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H.B. 236
135th General Assembly

Final Analysis

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Primary Sponsors: Reps. M. Miller and Lear

Effective date: March 20, 2025

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UPDATED VERSION*

SUMMARY

- Requires a congregate care setting to (1) inform a patient or resident that the patient or resident may designate an individual to serve as an advocate and (2) provide the patient or resident the opportunity to make the designation.
- Generally prohibits a congregate care setting – during any public health emergency or the period when a local or state public health order is in effect – from (1) denying a patient or resident access to an advocate and (2) prohibiting an advocate from being physically present with a patient or resident.
- Generally requires a congregate care setting, at all other times, to 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.
- Prohibits an advocate from physically interfering with, delaying, or obstructing the provision of health care and from engaging in criminal conduct against a staff member or health care practitioner.
- Grants a congregate care setting immunity from administrative or civil liability if the patient's or resident's advocate contracts an infectious disease, other than a foodborne disease, as a result of serving as the advocate.
- Grants an advocate the right – under certain circumstances – to quarantine with the patient at a congregate care setting that is a hospital or health care facility.
- Specifies that the act's provisions do not change or countermand any hospital or health care facility policy relating to the isolation of a patient during an invasive procedure.

* This version updates the effective date.

- Specifies that the act's provisions do not prevent a congregate care setting, in the event a patient or resident has a highly infectious disease requiring special isolation procedures, from establishing a reasonable protocol governing the use of personal protective equipment.
- Exempts an advocate from using personal protective equipment under the protocol if the advocate presents a practitioner's note documenting that the use conflicts with, or is not required because of, the advocate's own physical or mental health condition.
- Authorizes a patient, resident, and certain advocates to petition a court for injunctive relief for a violation or threatened violation of the act's provisions and requires the court to grant a prevailing plaintiff court costs.
- Prohibits a political subdivision, public official, or state agency from issuing an order or rule that would require a care setting to violate the act's provisions.
- Requires the Department of Health to create a Never Alone information sheet and each congregate care setting to provide a patient or resident with a paper copy at the time of admission.
- Names the act the Never Alone Act.

DETAILED ANALYSIS

Congregate care settings – patient and resident advocates

H.B. 236 requires a congregate care setting – at admission or first opportunity after admission – to inform a patient or resident that the patient or resident may designate an individual to serve as the patient's or resident's advocate.¹ The care setting also must provide the patient or resident the opportunity to make the designation.

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 an advocate.

A congregate care setting is not required to employ or contract with an individual to serve as an advocate for the care setting's patients or residents.

Advocate definition

An advocate is defined to mean an individual who advocates on behalf of a congregate care setting patient or resident.² Such an individual may include, but is not limited to, any of the following: the patient's or resident's spouse, family member, companion, or guardian; in the case of a minor patient or resident, the minor's residential parent and legal custodian or the minor's guardian; an individual appointed by a court to act as the patient's or resident's guardian; or an

¹ R.C. 3792.05(B).

² R.C. 3792.05(A)(1).

individual designated as an attorney in fact for the patient or resident under a durable power of attorney for health care.³

Note on durable powers of attorney for health care

The act specifies that it is not to be construed to change, interfere with, or restrict any of the rights and duties established by the law governing durable powers of attorney for health care.⁴

Automatic designation

A congregate care setting must consider the following to be a patient's or resident's advocate without the patient or resident having to make a designation:

- In the case of a minor patient or resident, the minor's residential parent and legal custodian or the minor's guardian;
- An individual designated as an attorney in fact for the patient or resident under a durable power of attorney for health care;
- An individual appointed by a court to act as the patient's or resident's guardian.⁵

Automatic ineligibility

An individual is ineligible to act as an advocate under any of the following circumstances:

- There has been an adjudicated finding that the individual abused the patient or resident;
- The care setting has determined that the individual poses a serious risk to the patient's or resident's physical health;
- The patient's or resident's guardian has excluded the individual from visiting or communicating with the patient or resident and has submitted the individual's name to the relevant probate court.⁶

Advocate prohibitions

After an advocate has been designated, the advocate is prohibited from the following:

- Physically interfering with, delaying, or obstructing the provision of any health care to which any of the following has given consent: a patient or resident, a minor patient's or resident's residential parent or legal custodian or guardian, or a patient's or resident's attorney in fact under a durable power of attorney for health care;

³ R.C. 1337.12, not in the act.

⁴ R.C. 3792.05(I); R.C. 1337.11 to 1338.17, not in the act.

