

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-277

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 12, 2018

To amend the Department on Disability Services Establishment Act of 2006 to require the Department on Disability Services to establish a process for the resolution of formal complaints, including formal complaints filed with a provider, establish a peer support pilot program to assist people with intellectual disabilities throughout the formal complaint process, and publish an annual report regarding the peer support pilot program, to require that a formal complaint filed with the Department on Disability Services receive a prompt review by the Director or the Director's designee, to require the Department on Disability Services to refer formal complaints to an external reviewer in accordance with rules issued by the Department on Disability Services, to authorize any person aggrieved by an action of the Department on Disability Services relating to a formal complaint to appeal the action of the Department on Disability Services to the Office of Administrative Hearings, to provide that if a person files a formal complaint with the Department on Disability Services that is substantially similar to a case that the person previously initiated in the Superior Court of the District of Columbia or the Office of Administrative Hearings, the Department on Disability Services shall deny the formal complaint, and to require the Mayor to issue rules, which shall be subject to Council review, to implement provisions relating to formal complaints; to amend the Office of Administrative Hearings Establishment Act of 2001 to expand the jurisdiction of the Office of Administrative Hearings to include appeals of formal complaints filed with the Department on Disability Services; to amend the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978 to repeal provisions relating to admissions, to prohibit new commitments other than commitments of persons found incompetent in a criminal case, to provide that decisions of the Superior Court of the District of Columbia ordering commitment of a person with an intellectual disability, other than a decision of the court ordering commitment of a person found incompetent in a criminal case, that was issued before the effective date of this act shall be reviewed in a court hearing annually, and to provide that a commitment entered into before the effective date of this act, other than a commitment of a person found incompetent in a criminal case, shall be terminated unless the person committed, or a person close to the committed person, provides informed consent to continue the commitment; to amend Title 21 of the District of Columbia Official Code to authorize the Department on Disability Services to petition the Superior Court of the District of Columbia to remove a limited guardian or a general

ENROLLED ORIGINAL

guardian, and to make conforming amendments; to amend the Nursing Home and Community Residence Facility Residents' Protections Act of 1985 to repeal an unnecessary provision; to allow a supported person and a supporter to enter into a supported decision-making agreement that authorizes a supporter to provide supported decision-making, be present during the supported decision-making process, when requested by the supported person, or, in the presence of the supported person, assist the supported person in obtaining information that is relevant to a given life decision and communicating the supported person's decisions to others, to require a person or a District agency who receives a supported-decision making agreement to give certain notices to the supporter and to rely on the supported decision-making agreement, to provide that neither a person nor a District agency shall be subject to criminal or civil liability, nor shall a person be considered to have engaged in professional misconduct, for an act or omission done in good faith and in reasonable reliance on a supported decision-making agreement, to require a District employee or a caregiver, who is aware of the existence of a supported decision-making agreement and has a reasonable belief that the supported person is an adult in need of protected services, to report the alleged abuse, neglect, or exploitation, and to require the Mayor to issue rules to implement provisions relating to supported decision-making agreements.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Disability Services Reform Amendment Act of 2018".

TITLE I. FORMAL COMPLAINTS RELATING TO THE DEPARTMENT ON
DISABILITY SERVICES

Sec. 101. The Department on Disability Services Establishment Act of 2006, effective March 14, 2007 (D.C. Law 16-264; D.C. Official Code § 7-761.01 *et seq.*), is amended as follows:

(a) Section 102 (D.C. Official Code § 7-761.02) is amended by adding new paragraphs (5A) and (5B) to read as follows:

"(5A) "External reviewer" means a person, selected by the Director to provide review and resolution of formal complaints, who has:

"(A) Extensive experience in alternative dispute resolution;

"(B) Experience working with people with intellectual disabilities; and

"(C) An understanding of DDS.

"(5B)(A) "Formal complaint" means a statement by a person of his or her dissatisfaction with DDS or a provider, including the denial of any services and supports under this act or other applicable law.

"(B) For the purposes of this paragraph, the term "provider" shall have the same meaning as provided in section 113(f)."

(b) Section 109 (D.C. Official Code § 7-761.09) is amended by adding a new subsection (a-2) to read as follows:

ENROLLED ORIGINAL

“(a-2)(1) Within 45 days after the effective date of the Disability Services Reform Amendment Act of 2018, passed on 2nd reading on February 6, 2018 (Enrolled version of Bill 22-154, the Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of section 113.

“(2) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within this 45-day period of review, the proposed rules shall be deemed approved.”.

(c) A new section 113 is added to read as follows:

“Sec. 113. Formal complaints.

“(a) The Department shall:

“(1) Establish a process for the resolution of formal complaints, including formal complaints filed with a provider, which shall include, at a minimum:

“(A) The opportunity for any person, or a third party with the person’s consent, to file a formal complaint with DDS or a provider;

“(B) Assistance for a person who needs help filing his or her formal complaint, orally or in writing;

“(C) The right of a person to be assisted by a family member, friend, attorney, or any other representative throughout the formal complaint process;

“(D) Definite time frames for each stage of the formal complaint resolution process;

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

“(F) Requirements for education and assistance to persons, provider staff, and third parties about individual rights and the formal complaint process;

“(G) An explanation of the appeal process available if the person is dissatisfied with the outcome of the formal complaint process; and

“(H) Prohibitions on retaliatory actions such as reprisal, restraint, interference, coercion, or discrimination by DDS or a provider against a person who files a formal complaint;

“(2) Establish a peer support pilot program to assist people with intellectual disabilities throughout the formal complaint process; and

“(3) Publish an annual report regarding the peer support pilot program described in paragraph (2) of this subsection, which shall include recommendations regarding how to improve the peer support pilot program.

