

As Introduced

132nd General Assembly

Regular Session

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H. B. No. 7

Representative Cupp

**Cosponsors: Representatives Becker, Hambley, Smith, R., Huffman, Schaffer,
Stein**

A BILL

To amend sections 2305.113, 2305.252, 2305.51,	1
2317.421, 2317.43, and 2323.41 and to enact	2
sections 2305.2311, 2317.44, 2317.45, 2323.40,	3
and 2323.451 of the Revised Code to grant	4
qualified civil immunity to certain medical	5
providers who provide emergency medical services	6
as a result of a disaster; to provide that	7
certain communications made regarding an	8
unanticipated outcome of medical care, the	9
development or implementation of standards under	10
federal laws, and an insurer's reimbursement	11
policies on health care are inadmissible as	12
evidence in a medical claim; to provide that	13
medical bills itemizing charges are inadmissible	14
as evidence and an amount accepted as full	15
payment for medical services is admissible as	16
evidence of the reasonableness of the charges;	17
to specify the manner of sending a notice of	18
intent to file a medical claim and provide a	19
procedure for the discovery of other potential	20
claims within a specified period after the	21
filing of a medical claim; to provide that any	22

loss of a chance of recovery or survival by 23
itself is not an injury, death, or loss for 24
which damages may be recovered; to provide civil 25
immunity to certain medical providers regarding 26
the discharge of a patient with a mental 27
condition that threatens the safety of the 28
patient or others; to require that governmental 29
agencies that receive peer review committee 30
records maintain their confidentiality; and to 31
clarify the definition of "medical claim." 32

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

Section 1. That sections 2305.113, 2305.252, 2305.51, 33
2317.421, 2317.43, and 2323.41 be amended and sections 34
2305.2311, 2317.44, 2317.45, 2323.40, and 2323.451 of the 35
Revised Code be enacted to read as follows: 36

Sec. 2305.113. (A) Except as otherwise provided in this 37
section, an action upon a medical, dental, optometric, or 38
chiropractic claim shall be commenced within one year after the 39
cause of action accrued. 40

(B) (1) If prior to the expiration of the one-year period 41
specified in division (A) of this section, a claimant who 42
allegedly possesses a medical, dental, optometric, or 43
chiropractic claim gives to the person who is the subject of 44
that claim written notice that the claimant is considering 45
bringing an action upon that claim, that action may be commenced 46
against the person notified at any time within one hundred 47
eighty days after the notice is so given. 48

(2) A claimant who allegedly possesses a medical claim and 49
who intends to give to the person who is the subject of that 50
claim the written notice described in division (B) (1) of this 51
section shall give that notice by sending it by certified mail, 52
return receipt requested, addressed to any of the following: 53

(a) The person's residence; 54

(b) The person's professional practice; 55

(c) The person's employer; 56

(d) The address of the person on file with the state 57
medical board or other appropriate agency that issued the 58
person's professional license. 59

(3) An insurance company shall not consider the existence 60
or nonexistence of a written notice described in division (B) (1) 61
of this section in setting the liability insurance premium rates 62
that the company may charge the company's insured person who is 63
notified by that written notice. 64

(C) Except as to persons within the age of minority or of 65
unsound mind as provided by section 2305.16 of the Revised Code, 66
and except as provided in division (D) of this section, both of 67
the following apply: 68

(1) No action upon a medical, dental, optometric, or 69
chiropractic claim shall be commenced more than four years after 70
the occurrence of the act or omission constituting the alleged 71
basis of the medical, dental, optometric, or chiropractic claim. 72

(2) If an action upon a medical, dental, optometric, or 73
chiropractic claim is not commenced within four years after the 74
occurrence of the act or omission constituting the alleged basis 75
of the medical, dental, optometric, or chiropractic claim, then, 76

any action upon that claim is barred. 77

(D) (1) If a person making a medical claim, dental claim, 78
optometric claim, or chiropractic claim, in the exercise of 79
reasonable care and diligence, could not have discovered the 80
injury resulting from the act or omission constituting the 81
alleged basis of the claim within three years after the 82
occurrence of the act or omission, but, in the exercise of 83
reasonable care and diligence, discovers the injury resulting 84
from that act or omission before the expiration of the four-year 85
period specified in division (C) (1) of this section, the person 86
may commence an action upon the claim not later than one year 87
after the person discovers the injury resulting from that act or 88
omission. 89

(2) If the alleged basis of a medical claim, dental claim, 90
optometric claim, or chiropractic claim is the occurrence of an 91
act or omission that involves a foreign object that is left in 92
the body of the person making the claim, the person may commence 93
an action upon the claim not later than one year after the 94
person discovered the foreign object or not later than one year 95
after the person, with reasonable care and diligence, should 96
have discovered the foreign object. 97

