 if no authorized person is reasonably available or if, in the reasonable medical judgment of the attending physician, attempting to locate an authorized person would cause:

"(1) A substantial risk of death;

"(2) The health of the incapacitated individual to be placed in serious jeopardy;

"(3) Serious impairment to the incapacitated individual's bodily functions; or

"(4) Serious dysfunction of any bodily organ or part.".

Sec. 4. The Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1301.02 *et seq*.), is amended as follows:

(a) Section 103 (D.C. Official Code § 7-1301.03) is amended as follows:

Note, § 7-1301.03

(1) Redesignate paragraph (2A) as paragraph (2C).

(2) New paragraphs (2A) and (2B) are added to read as follows:

"(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 individual's behavior and uses the working hypothesis as the basis for the selected intervention;

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

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

"(E) Addresses the individual'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 individual.".

(3) Paragraph (6) is amended to 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 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, but not be limited to,

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 of whether the person has the capacity to grant, refuse, or withdraw consent to any ongoing medical treatment; and

"(G) A determination of whether the person:

"(i) Has executed or could execute a durable power of attorney in accordance with D.C. Official Code § 21-2205;

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

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

(4) A new paragraph (20A) is added to read as follows:

"(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.".

(5) A new paragraph (24C) is added to read as follows:

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

(b) Section 413 (D.C. Official Code § 7-1304.13) is amended by adding a new subsection (n) to read as follows: **Note, § 7-1304.13**

"(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 of the District of Columbia Official Code.".

(c) Section 504(a) (D.C. Official Code § 7-1305.04(a)) is amended to read as follows: **Note, § 7-1305.04**

"(a)(1) Prior to each customer's commitment under this act, the customer shall receive, pursuant to section 403, a comprehensive evaluation or screening and an individual habilitation plan. Within 30 days of a customer's admission pursuant to section 302, the customer shall have a comprehensive evaluation or screening and an individual habilitation plan.

"(2) All individual habilitation plans shall include information on whether the person has the capacity to grant, refuse, or withdraw consent to any ongoing medical treatment and shall identify whether the person:

"(A) Has executed or could execute a durable power of attorney in accordance with D.C. Official Code § 21-2205;

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

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

"(3) Annual reevaluations or screenings of the customer shall be provided as determined by the customer's interdisciplinary team. Annual reevaluations and screenings shall include a review and update to the individual habilitation plan information on whether the person has the capacity to grant, refuse, or withdraw consent to any ongoing medical treatment and whether the person:

"(A) Has executed or could execute a durable power of attorney in accordance with D.C. Official Code § 21-2205;

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

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

"(4) By no later than January 1, 2007, MRDDA 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 customer'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.".

Note, § 7-1305.06

(d) New sections 506a, 506b, and 506c are added to read as follows:

"Sec. 506a. Informed consent.

"(a) Except in accordance with the procedures described in subsections (b) and (c) of this section, in D.C. Official Code § 21-2212, or as otherwise provided by law, no MRDDA customer shall be given services pursuant to this act absent the customer's informed consent. In seeking informed consent, the provider or MRDDA shall present the customer 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 MRDDA reasonably believes that the customer lacks the

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

"(c) If the customer is certified as incapacitated and unable to consent to the proposed service in accordance with D.C. Official Code § 21-2204, and no attorney-in-fact or person listed in D.C. Official Code § 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; or

"(2) For all proposed psychotropic medications, beginning 90 days after September 25, 2006, 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 MRDDA Administrator pursuant to section 506b.

"Sec. 506b. Review panel for administration of psychotropic medications.

"(a) Subject to the availability of appropriations, the MRDDA Administrator shall establish an independent panel to review all proposals to administer psychotropic medications to customers made pursuant to section 506a(c) and in accordance with the procedures set forth in this section and those to be developed by the Administrator as required by 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;

"(2) A licensed professional; and

"(3) A customer, or, if unavailable, a Mental Retardation Advocate or other customer advocate.

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

"(1) A meeting by the panel no later than one week after MRDDA receives a request for consent;

"(2) Written and oral notice to the customer not less than 48 hours prior to when

the panel will meet;

"(3) The right of the customer 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 customer and his or her representative to present information and to discuss the wishes of the customer;

"(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 customer, the customer's representative, and the provider; and

"(6) The right of the customer to request that the MRDDA Human Rights Advisory Committee review the decision of the panel.

