

COUNCIL OF THE DISTRICT OF COLUMBIA

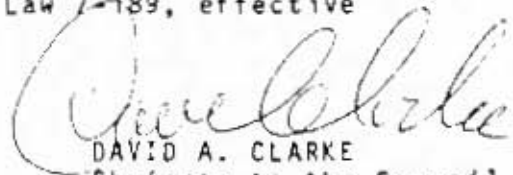
NOTICE

D.C. LAW 7-189

"Health-Care Decisions Act of 1988".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 7-131 on first and second readings October 25, 1988, and November 15, 1988, respectively. Following the signature of the Mayor on December 1, 1988, this legislation was assigned Act No. 7-251, published in the December 16, 1988, edition of the D.C. Register, (Vol. 35 page 8653) and transmitted to Congress on January 23, 1989 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 7-189, effective March 16, 1989.


DAVID A. CLARKE
Chairman to the Council

Dates Counted During the 30-day Congressional Review Period:

January 24,25,26,27,30,31
February 1,2,3,6,7,8,9,21,22,23,24,27,28
March 1,2,3,6,7,8,9,10,13,14,15

RESPECTIVE DATE MAR 16 1989

Enrolled Original

CODIFICATION,
New Chapter 22
of title 21,
District of Columbia
Code
(1989 Supp.)

AN ACT

D.C. ACT 7 - 251

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DEC - 1 1988

To establish procedures for making health-care decisions on behalf of incapacitated individuals.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Health-Care Decisions Act of 1988".

Sec. 2. Purpose.

(a) The purpose of this act is to affirm the right of all competent adults to control decisions relating to their own health care and to have their rights and intentions in health care matters respected and implemented by others if they become incapable of making or communicating decisions for themselves.

New,
Section 21-2201

Sec. 3. Definitions.

For the purposes of this act, the term:

New,
Section 21-2202

(1) "Attorney in fact" means:

(A) The person who receives the power of attorney for health-care decisions pursuant to the provisions of this act.

(2) "District" means the District of Columbia.

(3) "Durable power of attorney for health care" means a legally enforceable document that:

(a) Is executed in the District in a manner consistent with this act or validly executed in another jurisdiction pursuant to similar provisions of the law of that jurisdiction; and

(b) Creates a power of attorney for health-care decisions, which is effective upon, and only during incapitation and is unaffected by the subsequent disability or incapacity of the principal as defined in this act.

(4) "Health-care provider" means any person or organizational entity, including health care facilities as defined in section 2 of the Health-Care and Community

Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Code, sec. 32-1301), licensed or otherwise authorized to provide health-care services in the District.

(5) "Incapacitated individual" means:

(A) An adult individual who lacks sufficient mental capacity to appreciate the nature and implications of a health-care decision, make a choice regarding the alternatives presented or communicate that choice in an unambiguous manner.

(6) "Principal" means:

(A) A person who is competent to make health-care decisions for his or her own benefit or on his or her own account.

Sec. 4. Presumption of capacity.

New,
Section 21-2203

An individual shall be presumed capable of making health-care decisions unless certified otherwise under section 5 of this act. Mental incapacity to make a health-care decision shall not be inferred from the fact that an individual:

(1) Has been voluntarily or involuntarily hospitalized for mental illness pursuant to chapter 5 of title 21 of the District of Columbia Code;

(2) Is mentally retarded or has been determined by a court to be incompetent to refuse commitment under the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Code, sec. 6-1901 et seq.); or

(3) Has a conservator or guardian appointed pursuant to the Appointment of Conservators Act of 1964, approved September 14, 1965 (79 Stat. 774; D.C. Code, sec. 21-1501 et seq.), or the District of Columbia Guardianship Protective Proceedings, and Durable Power of Attorney Act of 1986, effective January 1, 1989 (D.C. Law 6-263; D.C. Code, sec. 21-2001 et seq.).

