

As Introduced

CORRECTED

135th General Assembly

Regular Session

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H. B. No. 236

Representatives Miller, M., Lear

Cosponsors: Representatives Barhorst, Claggett, Click, Dean, Ferguson, Fowler  
Arthur, Gross, Hall, Johnson, King, Kick, Klopfenstein, Lorenz, Swearingen,  
Wiggam, Williams, Willis

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**A BILL**

To enact sections 3792.05 and 3792.06 of the 1  
Revised Code to prohibit a congregate care 2  
setting from denying a patient or resident 3  
access to an advocate and to name this act the 4  
Never Alone Act. 5

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 3792.05 and 3792.06 of the 6  
Revised Code be enacted to read as follows: 7

**Sec. 3792.05.** (A) As used in this section and section 8  
3792.06 of the Revised Code: 9

(1) "Advocate" means an individual who advocates on behalf 10  
of a congregate care setting patient or resident. An advocate 11  
may include but is not limited to any of the following: 12

(a) The patient's or resident's spouse, family member, 13  
companion, or guardian; 14

(b) In the case of a minor patient or resident, the 15

<u>minor's residential parent and legal custodian or the minor's</u>	16
<u>guardian;</u>	17
<u>(c) An individual designated as an attorney in fact for</u>	18
<u>the patient or resident under a durable power of attorney for</u>	19
<u>health care as described in section 1337.12 of the Revised Code.</u>	20
<u>(2) "Congregate care setting" includes all of the</u>	21
<u>following:</u>	22
<u>(a) A county home or district home operated under Chapter</u>	23
<u>5155. of the Revised Code;</u>	24
<u>(b) A health care facility, as defined in section 3702.30</u>	25
<u>of the Revised Code;</u>	26
<u>(c) A hospice care program or pediatric respite care</u>	27
<u>program, each as defined in section 3712.01 of the Revised Code;</u>	28
<u>(d) A hospital, as defined in section 3722.01 of the</u>	29
<u>Revised Code;</u>	30
<u>(e) A hospital, as defined in section 5119.01 of the</u>	31
<u>Revised Code;</u>	32
<u>(f) A nursing home, residential care facility, or home for</u>	33
<u>the aging, each as defined in section 3721.01 of the Revised</u>	34
<u>Code;</u>	35
<u>(g) Recovery housing, as defined in section 340.01 of the</u>	36
<u>Revised Code;</u>	37
<u>(h) A residential facility, as defined in section 5123.19</u>	38
<u>of the Revised Code;</u>	39
<u>(i) A residential facility, as defined in section 5119.34</u>	40
<u>of the Revised Code;</u>	41
<u>(j) A veterans' home operated under Chapter 5907. of the</u>	42

Revised Code. 43

(3) "Political subdivision" means a county, township, 44  
municipal corporation, school district, or other body corporate 45  
and politic responsible for governmental activities in a 46  
geographic area smaller than that of the state. "Political 47  
subdivision" also includes a board of health of a city or 48  
general health district. 49

(4) "Public official" means any officer, employee, or duly 50  
authorized representative or agent of a political subdivision or 51  
state agency. 52

(5) "State agency" means every organized body, office, 53  
agency, institution, or other entity established by the laws of 54  
the state for the exercise of any function of state government. 55  
"State agency" does not include a court. 56

(B) (1) At the time of a patient's or resident's admission 57  
to a congregate care setting or at first opportunity after 58  
admission, the congregate care setting shall do both of the 59  
following: 60

(a) Inform the patient or resident that the patient or 61  
resident may designate an individual to serve as the patient's 62  
or resident's advocate; 63

(b) Except as provided in division (B) (2) of this section, 64  
provide the patient or resident the opportunity to make such a 65  
designation. 66

(2) In the case of an individual described in division (A) 67  
(1) (b) or (c) of this section, the congregate care setting shall 68  
consider the individual to be a patient's or resident's advocate 69  
without the patient or resident having to make such a 70  
designation. 71

(3) At any time, a patient or resident may revoke an individual's designation as an advocate by communicating the revocation to a congregate care setting staff member. After revocation, a patient or resident may designate another individual to serve as the patient's or resident's advocate. 72  
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(4) Division (B)(1) of this section does not require a congregate care setting to employ, or contract with, an individual to serve as an advocate for the care setting's patients or residents. 77  
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(C) After an advocate has been designated, the advocate shall not do either of the following: 81  
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(1) Physically interfere with, delay, or obstruct the provision of any health care to which any of the following has consented: the patient or resident; in the case of a minor patient or resident, the minor's residential parent and legal custodian or the minor's guardian; or the patient's or resident's attorney in fact under a durable power of attorney for health care; 83  
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(2) Engage in conduct prohibited under Title XXIX of the Revised Code, including as described in sections 2903.13, 2903.22, and 2917.22 of the Revised Code, against a staff member or licensed health care practitioner who is employed by, or under contract with, the congregate care setting. 90  
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(D) After an advocate has been designated, both of the following apply to the congregate care setting: 95  
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(1) The congregate care setting shall request from the patient or resident consent to the disclosure of the patient's or resident's medical information to the advocate. Both the request and disclosure shall be made in accordance with the care 97  
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setting's policies and state and federal law. If the patient or 101  
resident refuses to consent to the disclosure, the care setting 102  
shall not disclose the patient's or resident's medical 103  
information to the advocate. 104

