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Representative Cupp

Cosponsors: Representatives Becker, Hambley, Smith, R., Huffman, Schaffer, Stein, Anielski, Ginter, Green, Lang, Pelanda, Reineke, Roegner, Romanchuk, Scherer, Schuring, Seitz, Wiggam, Young

A BILL

To amend sections 2305.113, 2305.252, 2305.51, and 1
2317.43 and to enact sections 2305.2311, 2
2317.44, 2317.45, and 2323.451 of the Revised 3
Code to grant qualified civil immunity to 4
certain medical providers and emergency medical 5
technicians who provide emergency medical 6
services as a result of a disaster and through 7
its duration; to provide that certain 8
communications made regarding an unanticipated 9
outcome of medical care, the development or 10
implementation of standards under federal laws, 11
and an insurer's reimbursement policies on 12
health care are inadmissible as evidence in a 13
medical claim; to specify the manner of sending 14
a notice of intent to file a medical claim and 15
provide a procedure for the discovery of other 16
potential claims within a specified period after 17
the filing of a medical claim; to provide civil 18
immunity to certain medical providers regarding 19
the discharge of a patient with a mental 20
condition that threatens the safety of the 21
patient or others; to permit access to peer 22

review committee documents during authorized 23
inspections by the Director of Health while 24
preserving their confidentiality; and to clarify 25
the definition of "medical claim." 26

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

Section 1. That sections 2305.113, 2305.252, 2305.51, and 27
2317.43 be amended and sections 2305.2311, 2317.44, 2317.45, and 28
2323.451 of the Revised Code be enacted to read as follows: 29

Sec. 2305.113. (A) Except as otherwise provided in this 30
section, an action upon a medical, dental, optometric, or 31
chiropractic claim shall be commenced within one year after the 32
cause of action accrued. 33

(B) (1) If prior to the expiration of the one-year period 34
specified in division (A) of this section, a claimant who 35
allegedly possesses a medical, dental, optometric, or 36
chiropractic claim gives to the person who is the subject of 37
that claim written notice that the claimant is considering 38
bringing an action upon that claim, that action may be commenced 39
against the person notified at any time within one hundred 40
eighty days after the notice is so given. 41

(2) A claimant who allegedly possesses a medical claim and 42
who intends to give to the person who is the subject of that 43
claim the written notice described in division (B) (1) of this 44
section shall give that notice by sending it by certified mail, 45
return receipt requested, addressed to any of the following: 46

(a) The person's residence; 47

<u>(b) The person's professional practice;</u>	48
<u>(c) The person's employer;</u>	49
<u>(d) The address of the person on file with the state</u>	50
<u>medical board or other appropriate agency that issued the</u>	51
<u>person's professional license.</u>	52
<u>(3) An insurance company shall not consider the existence</u>	53
or nonexistence of a written notice described in division (B) (1)	54
of this section in setting the liability insurance premium rates	55
that the company may charge the company's insured person who is	56
notified by that written notice.	57
(C) Except as to persons within the age of minority or of	58
unsound mind as provided by section 2305.16 of the Revised Code,	59
and except as provided in division (D) of this section, both of	60
the following apply:	61
(1) No action upon a medical, dental, optometric, or	62
chiropractic claim shall be commenced more than four years after	63
the occurrence of the act or omission constituting the alleged	64
basis of the medical, dental, optometric, or chiropractic claim.	65
(2) If an action upon a medical, dental, optometric, or	66
chiropractic claim is not commenced within four years after the	67
occurrence of the act or omission constituting the alleged basis	68
of the medical, dental, optometric, or chiropractic claim, then,	69
any action upon that claim is barred.	70
(D) (1) If a person making a medical claim, dental claim,	71
optometric claim, or chiropractic claim, in the exercise of	72
reasonable care and diligence, could not have discovered the	73
injury resulting from the act or omission constituting the	74
alleged basis of the claim within three years after the	75
occurrence of the act or omission, but, in the exercise of	76

reasonable care and diligence, discovers the injury resulting 77
from that act or omission before the expiration of the four-year 78
period specified in division (C) (1) of this section, the person 79
may commence an action upon the claim not later than one year 80
after the person discovers the injury resulting from that act or 81
omission. 82

(2) If the alleged basis of a medical claim, dental claim, 83
optometric claim, or chiropractic claim is the occurrence of an 84
act or omission that involves a foreign object that is left in 85
the body of the person making the claim, the person may commence 86
an action upon the claim not later than one year after the 87
person discovered the foreign object or not later than one year 88
after the person, with reasonable care and diligence, should 89
have discovered the foreign object. 90