⁵ R.C. 3792.05(B)(2).

⁶ R.C. 3792.05(B)(3).

- Engaging in any criminal conduct against a congregate care setting staff member or health care practitioner, including assault and menacing.⁷

Duties of congregate care settings

Consent to the disclosure of medical information

After an advocate has been designated, the congregate care setting must request from the patient or resident consent to disclose the patient's or resident's medical information to the advocate. When applicable, the care setting instead must request consent to disclose from the patient's or resident's attorney in fact under a durable power of attorney for health care, the patient's or resident's court-appointed guardian, or, in the case of a minor patient or resident, the residential parent and legal custodian or guardian.⁸

Both the request and disclosure must be made in accordance with the care setting's policies and state and federal law. If consent is refused, the care setting is prohibited from disclosing medical information to the advocate.

Access to an advocate

The congregate care setting is generally prohibited from doing the following during any public health emergency or during the period when an order or rule issued by the Department of Health or a local board of health remains in effect:

- Denying the patient or resident access to the advocate;
- Prohibiting the patient's or resident's advocate from being physically present with the patient or resident in the care setting.

At all times other than during a public health emergency or when a state or local health order is in place, the congregate care setting instead must make every reasonable effort to allow the advocate to be physically present with the patient or resident at the care setting.⁹

Exceptions

The foregoing provisions related to advocate access do not apply when:

- The patient or resident requests that the advocate not be present;
- The advocate has physically interfered with, delayed, or obstructed the provision of health care to which consent has been given;
- The advocate has engaged in criminal conduct against a care setting staff member or health care practitioner;

⁷ R.C. 3792.05(C).

⁸ R.C. 3792.05(D)(1).

⁹ R.C. 3792.05(D)(2).

- The care setting temporarily separates the advocate from the patient or resident for the purpose of identifying possible abuse or neglect of the resident; or
- The patient or resident is participating in a group therapy session.¹⁰

Types of access

For purposes of the act, 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 must be provided at no cost to the patient or resident.

Personal protective equipment

When a care setting patient or resident has a highly infectious disease requiring special isolation precautions, the act's foregoing provisions related to advocate access do not prevent the care setting from establishing a reasonable protocol governing the use of personal protective equipment (PPE) in order to minimize the disease's spread.¹¹ The protocol must not be more restrictive for advocates than for care setting staff.

Exemption from PPE use

Under the protocol, an advocate is exempt from using PPE 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. A practitioner includes a certified nurse-midwife, clinical nurse specialist, certified nurse practitioner, physician, physician assistant, or psychologist.¹²

Advocate ineligibility and opportunity for new designation

If an advocate has (1) physically interfered with, delayed, or obstructed the provision of health care to which consent has been given or (2) engaged in criminal conduct against a staff member or health practitioner employed by the care setting (see "**Advocate prohibitions**" above), then all of the following apply:

- The individual is ineligible to serve as the patient's or resident's advocate;
- The individual's designation as an advocate becomes void;
- The congregate care setting must no longer consider the individual to be the patient's or resident's advocate.

In such a circumstance, the care setting must provide – as soon as practicable – the patient or resident an opportunity to designate another individual to serve as the patient's or resident's advocate.¹³

¹⁰ R.C. 3792.05(D)(2).

¹¹ R.C. 3792.05(E)(2).

¹² R.C. 3792.05(A)(5).

¹³ R.C. 3792.05(D)(3).

Immunity

Under the act, a congregate care setting is immune from administrative or civil liability should the patient's or resident's advocate contract an infectious disease, other than a foodborne disease, as a result of serving as the advocate.

However, in the case of a care setting that is a hospital or other health care facility, immunity does not extend to a claim of negligence or medical malpractice for any care provided by the hospital or facility should the advocate seek treatment there for the infectious disease.¹⁴

Hospitals and other health care facilities

The act includes other provisions specific to congregate care settings that are hospitals and other health care facilities.

Invasive procedures

It specifies that its provisions related to advocate access do 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 practitioner performing or overseeing the procedure may determine that a sterile environment is required during the procedure in order to protect patient safety.¹⁵

Quarantine

A patient's advocate must be allowed to quarantine with the patient at the hospital or facility if an infectious disease outbreak is serious enough to require hospital or health care facility staff to quarantine.¹⁶ In such a circumstance, the length of the quarantine and quarantine requirements must not be more restrictive for advocates than for hospital or facility staff.