(3) A person who commences an action upon a medical claim, 98
dental claim, optometric claim, or chiropractic claim under the 99
circumstances described in division (D) (1) or (2) of this 100
section has the affirmative burden of proving, by clear and 101
convincing evidence, that the person, with reasonable care and 102
diligence, could not have discovered the injury resulting from 103
the act or omission constituting the alleged basis of the claim 104
within the three-year period described in division (D) (1) of 105
this section or within the one-year period described in division 106

(D) (2) of this section, whichever is applicable. 107

(E) As used in this section: 108

(1) "Hospital" includes any person, corporation, 109
association, board, or authority that is responsible for the 110
operation of any hospital licensed or registered in the state, 111
including, but not limited to, those that are owned or operated 112
by the state, political subdivisions, any person, any 113
corporation, or any combination of the state, political 114
subdivisions, persons, and corporations. "Hospital" also 115
includes any person, corporation, association, board, entity, or 116
authority that is responsible for the operation of any clinic 117
that employs a full-time staff of physicians practicing in more 118
than one recognized medical specialty and rendering advice, 119
diagnosis, care, and treatment to individuals. "Hospital" does 120
not include any hospital operated by the government of the 121
United States or any of its branches. 122

(2) "Physician" means a person who is licensed to practice 123
medicine and surgery or osteopathic medicine and surgery by the 124
state medical board or a person who otherwise is authorized to 125
practice medicine and surgery or osteopathic medicine and 126
surgery in this state. 127

(3) "Medical claim" means any claim that is asserted in 128
any civil action against a physician, podiatrist, hospital, 129
home, or residential facility, against any employee or agent of 130
a physician, podiatrist, hospital, home, or residential 131
facility, or against a licensed practical nurse, registered 132
nurse, advanced practice registered nurse, physical therapist, 133
physician assistant, emergency medical technician-basic, 134
emergency medical technician-intermediate, or emergency medical 135
technician-paramedic, and that arises out of the medical 136

diagnosis, care, or treatment of any person. "Medical claim" 137
includes the following: 138

(a) Derivative claims for relief that arise from the ~~plan~~ 139
~~of care,~~ medical diagnosis, care, or treatment of a person; 140

(b) Derivative claims for relief that arise from the plan 141
of care prepared for a resident of a home; 142

(c) Claims that arise out of the ~~plan of care,~~ medical 143
diagnosis, care, or treatment of any person or claims that arise 144
out of the plan of care prepared for a resident of a home and to 145
which both types of claims either of the following applies: 146

(i) The claim results from acts or omissions in providing 147
medical care. 148

(ii) The claim results from the hiring, training, 149
supervision, retention, or termination of caregivers providing 150
medical diagnosis, care, or treatment. 151

~~(c)~~ (d) Claims that arise out of the plan of care, medical 152
diagnosis, or treatment of any person and that are brought under 153
section 3721.17 of the Revised Code; 154

~~(d)~~ (e) Claims that arise out of skilled nursing care or 155
personal care services provided in a home pursuant to the plan 156
of care, medical diagnosis, or treatment. 157

(4) "Podiatrist" means any person who is licensed to 158
practice podiatric medicine and surgery by the state medical 159
board. 160

(5) "Dentist" means any person who is licensed to practice 161
dentistry by the state dental board. 162

(6) "Dental claim" means any claim that is asserted in any 163

civil action against a dentist, or against any employee or agent 164
of a dentist, and that arises out of a dental operation or the 165
dental diagnosis, care, or treatment of any person. "Dental 166
claim" includes derivative claims for relief that arise from a 167
dental operation or the dental diagnosis, care, or treatment of 168
a person. 169

(7) "Derivative claims for relief" include, but are not 170
limited to, claims of a parent, guardian, custodian, or spouse 171
of an individual who was the subject of any medical diagnosis, 172
care, or treatment, dental diagnosis, care, or treatment, dental 173
operation, optometric diagnosis, care, or treatment, or 174
chiropractic diagnosis, care, or treatment, that arise from that 175
diagnosis, care, treatment, or operation, and that seek the 176
recovery of damages for any of the following: 177

(a) Loss of society, consortium, companionship, care, 178
assistance, attention, protection, advice, guidance, counsel, 179
instruction, training, or education, or any other intangible 180
loss that was sustained by the parent, guardian, custodian, or 181
spouse; 182

(b) Expenditures of the parent, guardian, custodian, or 183
spouse for medical, dental, optometric, or chiropractic care or 184
treatment, for rehabilitation services, or for other care, 185
treatment, services, products, or accommodations provided to the 186
individual who was the subject of the medical diagnosis, care, 187
or treatment, the dental diagnosis, care, or treatment, the 188
dental operation, the optometric diagnosis, care, or treatment, 189
or the chiropractic diagnosis, care, or treatment. 190

(8) "Registered nurse" means any person who is licensed to 191
practice nursing as a registered nurse by the board of nursing. 192

