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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 the patient or resident under a durable power of attorney for health care as described in section 1337.12 of the Revised Code.</u>	18 19 20
<u>(2) "Congregate care setting" includes all of the following:</u>	21 22
<u>(a) A county home or district home operated under Chapter 5155. of the Revised Code;</u>	23 24
<u>(b) A health care facility, as defined in section 3702.30 of the Revised Code;</u>	25 26
<u>(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;</u>	27 28 29
<u>(d) A hospital, as defined in section 3722.01 of the Revised Code;</u>	30 31
<u>(e) A hospital, as defined in section 5119.01 of the Revised Code;</u>	32 33
<u>(f) A nursing home, residential care facility, or home for the aging, each as defined in section 3721.01 of the Revised Code;</u>	34 35 36
<u>(g) Recovery housing, as defined in section 340.01 of the Revised Code;</u>	37 38
<u>(h) A residential facility, as defined in section 5123.19 of the Revised Code;</u>	39 40
<u>(i) A residential facility, as defined in section 5119.34 of the Revised Code;</u>	41 42
<u>(j) A veterans' home operated under Chapter 5907. of the</u>	43

Revised Code. 44

(3) "Political subdivision" means a county, township, 45
municipal corporation, school district, or other body corporate 46
and politic responsible for governmental activities in a 47
geographic area smaller than that of the state. "Political 48
subdivision" also includes a board of health of a city or 49
general health district. 50

(4) "Public official" means any officer, employee, or duly 51
authorized representative or agent of a political subdivision or 52
state agency. 53

(5) "State agency" means every organized body, office, 54
agency, institution, or other entity established by the laws of 55
the state for the exercise of any function of state government. 56
"State agency" does not include a court. 57

(B) (1) At the time of a patient's or resident's admission 58
to a congregate care setting or at first opportunity after 59
admission, the congregate care setting shall do both of the 60
following: 61

(a) Inform the patient or resident that the patient or 62
resident may designate an individual to serve as the patient's 63
or resident's advocate; 64

(b) Except as provided in division (B) (2) of this section, 65
provide the patient or resident the opportunity to make such a 66
designation. 67

(2) In the case of an individual described in division (A) 68
(1) (b) or (c) of this section, the congregate care setting shall 69
consider the individual to be a patient's or resident's advocate 70
without the patient or resident having to make such a 71
designation. 72

(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. 73
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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. 78
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(C) After an advocate has been designated, the advocate shall not do either of the following: 82
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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; 84
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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. 91
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(D) After an advocate has been designated, all of the following apply to the congregate care setting: 96
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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 98
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setting's policies and state and federal law. If the patient or 102
resident refuses to consent to the disclosure, the care setting 103
shall not disclose the patient's or resident's medical 104
information to the advocate. 105

(2) (a) Except as provided in division (D) (2) (c) of this 106
section, at all times, the congregate care setting shall neither 107
deny the patient or resident access to the advocate nor prohibit 108
the patient's or resident's advocate from being physically 109
present with the patient or resident in the care setting. 110

(b) Division (D) (2) (a) of this section also applies during 111
either of the following: 112

(i) A public health emergency; 113

(ii) The period in which an order or rule issued under 114
division (C) of section 3701.13 of the Revised Code or section 115
3701.14, 3709.20, or 3709.21 of the Revised Code remains in 116
effect. 117

(c) Division (D) (2) (a) of this section does not apply if 118
either of the following is the case: 119

(i) The patient or resident requests that the advocate not 120
be present. 121

(ii) The advocate has violated either or both of the 122
prohibitions described in division (C) of this section. 123

(d) For purposes of division (D) (2) (a) of this section, 124
patient or resident access to an advocate includes access on- 125
site at the care setting itself and off-site through a means of 126
telecommunication. Off-site access through a means of 127
telecommunication shall be provided at no cost to both the 128
advocate and the patient or resident. 129

(3) If the advocate violates either or both of the 130
prohibitions described in division (C) of this section, the 131
advocate shall be ineligible to serve as the patient's or 132
resident's advocate, the individual's designation as an advocate 133
shall become void, and the congregate care setting shall no 134
longer consider that individual to be the patient's or 135
resident's advocate. As soon as practicable, the care setting 136
shall provide the patient or resident with an opportunity to 137
designate another individual to serve as the patient's or 138
resident's advocate. 139