(2) At all times, the congregate care setting shall 105  
neither deny the patient or resident access to the advocate nor 106  
prohibit the patient's or resident's advocate from being 107  
physically present with the patient or resident in the care 108  
setting, except when the patient or resident requests that the 109  
advocate not be present. This division also applies during 110  
either of the following: 111

(a) A public health emergency; 112

(b) The period in which an order or rule issued under 113  
division (C) of section 3701.13 of the Revised Code or section 114  
3701.14, 3709.20, or 3709.21 of the Revised Code remains in 115  
effect. 116

For purposes of division (D) (2) of this section, patient 117  
or resident access to an advocate includes access on-site at the 118  
care setting itself and off-site through a means of 119  
telecommunication. 120

(E) (1) With respect to a congregate care setting that is a 121  
hospital or health care facility, division (D) (2) of this 122  
section does not change or countermand any hospital or facility 123  
policy relating to the isolation of a patient during an invasive 124  
procedure, in particular, a policy under which the health care 125  
practitioner performing or overseeing such a procedure may 126  
determine that a sterile environment is required during the 127  
procedure in order to protect patient safety. 128

(2) When a patient or resident of a congregate care 129

setting has a highly infectious disease requiring special 130  
isolation precautions, division (D) (2) of this section does not 131  
prevent the care setting from establishing for the care setting 132  
a protocol governing the use of personal protective equipment in 133  
order to minimize the disease's spread, except that the 134  
protocol's requirements must not be more restrictive for 135  
advocates than for care setting staff. 136

(3) In the event an infectious disease outbreak is serious 137  
enough to require the staff of a congregate care setting that is 138  
a hospital or health care facility to quarantine, then a 139  
patient's advocate shall be allowed to quarantine with the 140  
patient at the hospital or facility and both of the following 141  
apply: 142

(a) The length of quarantine must be based on clear and 143  
convincing scientific evidence and the quarantine requirements 144  
must not be more restrictive for advocates than for hospital or 145  
facility staff. 146

(b) The hospital or health facility shall be immune from 147  
administrative and civil liability should the patient's advocate 148  
contract the infectious disease during the advocate's quarantine 149  
with the patient. 150

(F) Division (E) (3) (b) of this section does not grant the 151  
hospital or facility immunity from a claim of negligence or 152  
medical malpractice for any care provided by the hospital or 153  
facility to the advocate to treat the infectious disease 154  
contracted during the advocate's quarantine with the patient. 155

(G) A political subdivision, public official, or state 156  
agency shall not issue any order or rule that would require a 157  
congregate care setting to violate this section. 158

(H) A political subdivision, public official, or state agency shall not enforce any order or rule issued by the federal government that would require a congregate care setting to violate this section. 159  
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(I) Either of the following individuals has a private right of action against a congregate care setting for violating this section and may commence an action against the care setting for money damages and injunctive relief: 163  
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(1) A patient or resident; 167

(2) A patient's or resident's advocate, but only if the advocate is one of the following: the patient's or resident's immediate family member, spouse, or guardian; in the case of a minor patient or resident, the minor's residential parent and legal custodian or the minor's guardian; or the patient's or resident's attorney in fact under a durable power of attorney for health care. 168  
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If the individual prevails, the court shall award the individual court costs and reasonable attorney's fees. 175  
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**Sec. 3792.06.** (A) (1) The department of health shall create a "Never Alone" information sheet that describes all of the duties, prohibitions, requirements, and rights established under section 3792.05 of the Revised Code, including the following: 177  
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(a) That a congregate care setting is prohibited from denying a patient or resident access to an advocate except as provided in division (D) (2) or (E) of section 3792.05 of the Revised Code; 181  
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(b) That a congregate care setting is prohibited from prohibiting a patient's or resident's advocate from being physically present with the patient or resident in the care 185  
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setting except as provided in division (D) (2) or (E) of section 188  
3792.05 of the Revised Code; 189

(c) That the spouse, family member, companion, or guardian 190  
of a patient or resident may serve as a patient or resident 191  
advocate; 192

(d) That a congregate care setting must allow a patient's 193  
advocate to quarantine with the patient at a congregate care 194  
setting that is a hospital or health care facility under the 195  
circumstances described in division (E) (3) of section 3792.05 of 196  
the Revised Code; 197

(e) That an individual described in division (I) of 198  
section 3792.05 of the Revised Code has a private right of 199  
action against a congregate care setting for violating that 200  
section. 201

(2) The department shall periodically review and update 202  
the information sheet and shall make it available on the 203  
internet web site maintained by the department. 204

(B) At the time a patient or resident is admitted to, or 205  
begins to receive services from, a congregate care setting, a 206  
representative of the care setting shall do both of the 207  
following: 208

(1) Verbally inform the patient about the duties, 209  
prohibitions, requirements, and rights established in section 210  
3792.05 of the Revised Code; 211

(2) Provide to the patient a copy of the "Never Alone" 212  
information sheet created under division (A) of this section. 213

The copy provided under division (B) (2) of this section 214  
shall be the most recent version available on the internet web 215

site maintained by the department.

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**Section 2.** This act shall be known as the Never Alone Act.

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