(9) "Chiropractic claim" means any claim that is asserted	193
in any civil action against a chiropractor, or against any	194
employee or agent of a chiropractor, and that arises out of the	195
chiropractic diagnosis, care, or treatment of any person.	196
"Chiropractic claim" includes derivative claims for relief that	197
arise from the chiropractic diagnosis, care, or treatment of a	198
person.	199
(10) "Chiropractor" means any person who is licensed to	200
practice chiropractic by the state chiropractic board.	201
(11) "Optometric claim" means any claim that is asserted	202
in any civil action against an optometrist, or against any	203
employee or agent of an optometrist, and that arises out of the	204
optometric diagnosis, care, or treatment of any person.	205
"Optometric claim" includes derivative claims for relief that	206
arise from the optometric diagnosis, care, or treatment of a	207
person.	208
(12) "Optometrist" means any person licensed to practice	209
optometry by the state board of optometry.	210
(13) "Physical therapist" means any person who is licensed	211
to practice physical therapy under Chapter 4755. of the Revised	212
Code.	213
(14) "Home" has the same meaning as in section 3721.10 of	214
the Revised Code.	215
(15) "Residential facility" means a facility licensed	216
under section 5123.19 of the Revised Code.	217
(16) "Advanced practice registered nurse" means any	218
certified nurse practitioner, clinical nurse specialist,	219
certified registered nurse anesthetist, or certified nurse-	220
midwife who holds a certificate of authority issued by the board	221

of nursing under Chapter 4723. of the Revised Code. 222

(17) "Licensed practical nurse" means any person who is 223
licensed to practice nursing as a licensed practical nurse by 224
the board of nursing pursuant to Chapter 4723. of the Revised 225
Code. 226

(18) "Physician assistant" means any person who is 227
licensed as a physician assistant under Chapter 4730. of the 228
Revised Code. 229

(19) "Emergency medical technician-basic," "emergency 230
medical technician-intermediate," and "emergency medical 231
technician-paramedic" means any person who is certified under 232
Chapter 4765. of the Revised Code as an emergency medical 233
technician-basic, emergency medical technician-intermediate, or 234
emergency medical technician-paramedic, whichever is applicable. 235

(20) "Skilled nursing care" and "personal care services" 236
have the same meanings as in section 3721.01 of the Revised 237
Code. 238

Sec. 2305.2311. (A) As used in this section: 239

(1) "Dentist" has the same meaning as in section 2305.231 240
of the Revised Code. 241

(2) "Disaster" means any occurrence of widespread personal 242
injury or loss of life that results from any natural or 243
technological phenomenon or act of a human, or an epidemic. 244

(3) "Hospital" and "medical claim" have the same meanings 245
as in section 2305.113 of the Revised Code. 246

(4) "Optometrist" means a person who is licensed under 247
Chapter 4725. of the Revised Code to practice optometry. 248

(5) "Physician" means an individual who is authorized 249
under Chapter 4731. of the Revised Code to practice medicine and 250
surgery, osteopathic medicine and surgery, or podiatric medicine 251
and surgery. 252

(6) "Physician assistant" means an individual who is 253
authorized under Chapter 4730. of the Revised Code to practice 254
as a physician assistant. 255

(7) "Reckless disregard" as it applies to a given 256
physician, physician assistant, dentist, optometrist, or 257
hospital rendering emergency medical services means conduct that 258
a physician, physician assistant, dentist, optometrist, or 259
hospital knew or should have known, at the time those services 260
were rendered, created an unreasonable risk of injury, death, or 261
loss to person or property so as to affect the life or health of 262
another and that risk was substantially greater than that which 263
is necessary to make the conduct negligent. 264

(8) "Tort action" means a civil action for damages for 265
injury, death, or loss to person or property other than a civil 266
action for damages for a breach of contract or another agreement 267
between persons or governmental entities. "Tort action" includes 268
an action on a medical claim. 269

(B) Subject to division (C) (3) of this section, a 270
physician, physician assistant, dentist, optometrist, or 271
hospital that provides emergency medical services, first-aid 272
treatment, or other emergency professional care, including the 273
provision of any medication or other medical product, as a 274
result of a disaster is not liable in damages to any person in a 275
tort action for injury, death, or loss to person or property 276
that allegedly arises from an act or omission of the physician, 277
physician assistant, dentist, optometrist, or hospital in the 278

physician's, physician assistant's, dentist's, optometrist's, or 279
hospital's provision of those services or that treatment or care 280
if that act or omission does not constitute reckless disregard 281
for the consequences so as to affect the life or health of the 282
patient. 283

(C)(1) This section does not create a new cause of action 284
or substantive legal right against a physician, physician 285
assistant, dentist, optometrist, or hospital. 286

(2) This section does not affect any immunities from civil 287
liability or defenses established by another section of the 288
Revised Code or available at common law to which a physician, 289
physician assistant, dentist, optometrist, or hospital may be 290
entitled in connection with the provision of emergency medical 291
services, first-aid treatment, or other emergency professional 292
care. 293

(3) This section does not grant an immunity from tort or 294
other civil liability to a physician, physician assistant, 295
dentist, optometrist, or hospital for actions that are outside 296
the scope of authority of the physician, physician assistant, 297
dentist, optometrist, or hospital. 298