Political subdivisions, public officials, and state agencies

The act prohibits a political subdivision, public official, or state agency from issuing any order or rule that would require a congregate care setting to violate its provisions.¹⁷

Private right of action – injunctive relief

Either of the following individuals may petition a court of common pleas for injunctive relief restraining a violation or threatened violation of the act's provisions:

- A patient or resident;
- A patient's or resident's advocate, but only if the advocate is the patient's or resident's immediate family member, spouse, or guardian or, in the case of a minor patient or resident, the minor's residential parent and legal custodian or the minor's guardian, or

¹⁴ R.C. 3792.05(F).

¹⁵ R.C. 3792.05(E)(1).

¹⁶ R.C. 3792.05(E)(3).

¹⁷ R.C. 3792.05(G).

the attorney in fact for the patient or resident under a durable power of attorney for health care.¹⁸

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

Never Alone information sheet

The act requires the Department of Health (ODH) to create a Never Alone information sheet that describes all of the duties, prohibitions, requirements, and rights established under the Never Alone Act.¹⁹ ODH must periodically review and update the information sheet and make it available on its website.

Information sheet distribution

At the time of admission to, or first receiving services from, a congregate care setting, a representative of the care setting must verbally inform the patient or resident about the duties, prohibitions, requirements, and rights established under the Never Alone Act. The setting also must provide the patient or resident a paper copy of the Never Alone information sheet. In providing a copy, the care setting must use the most recent version of the sheet available on ODH's website.²⁰

Types of congregate care settings

Under the act, a congregate care setting includes the following:²¹

- A **hospital**, defined as an institution or facility that provides inpatient medical or surgical services for a continuous period longer than 24 hours and that includes a children's hospital;²²
- A **hospital** that receives mentally ill persons and is licensed or managed by the Department of Mental Health and Addiction Services;²³
- A **nursing home**, defined as a home used for the reception and care of individuals who by reason of illness or physical or mental impairment require skilled nursing care and of individuals who require personal care services but not skilled nursing care;²⁴

¹⁸ R.C. 3792.05(H).

¹⁹ R.C. 3792.06(A).

²⁰ R.C. 3792.06(B).

²¹ R.C. 3792.05(A)(2).

²² R.C. 3722.01, not in the act.

²³ R.C. 5119.01 and 5119.33, neither in the act.

²⁴ R.C. 3721.01, not in the act.

- A **residential care facility** (assisted living facility), defined as a home providing accommodation and personal care services primarily to older adults;²⁵
- A **home for the aging**, defined as a home that provides services as a residential care facility and a nursing home, except that the home provides its services only to individuals who are dependent on the services of others by reason of both age and physical or mental impairment;²⁶
- A **veterans' home** providing independent living, intermediate nursing care, skilled nursing care, and memory care to disabled veterans who, by reason of disability, are incapable of earning a living;²⁷
- A **county home or district home**, which may be licensed as a residential care facility;²⁸
- A **hospice care program**, defined as a coordinated program of home, outpatient, and inpatient care and services that is operated by a person or public agency and that provides certain care and services to hospice patients and their families, but only when providing care and services other than in a home;²⁹
- A **pediatric respite care program**, defined as a program operated by a person or public agency that provides certain inpatient respite care and related services only to pediatric respite care patients and their families, but only when providing care and services other than in a home;³⁰
- A **health care facility**, defined as an ambulatory surgical facility, freestanding dialysis center, freestanding inpatient rehabilitation facility, freestanding birthing center, freestanding radiation therapy center, and freestanding or mobile diagnostic imaging center;³¹
- A **residential facility**, licensed by the Department of Developmental Disabilities and defined as a home or facility, including an intermediate care facility for individuals with intellectual disabilities, in which an individual with a developmental disability resides.³²

²⁵ R.C. 3721.01, not in the act.

²⁶ R.C. 3721.01, not in the act.

²⁷ R.C. Chapter 5907, not in the act.

²⁸ R.C. Chapter 5155, not in the act.

²⁹ R.C. 3712.01, not in the act.

³⁰ R.C. 3712.01, not in the act.

³¹ R.C. 3702.30, not in the act.

³² R.C. 5123.19, not in the act.

HISTORY

Action	Date
Introduced	07-05-23
Reported, H. Health Provider Services	06-10-24
Passed House (88-0)	06-12-24
Reported, S. Health	12-11-24
Passed Senate (30-1)	12-11-24
House concurred in Senate amendments (90-0)	12-11-24