Sec. 5. Certification of incapacity.

New,
Section 21-2204

(a) Mental incapacity to make a health-care decision shall be certified by 2 physicians who are licensed to practice in the District and qualified to make a determination of mental incapacity. One of the 2 certifying physicians shall be a psychiatrist. At least 1 of the 2 certifying physicians shall examine the individual in question within 1 day preceding certification. Both certifying physicians shall give an opinion regarding the cause and nature of the mental incapacity as well as its extent and probable duration.

(b) All professional findings and opinions forming the basis of certification under subsection (a) of this section

shall be expressed in writing, included in the patient-care records of the individual, and provide clear evidence that the person is incapable of understanding the health-care choice, making a decision concerning the particular treatment or services in question, or communicating a decision even if capable of making it.

(c) Certification of incapacity under this section shall be limited in its effect to the capacity to make health-care decisions and shall not be construed as a finding of incompetency for any other purpose.

Sec. 6. Durable power of attorney for health care.

New,
Section

(a) A competent adult may designate, in writing, an individual who shall be empowered to make health-care decisions on behalf of the competent adult, if the competent adult becomes incapable, by reason of mental disability, of making or communicating a choice regarding a particular health-care decision.

(b) A durable power of attorney for health care shall include language which clearly communicates that the principal intends the attorney in fact to have the authority to make health-care decisions on behalf of the principal and shall include language identical or substantially similar to the following:

(1) "This power of attorney shall not be affected by the subsequent incapacity of the principal."; or

(2) "This power of attorney becomes effective upon the incapacity of the principal."

(c) A durable power of attorney for health care shall be dated and signed by the principal and 2 adult witnesses who affirm that the principal was of sound mind and free from duress at the time of signing. The 2 adult witnesses shall not include the principal, the health-care provider of the principal or an employee of the health-care provider of the principal.

(d) Of the 2 adult witnesses referred to in section 5(c), at least 1 shall not be related to the principal by blood, marriage or adoption and shall not be entitled to any part of the estate of the principal by a current will or operation of law.

(e) Any durable power of attorney executed prior to the effective date of this act and specifically written to include health-care decision making after incompetency shall be effective, if the execution of the prior document meets the requirements of this act.

Sec. 7. Rights and duties of attorney in fact.

New,
Section

(a) Subject to any express limitations in the durable power of attorney for health care, an attorney in fact shall have all the rights, powers and authority related to

health-care decisions that the principal would have under District and federal law. This authority shall include, at a minimum:

- (1) The authority to grant, refuse or withdraw consent to the provision of any health-care service, treatment, or procedure;
- (2) The right to review the health care records of the principal;
- (3) The right to be provided with all information necessary to make informed health-care decisions;
- (4) The authority to select and discharge health-care professionals; and
- (5) The authority to make decisions regarding admission to or discharge from health-care facilities and to take any lawful actions that may be necessary to carry out these decisions.

(b)(1) Except as provided in paragraph (2) of this subsection and unless a durable power of attorney for health care provides otherwise, the designated attorney in fact, if known to a health-care provider to be available and willing to make a particular health-care decision, shall have priority over any other person to act for the principal in all matters regarding health care.

(2) A designated attorney in fact shall not have the authority to make a particular health-care decision, if the principal is able to give or withhold informed consent with respect to that decision.

(c) In exercising authority under a durable power of attorney for health care, the attorney in fact shall have a duty to act in accordance with:

- (1) The wishes of the principal as expressed in the durable power of attorney for health care; or
- (2) The good faith belief of the attorney in fact as to the best interests of the principal, if the wishes of the principal are unknown and cannot be ascertained.

(d) Nothing in this act shall affect any right that an attorney in fact may have, independent of the designation in a durable power of attorney for health care, to make or otherwise participate in health-care decisions on behalf of the principal.

Sec. 8. Forms for creating a durable power of attorney for health care.

