

Never Alone Act HB 236 (Reps. M. Miller and Lear)

Agenda

- ▣ Basic Information
- ▣ Detailed Requirements
 - ▣ Advocates
 - ▣ Access
 - ▣ Procedure
- ▣ Suggestions to Consider
- ▣ Resources

NOTE: This presentation contains most of the provisions of the bill, but it does not contain all of the provisions. Please consider reading the bill text and the LSC analysis for more information.

Basic Information

- ▣ Where are we?
 - ▣ The bill was passed by the General Assembly with almost unanimous support in both chambers
 - ▣ As of Monday morning, the bill had not been signed by Governor DeWine
 - ▣ After bills are signed into law, they typically go into effect in 90 days
 - ▣ Will have 90 days to come into compliance with the law's requirements

Basic Information

- ▣ Who does the bill (soon to be law) apply to?
 - ▣ Health care facilities, hospitals, and certain congregate care facilities
 - ▣ In the DD space: residential facilities licensed by the Department of Developmental Disabilities under O.R.C. 5123.19:
 - ▣ Intermediate care facilities (ICF)
 - ▣ Licensed waiver residential facilities

Basic Information

- ▣ What does the bill (soon to be law) require?
 - ▣ Requires a congregate care setting to:
 - ▣ (1) inform a resident that the resident may designate an individual to serve as an **advocate** and
 - ▣ (2) provide the resident the opportunity to make the designation.
 - ▣ Generally prohibits a congregate care setting from:
 - ▣ (1) denying a resident **access** to an advocate and
 - ▣ (2) prohibiting an advocate from being physically present with a resident during any public health emergency or while a local or state public health order remains in effect.

Advocates

- ▣ “An individual who advocates on behalf of a congregate care setting resident”
- ▣ Who can serve as an advocate?
 - ▣ Anyone so long as the person does not fit into an exception
 - ▣ Exceptions:
 - ▣ The person has been found guilty of abusing the resident,
 - ▣ The setting determines the person poses a serious risk to the resident’s physical health, or
 - ▣ The individual is excluded from visiting or communicating with the resident under (F)(2)(i) of Rule 66.09 of the Rules of Superintendence
- ▣ A resident can change their advocate by communicating to staff that they want to designate another person to be their advocate

Advocates and Guardians

- How does guardianship impact who can be an advocate?
 - Guardians, attorneys in fact, and individuals with durable power of attorney for health care are automatically designated as the resident's advocate
 - BUT: resident may revoke their designation as an advocate by communicating the revocation to a staff member and they may designate another person to be their advocate
- This could be an area of contention if an individual wants an advocate that is different than their guardian
 - The bill does not provide guidance on how to resolve this issue
 - Consider using the team process to resolve these disputes

Advocates and Guardians

- IMPORTANT NOTE: A person designated as an advocate does NOT automatically become someone's guardian
- Under this bill, the scope of what an advocate can do is limited to having access to the resident
 - An advocate can not make decisions about the care the resident receives unless they have independent legal authority to do so
- If a guardian, attorneys in fact, or someone with durable power of attorney for health care makes a decision about a resident's care, an advocate can not interfere with or supersede that decision
 - If an advocate interferes, they must be removed as the advocate and the resident must be afforded the opportunity to select a new advocate

What is Required of the Provider

- At time of admission, verbally inform resident of right to have access to an advocate and provide a fact sheet developed by the Ohio Department of Health on the resident's right to have an advocate
- Allow the resident to have access to their advocate
- Ask for consent from the resident or their guardian to share medical information with the advocate
- Allow residents to revoke their designation of an advocate and chose a new one

Resident Access to Advocates

During a Public Health Emergency

Can not deny resident's **access** to the advocate

Can not deny an advocate from being physically present with the resident

During All Other Times

Must make every reasonable effort to allow the resident's advocate to be physically present with the resident

- **Access:** resident access to an advocate includes access on-site at the care setting itself and off-site through a means of telecommunication

Resident Access to Advocates

- When does the access requirement not apply?
 - The resident requests the advocate not be present
 - Resident is participating in group therapy session
 - The advocate has physically interfered with the resident's care that has been consented to by the resident or guardian or engages in criminal conduct against your staff
- If the advocate is suspected of abuse, the resident and advocate can be separated for a reasonable amount of time to make such determination consistent with standard agency policy

Resident Right to an Advocate

- ▣ What steps can agencies take if the setting has an infectious disease outbreak?
 - ▣ You can establish reasonable infection control procedures which may include the advocate wearing PPE
 - ▣ The requirements on the advocate may not be stricter than what is required of staff
 - ▣ Advocate may be exempted from wearing PPE if they present with a valid health care practitioner's note stating wearing PPE would conflict with the advocate's physical or mental health

Resident Access to an Advocate

- ▣ What happens if you deny a resident access to their advocate?
 - ▣ The resident can sue for injunctive relief
 - ▣ An advocate can sue for injunctive relief but only if the advocate is an immediate family member, spouse, or guardian
 - ▣ Should the resident or advocate win injunctive relief, they can also sue the provider for attorney fees associated with the litigation

Unanswered Questions

- How to navigate the relationship between advocates, residents, and roommates
- Quarantines for infectious disease outside of a PHE and what advocates can and can't do
 - Addressed for hospitals and health care facilities but not for other congregate care settings
- Disputes between guardians and advocates when they are different people

Procedure

1. Upon admission: verbally inform the resident their right to have an advocate and the duties, prohibitions, and requirements of said advocate
2. Upon admission: provide Ohio Department of Health Never Alone Act factsheet (to be posted on the Ohio Department of Health's website)
3. For residents with guardians, attorneys in fact, or people with durable power of attorney over healthcare, inform resident of the guardian, attorney in fact, or person with durable power of attorney over healthcare's automatic designation
4. Allow for resident to determine who their advocate is or if they would like to change their advocate
5. Upon designation of an advocate: seek consent from the resident (or guardian) to disclose medical information with the advocate
 - ▣ Forms seeking consent must comply with state and federal disclosure laws
 - ▣ If denied, can not share medical information with the advocate

Suggestions to Consider

- Update policies to include the requirements in the bill (soon to be law)
- Update intake process to include provisions in the law
- Consider some form of documentation to show resident received the information and ODH form
- May want to create documentation form on who is the resident's advocate
- Offer training to staff on the bill (soon to be law)

Resources

- Bill text: https://search-prod.lis.state.oh.us/api/v2/general_assembly_135/legislation/hb236/05_EN/pdf/
- Legislative Services Commission analysis: <https://www.legislature.ohio.gov/download?key=24046>
- Full legislative record: <https://www.legislature.ohio.gov/legislation/135/hb236>