

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

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 and to name this act the
Never Alone Act.

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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:

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

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(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:

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

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

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minor's residential parent and legal custodian or the minor's 16
guardian; 17

(c) An individual designated as an attorney in fact for 18
the patient or resident under a durable power of attorney for 19
health care as described in section 1337.12 of the Revised Code. 20

(2) "Congregate care setting" includes all of the 21
following: 22

(a) A county home or district home operated under Chapter 23
5155. of the Revised Code; 24

(b) A health care facility, as defined in section 3702.30 25
of the Revised Code; 26

(c) A hospice care program or pediatric respite care 27
program, each as defined in section 3712.01 of the Revised Code; 28

(d) A hospital, as defined in section 3722.01 of the 29
Revised Code; 30

(e) A hospital, as defined in section 5119.01 of the 31
Revised Code; 32

(f) A nursing home, residential care facility, or home for 33
the aging, each as defined in section 3721.01 of the Revised 34
Code; 35

(g) Recovery housing, as defined in section 340.01 of the 36
Revised Code; 37

(h) A residential facility, as defined in section 5123.19 38
of the Revised Code; 39

(i) A residential facility, as defined in section 5119.34 40
of the Revised Code; 41

(j) A veterans' home operated under Chapter 5907. of the 42

Revised Code.

(3) "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.

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

(5) "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) or (c) 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) At any time, a patient or resident may revoke an 72
individual's designation as an advocate by communicating the 73
revocation to a congregate care setting staff member. After 74
revocation, a patient or resident may designate another 75
individual to serve as the patient's or resident's advocate. 76

(4) Division (B)(1) of this section does not require a 77
congregate care setting to employ, or contract with, an 78
individual to serve as an advocate for the care setting's 79
patients or residents. 80

(C) After an advocate has been designated, the advocate 81
shall not do either of the following: 82

(1) Physically interfere with, delay, or obstruct the 83
provision of any health care to which any of the following has 84
consented: the patient or resident; in the case of a minor 85
patient or resident, the minor's residential parent and legal 86
custodian or the minor's guardian; or the patient's or 87
resident's attorney in fact under a durable power of attorney 88
for health care; 89

(2) Engage in conduct prohibited under Title XXIX of the 90
Revised Code, including as described in sections 2903.13, 91
2903.22, and 2917.22 of the Revised Code, against a staff member 92
or licensed health care practitioner who is employed by, or 93
under contract with, the congregate care setting. 94

(D) After an advocate has been designated, both of the 95
following apply to the congregate care setting: 96

(1) The congregate care setting shall request from the 97
patient or resident consent to the disclosure of the patient's 98
or resident's medical information to the advocate. Both the 99
request and disclosure shall be made in accordance with the care 100

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 159
agency shall not enforce any order or rule issued by the federal 160
government that would require a congregate care setting to 161
violate this section. 162

(I) Either of the following individuals has a private 163
right of action against a congregate care setting for violating 164
this section and may commence an action against the care setting 165
for money damages and injunctive relief: 166

(1) A patient or resident; 167

(2) A patient's or resident's advocate, but only if the 168
advocate is one of the following: the patient's or resident's 169
immediate family member, spouse, or guardian; in the case of a 170
minor patient or resident, the minor's residential parent and 171
legal custodian or the minor's guardian; or the patient's or 172
resident's attorney in fact under a durable power of attorney 173
for health care. 174

If the individual prevails, the court shall award the 175
individual court costs and reasonable attorney's fees. 176

Sec. 3792.06. (A) (1) The department of health shall create 177
a "Never Alone" information sheet that describes all of the 178
duties, prohibitions, requirements, and rights established under 179
section 3792.05 of the Revised Code, including the following: 180

(a) That a congregate care setting is prohibited from 181
denying a patient or resident access to an advocate except as 182
provided in division (D) (2) or (E) of section 3792.05 of the 183
Revised Code; 184

(b) That a congregate care setting is prohibited from 185
prohibiting a patient's or resident's advocate from being 186
physically present with the patient or resident in the care 187

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. 216

Section 2. This act shall be known as the Never Alone Act. 217