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135th General Assembly
Regular Session
2023-2024

Sub. H. B. No. 236

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.

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



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<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>(d) An individual appointed by a court to act as the</u>	21
<u>patient's or resident's guardian.</u>	22
<u>(2) "Congregate care setting" includes all of the</u>	23
<u>following:</u>	24
<u>(a) A county home or district home operated under Chapter</u>	25
<u>5155. of the Revised Code;</u>	26
<u>(b) A health care facility, as defined in section 3702.30</u>	27
<u>of the Revised Code;</u>	28
<u>(c) A hospice care program or pediatric respite care</u>	29
<u>program, each as defined in section 3712.01 of the Revised Code,</u>	30
<u>but only when providing care and services other than in a home;</u>	31
<u>(d) A hospital, as defined in section 3722.01 of the</u>	32
<u>Revised Code;</u>	33
<u>(e) A hospital, as defined in section 5119.01 of the</u>	34
<u>Revised Code;</u>	35
<u>(f) A nursing home, residential care facility, or home for</u>	36
<u>the aging, each as defined in section 3721.01 of the Revised</u>	37
<u>Code;</u>	38
<u>(g) A residential facility, as defined in section 5123.19</u>	39
<u>of the Revised Code;</u>	40
<u>(h) A veterans' home operated under Chapter 5907. of the</u>	41
<u>Revised Code.</u>	42
<u>(3) "Physician" means an individual authorized under</u>	43

Chapter 4731. of the Revised Code to practice medicine and 44
surgery, osteopathic medicine and surgery, or podiatric medicine 45
and surgery. 46

(4) "Political subdivision" means a county, township, 47
municipal corporation, school district, or other body corporate 48
and politic responsible for governmental activities in a 49
geographic area smaller than that of the state. "Political 50
subdivision" also includes a board of health of a city or 51
general health district. 52

(5) "Practitioner" includes all of the following: 53

(a) A certified nurse-midwife, clinical nurse specialist, 54
or certified nurse practitioner, each as defined in section 55
4723.01 of the Revised Code; 56

(b) A physician; 57

(c) A physician assistant licensed under Chapter 4730. of 58
the Revised Code; 59

(d) A psychologist, as defined in section 4732.01 of the 60
Revised Code. 61

(6) "Public official" means any officer, employee, or duly 62
authorized representative or agent of a political subdivision or 63
state agency. 64

(7) "State agency" means every organized body, office, 65
agency, institution, or other entity established by the laws of 66
the state for the exercise of any function of state government. 67
"State agency" does not include a court. 68

(B) (1) At the time of a patient's or resident's admission 69
to a congregate care setting or at first opportunity after 70
admission, the congregate care setting shall do both of the 71

<u>following:</u>	72
<u>(a) Inform the patient or resident that the patient or</u>	73
<u>resident may designate an individual to serve as the patient's</u>	74
<u>or resident's advocate;</u>	75
<u>(b) Except as provided in division (B) (2) of this section,</u>	76
<u>provide the patient or resident the opportunity to make such a</u>	77
<u>designation.</u>	78
<u>(2) In the case of an individual described in division (A)</u>	79
<u>(1) (b), (c), or (d) of this section, the congregate care setting</u>	80
<u>shall consider the individual to be a patient's or resident's</u>	81
<u>advocate without the patient or resident having to make such a</u>	82
<u>designation.</u>	83
<u>(3) An individual described in division (A) (1) of this</u>	84
<u>section is ineligible to act as a patient's or resident's</u>	85
<u>advocate if either of the following is the case:</u>	86
<u>(a) There has been an adjudicated finding that the</u>	87
<u>individual abused the patient or resident.</u>	88
<u>(b) The congregate care setting has determined that the</u>	89
<u>individual poses a serious risk to the patient's or resident's</u>	90
<u>physical health.</u>	91
<u>(4) At any time, a patient or resident may revoke an</u>	92
<u>individual's designation as an advocate by communicating the</u>	93
<u>revocation to a congregate care setting staff member. After</u>	94
<u>revocation, a patient or resident may designate another</u>	95
<u>individual to serve as the patient's or resident's advocate.</u>	96
<u>(5) Division (B) (1) of this section does not require a</u>	97
<u>congregate care setting to employ, or contract with, an</u>	98
<u>individual to serve as an advocate for the care setting's</u>	99

patients or residents. 100

(C) After an advocate has been designated, the advocate shall not do either of the following: 101
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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; 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; 103
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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. 110
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(D) After an advocate has been designated, all of the following apply to the congregate care setting: 115
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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, 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. 117
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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 126
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setting shall not disclose the patient's or resident's medical 129
information to the advocate. 130

(2) (a) Except as provided in division (D) (2) (c) of this 131
section, at all times, the congregate care setting shall neither 132
deny the patient or resident access to the advocate nor prohibit 133
the patient's or resident's advocate from being physically 134
present with the patient or resident in the care setting. 135

(b) Division (D) (2) (a) of this section also applies during 136
either of the following: 137

(i) A public health emergency; 138

(ii) The period in which an order or rule issued under 139
division (C) of section 3701.13 of the Revised Code or section 140
3701.14, 3709.20, or 3709.21 of the Revised Code remains in 141
effect. 142

(c) Division (D) (2) (a) of this section does not apply if 143
any of the following is the case: 144

(i) The patient or resident requests that the advocate not 145
be present. 146

(ii) The advocate has violated either or both of the 147
prohibitions described in division (C) of this section. 148

(iii) The patient or resident is participating in a group 149
therapy session. 150

