

As Passed by the House

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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.**

A BILL

To enact sections 3792.05 and 3792.06 of the	1
Revised Code to prohibit a congregate care	2
setting from denying a patient or resident	3
access to an advocate during public health	4
emergencies and to name this act the Never Alone	5
Act.	6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3792.05 and 3792.06 of the	7
Revised Code be enacted to read as follows:	8

<u>Sec. 3792.05. (A) As used in this section and section</u>	9
<u>3792.06 of the Revised Code:</u>	10

<u>(1) "Advocate" means an individual who advocates on behalf</u>	11
<u>of a congregate care setting patient or resident. An advocate</u>	12
<u>may include but is not limited to any of the following:</u>	13

- (a) The patient's or resident's spouse, family member, 14
companion, or guardian; 15
- (b) In the case of a minor patient or resident, the 16
minor's residential parent and legal custodian or the minor's 17
guardian; 18
- (c) An individual designated as an attorney in fact for 19
the patient or resident under a durable power of attorney for 20
health care as described in section 1337.12 of the Revised Code; 21
- (d) An individual appointed by a court to act as the 22
patient's or resident's guardian. 23
- (2) "Congregate care setting" includes all of the 24
following: 25
- (a) A county home or district home operated under Chapter 26
5155. of the Revised Code; 27
- (b) A health care facility, as defined in section 3702.30 28
of the Revised Code; 29
- (c) A hospice care program or pediatric respite care 30
program, each as defined in section 3712.01 of the Revised Code, 31
but only when providing care and services other than in a home; 32
- (d) A hospital, as defined in section 3722.01 of the 33
Revised Code; 34
- (e) A hospital, as defined in section 5119.01 of the 35
Revised Code; 36
- (f) A nursing home, residential care facility, or home for 37
the aging, each as defined in section 3721.01 of the Revised 38
Code; 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.

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(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.

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(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.

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

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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;

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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.

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

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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,

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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
any of the following is the case: 153

(i) The patient or resident requests that the advocate not 154
be present. 155

(ii) The advocate has violated either or both of the 156
prohibitions described in division (C) of this section. 157

(iii) The patient or resident is participating in a group 158
therapy session. 159

(iv) For the purpose of identifying possible abuse or 160
neglect of a patient or resident, the care setting separates, in 161
a manner consistent with standard operating procedures, the 162
advocate from the patient or resident. The separation shall be 163
temporary and last no longer than is necessary to identify abuse 164
or neglect. 165

(c) For purposes of division (D) (2) (a) of this section, 166
patient or resident access to an advocate includes access on- 167
site at the care setting itself and off-site through a means of 168
telecommunication provided to the patient or resident. Off-site 169
access through a means of telecommunication shall be provided at 170
no cost to the patient or resident. 171

(3) If the advocate violates either or both of the 172
prohibitions described in division (C) of this section, the 173
advocate shall be ineligible to serve as the patient's or 174
resident's advocate, the individual's designation as an advocate 175
shall become void, and the congregate care setting shall no 176
longer consider that individual to be the patient's or 177
resident's advocate. As soon as practicable, the care setting 178
shall provide the patient or resident with an opportunity to 179
designate another individual to serve as the patient's or 180
resident's advocate. 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 and reasonable attorney's fees associated 236
with petitioning the court for 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