“(b)(1) Any formal complaint filed with DDS shall receive a prompt review by the Director, or the Director’s designee, who shall refer the formal complaint to an external reviewer in accordance with rules issued pursuant to section 109(a-2).

ENROLLED ORIGINAL

“(2) If a formal complaint is referred to an external reviewer, the external reviewer shall:

“(A) Facilitate informal resolution of the formal complaint; or

“(B) If such informal resolution is not possible, determine:

“(i) Whether the Director should sustain or deny the formal complaint; and

“(ii) If the external reviewer determines that the Director should sustain the formal complaint, how DDS should remedy any problems raised in the formal complaint.

“(3) After completing a timely examination of a formal complaint, the external reviewer shall submit a written report to the Director and the person who filed the formal complaint describing the outcome of the external review process.

“(c) Nothing in this section shall be construed to restrict or limit the rights, procedures, and remedies available under federal or District law protecting the rights of persons receiving services through DDS or a provider.

“(d) Any person aggrieved by an action of DDS taken pursuant to this section may appeal the action of DDS to the Office of Administrative Hearings pursuant to section 6(a) of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.02(a)).

“(e) If a person files a formal complaint with DDS pursuant to this section that is substantially similar to a case that the person previously initiated in the Superior Court of the District of Columbia or the Office of Administrative Hearings, DDS shall deny the formal complaint.

“(f) For the purposes of this section, the term “provider” means an entity that is responsible for providing residential or day services to people supported by the Developmental Disabilities Administration of DDS.”

Sec. 102. Section 6 of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03), is amended by adding a new subsection (b-15) to read as follows:

“(b-15) This act shall apply to all adjudicated cases involving a formal complaint filed pursuant to section 113 of the Department on Disability Services Establishment Act of 2006, passed on 2nd reading on February 6, 2018 (Enrolled version of Bill 22-154).”

TITLE II. ENDING ADMISSIONS AND NEW COMMITMENTS BY PETITION OF PARENT OR GUARDIAN

Sec. 201. The Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1301.01 *et seq.*), is amended as follows:

(a) Section 102(b) (D.C. Official Code § 7-1301.02(b)) is amended as follows:

ENROLLED ORIGINAL

(1) Paragraph (1) is amended by striking the word "individual" and inserting the word "person" in its place.

(2) Paragraph (4) is amended by striking the word "Individuals" and inserting the word "Persons" in its place.

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

(1) Paragraph (1) is repealed.

(2) Paragraph (1A) is redesignated as paragraph (1B).

(3) Paragraph (1B) is redesignated as paragraph (1C).

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

"(1A) "Adult" means a person who is at least 18 years of age."

(5) Paragraph (2A) is amended as follows:

(A) Subparagraph (B) is amended by striking the word "customer's" and inserting the word "person's" in its place.

(B) Subparagraph (C) is amended by striking the word "customer" and inserting the word "person" in its place.

(C) Subparagraph (E) is amended by striking the word "customer's" and inserting the word "person's" in its place.

(6) Paragraph (2B)(B) is amended by striking the word "customer" and inserting the word "person" in its place.

(7) Paragraph (2C) is amended by striking the word "individual's" and inserting the word "person's" in its place.

(8) Paragraph (3) is amended by striking the word "customers" and inserting the word "residents" in its place.

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

"(3A) "Close friend" means any adult who has exhibited significant care and concern for the person and has maintained regular contact with the person so as to be familiar with the person's activities, health, and religious and moral beliefs."

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

"(4) "Commitment" means the process whereby a person becomes a ward of the District through Court proceedings under this act."

(11) Paragraph (8B) is repealed.

(12) Paragraph (9) is repealed.

(13) Paragraph (14A) is amended by striking the word "individuals" and inserting the word "persons" in its place.

(14) Paragraph (14C) is amended as follows:

(A) Strike the word "Individual" and insert the word "Person" in its place.

(B) Strike the phrase "an individual" and insert the phrase "a person" in its place.

(15) Paragraph (16) is amended as follows:

(A) Strike the phrase "an individual's" and insert the phrase "a person's" in its place.

ENROLLED ORIGINAL

(B) Strike the phrase "an individual" and insert the phrase "a person" in its place.

(16) A new paragraph (21A) is added to read as follows:

"(21A) "Religious superior" means a bishop or a member of a religious order who, under the approved constitution, laws, statutes, bylaws, or rules of the religious order or community, exercises authority over the particular community or unit of the religious order to which the member of the religious order or community belongs."

(17) Paragraph (23) is repealed.

(18) Paragraph (24) is repealed.

(19) Paragraph (24C) is amended by striking the word "customer" both times it appears and inserting the word "person" in its place.

(20) Paragraph (26) is amended by striking the phrase "an individual" and inserting the phrase "a person" in its place.

(c) Title III is amended as follows:

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

"TITLE III. COMMITMENTS".

(2) Section 301 (D.C. Official Code § 7-1303.01) is amended as follows:

(A) Subsection (a) is repealed.

(B) Subsection (b) is amended as follows:

(i) Strike the phrase "an individual" and insert the phrase "a person" in its place.

(ii) Strike the word "individual's" and insert the word "person's" in its place.

(3) Section 302 (D.C. Official Code § 7-1303.02) is repealed.

(4) Section 303 (D.C. Official Code § 7-1303.03) is repealed.

(5) Section 304 (D.C. Official Code § 7-1303.04) is amended as follows:

(A) Subsection (a) is repealed.

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

"(a-1)(1) Except as provided in subsection (b-1) of this section, no person shall be newly committed under this act on or after the effective date of the Disability Services Reform Amendment Act of 2018, passed on 2nd reading on February 6, 2018 (Enrolled version of Bill 22-154).