New.
Section 21-2207

Any written form meeting the requirements of section 6 may be used to create a durable power of attorney for health care. The following is offered as a sample form only and its inclusion in this section shall not be construed to preclude the use of alternative language:

"INFORMATION ABOUT THIS DOCUMENT
"THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING

THIS DOCUMENT, IT IS VITAL FOR YOU TO KNOW AND UNDERSTAND THESE FACTS:

"THIS DOCUMENT GIVES THE PERSON YOU NAME AS YOUR ATTORNEY IN FACT THE POWER TO MAKE HEALTH-CARE DECISIONS FOR YOU IF YOU CANNOT MAKE THE DECISIONS FOR YOURSELF.

"AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH-CARE DECISIONS FOR YOURSELF IF YOU ARE MENTALLY COMPETENT TO DO SO. IN ADDITION, AFTER YOU HAVE SIGNED THIS DOCUMENT, NO TREATMENT MAY BE GIVEN TO YOU OR STOPPED OVER YOUR OBJECTION IF YOU ARE MENTALLY COMPETENT TO MAKE THAT DECISION.

"YOU MAY STATE IN THIS DOCUMENT ANY TYPE OF TREATMENT THAT YOU DO NOT DESIRE AND ANY THAT YOU WANT TO MAKE SURE YOU RECEIVE.

"YOU HAVE THE RIGHT TO TAKE AWAY THE AUTHORITY OF YOUR ATTORNEY IN FACT, UNLESS YOU HAVE BEEN ADJUDICATED INCOMPETENT, BY NOTIFYING YOUR ATTORNEY IN FACT OR HEALTH-CARE PROVIDER EITHER ORALLY OR IN WRITING. SHOULD YOU REVOKE THE AUTHORITY OF YOUR ATTORNEY IN FACT, IT IS ADVISABLE TO REVOKE IN WRITING AND TO PLACE COPIES OF THE REVOCATION WHEREVER THIS DOCUMENT IS LOCATED.

"IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A SOCIAL WORKER, LAWYER, OR OTHER PERSON TO EXPLAIN IT TO YOU.

* * * * *

"YOU SHOULD KEEP A COPY OF THIS DOCUMENT AFTER YOU HAVE SIGNED IT. GIVE A COPY TO THE PERSON YOU NAME AS YOUR ATTORNEY IN FACT. IF YOU ARE IN A HEALTH-CARE FACILITY, A COPY OF THIS DOCUMENT SHOULD BE INCLUDED IN YOUR MEDICAL RECORD.

"POWER OF ATTORNEY FOR HEALTH CARE

"I, _____, hereby appoint:

name

home address

home telephone number

work telephone number

as my attorney in fact to make health-care decisions for me if I become unable to make my own health-care decisions. This gives my attorney in fact the power to grant, refuse, or withdraw consent on my behalf for any health-care service, treatment or procedure. My attorney in fact also

has the authority to talk to health-care personnel, get information and sign forms necessary to carry out these decisions.

"If the person named as my attorney in fact is not available or is unable to act as my attorney in fact, I appoint the following person to serve in the order listed below:

1. _____
 name home address

home telephone number _____

work telephone number _____

2. _____
 name home address

home telephone number _____

work telephone number _____

"With this document, I intend to create a power of attorney for health care, which shall take effect if I become incapable of making my own health-care decisions and shall continue during that incapacity.

"My attorney in fact shall make health-care decisions as I direct below or as I make known to my attorney in fact in some other way.

"(a) STATEMENT OF DIRECTIVES CONCERNING LIFE-PROLONGING CARE, TREATMENT, SERVICES, AND PROCEDURES:

"(b) SPECIAL PROVISIONS AND LIMITATIONS:

"BY MY SIGNATURE I INDICATE THAT I UNDERSTAND THE PURPOSE AND EFFECT OF THIS DOCUMENT.

