

D.C. Code § 7-1305.01 (2007)

§ 7-1305.01. Habilitation and care; habilitation program [Formerly § 6-1961]

- (a) To the extent that appropriated funds are available to carry out the purposes of this chapter, no District resident with mental retardation shall be denied habilitation, care, or both suited to the person's needs regardless of the person's age, degree of retardation, or handicapping condition.
- (b) To the extent that appropriated funds are available to carry out the purposes of this chapter, each customer shall be provided a habilitation program that will maximize the customer's human abilities, enhance the customer's ability to cope with the customer's environment, and create a reasonable opportunity for progress toward the goal of independent living.
- (c) Notwithstanding subsection (a) of this section, no individual subject to commitment pursuant to § 7-1304.06a shall be denied habilitation, care, or both suited to the person's needs, regardless of the person's age, degree of retardation, or handicapping condition.
- (d) Notwithstanding subsection (b) of this section, an individual subject to commitment pursuant to § 7-1304.06a shall be provided a habilitation program that will maximize the person's human abilities, enhance the person's ability to cope with the person's environment, and create a reasonable opportunity for progress toward the goal of independent living.

D.C. Code § 7-1305.02 (2007)

§ 7-1305.02. Living conditions; teaching of skills [Formerly § 6-1962]

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

D.C. Code § 7-1305.03 (2007)

§ 7-1305.03. Least restrictive conditions [Formerly § 6-1963]

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

D.C. Code § 7-1305.04 (2007)

§ 7-1305.04. Comprehensive evaluation and individual habilitation plan [Formerly § 6-1964]

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

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

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

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

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

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

D.C. Code § 7-1305.05 (2007)

§ 7-1305.05. Visitors; mail; access to telephones; religious practice; personal possessions; privacy; exercise; diet; medical attention; medication [Formerly § 6-1965]

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

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

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

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

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

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

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

(h) All customers have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written or verbal order of a licensed physician, noted promptly in the patient's medical record and signed by the physician within 24 hours. Medication shall be administered only by a licensed physician, registered nurse or licensed practical nurse, or by a medical or nursing student under the direct supervision of a licensed physician or registered nurse, or by a Director acting upon a licensed physician's instructions. The attending physician shall review on a regular basis the drug regimen of each customer under his or her care. All

prescriptions for psychotropic medications shall be written with a termination date, which shall not exceed 30 days. Medication shall not be used as a punishment, for the convenience of staff, as a substitute for programs, or in quantities that interfere with the customer's habilitation program.

D.C. Code § 7-1305.06 (2007)

§ 7-1305.06. Prohibited psychological therapies [Formerly § 6-1966]

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

D.C. Code § 7-1305.07 (2007)

§ 7-1305.07. Essential surgery in medical emergency [Formerly § 6-1967]

If, in a medical emergency, it is the judgment of one licensed physician with the concurring judgment of another licensed physician that delay in obtaining consent for surgery would create a grave danger to the health of the customer, essential surgery may be administered without the consent of the customer if the necessary information is provided to the customer's parent, guardian, spouse or next of kin to enable such person to give informed, knowing and intelligent consent and such consent is given prior to the surgical procedure. In the event that there is no person who can be reasonably contacted, such surgery may be performed upon the authorization of the chief medical officer of the facility.

D.C. Code § 7-1305.08 (2007)

§ 7-1305.08. Sterilization [Formerly § 6-1968]

No customer of a facility shall be sterilized by any employee of a facility or by any other person acting at the direction of, or under the authorization of, the Director or any other employee of a facility.

D.C. Code § 7-1305.09 (2007)

§ 7-1305.09. Experimental research [Formerly § 6-1969]

Customers shall have a right not to be subjected to experimental research without the express and informed consent of the customer, or if the customer cannot give informed consent, of the customer's parent or guardian. Such proposed research shall first have been reviewed and approved by the Department on Disability Services before such consent shall be sought. Prior to such approval, the Department shall determine that such research complies with the principles of the statement on the use of human subjects for research of the American Association on Mental Deficiency and with the principles for research involving human subjects required by the United States Department of Health and Human Services for projects supported by that agency.