"(2) For a person committed by written petition of a parent or guardian before the effective date of the Disability Services Reform Amendment Act of 2018, passed on 2nd reading on February 6, 2018 (Enrolled version of Bill 22-154), the continued commitment of the person shall be governed by section 411(a)."

(C) Subsection (b) is repealed.

(D) Subsection (b-1) is amended as follows:

(i) Strike the phrase "an individual" and insert the phrase "a person" in its place.

ENROLLED ORIGINAL

(ii) Strike the phrase "the individual" and insert the phrase "the person" in its place.

(6) Section 305 (D.C. Official Code § 7-1303.05) is repealed.

(7) Section 306 (D.C. Official Code § 7-1303.06) is repealed.

(8) Section 307 (D.C. Official Code § 7-1303.07) is repealed.

(9) Section 308 (D.C. Official Code § 7-1303.08) is repealed.

(10) Section 309(b) (D.C. Official Code § 7-1303.09(b)) is repealed.

(11) Section 310 (D.C. Official Code § 7-1303.10) is repealed.

(12) Section 311 (D.C. Official Code § 7-1303.11) is repealed.

(13) Section 312 (D.C. Official Code § 7-1303.12) is amended by striking the phrase "committed to a facility" and inserting the word "committed" in its place.

(14) Section 312a (D.C. Official Code § 7-1303.12a) is amended as follows:

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

(i) Strike the phrase "an individual" and insert the phrase "a person" in its place.

(ii) Strike the phrase "the individual" and insert the phrase "the person" in its place.

(B) Subsection (b) is repealed.

(C) Subsection (c) is amended as follows:

(i) Strike the phrase "the individual" both times it appears and insert the phrase "the person" in its place.

(ii) Strike the word "individual's" and insert the word "person's" in its place.

(D) Subsection (d) is amended as follows:

(i) Strike the phrase "the individual" wherever it appears and insert the phrase "the person" in its place.

(ii) Strike the word "individual's" both times it appears and insert the word "person's" in its place.

(15) Section 313 (D.C. Official Code § 7-1303.13) is amended as follows:

(A) Strike the phrase "an individual" and insert the phrase "a person" in its place.

(B) Strike the word "individual's" and insert the word "person's" in its place.

(16) Section 314 (D.C. Official Code § 7-1303.14) is repealed.

(17) Section 401 (D.C. Official Code § 7-1304.01) is amended to read as follows:

"Sec. 401. Proceedings for the commitment of a person found incompetent in a criminal case shall be commenced by the filing of a written petition by the District with the Court in a manner and form prescribed by the Court. A copy of the petition shall be served on the person, the person's counsel, and the person's guardian, if any."

(18) Section 402 (D.C. Official Code § 7-1304.02) is amended to read as follows:

ENROLLED ORIGINAL

“Sec. 402. Persons who have been committed, or whose commitment is sought pursuant to section 304(b-1), have the right to be represented by counsel, retained or appointed by the Court, in any proceeding held before the Court in accordance with this act, and they shall be informed by the Court of this right. The Court shall appoint counsel to represent the person. Whenever possible, counsel shall be appointed who has had experience in the intellectual disability area. Counsel appointed to represent persons 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.”.

(19) Section 403 (D.C. Official Code § 7-1304.03) is amended as follows:

(A) Subsection (b)(1) is amended by striking the phrase “individual or respondent” and inserting the word “person” in its place.

(B) Subsection (c) is amended as follows:

(i) The lead-in language is amended by striking the phrase “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” and inserting the word “shall” in its place.

(ii) Paragraph (6) is amended by striking the phrase “, including criteria for discharge and a projected date for discharge if commitment is recommended by the plan.” and inserting a period in its place.

(C) Subsection (d) is amended as follows:

(i) Strike the phrase “individual or respondent” and insert the word “person” in its place.

(ii) Strike the phrase “counsel, and to the parent or guardian if the petition was filed under section 304 or section 306” and insert the word “counsel” in its place.

(iii) Strike the phrase “shall be provided to the respondent” and insert the phrase “shall be provided to the person” in its place.

(20) Section 404 (D.C. Official Code § 7-1304.04) is repealed.

(21) Section 405(a) (D.C. Official Code § 7-1304.05(a)) is repealed.

(22) Section 406 (D.C. Official Code § 7-1304.06) is amended as follows:

(A) Strike the phrase “Individuals whose admission has been questioned or respondents” and insert the phrase “Persons who have been committed, or whose commitment is sought pursuant to section 304(b-1),” in its place.

(B) Strike the phrase “of the respondent” and insert the phrase “of the person” in its place.

(C) Strike the phrase “that the respondent” both times it appears and insert the phrase “that the person” in its place.

(23) Section 406a (D.C. Official Code § 7-1304.06a) is amended as follows:

ENROLLED ORIGINAL

(A) Subsection (a) is amended by striking the phrase “an individual” and inserting the phrase “a person” in its place.

(B) Subsection (c) is amended by striking the word “individual” wherever it appears and inserting the word “person” in its place.

(C) Subsection (d) is amended as follows:

(i) Strike the word “individual” wherever it appears and insert the word “person” in its place.

(ii) Strike the word “individual’s” wherever it appears and insert the word “person’s” in its place.

(24) Section 407 (D.C. Official Code § 7-1304.07) is amended as follows:

(A) Subsection (a) is repealed.

(B) Subsection (b) is amended by striking the word “respondent” and inserting the phrase “person whose commitment is sought” in its place.

(25) Section 409 (D.C. Official Code § 7-1304.09) is repealed.

