

AN ACT

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.

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:

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

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

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

(b) In the case of a minor patient or resident, the minor's residential parent and legal custodian or the minor's guardian;

(c) An individual designated as an attorney in fact for the patient or resident under a durable power of attorney for health care as described in section 1337.12 of the Revised Code;

(d) An individual appointed by a court to act as the patient's or resident's guardian.

(2) "Congregate care setting" includes all of the following:

(a) A county home or district home operated under Chapter 5155. of the Revised Code;

(b) A health care facility, as defined in section 3702.30 of the Revised Code;

(c) A hospice care program or pediatric respite care program, each as defined in section 3712.01 of the Revised Code, but only when providing care and services other than in a home;

(d) A hospital, as defined in section 3722.01 of the Revised Code;

(e) A hospital, as defined in section 5119.01 of the Revised Code;

(f) A nursing home, residential care facility, or home for the aging, each as defined in section 3721.01 of the Revised Code;

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

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

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

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

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

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

(b) A physician;

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

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

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

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

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

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

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

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

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

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

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

(c) The individual is excluded from visiting or communicating with the patient or resident as described in division (F)(2)(i) of Rule 66.09 of the Rules of Superintendence for the Courts of Ohio.

(4) 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.

(5) 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.

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

(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; the patient's or resident's attorney in fact under a durable power of attorney for health care; or the patient's or resident's court-appointed guardian;

(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.

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

(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, except that, when applicable, the care setting instead shall request such consent from one of the following individuals: the patient's or resident's attorney in fact under a durable power of attorney; the patient's or resident's court-appointed guardian; or, in the case of a minor patient or resident, the minor's residential parent and legal custodian or the minor's guardian.

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

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

(i) Any public health emergency;

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

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

(b) Division (D)(2)(a) of this section does not apply if any of the following is the case:

(i) The patient or resident requests that the advocate not be present.

(ii) The advocate has violated either or both of the prohibitions described in division (C) of this section.

(iii) The patient or resident is participating in a group therapy session.

(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.

(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.

(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.

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

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

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

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

(F)(1) A congregate care setting shall be immune from administrative and civil liability if a patient's or resident's advocate contracts, as a result of serving as the advocate, an infectious disease other than a foodborne disease.

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

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

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

(1) A patient or resident;

(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.

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

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

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:

(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;

(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 setting except as provided in division (D)(2) or (E) of section 3792.05 of the Revised Code;

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

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

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

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

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

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

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

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

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

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor:

Sub. H. B. No. 236

135th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20 ____.

Secretary of State.

File No. _____ Effective Date _____