"(d) If the customer requests a review by the MRDDA Human Rights Advisory Committee before the decision of the panel has been implemented, the decision shall not be implemented until after the MRDDA Human Rights Advisory Committee responds to the requested review. The MRDDA Human Rights Advisory Committee 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, MRDDA shall offer the individual the opportunity to execute a durable power of attorney in accordance with D.C. Official Code § 21-2205 and shall continue to seek to identify one or more individuals listed in D.C. Official Code § 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 of the District of Columbia Official Code. 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 an 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.

"Sec. 506c. Psychotropic medication review.

"(a) No later than one year after September 25, 2006, the MRDDA shall complete a psychotropic medication review for all MRDDA customers.

"(b) No later than 90 days after September 25, 2006, the MRDDA shall establish written procedures, which shall include timelines and shall identify responsible entities or individuals, for promptly implementing the recommendations for each customer 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 mental retardation and mental illness.

"(d) The review team shall establish in writing:

"(1) Procedures for an initial administrative review of psychotropic medication prescriptions for all MRDDA customers;

"(2) Procedures and criteria for determining which customers receive only an initial administrative review of psychotropic medications, and which customers 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 customer.

"(e) The review team shall complete the initial administrative review of psychotropic medications within 90 days of September 25, 2006. The initial administrative review of psychotropic medications shall determine, at minimum, for each MRDDA customer:

"(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 customer.

"(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 customer'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 customer, the prescribing physician, and the customer's residential and day service providers, if any.

"(g) By no later than 30 days after completing a psychotropic medication review of a customer, 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 customer's individual habilitation plan and shall be provided to:

"(1) The customer;

"(2) The customer's legal representative, if any;

"(3) The customer's mental retardation advocate, if any;

"(4) The customer's MRDDA case manager;

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

"(6) The customer's residential service provider; and

"(7) The Quality Trust for Individuals with Disabilities, Inc.".

(e) Section 507 (D.C. Official Code § 7-1305.07) is repealed.

Note, Repeal § 7-1301.07 Note, § 7-1305.07

(f) A new section 507a (to be codified at D.C. Official Code § 7-1305.07a) is added to read as follows:

"Sec. 507a. 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 MRDDA to ensure that every MRDDA customer has the opportunity to execute a durable power of attorney pursuant to D.C. Official Code § 21-2205, and has one or more individuals identified as reasonably available, mentally capable, and willing to provide substituted consent pursuant to D.C. Official Code § 21-2210, if the customer were to become certified as incapacitated to make a health-care decision in accordance with D.C. Official Code § 21-2204.

"(b) The MRDDA Administrator shall issue by November 1 of each year an annual plan describing how MRDDA will comply with subsection (a) of this section during the current fiscal year. The plan shall include data from the prior fiscal year which assess the current and potential health-care decision-making needs of all MRDDA customers. The plan shall include, at a minimum:

"(1) Aggregate statistics summarizing the numbers of MRDDA customers 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 D.C. Official Code § 21-2205;

"(D) Have been offered an opportunity to execute a durable power of attorney pursuant to D.C. Official Code § 21-2205 and declined;

"(E) Have an individual identified as reasonably available, mentally capable, and willing to provide substituted consent pursuant to D.C. Official Code § 21-2210; and

"(F) Lack any available substitute health-care decision-maker;

"(2) Aggregate statistics describing the numbers of customers 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 customers;

"(3) Aggregate statistics describing the requests for consent reviewed during the prior fiscal year by the independent psychotropic medication panel authorized in section 506b, analyzing outcomes, monthly and yearly trends, and requests for review by the MRDDA Human Rights Committee;

"(4) Aggregate statistics describing for the prior fiscal year:

"(A) The number of substitute decisions which required intervention by MRDDA to identify an individual to provide substituted consent pursuant to D.C. Official Code § 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 MRDDA Administrator shall produce a quarterly report on all substituted consent activities pursuant to subsection (a) of this section until October 2008. 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 MRDDA to identify an individual to provide substituted consent pursuant to D.C. Official Code § 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 D. C. Official Code § 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 MRDDA 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 MRDDA 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 MRDDA 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.".

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 6. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 225 days of its having taken effect.

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Chairman
Council of the District of Columbia

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Mayor
District of Columbia