(26) Section 411 (D.C. Official Code § 7-1304.11) is amended as follows:

(A) Subsection (a) is amended to read as follows:

“(a)(1) Any decision of the Court ordering commitment of a person with an intellectual disability, other than a decision of the Court ordering commitment of a person found incompetent in a criminal case to DDS pursuant to section 406a, that was issued before the effective date of the Disability Services Reform Amendment Act of 2018, passed on 2nd reading on February 6, 2018 (Enrolled version of Bill 22-154), shall be reviewed in a Court hearing annually. The commitment shall be terminated unless there is a finding of the following:

“(A) The Court determines that the person with an intellectual disability has benefited from the habilitation;

“(B) DDS demonstrates that continued residential rehabilitation is necessary for the habilitation program;

“(C) The person with an intellectual disability is a resident of the District;

“(D) The Court determines beyond a reasonable doubt that:

“(i) Based on a comprehensive evaluation of the person performed within one year before the hearing, the person has at least a moderate intellectual disability and requires habilitation; and

“(ii) DDS is capable of providing the required habilitation; and

“(E) The person with an intellectual disability, or an individual authorized pursuant to paragraph (2) of this subsection, provides informed consent to continue the person’s commitment.

“(2) If a person with an intellectual disability does not have capacity to give informed consent to continue the person’s commitment, the following individuals, in the order of priority set forth below, shall be authorized to consent on behalf of the person with an intellectual disability to the continued commitment of the person with an intellectual disability pursuant to paragraph (1)(E) of this subsection:

“(A) A court-appointed general guardian or limited guardian of the person

ENROLLED ORIGINAL

with an intellectual disability whose scope of appointment includes the authority to consent to the continued commitment of the person;

“(B) A court-appointed conservator whose scope of appointment includes the authority to consent to the continued commitment of the person;

“(C) The spouse or domestic partner of the person;

“(D) An adult child of the person;

“(E) A parent of the person;

“(F) An adult sibling of the person;

“(G) A religious superior of the person, if the person is a member of a religious order, or a diocesan priest;

“(H) A close friend of the person;

“(I) The nearest-living, adult relative of the person; or

“(J) A guardian *ad litem* appointed by the Mental Health and Habilitation Branch of the Court for the sole purpose of consenting to the continued commitment of the person.

“(3) A decision by an individual authorized pursuant to paragraph (2) of this subsection to consent to the continued commitment of a person pursuant to paragraph (1)(E) of this subsection shall be based on the expressed wishes of the person or, if the wishes of the person are unknown and cannot be ascertained, on a good faith belief as to the best interests of the person.

“(4) If no individual in a prior category of individuals listed in paragraph (2) of this subsection is reasonably available, mentally capable, and willing to act, authority to consent to the continued commitment of a person shall rest with the next reasonably available, mentally capable, and willing individual on the priority list.

“(5) Any individual listed in paragraph (2) of this subsection shall have legal standing to challenge in the Court any decision made by an individual of higher priority listed in paragraph (2) of this subsection.

“(6) The order of priority established in paragraph (2) of this subsection creates a presumption that may be rebutted if an individual of lower priority is found to have better knowledge of the wishes of the person, or, if the wishes of the patient are unknown and cannot be ascertained, is better able to demonstrate a good-faith belief as to the interests of the person.

“(7) Nothing in this section shall be construed to change DDS’s responsibility to provide services and supports pursuant to section 105(1) of the Department on Disability Services Establishment Act of 2006, effective March 14, 2007 (D.C. Law 16-264; D.C. Official Code § 7-761.05(1)).

“(8) For the purposes of this subsection, a prior court decision to commit a person shall not be determinative of whether the person has capacity to give informed consent to continue the person’s commitment pursuant to paragraph (1)(E) of this subsection.”.

(B) Subsection (a-1) is amended as follows:

(i) Strike the phrase “an individual” and insert the phrase “a person” in its place.

ENROLLED ORIGINAL

(ii) Strike the phrase "the individual" and insert the phrase "the person" in its place.

(iii) Strike the phrase "The individual" and insert the phrase "The person" in its place.

(C) Subsection (b) is amended by striking the phrase "an individual" and inserting the phrase "a person" in its place.

(27) Section 413 (D.C. Official Code § 7-1304.13) is amended as follows:

(A) Subsection (a) is amended by striking the phrase "Persons with an intellectual disability who admit themselves to a facility under section 302, and persons with an intellectual disability whose commitment is sought under section 304 or section 306," and inserting the phrase "Persons with an intellectual disability who have been committed, and persons whose commitment is sought under section 304(b-1)," in its place.

(B) Subsection (b) is amended by striking the phrase "Upon receipt of the petition for commitment or notification of admission as provided in section 302, section 304 and section 306 of this act, the" and inserting the word "The" in its place.

(C) Subsection (h) is amended by striking the phrase "for individuals" and inserting the phrase "for persons" in its place.

(28) Section 501 (D.C. Official Code § 7-1305.01) is amended as follows:

(A) Subsection (b) is amended as follows:

(i) Strike the word "individual" and insert the word "person" in its place.

(ii) Strike the word "individual's" wherever it appears and insert the word "person's" in its place.

(B) Subsection (c) is amended by striking the word "individual" and inserting the word "person" in its place.

(C) Subsection (d) is amended by striking the phrase "an individual" and inserting the phrase "a person" in its place.

(29) Section 502 (D.C. Official Code § 7-1305.02) is amended as follows:

(A) Strike the word "Individuals" wherever it appears and insert word "Persons" in its place.

(B) Strike the phrase "the individual" and insert the phrase "the person" in its place.

(C) Strike the word "individual's" and insert the word "person's" in its place.

(D) Strike the phrase "an individual" and insert the phrase "a person" in its place.

(30) Section 503 (D.C. Official Code § 7-1305.03) is amended as follows:

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

(i) Strike the word "Individuals" and insert the word "Persons" in its place.

ENROLLED ORIGINAL

(ii) Strike the word "individuals" and insert the word "persons" in its place.

(B) Subsection (b) is amended as follows:

(i) Strike the phrase "an individual" and insert the phrase "a person" in its place.