(4) This section does not affect any legal responsibility 299
of a physician, physician assistant, dentist, optometrist, or 300
hospital to comply with any applicable law of this state or rule 301
of an agency of this state. 302

(D) This section does not apply to a tort action alleging 303
wrongful death against a physician, physician assistant, 304
dentist, optometrist, or hospital that provides emergency 305
medical services, first-aid treatment, or other emergency 306
professional care, including the provision of any medication or 307

other medical product that allegedly arises from an act or 308
omission of the physician, physician assistant, dentist, 309
optometrist, or hospital in the physician's, physician 310
assistant's, dentist's, optometrist's, or hospital's provision 311
of those services or that treatment or care as a result of a 312
disaster. 313

Sec. 2305.252. (A) Proceedings and records within the 314
scope of a peer review committee of a health care entity shall 315
be held in confidence and shall not be subject to discovery or 316
introduction in evidence in any civil action against a health 317
care entity or health care provider, including both individuals 318
who provide health care and entities that provide health care, 319
arising out of matters that are the subject of evaluation and 320
review by the peer review committee. No individual who attends a 321
meeting of a peer review committee, serves as a member of a peer 322
review committee, works for or on behalf of a peer review 323
committee, or provides information to a peer review committee 324
shall be permitted or required to testify in any civil action as 325
to any evidence or other matters produced or presented during 326
the proceedings of the peer review committee or as to any 327
finding, recommendation, evaluation, opinion, or other action of 328
the committee or a member thereof. 329

Information, documents, or records otherwise available 330
from original sources are not to be construed as being 331
unavailable for discovery or for use in any civil action merely 332
because they were produced or presented during proceedings of a 333
peer review committee, but the information, documents, or 334
records are available only from the original sources and cannot 335
be obtained from the peer review committee's proceedings or 336
records. 337

The release of any information, documents, or records that 338
were produced or presented during proceedings of a peer review 339
committee or created to document the proceedings does not affect 340
the confidentiality of any other information, documents, or 341
records produced or presented during those proceedings or 342
created to document them. Only the information, documents, or 343
records actually released cease to be privileged under this 344
section. 345

Nothing in this section precludes health care entities 346
from sharing information, documents, or records that were 347
produced or presented during proceedings of a peer review 348
committee or created to document them as long as the 349
information, documents, or records are used only for peer review 350
purposes. 351

An individual who testifies before a peer review 352
committee, serves as a representative of a peer review 353
committee, serves as a member of a peer review committee, works 354
for or on behalf of a peer review committee, or provides 355
information to a peer review committee shall not be prevented 356
from testifying as to matters within the individual's knowledge, 357
but the individual cannot be asked about the individual's 358
testimony before the peer review committee, information the 359
individual provided to the peer review committee, or any opinion 360
the individual formed as a result of the peer review committee's 361
activities. 362

An order by a court to produce for discovery or for use at 363
trial the proceedings or records described in this section is a 364
final order. 365

(B) Division (A) of this section applies to a peer review 366
committee of the bureau of workers' compensation that is 367

responsible for reviewing the professional qualifications and 368
the performance of providers certified by the bureau to 369
participate in the health partnership program created under 370
sections 4121.44 and 4121.441 of the Revised Code, except that 371
the proceedings and records within the scope of the peer review 372
committee are subject to discovery or court subpoena and may be 373
admitted into evidence in any criminal action or administrative 374
or civil action initiated, prosecuted, or adjudicated by the 375
bureau involving an alleged violation of applicable statutes or 376
administrative rules. The bureau may share proceedings and 377
records within the scope of the peer review committee, including 378
claimant records and claim file information, with law 379
enforcement agencies, licensing boards, and other governmental 380
agencies that are prosecuting, adjudicating, or investigating 381
alleged violations of applicable statutes or administrative 382
rules. If the bureau shares proceedings or records with a law 383
enforcement agency, licensing board, or another governmental 384
agency pursuant to this division, that sharing does not affect 385
the confidentiality of the record. Recipients of claimant 386
records and claim file information provided by the bureau 387
pursuant to this division shall take appropriate measures to 388
maintain the confidentiality of the information. 389

(C) A peer review committee may share proceedings and 390
records within the scope of the peer review committee, including 391
documents regarding patient care and medical care provided by 392
physicians and nurses, with law enforcement agencies, licensing 393
boards, regulatory agencies, and other governmental agencies 394
that are prosecuting, investigating, or adjudicating alleged 395
violations of applicable statutes or administrative rules. 396
However, the sharing of those proceedings or records with any of 397
those agencies or boards shall not affect the confidentiality of 398

the proceedings and records under division (A) of this section. 399
Any recipient of the records that are provided under this 400
division shall take appropriate measures to maintain the 401
confidentiality of the information contained in the records. 402

Sec. 2305.51. (A) (1) As used in this section: 403

(a) "Civil Rights" has the same meaning as in section 404
5122.301 of the Revised Code. 405

