

# Advocates in Congregate Care Settings Information Sheet

## House Bill 236 (135th General Assembly)

Passed by the General Assembly in December 2024, House Bill 236 (Never Alone Act) specifies conditions in which patients and residents of congregate care settings may elect to designate an individual as their advocate. (See [Ohio Revised Code \(ORC\) 3792.05](#) and [ORC section 3792.06](#).) Effective March 20, 2025, the act establishes conditions with which an advocate can be physically present with the patient or resident. (Please note that federal law and regulations still apply to congregate care settings and may override this act under certain circumstances.)

Under HB 236, patients and residents are required to be informed either at admission or first opportunity after admission of their ability to designate an individual as their advocate.

An advocate is defined as an individual who advocates on behalf of a patient or resident in a congregate care setting and 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 designated as an attorney-in-fact for the patient or resident under a durable power of attorney for healthcare as described in [ORC section 1337.12](#).
- An individual appointed by a court to act as the patient's or resident's guardian.
- Please note that a congregate care setting must consider the following to be a patient's or resident's advocate automatically, without a patient or resident having to make the designation themselves:
- For minor patients or residents, 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 healthcare.
- An individual appointed by a court to act as the patient's or resident's guardian.

A patient/resident may revoke an individual's designation as an advocate at any time by communicating the revocation to a congregate care setting staff member. Another individual may subsequently be designated as advocate.

## Access to 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 Ohio 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 must make every reasonable effort to allow the advocate to be physically present with the patient or resident at the care setting.

In the event an infectious-disease outbreak is serious enough to require the staff of a congregate care setting (a hospital or healthcare facility; see [ORC 3792.05 for definition](#)) to quarantine, then a patient's advocate shall be allowed to quarantine with the patient at the hospital or facility. The length of quarantine and quarantine requirements must not be more restrictive for advocates than for hospital or facility staff.

The Act clarifies that patient/resident access to an advocate includes on-site at the care setting itself and off-site through a means of telecommunication provided to the patient/resident at no cost.

## Exceptions

The above provisions related to advocating 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 healthcare to which consent has been given.
- The advocate has engaged in criminal conduct against a care setting staff member or healthcare practitioner.
- The care setting temporarily separates the advocate from the patient or resident for the purpose of identifying possible abuse or neglect of the resident.
- The patient or resident is participating in a group therapy session.

The provisions of this Act do not change or revoke any of the following:

- Any hospital or healthcare facility policy relating to the isolation of a patient during an invasive procedure.
- Any congregate care setting, in the event a patient/resident has a highly infectious disease requiring special isolation procedures, from establishing a reasonable protocol governing the use of personal protective equipment.
- An advocate from using personal protective equipment under the protocol unless 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.

## Congregate Care Requirements

After an advocate has been designated, the congregate care setting must request from the patient/resident their consent to disclose the patient's or resident's medical information to the advocate with consideration of the automatic advocate designation as noted above.

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

## Prohibitions

The act prohibits congregate care settings from denying a patient or resident access to an advocate during public health emergencies.

Advocates are prohibited from physically interfering with, delaying, or obstructing the provision of any healthcare that the patient/resident, minor patient's/resident's parent or legal guardian, or a patient's/resident's attorney-in-fact under a durable power of attorney for healthcare has consented to.

Advocates are prohibited from engaging in any criminal conduct against congregate care setting staff members or healthcare practitioners.

Additionally, the following individuals are automatically ineligible to be an advocate:

- Any individual adjudicated to have abused the patient or resident.
- Any individual the congregate care setting has determined to pose a serious risk to the patient's or resident's physical health.
- Any individual the patient's/resident's guardian has excluded from visiting or communicating with the patient/resident and whose name has been submitted to the relevant probate court.

## Immunities and Complaints

Under the new law, congregate care settings are immune from administrative and civil liability should a patient/resident advocate contract an infectious disease – other than foodborne illness – resulting from advocate service. However, immunity does not extend to a claim of negligence or medical malpractice for any care provided by a hospital or facility should an advocate seek treatment there for the infectious disease.

Either of the following individuals may petition a court of common pleas for injunctive relief restraining a violation or threatened violation of the provisions under the Never Alone Act:

- A patient/resident.
- A patient/resident advocate, but only if the advocate is the patient's/resident's immediate family member, spouse, or guardian. In the case of a minor patient/resident, the minor's residential parent and legal custodian, or the minor's guardian, or the attorney-in-fact for the patient/resident under a durable power of attorney for healthcare.

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