(ii) Strike the phrase "the individual" and insert the phrase "the person" in its place.

(iii) Strike the phrase "the individual's" wherever it appears and insert the phrase "the person's" in its place.

(31) Section 504 (D.C. Official Code § 7-1305.04) is amended as follows:

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

(i) Paragraph (1) is amended to read as follows:

"(1) Before each person's commitment under this act, the person shall receive, pursuant to section 403, a comprehensive evaluation or screening and an individual habilitation plan."

(ii) Paragraph (2)(A) is amended by striking the phrase "the individual" and inserting the phrase "the person" in its place.

(iii) Paragraph (3) is amended as follows:

(I) Strike the phrase "the individual shall" and insert the phrase "the person shall" in its place.

(II) Strike the word "individual's" and insert the word "person's" in its place.

(III) Strike the phrase "the individual:" and insert the phrase "the person:" in its place.

(iv) Paragraph (4) is amended by striking the word "individual's" and inserting the word "person's" in its place.

(B) Subsection (b) is amended as follows:

(i) Strike the phrase "section 403, or within 30 days of admission pursuant to section 302, the facility, the facility's sponsoring agency, or" and insert the phrase "section 403," in its place.

(ii) Strike the phrase "an individual's" both times it appears and insert the phrase "a person's" in its place.

(C) Subsection (c) is amended to read as follows:

"(c) To the extent of funds appropriated for the purposes of this act, each person shall receive habilitation, care, or both consistent with the recommendations included in the person's individual habilitation plan. The Department on Disability Services shall set standards for habilitation and care provided to such persons, consistent with standards set by the Council on Quality and Leadership, including staff-person and professional-person ratios."

(32) Section 505 (D.C. Official Code § 7-1305.05) is amended as follows:

(A) Subsection (a) is amended by striking the word "individual" wherever it appears and inserting the word "person" in its place.

ENROLLED ORIGINAL

- (B) Subsection (b) is amended as follows:
- (i) Strike the word "individual's" and insert the word "person's" in its place.
 - (ii) Strike the phrase "The individual" both times it appears and insert the phrase "The person" in its place.
 - (iii) Strike the phrase "An individual" and insert the phrase "A person" in its place.
- (C) Subsection (c) is amended as follows:
- (i) Strike the word "individual" and insert the word "person" in its place.
 - (ii) Strike the word "Individuals" and insert the word "Persons" in its place.
- (D) Subsection (d) is amended as follows:
- (i) Strike the word "individual" and insert the word "person" in its place.
 - (ii) Strike the word "individual's" and insert the word "person's" in its place.
- (E) Subsection (e) is amended by striking the word "individual" and inserting the word "person" in its place.
- (F) Subsection (f) is amended by striking the word "individual" and inserting the word "person" in its place.
- (G) Subsection (g) is amended by striking the word "individual" and insert the word "person" in its place.
- (H) Subsection (h) is amended as follows:
- (i) Strike the word "individuals" and insert the word "persons" in its place.
 - (ii) Strike the word "individual" and insert the word "person" in its place.
 - (iii) Strike the word "individual's" and insert the word "person's" in its place.
- (33) Section 506a (D.C. Official Code § 7-1305.06a) is amended as follows:
- (A) Subsection (a) is amended as follows:
- (i) Strike the word "individual" both times it appears and insert the word "person" in its place.
 - (ii) Strike the word "individual's" and insert the word "person's" in its place.
- (B) Subsection (b) is amended as follows:
- (i) Strike the phrase "the individual" both times it appears and insert the phrase "the person" in its place.
 - (ii) Strike the word "individual's" both times it appears and insert the word "person's" in its place.

ENROLLED ORIGINAL

(C) Subsection (c) is amended as follows:

(i) The lead-in language is amended by striking the word "individual" and inserting the word "person" in its place.

(ii) Paragraph (1) is amended as follows:

(I) Strike the word "individual" and insert the word "person" in its place.

(II) Strike the word "individual's" and insert the word "person's" in its place.

(iii) Paragraph (3) is amended as follows:

(I) Strike the phrase "an individual" and insert the phrase "a person" in its place.

(II) Strike the phrase "the individual" and insert the phrase "the person" in its place.

(III) Strike the word "individual's" and insert the word "person's" in its place.

(34) Section 506b (D.C. Official Code § 7-1305.06b) is amended as follows:

(A) Subsection (a) is amended by striking the word "individuals" and inserting the word "persons" in its place.

(B) Subsection (b) is amended by striking the phrase "the individual" and inserting the phrase "the person" in its place.

(C) Subsection (c) is amended as follows:

(i) Strike the word "individual" wherever it appears and insert the word "person" in its place.

(ii) Strike the word "individual's" and insert the word "person's" in its place.

(D) Subsection (d) is amended by striking the word "individual" and inserting the word "person" in its place.

(E) Subsection (e) is amended by striking the word "individual's" both times it appears and inserting the word "person's" in its place.

(F) Subsection (f) is amended as follows:

(i) Strike the phrase "For individuals" and insert the phrase "For persons" in its place.

(ii) Strike the phrase "the individual" and insert the phrase "the persons" in its place.

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

(i) Strike the word "individuals" and insert the word "persons" in its place.

(ii) Strike the word "individual" both times it appears and insert the word "person" in its place.

(iii) Strike the word "individual's" and insert the word "person's" in its place.

ENROLLED ORIGINAL

(H) Subsection (h) is amended by striking the word "individual's" and inserting the word "person's" in its place.

(35) Section 506c (D.C. Official Code § 7-1305.06c) is amended as follows:

(A) Subsection (a) is amended by striking the word "individuals" and inserting the word "persons" in its place.

(B) Subsection (b) is amended by striking the word "individual" and inserting the word "person" in its place.