(3) A person who commences an action upon a medical claim, 91
dental claim, optometric claim, or chiropractic claim under the 92
circumstances described in division (D) (1) or (2) of this 93
section has the affirmative burden of proving, by clear and 94
convincing evidence, that the person, with reasonable care and 95
diligence, could not have discovered the injury resulting from 96
the act or omission constituting the alleged basis of the claim 97
within the three-year period described in division (D) (1) of 98
this section or within the one-year period described in division 99
(D) (2) of this section, whichever is applicable. 100

(E) As used in this section: 101

(1) "Hospital" includes any person, corporation, 102
association, board, or authority that is responsible for the 103
operation of any hospital licensed or registered in the state, 104
including, but not limited to, those that are owned or operated 105
by the state, political subdivisions, any person, any 106

corporation, or any combination of the state, political 107
subdivisions, persons, and corporations. "Hospital" also 108
includes any person, corporation, association, board, entity, or 109
authority that is responsible for the operation of any clinic 110
that employs a full-time staff of physicians practicing in more 111
than one recognized medical specialty and rendering advice, 112
diagnosis, care, and treatment to individuals. "Hospital" does 113
not include any hospital operated by the government of the 114
United States or any of its branches. 115

(2) "Physician" means a person who is licensed to practice 116
medicine and surgery or osteopathic medicine and surgery by the 117
state medical board or a person who otherwise is authorized to 118
practice medicine and surgery or osteopathic medicine and 119
surgery in this state. 120

(3) "Medical claim" means any claim that is asserted in 121
any civil action against a physician, podiatrist, hospital, 122
home, or residential facility, against any employee or agent of 123
a physician, podiatrist, hospital, home, or residential 124
facility, or against a licensed practical nurse, registered 125
nurse, advanced practice registered nurse, physical therapist, 126
physician assistant, emergency medical technician-basic, 127
emergency medical technician-intermediate, or emergency medical 128
technician-paramedic, and that arises out of the medical 129
diagnosis, care, or treatment of any person. "Medical claim" 130
includes the following: 131

(a) Derivative claims for relief that arise from the ~~plan-~~ 132
~~of care,~~ medical diagnosis, care, or treatment of a person; 133

(b) Derivative claims for relief that arise from the plan 134
of care prepared for a resident of a home; 135

<u>(c)</u> Claims that arise out of the plan of care, medical	136
diagnosis, <u>care,</u> or treatment of any person <u>or claims that arise</u>	137
<u>out of the plan of care prepared for a resident of a home</u> and to	138
which <u>both types of claims</u> either of the following applies:	139
(i) The claim results from acts or omissions in providing	140
medical care.	141
(ii) The claim results from the hiring, training,	142
supervision, retention, or termination of caregivers providing	143
medical diagnosis, care, or treatment.	144
(e) <u>(d)</u> Claims that arise out of the plan of care, medical	145
diagnosis, or treatment of any person and that are brought under	146
section 3721.17 of the Revised Code;	147
(d) <u>(e)</u> Claims that arise out of skilled nursing care or	148
personal care services provided in a home pursuant to the plan	149
of care, medical diagnosis, or treatment.	150
(4) "Podiatrist" means any person who is licensed to	151
practice podiatric medicine and surgery by the state medical	152
board.	153
(5) "Dentist" means any person who is licensed to practice	154
dentistry by the state dental board.	155
(6) "Dental claim" means any claim that is asserted in any	156
civil action against a dentist, or against any employee or agent	157
of a dentist, and that arises out of a dental operation or the	158
dental diagnosis, care, or treatment of any person. "Dental	159
claim" includes derivative claims for relief that arise from a	160
dental operation or the dental diagnosis, care, or treatment of	161
a person.	162
(7) "Derivative claims for relief" include, but are not	163

limited to, claims of a parent, guardian, custodian, or spouse 164
of an individual who was the subject of any medical diagnosis, 165
care, or treatment, dental diagnosis, care, or treatment, dental 166
operation, optometric diagnosis, care, or treatment, or 167
chiropractic diagnosis, care, or treatment, that arise from that 168
diagnosis, care, treatment, or operation, and that seek the 169
recovery of damages for any of the following: 170

(a) Loss of society, consortium, companionship, care, 171
assistance, attention, protection, advice, guidance, counsel, 172
instruction, training, or education, or any other intangible 173
loss that was sustained by the parent, guardian, custodian, or 174
spouse; 175

(b) Expenditures of the parent, guardian, custodian, or 176
spouse for medical, dental, optometric, or chiropractic care or 177
treatment, for rehabilitation services, or for other care, 178
treatment, services, products, or accommodations provided to the 179
individual who was the subject of the medical diagnosis, care, 180
or treatment, the dental diagnosis, care, or treatment, the 181
dental operation, the optometric diagnosis, care, or treatment, 182
or the chiropractic diagnosis, care, or treatment. 183