(b) "Mental health client or patient" means an individual 406
who is receiving mental health services from a mental health 407
professional or organization. 408

(c) "Mental health organization" means an organization 409
that engages one or more mental health professionals to provide 410
mental health services to one or more mental health clients or 411
patients. 412

(d) "Mental health professional" means an individual who 413
is licensed, certified, or registered under the Revised Code, or 414
otherwise authorized in this state, to provide mental health 415
services for compensation, remuneration, or other personal gain. 416

(e) "Mental health service" means a service provided to an 417
individual or group of individuals involving the application of 418
medical, psychiatric, psychological, professional counseling, 419
social work, marriage and family therapy, or nursing principles 420
or procedures to either of the following: 421

(i) The assessment, diagnosis, prevention, treatment, or 422
amelioration of mental, emotional, psychiatric, psychological, 423
or psychosocial disorders or diseases, as described in the most 424
recent edition of the diagnostic and statistical manual of 425
mental disorders published by the American psychiatric 426
association; 427

(ii) The assessment or improvement of mental, emotional, psychiatric, psychological, or psychosocial adjustment or functioning, regardless of whether there is a diagnosable, pre-existing disorder or disease.

(f) "Knowledgeable person" means an individual who has reason to believe that a mental health client or patient has the intent and ability to carry out an explicit threat of inflicting imminent and serious physical harm to or causing the death of a clearly identifiable potential victim or victims and who is either an immediate family member of the client or patient or an individual who otherwise personally knows the client or patient.

(g) "Advanced practice registered nurse" has the same meaning as in section 4723.01 of the Revised Code.

(h) "Hospital" has the same meaning as in section 2305.25 of the Revised Code.

(i) "Physician" means an individual authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery.

(j) "Physician assistant" has the same meaning as in section 4730.01 of the Revised Code.

(2) For the purpose of this section, in the case of a threat to a readily identifiable structure, "clearly identifiable potential victim" includes any potential occupant of the structure.

(B) A mental health professional or mental health organization may be held liable in damages in a civil action, or may be made subject to disciplinary action by an entity with licensing or other regulatory authority over the professional or organization, for serious physical harm or death resulting from

failing to predict, warn of, or take precautions to provide 457
protection from the violent behavior of a mental health client 458
or patient, only if the client or patient or a knowledgeable 459
person has communicated to the professional or organization an 460
explicit threat of inflicting imminent and serious physical harm 461
to or causing the death of one or more clearly identifiable 462
potential victims, the professional or organization has reason 463
to believe that the client or patient has the intent and ability 464
to carry out the threat, and the professional or organization 465
fails to take one or more of the following actions in a timely 466
manner: 467

(1) Exercise any authority the professional or 468
organization possesses to hospitalize the client or patient on 469
an emergency basis pursuant to section 5122.10 of the Revised 470
Code; 471

(2) Exercise any authority the professional or 472
organization possesses to have the client or patient 473
involuntarily or voluntarily hospitalized under Chapter 5122. of 474
the Revised Code; 475

(3) Establish and undertake a documented treatment plan 476
that is reasonably calculated, according to appropriate 477
standards of professional practice, to eliminate the possibility 478
that the client or patient will carry out the threat, and, 479
concurrent with establishing and undertaking the treatment plan, 480
initiate arrangements for a second opinion risk assessment 481
through a management consultation about the treatment plan with, 482
in the case of a mental health organization, the clinical 483
director of the organization, or, in the case of a mental health 484
professional who is not acting as part of a mental health 485
organization, any mental health professional who is licensed to 486

engage in independent practice; 487

(4) Communicate to a law enforcement agency with 488
jurisdiction in the area where each potential victim resides, 489
where a structure threatened by a mental health client or 490
patient is located, or where the mental health client or patient 491
resides, and if feasible, communicate to each potential victim 492
or a potential victim's parent or guardian if the potential 493
victim is a minor or has been adjudicated incompetent, all of 494
the following information: 495

(a) The nature of the threat; 496

(b) The identity of the mental health client or patient 497
making the threat; 498

(c) The identity of each potential victim of the threat. 499

(C) All of the following apply when a mental health 500
professional or organization takes one or more of the actions 501
set forth in divisions (B) (1) to (4) of this section: 502

(1) The mental health professional or organization shall 503
consider each of the alternatives set forth and shall document 504
the reasons for choosing or rejecting each alternative. 505

(2) The mental health professional or organization may 506
give special consideration to those alternatives which, 507
consistent with public safety, would least abridge the rights of 508
the mental health client or patient established under the 509
Revised Code, including the rights specified in sections 5122.27 510
to 5122.31 of the Revised Code. 511

(3) The mental health professional or organization is not 512
required to take an action that, in the exercise of reasonable 513
professional judgment, would physically endanger the 514

professional or organization, increase the danger to a potential 515
victim, or increase the danger to the mental health client or 516
patient. 517