(C) Subsection (c) is amended by striking the word "individuals" and inserting the word "persons" in its place.

(D) Subsection (d) is amended as follows:

(i) Paragraph (1) is amended by striking the word "individuals" and inserting the word "persons" in its place.

(ii) Paragraph (2) is amended by striking the word "individuals" both times it appears and inserting the word "persons" in its place.

(iii) Paragraph (3) is amended by striking the word "individual" and inserting the word "person" in its place.

(E) Subsection (e) is amended by striking the word "individual" both times it appears and inserting the word "person" in its place.

(F) Subsection (f) is amended as follows:

(i) Strike the word "individual's" both times it appears and insert the word "person's" in its place.

(ii) Strike the word "individual" and insert the word "person" in its place.

(G) Subsection (g) is amended by striking the phrase "an individual" and inserting the phrase "a person" in its place.

(H) Subsection (h) is amended as follows:

(i) The lead-in language is amended by striking the word "individual's" and inserting the word "person's" in its place.

(ii) Paragraph (1) is amended by striking the word "individual" and inserting the word "person" in its place.

(iii) Paragraph (2) is amended by striking the word "individual's" and inserting the word "person's" in its place.

(iv) Paragraph (3) is amended by striking the word "individual's" and inserting the word "person's" in its place.

(v) Paragraph (4) is amended by striking the word "individual's" and inserting the word "person's" in its place.

(vi) Paragraph (5) is amended by striking the word "individual's" and inserting the word "person's" in its place.

(vii) Paragraph (6) is amended by striking the word "individual's" and inserting the word "person's" in its place.

(36) Section 507a (D.C. Official Code § 7-1305.07a) is amended as follows:

ENROLLED ORIGINAL

(A) Subsection (a) is amended by striking the word "individual" both times it appears and inserting the word "person" in its place.

(B) Subsection (b) is amended as follows:

(i) The lead-in language is amended by striking the word "individuals" and inserting the word "persons" in its place.

(ii) Paragraph (2) is amended by striking the word "individuals" both times it appears and inserting the word "persons" in its place.

(37) Section 508 (D.C. Official Code § 7-1305.08) is amended by striking the word "individual" and inserting the word "person" in its place.

(38) Section 509 (D.C. Official Code § 7-1305.09) is amended as follows:

(A) Strike the word "Individuals" and insert the word "Persons" in its place.

(B) Strike the word "individual" both times it appears and insert the word "person" in its place.

(C) Strike the word "individual's" and insert the word "person's" in its place.

(39) Section 510 (D.C. Official Code § 7-1305.10) is amended as follows:

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

(i) Strike the phrase "any individual" and insert the phrase "any person" in its place.

(ii) Strike the phrase "an individual" and insert the phrase "a person" in its place.

(iii) Strike the word "individual's" and insert the word "person's" in its place.

(B) Subsection (b) is amended by striking the phrase "An individual" and inserting the phrase "A person" in its place.

(C) Subsection (c) is amended by striking the word "individual" and inserting the word "person" in its place.

(D) Subsection (d) is amended by striking the phrase "an individual" and inserting the phrase "a person" in its place.

(E) Subsection (e) is amended as follows:

(i) Strike the word "individual" and insert the word "person" in its place.

(ii) Strike the word "individual's" and insert the word "person's" in its place.

(F) Subsection (f) is amended as follows:

(i) Strike the phrase "An individual's" and insert the phrase "A person's" in its place.

(ii) Strike the phrase "an individual's" and insert the phrase "a person's" in its place.

(40) Section 511 (D.C. Official Code § 7-1305.11) is amended as follows:

ENROLLED ORIGINAL

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

(i) Strike the word "individual" and insert the word "person" in its place.

(ii) Strike the word "individuals" and insert the word "persons" in its place.

(B) Subsection (b) is amended by striking the word "individual" and inserting the word "person" in its place.

(C) Subsection (c) is amended by striking the word "individual" and inserting the word "person" in its place.

(41) Section 512 (D.C. Official Code § 7-1305.12) is amended as follows:

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

(i) The lead-in language is amended as follows:

(I) Strike the word "individual" wherever it appears and insert the word "person" in its place.

(II) Strike the phrase "an individual's" and insert the phrase "a person's" in its place.

(III) Strike the phrase "the individual's" wherever it appears and insert the phrase "the person's" in its place.

(ii) Paragraph (1) is amended striking the word "individual's" and inserting the word "person's" in its place.

(iii) Paragraph (2) is amended by striking the word "individual's" and inserting the word "person's" in its place.

(iv) Paragraph (3) is amended by striking the word "individual's" and inserting the word "person's" in its place.

(v) Paragraph (4) is amended by striking the word "individual's" and inserting the word "person's" in its place.

(vi) Paragraph (6) is amended by striking the word "individual's" and inserting the word "person's" in its place.

(vii) Paragraph (9) is amended by striking the phrase "an individual" and inserting the phrase "a person" in its place.

(viii) Paragraph (10) is amended by striking the word "individual's" both times it appears and inserting the word "person's" in its place.

(ix) Paragraph (11) is amended by striking the word "individual's" both times it appears and inserting the word "person's" in its place.

(x) Paragraph (13) is amended as follows:

(i) Strike the word "individual" and insert the word "person" in its place.

(ii) Strike the word "individual's" and insert the word "person's" in its place.

(B) Subsection (b) is amended by striking the phrase "an individual's" and inserting the phrase "a person's" in its place.

ENROLLED ORIGINAL

(42) Section 513 (D.C. Official Code § 7-1305.13) is amended as follows:

(A) Subsection (b) amended as follows:

(i) Strike the phrase "Any individual" and insert the phrase "Any person" in its place.

(ii) Strike the phrase "said individual" and insert the phrase "said person" in its place.

