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H.B. 236
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135th General Assembly

Bill Analysis

Version: As Pending in House Health Provider Services

Primary Sponsors: Reps. M. Miller and Lear

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SUMMARY

- Requires a congregate care setting to inform a patient or resident that the patient or resident may designate an individual to serve as an advocate and to provide the patient or resident the opportunity to make a designation.
- Generally prohibits a congregate care setting 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.
- Prohibits an advocate from physically interfering with, delaying, or obstructing the provision of health care to which consent has been granted and from engaging in criminal conduct against a staff member or health care practitioner.
- Grants an advocate the right – under certain circumstances – to quarantine with the patient at a hospital or health care facility.
- Grants a hospital or health care facility immunity from administrative or civil liability if the patient’s advocate contracts the infectious disease during that quarantine.
- Specifies that the bill’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.
- Specifies that the bill’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.
- Authorizes a patient, resident, and certain advocates to commence an action for money damages and injunctive relief against a congregate care setting for violating the bill’s provisions.

- Prohibits a political subdivision, public official, or state agency from issuing an order or rule, or enforcing on behalf of the federal government a federal order or rule, that would require a care setting to violate the bill's provisions.
- Requires the Department of Health to create a Never Alone information sheet and each congregate care setting to provide each 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.

The bill specifies that it 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.

Advocate definition

For purposes of the bill, an advocate means 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; or an individual designated as an attorney in fact for the patient or resident under a durable power of attorney for health care.³

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;

¹ R.C. 3792.05(B).

² R.C. 3792.05(A)(1).

³ R.C. 1337.12, not in the bill.

- An individual designated as an attorney in fact for the patient or resident under a durable power of attorney for health care.⁴

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;
- Engaging in any criminal conduct against a congregate care setting staff member or health care practitioner, including assault and menacing.⁵

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.⁶ The bill requires both the request and disclosure to be made in accordance with the care setting's policies and state and federal law. If the patient or resident refuses to consent, 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 at all times, including during a public health emergency or 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.

Exceptions

The foregoing prohibitions related to advocate access do not apply in any of the following circumstances:

- 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;

⁴ R.C. 3792.05(B)(2).

⁵ R.C. 3792.05(C).

⁶ R.C. 3792.05(D)(1).

- The advocate has engaged in criminal conduct against a care setting staff member or health care practitioner.⁷

Types of access

For purposes of the bill, patient or resident access to an advocate includes access on-site at the care setting itself and off-site through a means of telecommunication. The bill requires that off-site access be provided at no cost to the advocate and patient or resident.

Note on personal protective equipment

When a care setting patient or resident has a highly infectious disease requiring special isolation precautions, the bill's foregoing prohibitions related to advocate access do not prevent the care setting from establishing a reasonable protocol governing the use of personal protective equipment in order to minimize the disease's spread.⁸ Such a protocol must not be more restrictive for advocates than for care setting staff and must include exemptions for vulnerable populations.

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, 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.⁹

Hospitals and other health care facilities

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

Invasive procedures

The bill specifies that its prohibitions 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

⁷ R.C. 3792.05(D)(2).

⁸ R.C. 3792.05(E)(2).

⁹ R.C. 3792.05(D)(3).

overseeing the procedure may determine that a sterile environment is required during the procedure in order to protect patient safety.¹⁰

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. 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.

Immunity

Under the bill, the hospital or health care facility is immune from administrative or civil liability should the patient's advocate contract the infectious disease during the advocate's quarantine with the patient.¹¹ The bill does not define or describe administrative liability and does not address health care practitioner immunity.

The bill specifies, however, that the immunity granted under it to a hospital and facility does not extend to a claim of negligence or medical malpractice for any care provided by the hospital or facility to the advocate to treat the infectious disease contracted during the advocate's quarantine with the patient.¹²

Political subdivisions and state agencies

The bill prohibits a political subdivision, public official, or state agency from doing the following:

- Issuing any order or rule that would require a congregate care setting to violate the bill's provisions;¹³
- Enforcing – on behalf of the federal government – an order or rule issued by the federal government that would require a care setting to violate the bill's provisions.¹⁴

Private right of action

The bill specifies that either of the following individuals has a private right of action against a congregate care setting for violating the bill's provisions and may commence an action against the care setting for money damages and injunctive relief:

- A patient or resident;

¹⁰ R.C. 3792.05(E)(1).

¹¹ R.C. 3792.05(E)(3).

¹² R.C. 3792.05(F).

¹³ R.C. 3792.05(G).

¹⁴ R.C. 3792.05(H).

- 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 the attorney in fact for the patient or resident under a durable power of attorney for health care.¹⁵

If the individual bringing the action prevails, the court must award the individual court costs and reasonable attorney's fees.

Never Alone information sheet

The bill 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.¹⁶ ODH is to periodically review and update the information sheet and make it available on the website the Department maintains.

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 created by ODH. In providing a copy, the care setting must use the most recent version of the sheet available on the website maintained by ODH.¹⁷

Types of congregate care settings

Under the bill, a congregate care setting includes all of the following:¹⁸

- 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;¹⁹
- A **hospital** that receives mentally ill persons and is licensed or managed by the Department of Mental Health and Addiction;²⁰

¹⁵ R.C. 3792.05(I).

¹⁶ R.C. 3792.06(A).

¹⁷ R.C. 3792.06(B).

¹⁸ R.C. 3792.05(A)(2).

¹⁹ R.C. 3722.01, not in the bill.

²⁰ R.C. 5119.01 and 5119.33, neither in the bill.

- 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;²¹
- A **residential care facility** (assisted living facility), defined as a home providing accommodation and personal care services primarily to older adults;²²
- 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;²³
- 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;²⁴
- A **county home or district home**, which may be licensed as a residential care facility;²⁵
- 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;²⁶
- 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;²⁷
- 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;²⁸

²¹ R.C. 3721.01, not in the bill.

²² R.C. 3721.01, not in the bill.

²³ R.C. 3721.01, not in the bill.

²⁴ R.C. Chapter 5907, not in the bill.

²⁵ R.C. Chapter 5155, not in the bill.

²⁶ R.C. 3712.01, not in the bill.

²⁷ R.C. 3712.01, not in the bill.

²⁸ R.C. 3702.30, not in the bill.

- 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;²⁹
- A **residential facility**, licensed by the Department of Mental Health and Addiction Services and defined as a publicly or privately operated home or facility that provides accommodations, supervision, personal care services, and mental health services to unrelated adults or children with mental illness or serious emotional disturbances;³⁰
- **Recovery housing**, defined as housing for individuals recovering from alcoholism or drug addiction that provides an alcohol and drug-free living environment, peer support, assistance with obtaining alcohol and drug addiction services, and other alcoholism and drug addiction recovery assistance.³¹

HISTORY

Action	Date
Introduced	07-05-23

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²⁹ R.C. 5123.19, not in the bill.

³⁰ R.C. 5119.34, not in the bill.

³¹ R.C. 340.01, not in the bill.