(8) "Registered nurse" means any person who is licensed to 184
practice nursing as a registered nurse by the board of nursing. 185

(9) "Chiropractic claim" means any claim that is asserted 186
in any civil action against a chiropractor, or against any 187
employee or agent of a chiropractor, and that arises out of the 188
chiropractic diagnosis, care, or treatment of any person. 189
"Chiropractic claim" includes derivative claims for relief that 190
arise from the chiropractic diagnosis, care, or treatment of a 191
person. 192

(10) "Chiropractor" means any person who is licensed to	193
practice chiropractic by the state chiropractic board.	194
(11) "Optometric claim" means any claim that is asserted	195
in any civil action against an optometrist, or against any	196
employee or agent of an optometrist, and that arises out of the	197
optometric diagnosis, care, or treatment of any person.	198
"Optometric claim" includes derivative claims for relief that	199
arise from the optometric diagnosis, care, or treatment of a	200
person.	201
(12) "Optometrist" means any person licensed to practice	202
optometry by the state board of optometry.	203
(13) "Physical therapist" means any person who is licensed	204
to practice physical therapy under Chapter 4755. of the Revised	205
Code.	206
(14) "Home" has the same meaning as in section 3721.10 of	207
the Revised Code.	208
(15) "Residential facility" means a facility licensed	209
under section 5123.19 of the Revised Code.	210
(16) "Advanced practice registered nurse" means any	211
certified nurse practitioner, clinical nurse specialist,	212
certified registered nurse anesthetist, or certified nurse-	213
midwife who holds a certificate of authority issued by the board	214
of nursing under Chapter 4723. of the Revised Code.	215
(17) "Licensed practical nurse" means any person who is	216
licensed to practice nursing as a licensed practical nurse by	217
the board of nursing pursuant to Chapter 4723. of the Revised	218
Code.	219
(18) "Physician assistant" means any person who is	220

licensed as a physician assistant under Chapter 4730. of the 221
Revised Code. 222

(19) "Emergency medical technician-basic," "emergency 223
medical technician-intermediate," and "emergency medical 224
technician-paramedic" means any person who is certified under 225
Chapter 4765. of the Revised Code as an emergency medical 226
technician-basic, emergency medical technician-intermediate, or 227
emergency medical technician-paramedic, whichever is applicable. 228

(20) "Skilled nursing care" and "personal care services" 229
have the same meanings as in section 3721.01 of the Revised 230
Code. 231

Sec. 2305.2311. (A) As used in this section: 232

(1) "Advanced practice registered nurse" means an 233
individual who holds a current, valid license issued under 234
Chapter 4723. of the Revised Code to practice as an advanced 235
practice registered nurse. 236

(2) "Dentist" has the same meaning as in section 2305.231 237
of the Revised Code. 238

(3) "Disaster" means any occurrence of widespread personal 239
injury or loss of life that results from any natural or 240
technological phenomenon or act of a human, or an epidemic and 241
is declared to be a disaster by the federal government, the 242
state government, or a political subdivision of this state. 243

(4) "Emergency medical technician" means an EMT-basic, an 244
EMT-I, or a paramedic. 245

(5) "EMT-basic" means an individual who holds a current, 246
valid certificate issued under section 4765.30 of the Revised 247
Code to practice as an emergency medical technician-basic. 248

<u>(6) "EMT-I" means an individual who holds a current, valid</u>	249
<u>certificate issued under section 4765.30 of the Revised Code to</u>	250
<u>practice as an emergency medical technician-intermediate.</u>	251
<u>(7) "Health care provider" means an advanced practice</u>	252
<u>registered nurse, a registered nurse, a pharmacist, a dentist,</u>	253
<u>an optometrist, a physician, a physician assistant, or a</u>	254
<u>hospital.</u>	255
<u>(8) "Hospital" and "medical claim" have the same meanings</u>	256
<u>as in section 2305.113 of the Revised Code.</u>	257
<u>(9) "Optometrist" means a person who is licensed under</u>	258
<u>Chapter 4725. of the Revised Code to practice optometry.</u>	259
<u>(10) "Paramedic" means an individual who holds a current,</u>	260
<u>valid certificate issued under section 4765.30 of the Revised</u>	261
<u>Code to practice as an emergency medical technician-paramedic.</u>	262
<u>(11) "Pharmacist" means an individual who holds a current,</u>	263
<u>valid license issued under Chapter 4729. of the Revised Code to</u>	264
<u>practice as a pharmacist.</u>	265
<u>(12) "Physician" means an individual who is authorized</u>	266
<u>under Chapter 4731. of the Revised Code to practice medicine and</u>	267
<u>surgery, osteopathic medicine and surgery, or podiatric medicine</u>	268
<u>and surgery.</u>	269
<u>(13) "Physician assistant" means an individual who is</u>	270
<u>authorized under Chapter 4730. of the Revised Code to practice</u>	271
<u>as a physician assistant.</u>	272
<u>(14) "Reckless disregard" as it applies to a given health</u>	273
<u>care provider or emergency medical technician rendering</u>	274
<u>emergency medical services, first-aid treatment, or other</u>	275
<u>emergency professional care, including the provision of any</u>	276