"I sign my name to this form on _____ (date)

at: _____ (address).

(Signature)

"WITNESSES

"I declare that the person who signed or acknowledged this document is personally known to me, that the person signed or acknowledged this durable power of attorney for health care in my presence, and that the person appears to be of sound mind and under no duress, fraud, or undue influence. I am not the person appointed as the attorney in fact by this document, nor am I the health-care provider of the principal or an employee of the health-care provider of the principal.

First Witness

Signature: _____
Home Address: _____
Print Name: _____
Date: _____

Second Witness

Signature: _____
Home Address: _____
Print Name: _____
Date: _____

(AT LEAST 1 OF THE WITNESSES LISTED ABOVE SHALL ALSO SIGN THE FOLLOWING DECLARATION.)

"I further declare that I am not related to the principal by blood, marriage or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the principal under a currently existing will or by operation of law.

Signature: _____
Signature: _____."

Sec. 9. Revocation.

(a) At any time that the principal has the capacity to create a durable power of attorney for health care, the principal may:

New, Section 21-

(1) Revoke the appointment of the attorney in fact under a durable power of attorney for health care by notifying the attorney in fact orally or in writing; or

(2) Revoke the authority to make health-care decisions granted to the attorney in fact under a durable power of attorney for health care by notifying the health-care provider orally or in writing.

(b) If a health-care provider is notified of a revocation pursuant to subsection (a)(2) of this section, the health-care provider shall document this fact in the patient-care records of the principal and make a reasonable effort to notify the attorney in fact of the revocation.

(c) There shall be a rebuttable presumption, affecting the burden of proof, that a principal has the capacity to revoke a durable power of attorney for health care.

(d) Unless it expressly provides otherwise, a valid durable power of attorney for health care revokes any prior durable power of attorney for health-care decisions only.

(e) Unless a durable power of attorney for health care expressly provides otherwise, and after its execution the marriage of the principal is dissolved or annulled, the dissolution or annulment shall automatically revoke a designation of the former spouse as an attorney in fact to make health-care decisions for the principal. If a designation is revoked solely on account of this subsection, it shall be revived by the remarriage of the principal to the former spouse but may be subsequently revoked by an act of the principal.

Sec. 10. Health-care provider limitation.

New,
Section 21-220

(a) No health-care provider may require an individual to execute a durable power of attorney for health care as a condition for the provision of health-care services or admission to a health-care facility, as defined in section 2 of the Health-Care and Community Residence Facility Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Code, sec. 32-1301).

(b) After an individual has spent at least 48 hours in a health care facility, a health care provider may request the individual to execute a durable power of attorney for health care subject to the limitations set forth in this act. The health care provider may not be named as the attorney in fact.

Sec. 11. Substituted consent.

New,
Section 21-221

(a) In the absence of a durable power of attorney for health care and provided that the incapacity of the principal has been certified in accordance with section 5, the following individuals, in the order of priority set forth below, shall be authorized to grant, refuse or

withdraw consent on behalf of the patient with respect to the provision of any health-care service, treatment, or procedure:

(1) A court-appointed guardian or conservator of the patient, if the consent is within the scope of the guardianship or conservatorship;

(2) The spouse of the patient;

(3) An adult child of the patient;

(4) A parent of the patient;

(5) An adult sibling of the patient; or

(6) The nearest living relative of the patient.

(b) A decision to grant, refuse or withdraw consent made pursuant to subsection (a) of this section shall be based on the known wishes of the patient or, if the wishes of the patient are unknown and cannot be ascertained, on a good faith belief as to the best interests of the patient.

(c) There shall be at least 1 witness present whenever a person specified in paragraphs (a)(2)-(6) of this section grants, refuses or withdraws consent on behalf of the patient.

(d) If no individual in a prior class is reasonably available, mentally capable and willing to act, responsibility for decisionmaking shall rest with the next reasonably available, mentally capable, and willing person on the priority list.

