

**As Reported by the Senate Health Committee**

**135th General Assembly**

**Regular Session**

**2023-2024**

**Sub. 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, Liston, Brennan, Brewer, Creech, Dell'Aquila, Demetriou, Dobos, Edwards, Forhan, Ghanbari, Grim, Hoops, Isaacsohn, Jarrells, John, Jones, Mathews, Merrin, Miller, K., Mohamed, Peterson, Piccolantonio, Pizzulli, Plummer, Ray, Robinson, Russo, Seitz, Thomas, C., Upchurch, Weinstein, White, Whitted, Young, T.**

**Senators Johnson, Huffman, S.**

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**A BILL**

To enact sections 3792.05 and 3792.06 of the Revised Code to prohibit a congregate care setting from denying a patient or resident access to an advocate during public health emergencies and to name this act the Never Alone Act. 1  
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**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 3792.05 and 3792.06 of the Revised Code be enacted to read as follows: 7  
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**Sec. 3792.05.** (A) As used in this section and section 3792.06 of the Revised Code: 9  
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(1) "Advocate" means an individual who advocates on behalf of a congregate care setting patient or resident. An advocate 11  
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<u>may include but is not limited to any of the following:</u>	13
<u>(a) The patient's or resident's spouse, family member,</u>	14
<u>companion, or guardian;</u>	15
<u>(b) In the case of a minor patient or resident, the</u>	16
<u>minor's residential parent and legal custodian or the minor's</u>	17
<u>guardian;</u>	18
<u>(c) An individual designated as an attorney in fact for</u>	19
<u>the patient or resident under a durable power of attorney for</u>	20
<u>health care as described in section 1337.12 of the Revised Code;</u>	21
<u>(d) An individual appointed by a court to act as the</u>	22
<u>patient's or resident's guardian.</u>	23
<u>(2) "Congregate care setting" includes all of the</u>	24
<u>following:</u>	25
<u>(a) A county home or district home operated under Chapter</u>	26
<u>5155. of the Revised Code;</u>	27
<u>(b) A health care facility, as defined in section 3702.30</u>	28
<u>of the Revised Code;</u>	29
<u>(c) A hospice care program or pediatric respite care</u>	30
<u>program, each as defined in section 3712.01 of the Revised Code,</u>	31
<u>but only when providing care and services other than in a home;</u>	32
<u>(d) A hospital, as defined in section 3722.01 of the</u>	33
<u>Revised Code;</u>	34
<u>(e) A hospital, as defined in section 5119.01 of the</u>	35
<u>Revised Code;</u>	36
<u>(f) A nursing home, residential care facility, or home for</u>	37
<u>the aging, each as defined in section 3721.01 of the Revised</u>	38
<u>Code;</u>	39

(g) A residential facility, as defined in section 5123.19 40  
of the Revised Code; 41

(h) A veterans' home operated under Chapter 5907. of the 42  
Revised Code. 43

(3) "Physician" means an individual authorized under 44  
Chapter 4731. of the Revised Code to practice medicine and 45  
surgery, osteopathic medicine and surgery, or podiatric medicine 46  
and surgery. 47

(4) "Political subdivision" means a county, township, 48  
municipal corporation, school district, or other body corporate 49  
and politic responsible for governmental activities in a 50  
geographic area smaller than that of the state. "Political 51  
subdivision" also includes a board of health of a city or 52  
general health district. 53

(5) "Practitioner" includes all of the following: 54

(a) A certified nurse-midwife, clinical nurse specialist, 55  
or certified nurse practitioner, each as defined in section 56  
4723.01 of the Revised Code; 57

(b) A physician; 58

(c) A physician assistant licensed under Chapter 4730. of 59  
the Revised Code; 60

(d) A psychologist, as defined in section 4732.01 of the 61  
Revised Code. 62

(6) "Public official" means any officer, employee, or duly 63  
authorized representative or agent of a political subdivision or 64  
state agency. 65

(7) "State agency" means every organized body, office, 66

agency, institution, or other entity established by the laws of 67  
the state for the exercise of any function of state government. 68  
"State agency" does not include a court. 69

(B)(1) At the time of a patient's or resident's admission 70  
to a congregate care setting or at first opportunity after 71  
admission, the congregate care setting shall do both of the 72  
following: 73

(a) Inform the patient or resident that the patient or 74  
resident may designate an individual to serve as the patient's 75  
or resident's advocate; 76

(b) Except as provided in division (B)(2) of this section, 77  
provide the patient or resident the opportunity to make such a 78  
designation. 79

(2) In the case of an individual described in division (A) 80  
(1)(b), (c), or (d) of this section, the congregate care setting 81  
shall consider the individual to be a patient's or resident's 82  
advocate without the patient or resident having to make such a 83  
designation. 84