medication or other medical product, means conduct that a health 277
care provider or emergency medical technician knew or should 278
have known, at the time those services or that treatment or care 279
were rendered, created an unreasonable risk of injury, death, or 280
loss to person or property so as to affect the life or health of 281
another and that risk was substantially greater than that which 282
is necessary to make the conduct negligent. 283

(15) "Registered nurse" means an individual who holds a 284
current, valid license issued under Chapter 4723. of the Revised 285
Code to practice as a registered nurse. 286

(16) "Tort action" means a civil action for damages for 287
injury, death, or loss to person or property other than a civil 288
action for damages for a breach of contract or another agreement 289
between persons or governmental entities. "Tort action" includes 290
an action on a medical claim. 291

(B) Subject to division (C) (3) of this section, a health 292
care provider or emergency medical technician that provides 293
emergency medical services, first-aid treatment, or other 294
emergency professional care, including the provision of any 295
medication or other medical product, as a result of a disaster 296
is not liable in damages to any person in a tort action for 297
injury, death, or loss to person or property that allegedly 298
arises from an act or omission of the health care provider or 299
emergency medical technician in the health care provider's or 300
emergency medical technician's provision of those services or 301
that treatment or care if that act or omission does not 302
constitute reckless disregard for the consequences so as to 303
affect the life or health of the patient. 304

(C) (1) This section does not create a new cause of action 305
or substantive legal right against a health care provider or 306

emergency medical technician. 307

(2) This section does not affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law to which a health care provider or emergency medical technician may be entitled in connection with the provision of emergency medical services, first-aid treatment, or other emergency professional care, including the provision of medication or other medical product. 308
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(3) This section does not grant an immunity from tort or other civil liability to a health care provider or emergency medical technician for actions that are outside the scope of authority of the health care provider or emergency medical technician. 315
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(4) This section does not affect any legal responsibility of a health care provider or emergency medical technician to comply with any applicable law of this state or rule of an agency of this state. 320
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(5) This section applies only to the provision of emergency medical services, first-aid treatment, or other emergency professional care, including the provision of any medication or other medical product, by a health care provider or emergency medical technician as a result of a disaster and through the duration of the disaster. 324
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(D) This section does not apply to a tort action alleging wrongful death against a health care provider or emergency medical technician that provides emergency medical services, first-aid treatment, or other emergency professional care, including the provision of any medication or other medical product, that allegedly arises from an act or omission of the 330
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health care provider or emergency medical technician in the 336
health care provider's or emergency medical technician's 337
provision of those services or that treatment or care as a 338
result of a disaster. 339

Sec. 2305.252. (A) Proceedings and records within the 340
scope of a peer review committee of a health care entity shall 341
be held in confidence and shall not be subject to discovery or 342
introduction in evidence in any civil action against a health 343
care entity or health care provider, including both individuals 344
who provide health care and entities that provide health care, 345
arising out of matters that are the subject of evaluation and 346
review by the peer review committee. No individual who attends a 347
meeting of a peer review committee, serves as a member of a peer 348
review committee, works for or on behalf of a peer review 349
committee, or provides information to a peer review committee 350
shall be permitted or required to testify in any civil action as 351
to any evidence or other matters produced or presented during 352
the proceedings of the peer review committee or as to any 353
finding, recommendation, evaluation, opinion, or other action of 354
the committee or a member thereof. 355

Information, documents, or records otherwise available 356
from original sources are not to be construed as being 357
unavailable for discovery or for use in any civil action merely 358
because they were produced or presented during proceedings of a 359
peer review committee, but the information, documents, or 360
records are available only from the original sources and cannot 361
be obtained from the peer review committee's proceedings or 362
records. 363

The release of any information, documents, or records that 364
were produced or presented during proceedings of a peer review 365

committee or created to document the proceedings does not affect 366
the confidentiality of any other information, documents, or 367
records produced or presented during those proceedings or 368
created to document them. Only the information, documents, or 369
records actually released cease to be privileged under this 370
section. 371

Nothing in this section precludes health care entities 372
from sharing information, documents, or records that were 373
produced or presented during proceedings of a peer review 374
committee or created to document them as long as the 375
information, documents, or records are used only for peer review 376
purposes. 377