(iii) Strike the word "individual's" and insert the word "person's" in its place.

(B) Subsection (d) is amended by striking the word "individual" and inserting the word "person" in its place.

(43) Section 515 (D.C. Official Code § 7-1305.15) is amended as follows:

(A) Strike the phrase "an individual" both times it appears and insert the phrase "a person" in its place.

(B) Strike the phrase "the individual" wherever it appears and insert the phrase "the person" in its place.

(C) Strike the phrase "committed individual" and insert the phrase "committed person" in its place.

Sec. 202. Title 21 of the District of Columbia Official Code is amended as follows:

(a) Section 21-2047.01(4) is amended by striking the phrase "or Chapter 13 of Title 7;" and inserting a semicolon in its place.

(b) Section 21-2049(a)(3) is amended by striking the phrase "On petition of the ward or any interested person" and inserting the phrase "On petition of the ward, the Department on Disability Services ("Department") if the ward is receiving services from the Department, or any interested person" in its place.

(c) Section 21-2210(h) is amended by striking the phrase "for those persons committed or admitted to receive habilitation" and inserting the phrase "for those persons committed to receive habilitation" in its place.

Sec. 203. Section 312 of the Nursing Home and Community Residence Facility Residents' Protections Act of 1985, effective April 18, 1986 (D.C. Law 6-108; D.C. Official Code § 44-1003.12), is repealed.

TITLE III. SUPPORTED DECISION-MAKING AGREEMENTS

Sec. 301. Definitions.

For the purposes of this title, the term:

(1) "Adult" means a person who is at least 18 years of age.

(2) "Adult in need of protective services" shall have the same meaning as provided in section 2(2) of the Adult Protective Services Act of 1984, effective March 14, 1985 (D.C. Law 5-156; D.C. Official Code § 7-1901(2)).

ENROLLED ORIGINAL

(3) "Caregiver" shall have the same meaning as provided in section 2(4) of the Adult Protective Services Act of 1984, effective March 14, 1985 (D.C. Law 5-156; D.C. Official Code § 7-1901(4)).

(4) "Covered education agreement" means a supported decision-making agreement that is entered into for the sole purpose of providing supported decision-making related to the supported person's education and:

(A) The Individuals with Disabilities Education Act, approved April 13, 1970 (84 Stat. 175; 20 U.S.C. § 1400 *et seq.*); or

(B) Section 504 of the Rehabilitation Act of 1973, approved September 26, 1973 (87 Stat. 394; 29 U.S.C. § 794).

(5) "Disability" means a physical or mental impairment that substantially limits one or more major life activities of a person.

(6) "Educational records" includes educational records under the Family Educational Rights and Privacy Act of 1974, approved August 21, 1974 (88 Stat. 571; 20 U.S.C. § 1232g).

(7) "Information that is relevant to a life decision" includes medical records, psychological records, financial records, educational records, and treatment records.

(8) "Life decisions" includes decisions related to:

(A) Where and with whom an adult with a disability wants to live;

(B) What services, supports, and medical care the adult with a disability wants to receive; and

(C) Where the adult with a disability wants to work.

(9) "Medical records" includes protected health information under the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (Pub. L. No. 104-191; 110 Stat. 1936).

(10) "Relative" means a parent, other ancestor, brother, sister, uncle, aunt, or one who has been lawful custodian of an adult with a disability at some prior time.

(11) "Supported decision-making" means a process of supporting and accommodating an adult with a disability in order to:

(A) Assist the adult with a disability in understanding the options, responsibilities, and consequences of life decisions; and

(B) Enable the adult with a disability to make life decisions, without impeding the self-determination of the adult with a disability or making decisions for the adult with a disability.

(12) "Supported decision-making agreement" means an agreement between a supported person and a supporter entered into pursuant to this title.

(13) "Supported person" means an adult with a disability who has entered into a supported decision making-agreement with a supporter.

(14) "Supporter" means an adult who has entered into a supported decision-making agreement with a supported person.

ENROLLED ORIGINAL

Sec. 302. Executing a supported decision-making agreement.

(a) The following individuals, except if the individual is the supported person's relative, may not be a supporter:

(1) An individual who provides physical, mental, or behavioral healthcare services or disability services to the supported person, or the owner or operator of the entity providing the healthcare services or disability services to the supported person; or

(2) An individual who works for a government agency that is financially responsible for the supported person's care.

(b)(1) An individual shall not be a supporter if:

(A) There is or has been a finding by a government agency that the individual:

(i) Abused, neglected, or exploited the supported person; or

(ii) Inflicted harm upon a child, elderly individual, or person with a disability; or

(B) The individual is or has been convicted of any of the following criminal offenses, or their equivalent in any other state or territory, within 7 years before entering the supported decision-making agreement:

(i) Any sexual offense prohibited in Title II of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3002 *et seq.*), where the victim was a child, elderly individual, or person with a disability;

(ii) Aggravated assault, as described in section 806a of An Act To establish a code of law for the District of Columbia, effective August 20, 1994 (D.C. Law 10-151; D.C. Official Code § 22-404.01), where the victim was a child, elderly individual, or person with a disability;

(iii) Fraud, as described in section 121 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3221);

(iv) Theft in the first degree, as that term is used in section 112(a) of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3212(a));

(v) Forgery, as described in section 141 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3241); or

(vi) Extortion, as described in section 151 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3251).

(2) Paragraph (1) of this subsection shall not apply to a covered education agreement.

(c) A supported decision-making agreement must be signed by the adult with a disability and the supporter in the presence of 2 adult witnesses or a notary public.

ENROLLED ORIGINAL

(d) Except for a covered education agreement, a supported decision-making agreement shall be in substantially the following form:

“SUPPORTED DECISION-MAKING AGREEMENT

“Appointment of Supporter

“I, (name of supported person), make this agreement of my own free will.