(iv) For the purpose of identifying possible abuse or 151
neglect of a patient or resident, the care setting separates, in 152
a manner consistent with standard operating procedures, the 153
advocate from the patient or resident. The separation shall be 154
temporary and last no longer than is necessary to identify abuse 155
or neglect. 156

(d) For purposes of division (D) (2) (a) of this section, 157
patient or resident access to an advocate includes access on- 158
site at the care setting itself and off-site through a means of 159
telecommunication provided to the patient or resident. Off-site 160
access through a means of telecommunication shall be provided at 161
no cost to the patient or resident. 162

(3) If the advocate violates either or both of the 163
prohibitions described in division (C) of this section, the 164
advocate shall be ineligible to serve as the patient's or 165
resident's advocate, the individual's designation as an advocate 166
shall become void, and the congregate care setting shall no 167
longer consider that individual to be the patient's or 168
resident's advocate. As soon as practicable, the care setting 169
shall provide the patient or resident with an opportunity to 170
designate another individual to serve as the patient's or 171
resident's advocate. 172

(E) (1) With respect to a congregate care setting that is a 173
hospital or health care facility, division (D) (2) (a) of this 174
section does not change or countermand any hospital or facility 175
policy relating to the isolation of a patient during an invasive 176
procedure, in particular, a policy under which the health care 177
practitioner performing or overseeing such a procedure may 178
determine that a sterile environment is required during the 179
procedure in order to protect patient safety. 180

(2) When a patient or resident of a congregate care 181
setting has a highly infectious disease requiring special 182
isolation precautions, division (D) (2) (a) of this section does 183
not prevent the care setting from establishing, in order to 184
minimize the disease's spread, a reasonable protocol governing 185
the use of personal protective equipment in the care setting. 186

The protocol's requirements must not be more restrictive for 187
advocates than for care setting staff. 188

Under the protocol, an advocate is exempt from using 189
personal protective equipment while in the care setting if the 190
advocate presents to the care setting a practitioner's note 191
documenting that such use conflicts with, or is not required 192
because of, the advocate's own physical or mental health 193
condition. 194

(3) In the event an infectious disease outbreak is serious 195
enough to require the staff of a congregate care setting that is 196
a hospital or health care facility to quarantine, then a 197
patient's advocate shall be allowed to quarantine with the 198
patient at the hospital or facility. The length of quarantine 199
and quarantine requirements must not be more restrictive for 200
advocates than for hospital or facility staff. 201

(F) (1) A congregate care setting shall be immune from 202
administrative and civil liability if a patient's or resident's 203
advocate contracts, as a result of serving as the advocate, an 204
infectious disease other than a foodborne disease. 205

(2) Division (F) (1) of this section does not grant a 206
congregate care setting that is a hospital or health care 207
facility immunity from a claim of negligence or medical 208
malpractice for any care provided to the advocate should the 209
advocate seek treatment at the hospital or facility for the 210
infectious disease described in division (F) (1) of this section. 211

(G) A political subdivision, public official, or state 212
agency shall not issue any order or rule that would require a 213
congregate care setting to violate this section. 214

(H) Either of the following individuals has a private 215

right of action against a congregate care setting for violating 216
this section and may commence an action against the care setting 217
for money damages and injunctive relief: 218

(1) A patient or resident; 219

(2) A patient's or resident's advocate, but only if the 220
advocate is one of the following: the patient's or resident's 221
immediate family member, spouse, or guardian; in the case of a 222
minor patient or resident, the minor's residential parent and 223
legal custodian or the minor's guardian; or the patient's or 224
resident's attorney in fact under a durable power of attorney 225
for health care. 226

If the individual prevails, the court shall award the 227
individual court costs and reasonable attorney's fees. 228

(I) Nothing in this section shall be construed to change, 229
interfere with, or restrict any of the rights and duties 230
described in sections 1337.11 to 1337.17 of the Revised Code. 231

Sec. 3792.06. (A) (1) The department of health shall create 232
a "Never Alone" information sheet that describes all of the 233
duties, prohibitions, requirements, and rights established under 234
section 3792.05 of the Revised Code, including the following: 235

(a) That a congregate care setting is prohibited from 236
denying a patient or resident access to an advocate except as 237
provided in division (D)(2) or (E) of section 3792.05 of the 238
Revised Code; 239

(b) That a congregate care setting is prohibited from 240
prohibiting a patient's or resident's advocate from being 241
physically present with the patient or resident in the care 242
setting except as provided in division (D)(2) or (E) of section 243
3792.05 of the Revised Code; 244

(c) That the spouse, family member, companion, or guardian 245
of a patient or resident may serve as a patient or resident 246
advocate; 247

(d) That a congregate care setting must allow a patient's 248
advocate to quarantine with the patient at a congregate care 249
setting that is a hospital or health care facility under the 250
circumstances described in division (E) (3) of section 3792.05 of 251
the Revised Code; 252

(e) That an individual described in division (H) of 253
section 3792.05 of the Revised Code has a private right of 254
action against a congregate care setting for violating that 255
section. 256

(2) The department shall periodically review and update 257
the information sheet and shall make it available on the 258
internet web site maintained by the department. 259

(B) At the time a patient or resident is admitted to, or 260
begins to receive services from, a congregate care setting, a 261
representative of the care setting shall do both of the 262
following: 263

(1) Verbally inform the patient or resident about the 264
duties, prohibitions, requirements, and rights established in 265
section 3792.05 of the Revised Code; 266

(2) Provide to the patient or resident a paper copy of the 267
"Never Alone" information sheet created under division (A) of 268
this section. 269

The copy provided under division (B) (2) of this section 270
shall be the most recent version available on the internet web 271
site maintained by the department. 272

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

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