An individual who testifies before a peer review 378
committee, serves as a representative of a peer review 379
committee, serves as a member of a peer review committee, works 380
for or on behalf of a peer review committee, or provides 381
information to a peer review committee shall not be prevented 382
from testifying as to matters within the individual's knowledge, 383
but the individual cannot be asked about the individual's 384
testimony before the peer review committee, information the 385
individual provided to the peer review committee, or any opinion 386
the individual formed as a result of the peer review committee's 387
activities. 388

An order by a court to produce for discovery or for use at 389
trial the proceedings or records described in this section is a 390
final order. 391

(B) Division (A) of this section applies to a peer review 392
committee of the bureau of workers' compensation that is 393
responsible for reviewing the professional qualifications and 394
the performance of providers certified by the bureau to 395

participate in the health partnership program created under 396
sections 4121.44 and 4121.441 of the Revised Code, except that 397
the proceedings and records within the scope of the peer review 398
committee are subject to discovery or court subpoena and may be 399
admitted into evidence in any criminal action or administrative 400
or civil action initiated, prosecuted, or adjudicated by the 401
bureau involving an alleged violation of applicable statutes or 402
administrative rules. The bureau may share proceedings and 403
records within the scope of the peer review committee, including 404
claimant records and claim file information, with law 405
enforcement agencies, licensing boards, and other governmental 406
agencies that are prosecuting, adjudicating, or investigating 407
alleged violations of applicable statutes or administrative 408
rules. If the bureau shares proceedings or records with a law 409
enforcement agency, licensing board, or another governmental 410
agency pursuant to this division, that sharing does not affect 411
the confidentiality of the record. Recipients of claimant 412
records and claim file information provided by the bureau 413
pursuant to this division shall take appropriate measures to 414
maintain the confidentiality of the information. 415

(C) When inspections authorized by the director of health 416
pursuant to Chapter 3701. or 3702. or section 3727.04 of the 417
Revised Code seek records or documents from a health care 418
entity, the director shall be permitted access to those records 419
or documents, including records or documents the confidentiality 420
of which is protected under this section. Except as otherwise 421
provided in this division, the director's access to those 422
records or documents shall be limited to an on-site review of 423
the records or documents. If the director is required by any 424
provision of the Revised Code to obtain copies of those records 425
or documents, any patient identifying information and any 426

information on any individual health care provider and the 427
health care entity that provides the health care shall be 428
redacted from the copies made available to the director. The 429
director's access to, or receipt of copies of, records or 430
documents under this division shall not affect the 431
confidentiality of the records or documents or the information 432
contained in them under division (A) of this section. 433

Sec. 2305.51. (A) (1) As used in this section: 434

(a) "Civil Rights" has the same meaning as in section 435
5122.301 of the Revised Code. 436

(b) "Mental health client or patient" means an individual 437
who is receiving mental health services from a mental health 438
professional or organization. 439

(c) "Mental health organization" means an organization 440
that engages one or more mental health professionals to provide 441
mental health services to one or more mental health clients or 442
patients. 443

(d) "Mental health professional" means an individual who 444
is licensed, certified, or registered under the Revised Code, or 445
otherwise authorized in this state, to provide mental health 446
services for compensation, remuneration, or other personal gain. 447

(e) "Mental health service" means a service provided to an 448
individual or group of individuals involving the application of 449
medical, psychiatric, psychological, professional counseling, 450
social work, marriage and family therapy, or nursing principles 451
or procedures to either of the following: 452

(i) The assessment, diagnosis, prevention, treatment, or 453
amelioration of mental, emotional, psychiatric, psychological, 454
or psychosocial disorders or diseases, as described in the most 455

recent edition of the diagnostic and statistical manual of 456
mental disorders published by the American psychiatric 457
association; 458

(ii) The assessment or improvement of mental, emotional, 459
psychiatric, psychological, or psychosocial adjustment or 460
functioning, regardless of whether there is a diagnosable, pre- 461
existing disorder or disease. 462

(f) "Knowledgeable person" means an individual who has 463
reason to believe that a mental health client or patient has the 464
intent and ability to carry out an explicit threat of inflicting 465
imminent and serious physical harm to or causing the death of a 466
clearly identifiable potential victim or victims and who is 467
either an immediate family member of the client or patient or an 468
individual who otherwise personally knows the client or patient. 469

(g) "Advanced practice registered nurse" has the same 470
meaning as in section 4723.01 of the Revised Code. 471

(h) "Hospital" has the same meaning as in section 2305.25 472
of the Revised Code. 473

(i) "Physician" means an individual authorized under 474
Chapter 4731. of the Revised Code to practice medicine and 475
surgery or osteopathic medicine and surgery. 476

(j) "Physician assistant" has the same meaning as in 477
section 4730.01 of the Revised Code. 478

(2) For the purpose of this section, in the case of a 479
threat to a readily identifiable structure, "clearly 480
identifiable potential victim" includes any potential occupant 481
of the structure. 482