“I agree to designate the following person as my supporter:

“Name:

“Address:

“Phone Number:

“E-mail Address:

“My supporter may help me with making everyday life decisions relating to the following:

“Y/N applying for and maintaining supports and services including District government assistance

“Y/N obtaining food, clothing, and shelter

“Y/N taking care of my physical health

“Y/N taking care of my mental/behavioral health

“Y/N managing my financial affairs

“Y/N managing real property transactions

“Any other duties as listed below:

“

“

“NOTHING IN THIS DOCUMENT GIVES MY SUPPORTER PERMISSION TO “MAKE DECISIONS FOR ME.

“Nothing in this document prevents my supporter from also serving as a power of attorney or as a healthcare decision-maker.

“To help me with decisions, my supporter may:

“Y/N Help me obtain information that is relevant to a decision, including medical, psychological, financial, educational, or treatment records;

“Y/N When requested by me, be present to help me make my own decisions;

“Y/N Help me understand my options so that I can make an informed decision; and

“Y/N Help me communicate my decision to appropriate persons.

“Releases

“Y/N A release allowing my supporter to see and obtain protected health information under the Health Insurance Portability and Accountability Act of 1996 is attached.

“Y/N A release allowing my supporter to see and obtain educational records under the Family Educational Rights and Privacy Act of 1974 is attached.

“Effective Date of Supported Decision-Making Agreement

ENROLLED ORIGINAL

"This supported decision-making agreement is effective immediately and will continue until (insert date) or until the agreement is terminated by my supporter or me or by operation of law.

"Signed this _____ day of _____, 20____

"Consent and Attestation of Supporter

"I, (name of supporter), consent to act as a supporter under this agreement and affirm that

"1. I have not been found to have abused, neglected, or exploited (name of supported person) by a government agency;

"2. I have not been found to have inflicted harm upon a child, elderly individual, or person with a disability by a government agency;

"3. In the last 7 years, I have not been convicted of any sexual offense where the victim was a child, elderly individual, or person with a disability;

"4. In the last 7 years, I have not be convicted of aggravated assault where the victim was a child, elderly individual, or person with a disability; and

"5. In the last 7 years, I have not been convicted of fraud, theft in the first degree, forgery, or extortion.

"Signature of Supporter Printed Name of Supporter

"Signature of Supported Person

"I, (name of supported person), consent to have (name of supporter) act as my supporter under this agreement.

"My signature Printed Name of Supported Person

"Signature of Two Witnesses

"Signature of Witness Printed Name of Witness (1)

"Signature of Witness Printed Name of Witness (2)

"This document was acknowledged before me on this ____ day of (insert month and year) by (name of person supported) and (name of supporter).

"Signature of Notary Public and notary seal, if any.

"Printed Name of Notary Public

"My commission expires:

"WARNING: PROTECTION FOR PERSON SUPPORTED

"IF A PERSON WHO RECIVES A COPY OF THIS AGREEMENT OR IS AWARE OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE ADULT NAMED AS A SUPPORTED PERSON IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE PERSON MAY REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE CITYWIDE CALL CENTER AT 311, METROPOLITAN POLICE DEPARTMENT AT 911, ADULT PROTECTIVE SERVICES AT (202) 541-3950."

(e) A supported decision-making agreement may be terminated at any time by the supported person or the supporter.

ENROLLED ORIGINAL

Sec. 303. Supported decision-making agreements.

(a) An adult with a disability may voluntarily enter into one or more supported decision-making agreements under which the adult with a disability may authorize a supporter to do any of the following:

- (1) Provide supported decision-making;
- (2) Be present during the supported decision-making process, when requested by the supported person; or
- (3) In the presence of the supported person, assist the supported person in:
 - (A) Obtaining information that is relevant to a given life decision from any person; provided, that the supporter shall keep any information obtained under this paragraph confidential; or
 - (B) Communicating the supported person's decisions to others.

(b) A supporter acting pursuant to a supported decision-making agreement may exercise only the authority expressly granted to the supporter in the supported decision-making agreement.

(c)(1) If a law or regulation requires a person or a District agency to give notice to a supported person, and the person or District agency that is required to give the notice has received a supported decision-making agreement from the supported person, the person or District agency shall also provide the supporter with a copy of the notice required by law or regulation to be given to the supported person, unless the person or District agency has substantial cause to believe that the supported person is an adult in need of protective services.

(2) If a law or regulation requires a person or District agency to give notice to a supported person that contains information protected by federal or District law, such as medical records or educational records, paragraph (1) of this subsection shall not apply unless the supported decision-making agreement contains a release authorizing the supporter to obtain the protected information.

(d) A person or a District agency who receives a supported decision-making agreement shall rely on the agreement, unless the person or District agency has substantial cause to believe that the supported person is an adult in need of protective services.

(e) Neither a person nor a District agency shall be subject to criminal or civil liability, nor shall a person be considered to have engaged in professional misconduct, for an act or omission done in good faith and in reasonable reliance on a supported decision-making agreement.

(f) If a District employee or a caregiver, who is aware of the existence of a supported decision-making agreement, has a reasonable belief that the supported person is an adult in need of protective services, the District employee or caregiver shall report the alleged abuse, neglect, or exploitation to the Citywide Call Center at 311, Metropolitan Police Department at 911, Adult Protective Services at (202) 541-3950, or a District agency where the supported person receives services.

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Sec. 304. Rules.

The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this title.

TITLE IV. APPLICABILITY; FISCAL IMPACT; EFFECTIVE DATE

Sec. 401. Applicability.

Title II shall apply 90 days after the effective date of this act.

Sec. 402. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 403. Effective date.

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.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
March 12, 2018