(E) (1) With respect to a congregate care setting that is a 140
hospital or health care facility, division (D) (2) (a) of this 141
section does not change or countermand any hospital or facility 142
policy relating to the isolation of a patient during an invasive 143
procedure, in particular, a policy under which the health care 144
practitioner performing or overseeing such a procedure may 145
determine that a sterile environment is required during the 146
procedure in order to protect patient safety. 147

(2) When a patient or resident of a congregate care 148
setting has a highly infectious disease requiring special 149
isolation precautions, division (D) (2) (a) of this section does 150
not prevent the care setting from establishing, in order to 151
minimize the disease's spread, a reasonable protocol governing 152
the use of personal protective equipment in the care setting. 153
Such a protocol must include exemptions for vulnerable 154
populations, and its requirements must not be more restrictive 155
for advocates than for care setting staff. 156

(3) In the event an infectious disease outbreak is serious 157
enough to require the staff of a congregate care setting that is 158
a hospital or health care facility to quarantine, then a 159

patient's advocate shall be allowed to quarantine with the 160
patient at the hospital or facility and both of the following 161
apply: 162

(a) The length of quarantine and quarantine requirements 163
must not be more restrictive for advocates than for hospital or 164
facility staff. 165

(b) The hospital or health facility shall be immune from 166
administrative and civil liability should the patient's advocate 167
contract the infectious disease during the advocate's quarantine 168
with the patient. 169

(F) Division (E) (3) (b) of this section does not grant the 170
hospital or facility immunity from a claim of negligence or 171
medical malpractice for any care provided by the hospital or 172
facility to the advocate to treat the infectious disease 173
contracted during the advocate's quarantine with the patient. 174

(G) A political subdivision, public official, or state 175
agency shall not issue any order or rule that would require a 176
congregate care setting to violate this section. 177

(H) A political subdivision, public official, or state 178
agency shall not enforce on behalf of the federal government any 179
order or rule issued by the federal government that would 180
require a congregate care setting to violate this section. 181

(I) Either of the following individuals has a private 182
right of action against a congregate care setting for violating 183
this section and may commence an action against the care setting 184
for money damages and injunctive relief: 185

(1) A patient or resident; 186

(2) A patient's or resident's advocate, but only if the 187

advocate is one of the following: the patient's or resident's 188
immediate family member, spouse, or guardian; in the case of a 189
minor patient or resident, the minor's residential parent and 190
legal custodian or the minor's guardian; or the patient's or 191
resident's attorney in fact under a durable power of attorney 192
for health care. 193

If the individual prevails, the court shall award the 194
individual court costs and reasonable attorney's fees. 195

Sec. 3792.06. (A) (1) The department of health shall create 196
a "Never Alone" information sheet that describes all of the 197
duties, prohibitions, requirements, and rights established under 198
section 3792.05 of the Revised Code, including the following: 199

(a) That a congregate care setting is prohibited from 200
denying a patient or resident access to an advocate except as 201
provided in division (D) (2) or (E) of section 3792.05 of the 202
Revised Code; 203

(b) That a congregate care setting is prohibited from 204
prohibiting a patient's or resident's advocate from being 205
physically present with the patient or resident in the care 206
setting except as provided in division (D) (2) or (E) of section 207
3792.05 of the Revised Code; 208

(c) That the spouse, family member, companion, or guardian 209
of a patient or resident may serve as a patient or resident 210
advocate; 211

(d) That a congregate care setting must allow a patient's 212
advocate to quarantine with the patient at a congregate care 213
setting that is a hospital or health care facility under the 214
circumstances described in division (E) (3) of section 3792.05 of 215
the Revised Code; 216

(e) That an individual described in division (I) of 217
section 3792.05 of the Revised Code has a private right of 218
action against a congregate care setting for violating that 219
section. 220

(2) The department shall periodically review and update 221
the information sheet and shall make it available on the 222
internet web site maintained by the department. 223

(B) At the time a patient or resident is admitted to, or 224
begins to receive services from, a congregate care setting, a 225
representative of the care setting shall do both of the 226
following: 227

(1) Verbally inform the patient or resident about the 228
duties, prohibitions, requirements, and rights established in 229
section 3792.05 of the Revised Code; 230

(2) Provide to the patient or resident a paper copy of the 231
"Never Alone" information sheet created under division (A) of 232
this section. 233

The copy provided under division (B)(2) of this section 234
shall be the most recent version available on the internet web 235
site maintained by the department. 236

Section 2. This act shall be known as the Never Alone Act. 237