

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

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To amend, on a temporary basis, Chapter 20 of Title 21 of the District of Columbia Official Code to add a definition of "emergency care" to the guardianship law; 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 permit court-appointed mental retardation advocates to provide substituted consent for health-care decisions for incapacitated consumers, 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 decisionmaker for an incapacitated consumer; and to amend the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978 to require initial and periodic evaluations of decisionmaking capacity and availability of health-care decisionmaking supports for consumers of services funded by the Mental Retardation and Developmental Disabilities Administration, to repeal a provision providing a process for authorizing emergency medical surgery for a consumer that is inconsistent with federal law, and to require the Administrator of the Mental Retardation and Developmental Disabilities Administration to issue reports on the decisionmaking capacity of and the availability of health-care decisionmaking supports for consumers of services funded by the Mental Retardation and Developmental Disabilities Administration.

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 Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2005".

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

(a) Section 21-2011 is amended by adding a new paragraph (5A) to read as follows:
"(5A) "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."

Note,
§ 21-2011

(b) Section 21-2046(a) is amended by striking the phrase "life threatening emergency" and inserting the phrase "life-threatening situation or a situation involving emergency care" in its place.

Note,
§ 21-2046

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

ENROLLED ORIGINAL

(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:

(1) Strike the word “physicians” wherever it appears and insert the word “professionals” in its place. Note,
§ 21-2204

(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:

(1) Subsection (a) is amended to add a new paragraph (1A) to read as follows: Note,
§ 21-2210
“(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 § 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 of the District of Columbia Official Code, or any interested person may petition the Superior Court of the District of Columbia for appointment of a limited guardian for health care pursuant to § 21-2044(c).”.

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(6) (D.C. Official Code § 7-1301.03(6)) is amended to read as follows: Note,
§ 7-1301.03
“(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 for health care in accordance with D.C. Official Code § 21-2204;
“(ii) Has been offered an opportunity to execute a durable power

of attorney for health care pursuant to D.C. Official Code § 21-2204 and declined; or

“(iii) Has an individual reasonably available, mentally capable, and willing to act as a substitute health-care decisionmaker pursuant to D.C. Official Code § 21-2210.”.

(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 for health care in accordance with D.C. Official Code § 21-2204;

“(B) Has been offered an opportunity to execute a durable power of attorney for health care pursuant to D.C. Official Code § 21-2204 and declined; or

“(C) Has an individual reasonably available, mentally capable, and willing to act as a substitute health-care decisionmaker 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 for health care in accordance with D.C. Official Code § 21-2204;

“(B) Has been offered an opportunity to execute a durable power of attorney for health care pursuant to D.C. Official Code § 21-2204 and declined; or

“(C) Has an individual reasonably available, mentally capable, and willing to act as a substitute health-care decisionmaker pursuant to D.C. Official Code § 21-2210.

“(4) Nothing in this subsection shall be read to require any person to execute a durable power of attorney for health care.”.

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

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

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

“Sec. 507a. (a)(1) 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 decisionmakers.

“(2) The Administrator of the Mental Retardation and Developmental Disabilities Administration shall develop, by no later than December 1, 2005, a written plan to

encourage, as much as possible, the availability of health-care decisionmakers pursuant to D.C. Official Code § 21-2210 for all incapacitated and potentially incapacitated persons under the jurisdiction of the MRDDA.

"(b) Commencing with the month of November 2005, the Administrator of the MRDDA shall produce a monthly report, to be completed by the 15th day of the following month, which shall include:

"(1) Aggregate statistics on the number of petitions filed in that month by the District of Columbia for appointment of a plenary, temporary, or limited guardian where the basis for the petition was the need for a health-care decisionmaker;

"(2) For each petition reported pursuant to paragraph (1) of this subsection:

"(A) A description of the nature of the health-care need which formed the basis for the petition for guardianship;

"(B) The time elapsed between MRDDA's identification of the need for a health-care decision and the date on which the petition for guardianship was filed;

"(C) The time elapsed between the date on which the guardianship petition was filed and a decision was made by the court; and

"(D) Whether a guardian was appointed;

"(3) A description of all activities carried out by the MRDDA during the month to promote the availability of health-care decisionmakers for individuals currently or potentially in need of health-care decisionmakers pursuant to D.C. Official Code § 21-2210; and

"(4) Information indicating the number of substitute decisions made during the month for *Evans* class members and the number of substitute decisions made during the month for non-*Evans* class members.

"(c) By April 15, 2006, the Administrator of the MRDDA shall produce a report assessing the current and potential health-care decisionmaking needs of all consumers of services funded by the MRDDA. In developing the methodology for the report, the Administrator of the MRDDA may consult with community stakeholders, including advocates, legal experts, service providers, and people with disabilities. The report shall, at a minimum:

"(1) Include aggregate statistics summarizing the numbers of consumers of the MRDDA who:

"(A) Have a plenary guardian;

"(B) Have a limited guardian authorized to make health-care decisions;

decisions;

"(D) Have executed a durable power of attorney for health care in accordance with D.C. Official Code § 21-2204;

"(E) Have been offered an opportunity to execute a durable power of attorney for health care pursuant to D.C. Official Code § 21-2204 and declined;

"(F) Have individuals identified as reasonably available, mentally capable, and willing to act as substitute health-care decisionmakers pursuant to D.C. Official Code § 21-2210; and

"(G) Lack any available health-care decisionmaker in the categories described in subparagraphs (A) through (F) of this paragraph;

"(2) Include aggregate statistics describing the numbers of consumers taking psychotropic medications, and an assessment of the degree to which health-care decisionmaking support may be required for new prescriptions, changes in prescription dose, or prescription termination;

"(3) Analyze all aggregate statistics by *Evans v. Williams* (CA No. 76-293) class membership and non-membership, and by commitment and admission status; and

"(4) Describe any impediments to the use of limited and temporary guardianship and durable power of attorney for health care.

"(d)(1) The Administrator of the MRDDA shall submit the plan described in subsection (a) of this section, the monthly report described in subsection (b) of this section, and the final report described in subsection (c) of this section to:

“(A) The Council’s Committee on Human Services;

“(B) The Mayor;

“(C) The designated state protection and advocacy agency for the District of Columbia established pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, approved October 30, 2000 (114 Stat. 1677; 42 U.S.C. § 15001 *et seq.*);

“(D) The Special Masters and Independent Court Monitor in *Evans v. Williams* (CA No. 76-293); and

“(E) The Quality Trust for Individuals with Disabilities.

“(2) The Administrator of the MRDDA shall make copies of plans and reports referenced in paragraph (1) of this subsection available to members of the public upon request.

"(e) Nothing in this section shall be read to require any person to execute a durable power of attorney for health care."

Sec. 5. Fiscal impact statement.

The Council anticipates that this act will reduce Medicaid costs to the District of Columbia because prompt attention to medical needs will reduce overall medical costs.

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.

Chairman
Council of the District of Columbia

Mayor
District of Columbia