(B) A mental health professional or mental health 483

organization may be held liable in damages in a civil action, or 484
may be made subject to disciplinary action by an entity with 485
licensing or other regulatory authority over the professional or 486
organization, for serious physical harm or death resulting from 487
failing to predict, warn of, or take precautions to provide 488
protection from the violent behavior of a mental health client 489
or patient, only if the client or patient or a knowledgeable 490
person has communicated to the professional or organization an 491
explicit threat of inflicting imminent and serious physical harm 492
to or causing the death of one or more clearly identifiable 493
potential victims, the professional or organization has reason 494
to believe that the client or patient has the intent and ability 495
to carry out the threat, and the professional or organization 496
fails to take one or more of the following actions in a timely 497
manner: 498

(1) Exercise any authority the professional or 499
organization possesses to hospitalize the client or patient on 500
an emergency basis pursuant to section 5122.10 of the Revised 501
Code; 502

(2) Exercise any authority the professional or 503
organization possesses to have the client or patient 504
involuntarily or voluntarily hospitalized under Chapter 5122. of 505
the Revised Code; 506

(3) Establish and undertake a documented treatment plan 507
that is reasonably calculated, according to appropriate 508
standards of professional practice, to eliminate the possibility 509
that the client or patient will carry out the threat, and, 510
concurrent with establishing and undertaking the treatment plan, 511
initiate arrangements for a second opinion risk assessment 512
through a management consultation about the treatment plan with, 513

in the case of a mental health organization, the clinical 514
director of the organization, or, in the case of a mental health 515
professional who is not acting as part of a mental health 516
organization, any mental health professional who is licensed to 517
engage in independent practice; 518

(4) Communicate to a law enforcement agency with 519
jurisdiction in the area where each potential victim resides, 520
where a structure threatened by a mental health client or 521
patient is located, or where the mental health client or patient 522
resides, and if feasible, communicate to each potential victim 523
or a potential victim's parent or guardian if the potential 524
victim is a minor or has been adjudicated incompetent, all of 525
the following information: 526

(a) The nature of the threat; 527

(b) The identity of the mental health client or patient 528
making the threat; 529

(c) The identity of each potential victim of the threat. 530

(C) All of the following apply when a mental health 531
professional or organization takes one or more of the actions 532
set forth in divisions (B) (1) to (4) of this section: 533

(1) The mental health professional or organization shall 534
consider each of the alternatives set forth and shall document 535
the reasons for choosing or rejecting each alternative. 536

(2) The mental health professional or organization may 537
give special consideration to those alternatives which, 538
consistent with public safety, would least abridge the rights of 539
the mental health client or patient established under the 540
Revised Code, including the rights specified in sections 5122.27 541
to 5122.31 of the Revised Code. 542

(3) The mental health professional or organization is not 543
required to take an action that, in the exercise of reasonable 544
professional judgment, would physically endanger the 545
professional or organization, increase the danger to a potential 546
victim, or increase the danger to the mental health client or 547
patient. 548

(4) The mental health professional or organization is not 549
liable in damages in a civil action, and shall not be made 550
subject to disciplinary action by any entity with licensing or 551
other regulatory authority over the professional or 552
organization, for disclosing any confidential information about 553
a mental health client or patient that is disclosed for the 554
purpose of taking any of the actions. 555

(D) Notwithstanding any other provision of the Revised 556
Code, a physician, physician assistant, advanced practice 557
registered nurse, or hospital is not liable in damages in a 558
civil action, and shall not be made subject to disciplinary 559
action by any entity with licensing or other regulatory 560
authority, for doing either of the following: 561

(1) Failing to discharge or to allow a patient to leave 562
the facility if the physician, physician assistant, advanced 563
practice registered nurse, or hospital believes in the good 564
faith exercise of professional medical, advanced practice 565
registered nursing, or physician assistant judgment according to 566
appropriate standards of professional practice that the patient 567
has a mental health condition that threatens the safety of the 568
patient or others; 569

(2) Discharging a patient whom the physician, physician 570
assistant, advanced practice registered nurse, or hospital 571
believes in the good faith exercise of professional medical, 572

advanced practice registered nursing, or physician assistant 573
judgment according to appropriate standards of professional 574
practice not to have a mental health condition that threatens 575
the safety of the patient or others. 576

(E) The immunities from civil liability and disciplinary 577
action conferred by this section are in addition to and not in 578
limitation of any immunity conferred on a mental health 579
professional or organization or on a physician, physician 580
assistant, advanced practice registered nurse, or hospital by 581
any other section of the Revised Code or by judicial precedent. 582

~~(E)~~ (F) This section does not affect the civil rights of a 583
mental health client or patient under Ohio or federal law. 584