(3) An individual described in division (A)(1) of this 85  
section is ineligible to act as a patient's or resident's 86  
advocate if any of the following is the case: 87

(a) There has been an adjudicated finding that the 88  
individual abused the patient or resident. 89

(b) The congregate care setting has determined that the 90  
individual poses a serious risk to the patient's or resident's 91  
physical health. 92

(c) The individual is excluded from visiting or 93  
communicating with the patient or resident as described in 94

division (F) (2) (i) of Rule 66.09 of the Rules of Superintendence 95  
for the Courts of Ohio. 96

(4) At any time, a patient or resident may revoke an 97  
individual's designation as an advocate by communicating the 98  
revocation to a congregate care setting staff member. After 99  
revocation, a patient or resident may designate another 100  
individual to serve as the patient's or resident's advocate. 101

(5) Division (B) (1) of this section does not require a 102  
congregate care setting to employ, or contract with, an 103  
individual to serve as an advocate for the care setting's 104  
patients or residents. 105

(C) After an advocate has been designated, the advocate 106  
shall not do either of the following: 107

(1) Physically interfere with, delay, or obstruct the 108  
provision of any health care to which any of the following has 109  
consented: the patient or resident; in the case of a minor 110  
patient or resident, the minor's residential parent and legal 111  
custodian or the minor's guardian; the patient's or resident's 112  
attorney in fact under a durable power of attorney for health 113  
care; or the patient's or resident's court-appointed guardian; 114

(2) Engage in conduct prohibited under Title XXIX of the 115  
Revised Code, including as described in sections 2903.13, 116  
2903.22, and 2917.22 of the Revised Code, against a staff member 117  
or licensed health care practitioner who is employed by, or 118  
under contract with, the congregate care setting. 119

(D) After an advocate has been designated, all of the 120  
following apply to the congregate care setting: 121

(1) The congregate care setting shall request from the 122  
patient or resident consent to the disclosure of the patient's 123

or resident's medical information to the advocate, except that, 124  
when applicable, the care setting instead shall request such 125  
consent from one of the following individuals: the patient's or 126  
resident's attorney in fact under a durable power of attorney; 127  
the patient's or resident's court-appointed guardian; or, in the 128  
case of a minor patient or resident, the minor's residential 129  
parent and legal custodian or the minor's guardian. 130

Both the request and disclosure shall be made in 131  
accordance with the care setting's policies and state and 132  
federal law. If consent to the disclosure is refused, the care 133  
setting shall not disclose the patient's or resident's medical 134  
information to the advocate. 135

(2) (a) Except as provided in division (D) (2) (b) of this 136  
section, the congregate care setting shall neither deny the 137  
patient or resident access to the advocate nor prohibit the 138  
patient's or resident's advocate from being physically present 139  
with the patient or resident in the care setting during either 140  
of the following: 141

(i) Any public health emergency; 142

(ii) The period in which an order or rule issued under 143  
division (C) of section 3701.13 of the Revised Code or section 144  
3701.14, 3709.20, or 3709.21 of the Revised Code remains in 145  
effect. 146

At all other times, and except as provided in division (D) 147  
(2) (b) of this section, the care setting shall make every 148  
reasonable effort to allow the patient's or resident's advocate 149  
to be physically present with the patient or resident in the 150  
care setting. 151

(b) Division (D) (2) (a) of this section does not apply if 152

<u>any of the following is the case:</u>	153
<u>(i) The patient or resident requests that the advocate not be present.</u>	154 155
<u>(ii) The advocate has violated either or both of the prohibitions described in division (C) of this section.</u>	156 157
<u>(iii) The patient or resident is participating in a group therapy session.</u>	158 159
<u>(iv) For the purpose of identifying possible abuse or neglect of a patient or resident, the care setting separates, in a manner consistent with standard operating procedures, the advocate from the patient or resident. The separation shall be temporary and last no longer than is necessary to identify abuse or neglect.</u>	160 161 162 163 164 165
<u>(c) For purposes of division (D) (2) (a) of this section, patient or resident access to an advocate includes access on-site at the care setting itself and off-site through a means of telecommunication provided to the patient or resident. Off-site access through a means of telecommunication shall be provided at no cost to the patient or resident.</u>	166 167 168 169 170 171
<u>(3) If the advocate violates either or both of the prohibitions described in division (C) of this section, the advocate shall be ineligible to serve as the patient's or resident's advocate, the individual's designation as an advocate shall become void, and the congregate care setting shall no longer consider that individual to be the patient's or resident's advocate. As soon as practicable, the care setting shall provide the patient or resident with an opportunity to designate another individual to serve as the patient's or resident's advocate.</u>	172 173 174 175 176 177 178 179 180 181