D.C. Code § 7-1305.10 (2007)

§ 7-1305.10. Mistreatment, neglect or abuse prohibited; use of restraints; seclusion; "time-out" procedures [Formerly § 6-1970]

(a) Mistreatment, neglect or abuse in any form of any customer shall be prohibited. The routine use of all forms of restraint shall be eliminated. Physical or chemical restraint shall be employed only when absolutely necessary to prevent a customer from seriously injuring himself or herself, or others. Restraint shall not be employed as a punishment, for the convenience of staff or as a substitute for programs. In any event, restraints may only be applied if alternative techniques have been attempted and failed (such failure to be documented in the customer's record) and only if such restraints impose the least possible restriction consistent with their purposes. Each facility shall have a written policy defining:

- (1) The use of restraints;
- (2) The professionals who may authorize such use; and
- (3) The mechanism for monitoring and controlling such use.

(b) Only professionals designated by the Director may order the use of restraints. Such orders shall be in writing and shall not be in force for over 12 hours. A customer placed in restraint shall be checked at least every 30 minutes by staff trained in the use of restraints and a written record of such checks shall be kept.

(c) Mechanical restraints shall be designed for minimum discomfort and used so as not to cause physical injury to the customer. Opportunity for motion and exercise shall be provided for a period of not less than 10 minutes during each 2 hours in which restraint is employed.

(d) Seclusion, defined as a placement of a customer alone in a locked room, shall not be employed. Legitimate "time-out" procedures may be utilized under close and direct professional supervision as a technique in behavior-shaping programs. Each facility shall have a written policy regarding "time-out" procedures.

(e) Alleged instances of mistreatment, neglect or abuse of any customer shall be reported immediately to the Director and the Director shall inform the customer's counsel, parent or guardian who petitioned for the commitment, and the customer's mental retardation advocate of any such instances. There shall be a written report that the allegation has been thoroughly and promptly investigated (with the findings stated therein). Employees of facilities who report such instances of mistreatment, neglect, or abuse shall not be subjected to adverse action by the facility because of the report.

(f) A customer's counsel, parent or guardian who petitioned for commitment and a customer's mental retardation advocate shall be notified in writing whenever restraints are used and whenever an instance of mistreatment, neglect or abuse occurs.

D.C. Code § 7-1305.11 (2007)

§ 7-1305.11. Performance of labor [Formerly § 6-1971]

(a) No customer shall be compelled to perform labor which involves the operation, support, or maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditional upon the performance of such labor. The Mayor shall promulgate rules and regulations governing compensation of customers who volunteer to perform such labor, which rules and regulations shall be consistent with United States Department of Labor regulations governing employment of patient workers in hospitals and institutions at subminimum wages.

(b) A customer may be required to perform habilitative tasks which do not involve the operation, support or maintenance of the facility if those tasks are an integrated part of the customer's habilitation plan and supervised by a qualified mental retardation professional designated by the Director.

(c) A customer may be required to perform tasks of a housekeeping nature for his or her own person only.

D.C. Code § 7-1305.12 (2007)

§ 7-1305.12. Maintenance of records; information considered privileged and confidential; access; contents [Formerly § 6-1972]

Complete records for each customer shall be maintained and shall be readily available to professional persons and to the staff workers who are directly involved with the particular customer and to the Department on Disability Services without divulging the identity of the customer. All information contained in a customer's records shall be considered privileged and confidential. The customer's parent or guardian who petitioned for the commitment, the customer's counsel, the customer's mental retardation advocate and any person properly authorized in writing by the customer, if such customer is capable of giving such authorization, shall be permitted access to the customer's records. These records shall include:

- (1) Identification data, including the customer's legal status;
- (2) The customer's history, including but not limited to:
 - (A) Family data, educational background and employment record;
 - (B) Prior medical history, both physical and mental, including prior institutionalization;
- (3) The customer's grievances, if any;
- (4) An inventory of the customer's life skills;
- (5) A record of each physical examination which describes the results of the examination;
- (6) A copy of the individual habilitation plan; and any modifications thereto and an appropriate summary which will guide and assist the professional and staff employees in implementing the customer's program;
- (7) The findings made in periodic reviews of the habilitation plan which findings shall include an analysis of the successes and failures of the habilitation program and shall direct whatever modifications are necessary;
- (8) A medication history and status;
- (9) A summary of each significant contact by a professional person with a customer;
- (10) A summary of the customer's response to his or her program, prepared and recorded at least monthly, by the professional person designated pursuant to § 7-1305.04(c) to supervise the customer's habilitation;
- (11) A monthly summary of the extent and nature of the customer's work activities and the effect of such activity upon the customer's progress along the habilitation plan;
- (12) A signed order by a professional person, as set forth in § 7-1305.10(b), for any physical restraints;
- (13) A description of any extraordinary incident or accident in the facility involving the customer, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of customer's mistreatment;
- (14) A summary of family visits and contacts;
- (15) A summary of attendance and leaves from the facility; and
- (16) A record of any seizures, illnesses, treatments thereof, and immunizations.

D.C. Code § 7-1305.13 (2007)

§ 7-1305.13. Initiation of action to compel rights; civil remedy; sovereign immunity barred; defense to action; payment of expenses [Formerly § 6-1973]

- (a) Any interested party shall have the right to initiate an action in the Court to compel the rights afforded persons with mental retardation under this chapter.
- (b) Any customer shall have the right to a civil remedy in an amount not less than \$ 25 per day from the Director or the District of Columbia, separately or jointly, for each day in which said customer at a facility is not provided a program adequate for habilitation and normalization pursuant to the customer's individual habilitation plan, unless the District is unable to pay the cost of recommended services because available funds appropriated for the purposes of this chapter are insufficient to pay the costs.
- (c) Sovereign immunity shall not bar an action under this section.
- (d) The good faith belief that an habilitation program was professionally indicated shall be a defense to an action under subsection (b) of this section, despite the program's apparent ineffectiveness. In such circumstances, the habilitation program shall be modified to one appropriate for the customer within 5 days of a Court's decision that the program is inappropriate.
- (e) Reasonable attorneys' fees and Court costs shall be available for actions brought under this section.

D.C. Code § 7-1305.14 (2007)

§ 7-1305.14. Deprivation of civil rights; public or private employment; retention of rights; liability; immunity; exceptions [Formerly § 6-1974]

- (a) No person shall be deprived of any civil right, or public or private employment, solely by reason of his or her having received services, voluntarily or involuntarily, for mental retardation.
- (b) Any person who has been admitted or committed to a facility under the provisions of this chapter retains all rights not specifically denied him or her under this chapter, including rights of habeas corpus.
- (c) Any person who violates or abuses any rights or privileges protected by this chapter shall be liable for damages as determined by law, for Court costs and for reasonable attorneys' fees. Any person who acts in good faith compliance with the provisions of this chapter shall be immune from civil or criminal liability for actions in connection with evaluation, admission, commitment, habilitative programming, education or discharge of a resident. However, this section shall not relieve any person from liability for acts of negligence, misfeasance, nonfeasance, or malfeasance.

D.C. Code § 7-1305.15 (2007)

§ 7-1305.15. Coordination of services for dually diagnosed individuals

If an individual is committed by the Court to DDS pursuant to this chapter or committed by the Court to the Department of Mental Health pursuant to subchapter IV of Chapter 5 of Title 21, or if an individual is temporarily placed with DDS pursuant to § 7-1303.12a during the pendency of commitment proceedings, and DDS or the Department of Mental Health has reason to believe that the committed individual or the individual temporarily placed with DDS pursuant to § 7-1303.12a is dually diagnosed as having both mental illness and mental retardation, DDS and the Department of Mental Health shall collaborate in assessing the individual and shall jointly provide appropriate supports and services for the individual.