Sec. 2317.43. (A) (1) In any civil action brought by an 585
alleged victim of an unanticipated outcome of medical care or in 586
any arbitration proceeding related to such a civil action, any 587
and all statements, affirmations, gestures, or conduct 588
expressing apology, sympathy, commiseration, condolence, 589
compassion, error, fault, or a general sense of benevolence that 590
are made by a health care provider ~~or,~~ an employee of a health 591
care provider, or a representative of a health care provider to 592
the alleged victim, a relative of the alleged victim, or a 593
representative of the alleged victim, and that relate to the 594
discomfort, pain, suffering, injury, or death of the alleged 595
victim as the result of the unanticipated outcome of medical 596
care are inadmissible as evidence of an admission of liability 597
or as evidence of an admission against interest. 598

(2) If any statements, affirmations, gestures, or conduct 599
that are described in division (A) (1) of this section or any 600
reference to them are included in the medical record pertaining 601
to the victim of an unanticipated outcome of medical care, only 602

the portions of the medical record that include those 603
statements, affirmations, gestures, or conduct or any reference 604
to them are inadmissible as evidence of an admission of 605
liability or as evidence of an admission against interest. 606

(B)(1) When made as part of a review conducted in good 607
faith by the health care provider, an employee of the health 608
care provider, or a representative of the health care provider 609
into the cause of or reasons for an unanticipated outcome of 610
medical care, the following communications are inadmissible as 611
evidence in any civil action brought by an alleged victim of an 612
unanticipated outcome of medical care, in any arbitration 613
proceeding related to such a civil action, or in any other civil 614
proceeding, unless the communications are recorded in the 615
medical record of the alleged victim, subject to division (A)(2) 616
of this section: 617

(a) Any communications made by a health care provider, an 618
employee of a health care provider, or a representative of a 619
health care provider to the alleged victim, a relative or 620
acquaintance of the alleged victim, or a representative of the 621
alleged victim; 622

(b) Any communications made by an alleged victim, a 623
relative or acquaintance of the alleged victim, or a 624
representative of the alleged victim to the health care 625
provider, an employee of a health care provider, or a 626
representative of a health care provider. 627

(2) Nothing in this section requires a review to be 628
conducted. 629

(C) For purposes of this section, unless the context 630
otherwise requires: 631

(1) "Health care provider" has the same meaning as in 632
division (B) (5) of section 2317.02 of the Revised Code. 633

(2) "Relative" means a victim's spouse, parent, 634
grandparent, stepfather, stepmother, child, grandchild, brother, 635
sister, half brother, half sister, or spouse's parents. The term 636
includes said relationships that are created as a result of 637
adoption. In addition, "relative" includes any person who has a 638
family-type relationship with a victim. 639

(3) "Representative of an alleged victim" means a legal 640
guardian, attorney, person designated to make decisions on 641
behalf of a patient under a medical power of attorney, or any 642
person recognized in law or custom as a patient's agent. 643

(4) "Representative of a health care provider" means an 644
attorney, health care provider, employee of a health care 645
provider, or other person designated by a health care provider 646
or an employee of a health care provider to participate in a 647
review conducted by a health care provider or employee of a 648
health care provider. 649

(5) "Review" means the policy, procedures, and activities 650
undertaken by or at the direction of a health care provider, 651
employee of a health care provider, or person designated by a 652
health care provider or employee of a health care provider with 653
the purpose of determining the cause of or reasons for an 654
unanticipated outcome, and initiated and completed during the 655
first forty-five days following the occurrence or discovery of 656
an unanticipated outcome. A review shall be initiated by verbal 657
communication to the patient, relative of the patient, or 658
representative of the patient by the health care provider, 659
employee of a health care provider, or person designated by a 660
health care provider or employee of a health care provider. The 661

verbal communication shall be followed by a written document 662
explaining the review process. A review may be extended for a 663
longer period if necessary upon written notice to the patient, 664
relative of the patient, or representative of the patient. 665

(6) "Unanticipated outcome" means the outcome of a medical 666
treatment or procedure that differs from an expected result or 667
any outcome that is adverse or not satisfactory to the patient. 668

Sec. 2317.44. (A) As used in this section: 669

(1) "Health care provider" means any person or entity 670
against whom a medical claim may be asserted in a civil action. 671

(2) "Medical claim" has the same meaning as in section 672
2305.113 of the Revised Code. 673

(B) Any guideline, regulation, or other standard under any 674
provision of the "Patient Protection and Affordable Care Act," 675
124 Stat. 119 (2010), 42 U.S.C. 18001 et seq., as amended, Title 676
XVIII of the "Social Security Act," 42 U.S.C. 1395 et seq., as 677
amended, and Title XIX of the "Social Security Act," 42 U.S.C. 678
1396 et seq., as amended, shall not be construed to establish 679
the standard of care or duty of care owed by a health care 680
provider to a patient in a medical claim and is not admissible 681
as evidence for or against any party in any civil action based 682
upon the medical claim or in any civil or administrative action 683
involving the licensing or licensure status of the health care 684
provider. 685