(E) (1) With respect to a congregate care setting that is a 182  
hospital or health care facility, division (D) (2) (a) of this 183  
section does not change or countermand any hospital or facility 184  
policy relating to the isolation of a patient during an invasive 185  
procedure, in particular, a policy under which the health care 186  
practitioner performing or overseeing such a procedure may 187  
determine that a sterile environment is required during the 188  
procedure in order to protect patient safety. 189

(2) When a patient or resident of a congregate care 190  
setting has a highly infectious disease requiring special 191  
isolation precautions, division (D) (2) (a) of this section does 192  
not prevent the care setting from establishing, in order to 193  
minimize the disease's spread, a reasonable protocol governing 194  
the use of personal protective equipment in the care setting. 195  
The protocol's requirements must not be more restrictive for 196  
advocates than for care setting staff. 197

Under the protocol, an advocate is exempt from using 198  
personal protective equipment while in the care setting if the 199  
advocate presents to the care setting a practitioner's note 200  
documenting that such use conflicts with, or is not required 201  
because of, the advocate's own physical or mental health 202  
condition. 203

(3) In the event an infectious disease outbreak is serious 204  
enough to require the staff of a congregate care setting that is 205  
a hospital or health care facility to quarantine, then a 206  
patient's advocate shall be allowed to quarantine with the 207  
patient at the hospital or facility. The length of quarantine 208  
and quarantine requirements must not be more restrictive for 209  
advocates than for hospital or facility staff. 210

(F) (1) A congregate care setting shall be immune from 211



administrative and civil liability if a patient's or resident's 212  
advocate contracts, as a result of serving as the advocate, an 213  
infectious disease other than a foodborne disease. 214

(2) Division (F)(1) of this section does not grant a 215  
congregate care setting that is a hospital or health care 216  
facility immunity from a claim of negligence or medical 217  
malpractice for any care provided to the advocate should the 218  
advocate seek treatment at the hospital or facility for the 219  
infectious disease described in division (F)(1) of this section. 220

(G) A political subdivision, public official, or state 221  
agency shall not issue any order or rule that would require a 222  
congregate care setting to violate this section. 223

(H) Either of the following individuals may petition a 224  
court of common pleas for injunctive relief restraining a 225  
violation or threatened violation of this section: 226

(1) A patient or resident; 227

(2) A patient's or resident's advocate, but only if the 228  
advocate is one of the following: the patient's or resident's 229  
immediate family member, spouse, or guardian; in the case of a 230  
minor patient or resident, the minor's residential parent and 231  
legal custodian or the minor's guardian; or the patient's or 232  
resident's attorney in fact under a durable power of attorney 233  
for health care. 234

If the individual prevails, the court shall award the 235  
individual court costs associated with petitioning the court for 236  
injunctive relief. 237

(I) Nothing in this section shall be construed to change, 238  
interfere with, or restrict any of the rights and duties 239  
described in sections 1337.11 to 1337.17 of the Revised Code. 240

Sec. 3792.06. (A) (1) The department of health shall create 241  
a "Never Alone" information sheet that describes all of the 242  
duties, prohibitions, requirements, and rights established under 243  
section 3792.05 of the Revised Code, including the following: 244

(a) That a congregate care setting is prohibited from 245  
denying a patient or resident access to an advocate except as 246  
provided in division (D) (2) or (E) of section 3792.05 of the 247  
Revised Code; 248

(b) That a congregate care setting is prohibited from 249  
prohibiting a patient's or resident's advocate from being 250  
physically present with the patient or resident in the care 251  
setting except as provided in division (D) (2) or (E) of section 252  
3792.05 of the Revised Code; 253

(c) That the spouse, family member, companion, or guardian 254  
of a patient or resident may serve as a patient or resident 255  
advocate; 256

(d) That a congregate care setting must allow a patient's 257  
advocate to quarantine with the patient at a congregate care 258  
setting that is a hospital or health care facility under the 259  
circumstances described in division (E) (3) of section 3792.05 of 260  
the Revised Code; 261

(e) That an individual described in division (H) of 262  
section 3792.05 of the Revised Code may petition a court of 263  
common pleas for injunctive relief restraining any violation or 264  
threatened violation of that section. 265

(2) The department shall periodically review and update 266  
the information sheet and shall make it available on the 267  
internet web site maintained by the department. 268

(B) At the time a patient or resident is admitted to, or 269

begins to receive services from, a congregate care setting, a 270  
representative of the care setting shall do both of the 271  
following: 272

(1) Verbally inform the patient or resident about the 273  
duties, prohibitions, requirements, and rights established in 274  
section 3792.05 of the Revised Code; 275

(2) Provide to the patient or resident a paper copy of the 276  
"Never Alone" information sheet created under division (A) of 277  
this section. 278

The copy provided under division (B)(2) of this section 279  
shall be the most recent version available on the internet web 280  
site maintained by the department. 281

**Section 2.** This act shall be known as the Never Alone Act. 282