(4) The mental health professional or organization is not 518
liable in damages in a civil action, and shall not be made 519
subject to disciplinary action by any entity with licensing or 520
other regulatory authority over the professional or 521
organization, for disclosing any confidential information about 522
a mental health client or patient that is disclosed for the 523
purpose of taking any of the actions. 524

(D) Notwithstanding any other provision of the Revised 525
Code, a physician, physician assistant, advanced practice 526
registered nurse, or hospital is not liable in damages in a 527
civil action, and shall not be made subject to disciplinary 528
action by any entity with licensing or other regulatory 529
authority, for doing either of the following: 530

(1) Failing to discharge or to allow a patient to leave 531
the facility if the physician, physician assistant, advanced 532
practice registered nurse, or hospital believes in the good 533
faith exercise of professional medical, advanced practice 534
registered nursing, or physician assistant judgment according to 535
appropriate standards of professional practice that the patient 536
has a mental health condition that threatens the safety of the 537
patient or others; 538

(2) Discharging a patient whom the physician, physician 539
assistant, advanced practice registered nurse, or hospital 540
believes in the good faith exercise of professional medical, 541
advanced practice registered nursing, or physician assistant 542
judgment according to appropriate standards of professional 543
practice not to have a mental health condition that threatens 544

the safety of the patient or others.

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(E) The immunities from civil liability and disciplinary
action conferred by this section are in addition to and not in
limitation of any immunity conferred on a mental health
professional or organization or on a physician, physician
assistant, advanced practice registered nurse, or hospital by
any other section of the Revised Code or by judicial precedent.

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~~(E)~~ (F) This section does not affect the civil rights of a
mental health client or patient under Ohio or federal law.

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Sec. 2317.421. (A) In an action for damages arising from
personal injury or wrongful death, a written bill or statement,
or any relevant portion ~~thereof~~ of a written bill or statement,
itemized by date, type of service rendered, and charge, shall,
if otherwise admissible, be prima-facie evidence of the
reasonableness of any charges and fees stated ~~therein~~ in the
bill or statement for dental medication and prosthetic devices
furnished, or ~~medical, dental, hospital,~~ and funeral services
rendered by the person, firm, or corporation issuing such bill
or statement, provided, that ~~such~~ the bill or statement shall be
prima-facie evidence of reasonableness only if the party
offering it delivers a copy ~~of it,~~ or the relevant portion
~~thereof, of it~~ to the attorney of record for each adverse party
not less than five days before trial.

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(B) In an action for damages based upon a medical claim,
as defined in section 2305.113 of the Revised Code, a written
bill or statement or any relevant portion of a written bill or
statement itemizing the charges and fees for the medical
services rendered by the defendant medical provider or hospital
is not admissible as evidence of the reasonableness of the
medical charges and fees. Any evidence of an amount accepted as

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full payment for the medical services rendered to the patient is 575
admissible as evidence of the reasonableness of the medical 576
charges and fees for the medical services rendered, and section 577
2323.41 of the Revised Code does not apply to exclude that 578
evidence. 579

Sec. 2317.43. (A) In any civil action brought by an 580
alleged victim of an unanticipated outcome of medical care or in 581
any arbitration proceeding related to such a civil action, any 582
and all statements, affirmations, gestures, or conduct 583
expressing apology, sympathy, commiseration, condolence, 584
compassion, error, fault, or a general sense of benevolence that 585
are made by a health care provider ~~or,~~ an employee of a health 586
care provider, or a representative of a health care provider to 587
the alleged victim, a relative of the alleged victim, or a 588
representative of the alleged victim, and that relate to the 589
discomfort, pain, suffering, injury, or death of the alleged 590
victim as the result of the unanticipated outcome of medical 591
care are inadmissible as evidence of an admission of liability 592
or as evidence of an admission against interest. 593

(B) (1) When made as part of a review conducted in good 594
faith by the health care provider, an employee of the health 595
care provider, or a representative of the health care provider 596
into the cause of or reasons for an unanticipated outcome of 597
medical care, the following communications are inadmissible as 598
evidence in any civil action brought by an alleged victim of an 599
unanticipated outcome of medical care, in any arbitration 600
proceeding related to such a civil action, or in any other civil 601
proceeding, unless the communications are recorded in the 602
medical record of the alleged victim: 603

(a) Any communications made by a health care provider, an 604

employee of a health care provider, or a representative of a 605
health care provider to the alleged victim, a relative or 606
acquaintance of the alleged victim, or a representative of the 607
alleged victim; 608

(b) Any communications made by an alleged victim, a 609
relative or acquaintance of the alleged victim, or a 610
representative of the alleged victim to the health care 611
provider, an employee of a health care provider, or a 612
representative of a health care provider. 613

(2) Nothing in this section requires a review to be 614
conducted. 615

(C) For purposes of this section, unless the context 616
otherwise requires: 617

(1) "Health care provider" has the same meaning as in 618
division (B) (5) of section 2317.02 of the Revised Code. 619