Sec. 2317.45. (A) As used in this section: 686

(1) "Health care provider" means any person or entity 687
against whom a medical claim may be asserted in a civil action. 688

(2) "Insurer" means any public or private entity doing or 689

authorized to do any insurance business in this state. "Insurer" 690
includes a self-insuring employer and the United States centers 691
for medicare and medicaid services. 692

(3) "Medical claim" has the same meaning as in section 693
2305.113 of the Revised Code. 694

(4) "Reimbursement determination" means an insurer's 695
determination of whether the insurer will reimburse a health 696
care provider for health care services and the amount of that 697
reimbursement. 698

(5) "Reimbursement policies" means an insurer's policies 699
and procedures governing its decisions regarding the 700
reimbursement of a health care provider for health care services 701
and the method of reimbursement. 702

(B) Any insurer's reimbursement policies or reimbursement 703
determination or regulations issued by the United States centers 704
for medicare and medicaid services or the Ohio department of 705
medicaid regarding the health care services provided to the 706
patient in any civil action based on a medical claim are not 707
admissible as evidence for or against any party in the action 708
and may not be used to establish a standard of care or breach of 709
that standard of care in the action. 710

Sec. 2323.451. (A) (1) As used in this section, "medical 711
claim" has the same meaning as in section 2305.113 of the 712
Revised Code. 713

(2) This section may be used in lieu of, and not in 714
addition to, division (B) (1) of section 2305.113 of the Revised 715
Code. 716

(B) At the time of filing a complaint asserting a medical 717
claim, the plaintiff shall file with the complaint, pursuant to 718

rule 10(D) of the Rules of Civil Procedure, an affidavit of 719
merit relative to each defendant named in the complaint or a 720
motion to extend the period of time to file an affidavit of 721
merit. 722

(C) The parties may conduct discovery as permitted by the 723
Rules of Civil Procedure. Additionally, for the period of time 724
specified in division (D)(2) of this section, the parties may 725
seek to discover the existence or identity of any other 726
potential medical claims or defendants that are not included or 727
named in the complaint. All parties shall provide the discovery 728
under this division in accordance with the Rules of Civil 729
Procedure. 730

(D)(1) Within the period of time specified in division (D) 731
(2) of this section, the plaintiff, in an amendment to the 732
complaint pursuant to rule 15 of the Rules of Civil Procedure, 733
may join in the action any additional medical claim or defendant 734
if the original one-year period of limitation applicable to that 735
additional medical claim or defendant had not expired prior to 736
the date the original complaint was filed. The plaintiff shall 737
file an affidavit of merit supporting the joinder of the 738
additional medical claim or defendant or a motion to extend the 739
period of time to file an affidavit of merit pursuant to rule 740
10(D) of the Rules of Civil Procedure with the amendment to the 741
complaint. 742

(2) If a complaint is filed under this section prior to 743
the expiration of the one-year period of limitation applicable 744
to medical claims under section 2305.113 of the Revised Code, 745
then the period of time in which the parties may conduct the 746
discovery under division (C) of this section and in which the 747
plaintiff may join in the action any additional medical claim or 748

defendant under division (D) (1) of this section shall be equal 749
to the balance of any days remaining from the filing of the 750
complaint to the expiration of that one-year period of 751
limitation, plus one hundred eighty days from the filing of the 752
complaint. 753

(E) After the expiration of one hundred eighty days 754
following the filing of a complaint asserting a medical claim, 755
the plaintiff shall not join any additional medical claim or 756
defendant to the action unless the medical claim is for wrongful 757
death, and the period of limitation for the claim under section 758
2125.02 of the Revised Code has not expired. This section does 759
not modify or affect and shall not be construed as modifying or 760
affecting any provision of the Revised Code, rule of common law, 761
or Ohio Rules of Civil Procedure that applies to the 762
commencement of the period of limitation for medical claims that 763
are asserted or defendants that are joined after the expiration 764
of the one-hundred-eighty-day period described in division (D) 765
(2) of this section. 766

Section 2. That existing sections 2305.113, 2305.252, 767
2305.51, and 2317.43 of the Revised Code are hereby repealed. 768

Section 3. (A) Section 2323.451 of the Revised Code, as 769
enacted by this act, applies to a civil action that is based 770
upon a medical claim and that is filed on or after the effective 771
date of this act. 772

(B) As used in division (A) of this section, "medical 773
claim" has the same meaning as in section 2305.113 of the 774
Revised Code. 775