(e) Any person listed in subsection (a) of this section shall have legal standing to challenge in the Superior Court of the District of Columbia any decision made by a person of higher priority as listed within that subsection.

Sec. 12. Limitations.

No person authorized to act pursuant to section 11 of this act shall have the power:

(a) To consent to an abortion, sterilization or psycho-surgery, unless authorized by a court;

(b) To consent to convulsive therapy or behavior modification programs involving aversive stimuli, unless authorized by a court;

Sec. 13. Effect of act.

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

Sec. 14. Construction.

This act shall be liberally construed and applied to promote its underlying purposes and policies.

Sec. 15. Effective date.

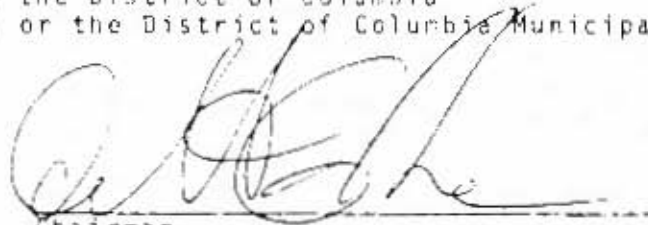
This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in

New,
Section 21-2

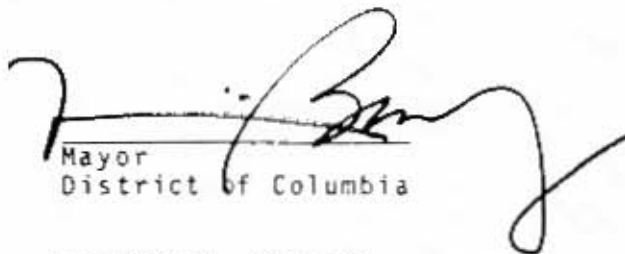
New,
Section 21-2

New,
Section 21-2

the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-233(c)(1)), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations.



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED: 12-1-88



COUNCIL OF THE DISTRICT OF COLUMBIA
Council Period Seven

RECORD OF OFFICIAL COUNCIL VOTE

DOCKET NO: B7-131

Item on Consent Calendar

X ACTION & DATE: Adopted First Reading, 10-25-88
X VOICE VOTE: Approved, Chairman Clarke and Member Winter voted no
 Recorded vote on request

Absent: Crawford

ROLL CALL VOTE - RESULT

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					NATHANSON					THOMAS SR				
CRAWFORD					RAY					WILSON				
JARVIS					ROLARK					WINTER				
KANE					SCHWARTZ									
MASON					SMITH, JR									

X - Indicates Vote A.B. - Absent N.V. - Present, not voting

CERTIFICATION RECORD

[Signature]
 Secretary to the Council Date: 11-22-88

Item on Consent Calendar

X ACTION & DATE: Adopted Final Reading, 11-15-88
X VOICE VOTE: Approved, Chairman Clarke voted no
 Recorded vote on request

Absent: Thomas and Smith

ROLL CALL VOTE - RESULT

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					NATHANSON					THOMAS SR				
CRAWFORD					RAY					WILSON				
JARVIS					ROLARK					WINTER				
KANE					SCHWARTZ									
MASON					SMITH, JR									

X - Indicates Vote A.B. - Absent N.V. - Present, not voting

CERTIFICATION RECORD

[Signature]
 Secretary to the Council Date: 11-22-88

Item on Consent Calendar

ACTION & DATE:
VOICE VOTE:
 Recorded vote on request

Absent:

ROLL CALL VOTE - RESULT

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					NATHANSON					THOMAS SR				
CRAWFORD					RAY					WILSON				
JARVIS					ROLARK					WINTER				
KANE					SCHWARTZ									
MASON					SMITH, JR									

X - Indicates Vote A.B. - Absent N.V. - Present, not voting

CERTIFICATION RECORD

 Secretary to the Council Date