(2) "Relative" means a victim's spouse, parent, 620
grandparent, stepfather, stepmother, child, grandchild, brother, 621
sister, half brother, half sister, or spouse's parents. The term 622
includes said relationships that are created as a result of 623
adoption. In addition, "relative" includes any person who has a 624
family-type relationship with a victim. 625

(3) "Representative of an alleged victim" means a legal 626
guardian, attorney, person designated to make decisions on 627
behalf of a patient under a medical power of attorney, or any 628
person recognized in law or custom as a patient's agent. 629

(4) "Representative of a health care provider" means an 630
attorney, health care provider, employee of a health care 631
provider, or other person designated by a health care provider 632
or an employee of a health care provider to participate in a 633

review conducted by a health care provider or employee of a 634
health care provider. 635

(5) "Review" means the policy, procedures, and activities 636
undertaken by or at the direction of a health care provider, 637
employee of a health care provider, or person designated by a 638
health care provider or employee of a health care provider with 639
the purpose of determining the cause of or reasons for an 640
unanticipated outcome, and initiated and completed during the 641
first forty-five days following the occurrence or discovery of 642
an unanticipated outcome. A review shall be initiated by verbal 643
communication to the patient, relative of the patient, or 644
representative of the patient by the health care provider, 645
employee of a health care provider, or person designated by a 646
health care provider or employee of a health care provider. The 647
verbal communication shall be followed by a written document 648
explaining the review process. A review may be extended for a 649
longer period if necessary upon written notice to the patient, 650
relative of the patient, or representative of the patient. 651

(6) "Unanticipated outcome" means the outcome of a medical 652
treatment or procedure that differs from an expected result or 653
any outcome that is adverse or not satisfactory to the patient. 654

Sec. 2317.44. (A) As used in this section: 655

(1) "Health care provider" means any person or entity 656
against whom a medical claim may be asserted in a civil action. 657

(2) "Medical claim" has the same meaning as in section 658
2305.113 of the Revised Code. 659

(B) Any guideline, regulation, or other standard under any 660
provision of the "Patient Protection and Affordable Care Act," 661
124 Stat. 119 (2010), 42 U.S.C. 18001 et seq., as amended, Title 662

XVIII of the "Social Security Act," 42 U.S.C. 1395 et seq., as 663
amended, and Title XIX of the "Social Security Act," 42 U.S.C. 664
1396 et seq., as amended, shall not be construed to establish 665
the standard of care or duty of care owed by a health care 666
provider to a patient in a medical claim and is not admissible 667
as evidence for or against any party in any civil action based 668
upon the medical claim or in any civil or administrative action 669
involving the licensing or licensure status of the health care 670
provider. 671

Sec. 2317.45. (A) As used in this section: 672

(1) "Health care provider" means any person or entity 673
against whom a medical claim may be asserted in a civil action. 674

(2) "Insurer" means any public or private entity doing or 675
authorized to do any insurance business in this state. "Insurer" 676
includes a self-insuring employer and the United States centers 677
for medicare and medicaid services. 678

(3) "Medical claim" has the same meaning as in section 679
2305.113 of the Revised Code. 680

(4) "Reimbursement determination" means an insurer's 681
determination of whether the insurer will reimburse a health 682
care provider for health care services and the amount of that 683
reimbursement. 684

(5) "Reimbursement policies" means an insurer's policies 685
and procedures governing its decisions regarding the 686
reimbursement of a health care provider for health care services 687
and the method of reimbursement. 688

(B) Any insurer's reimbursement policies or reimbursement 689
determination or regulations issued by the United States centers 690
for medicare and medicaid services or the Ohio department of 691

medicaid regarding the health care services provided to the 692
patient in any civil action based on a medical claim are not 693
admissible as evidence for or against any party in the action 694
and may not be used to establish a standard of care or breach of 695
that standard of care in the action. 696

Sec. 2323.40. (A) As used in this section, "medical claim" 697
has the same meaning as in section 2305.113 of the Revised Code. 698

(B) In any civil action upon a medical claim, in order for 699
the plaintiff to recover any damages resulting from the alleged 700
injury, death, or loss to person, the plaintiff shall establish 701
by a preponderance of the evidence that the act or omission of 702
the defendant in rendering medical care or treatment is a 703
deviation from the required standard of medical care or 704
treatment and the direct and proximate cause of the injury, 705
death, or loss to person. Direct and proximate cause of the 706
injury, death, or loss to person is established by evidence 707
showing that it is more likely than not that the defendant's act 708
or omission was a cause in fact of the injury, death, or loss to 709
person. Any loss or diminution of a chance of recovery or 710
survival by itself is not an injury, death, or loss to person 711
for which damages may be recovered. 712

Sec. 2323.41. (A) In any civil action upon a medical, 713
dental, optometric, or chiropractic claim, the defendant may 714
introduce evidence of any amount payable as a benefit to the 715
plaintiff as a result of the damages that result from an injury, 716
death, or loss to person or property that is the subject of the 717
claim, except if the source of collateral benefits has a 718
mandatory self-effectuating federal right of subrogation, a 719
contractual right of subrogation, or a statutory right of 720
subrogation. 721

(B) If the defendant elects to introduce evidence 722
described in division (A) of this section, the plaintiff may 723
introduce evidence of any amount that the plaintiff has paid or 724
contributed to secure the plaintiff's right to receive the 725
benefits of which the defendant has introduced evidence. 726

(C) A source of collateral benefits of which evidence is 727
introduced pursuant to division (A) of this section shall not 728
recover any amount against the plaintiff nor shall it be 729
subrogated to the rights of the plaintiff against a defendant. 730

(D) This section does not apply to exclude evidence in an 731
action based upon a medical claim of any amount accepted as full 732
payment for the medical care or treatment of the patient. That 733
evidence is admissible to prove the reasonableness of the 734
charges and fees rendered for the medical care or treatment. 735

(E) As used in this section, "medical claim," "dental 736
claim," "optometric claim," and "chiropractic claim" have the 737
same meanings as in section 2305.113 of the Revised Code. 738

Sec. 2323.451. (A) As used in this section, "medical 739
claim" has the same meaning as in section 2305.113 of the 740
Revised Code. 741

(B) At the time of filing a complaint asserting a medical 742
claim, the plaintiff shall file with the complaint, pursuant to 743
rule 10(D) of the Rules of Civil Procedure, an affidavit of 744
merit relative to each defendant named in the complaint or a 745
motion to extend the period of time to file an affidavit of 746
merit. 747

(C) The parties may conduct discovery as permitted by the 748
Rules of Civil Procedure. Additionally, for a period of one 749
hundred eighty days following the filing of a complaint 750

asserting a medical claim, the parties may seek to discover the 751
existence or identity of any other potential medical claims or 752
defendants that are not included or named in the complaint. All 753
parties shall provide the discovery under this division in 754
accordance with the Rules of Civil Procedure. 755

(D) Within one hundred eighty days following the filing of 756
a complaint asserting a medical claim, the plaintiff, in an 757
amendment to the complaint pursuant to rule 15 of the Rules of 758
Civil Procedure, may join in the action any additional medical 759
claim or defendant if either the original one-year period of 760
limitation applicable to that additional medical claim or 761
defendant had not expired prior to the date the original 762
complaint was filed or if the amendment to the complaint was 763
filed within one hundred eighty days following service of the 764
written notice applicable to that additional medical claim or 765
defendant pursuant to divisions (B)(1) and (2) of section 766
2305.113 of the Revised Code. The plaintiff shall file an 767
affidavit of merit supporting the joinder of the additional 768
medical claim or defendant or a motion to extend the period of 769
time to file an affidavit of merit pursuant to rule 10(D) of the 770
Rules of Civil Procedure with the amendment to the complaint. 771

(E) Division (D) of this section does not modify or affect 772
and shall not be construed as modifying or affecting any 773
provision of the Revised Code or rule of common law that applies 774
to the commencement of the period of limitation for medical 775
claims that are asserted or defendants that are joined after the 776
expiration of the one-hundred-eighty-day period described in 777
that division. 778

(F) After the expiration of one hundred eighty days 779
following the filing of a complaint asserting a medical claim, 780

the plaintiff shall not join any additional medical claim or 781
defendant to the action unless the medical claim is for wrongful 782
death, and the period of limitation for the claim under section 783
2125.02 of the Revised Code has not expired. 784

Section 2. That existing sections 2305.113, 2305.252, 785
2305.51, 2317.421, 2317.43, and 2323.41 of the Revised Code are 786
hereby repealed. 787

Section 3. The General Assembly finds that in civil 788
actions based upon a medical claim, the negligent act or 789
omission of the responsible party must be shown to have been the 790
direct and proximate cause of the injury, death, or loss to 791
person complained of. The General Assembly also finds that the 792
application of the so-called loss of chance doctrine in those 793
actions improperly alters or eliminates the requirement of 794
direct and proximate causation. Therefore, the Ohio Supreme 795
Court decision adopting the loss of chance doctrine in *Roberts* 796
v. Ohio Permanente Medical Group, Inc. (1996), 76 Ohio St.3d 797
483, is hereby abrogated by enacting section 2323.40 of the 798
Revised Code in this act. 799

Section 4. (A) Section 2323.451 of the Revised Code, as 800
enacted by this act, applies to a civil action that is based 801
upon a medical claim and that is filed on or after the effective 802
date of this act. 803

(B) As used in division (A) of this section, "medical 804
claim" has the same meaning as in section 2305.113 of the 805
Revised Code. 806

Section 5. Section 2305.113 of the Revised Code is 807
presented in this act as a composite of the section as amended 808
by Sub. H.B. 290 of the 130th General Assembly and Sub. S.B. 110 809

of the 131st General Assembly. The General Assembly, applying	810
the principle stated in division (B) of section 1.52 of the	811
Revised Code that amendments are to be harmonized if reasonably	812
capable of simultaneous operation, finds that the composite is	813
the resulting version of the section in effect prior to the	814
effective date of the section as presented in this act.	815