

As Introduced

**132nd General Assembly
Regular Session
2017-2018**

S. B. No. 177

Senator Lehner

Cosponsors: Senators Beagle, Coley, Thomas

A BILL

To amend sections 2305.234, 3701.071, and 5119.44, 1
to enact section 3701.074, and to repeal section 2
2305.2341 of the Revised Code to expand the 3
circumstances in which qualified immunity from 4
civil liability applies with respect to 5
volunteer health care services provided to 6
indigent and uninsured persons. 7

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

Section 1. That sections 2305.234, 3701.071, and 5119.44 8
be amended and section 3701.074 of the Revised Code be enacted 9
to read as follows: 10

Sec. 2305.234. (A) As used in this section: 11

(1) "Chiropractic claim," "dental claim," "medical claim," 12
and "optometric claim" have the same meanings as in section 13
2305.113 of the Revised Code. 14

(2) ~~"Dental claim" has the same meaning as in section 15
2305.113 of the Revised Code, except that it does not include 16
any claim arising out of a dental operation or any derivative 17
claim for relief that arises out of a dental operation. 18~~

~~(3)~~ "Governmental health care program" has the same 19
meaning as in section 4731.65 of the Revised Code. 20

(3) "Health care service" means any type of medical, 21
dental, or other health-related diagnosis, care, or treatment 22
provided to a person. "Health care service" includes, as the 23
case may be, providing samples of medicine or other medical 24
products, performing any operation, or delivering a baby. 25

(4) "Health care facility or location" means a hospital, 26
clinic, ambulatory surgical facility, office of a health care 27
professional or associated group of health care professionals, 28
training institution for health care professionals, a free 29
clinic or other nonprofit shelter or health care facility as 30
those terms are defined in section 3701.071 of the Revised Code, 31
or any other place where ~~medical, dental, or other health-~~ 32
~~related diagnosis, care, or treatment~~ a health care service is 33
~~provided to a person.~~ 34

(5) "Health care professional" means any of the following 35
who provide ~~medical, dental, or other health-related diagnosis,~~ 36
~~care, or treatment~~ health care services: 37

(a) Physicians authorized under Chapter 4731. of the 38
Revised Code to practice medicine and surgery or osteopathic 39
medicine and surgery; 40

(b) Advanced practice registered nurses, registered 41
nurses, and licensed practical nurses licensed under Chapter 42
4723. of the Revised Code; 43

(c) Physician assistants authorized to practice under 44
Chapter 4730. of the Revised Code; 45

(d) Dentists and dental hygienists licensed under Chapter 46
4715. of the Revised Code; 47

(e) Physical therapists, physical therapist assistants, occupational therapists, occupational therapy assistants, and athletic trainers licensed under Chapter 4755. of the Revised Code;	48 49 50 51
(f) Chiropractors licensed under Chapter 4734. of the Revised Code;	52 53
(g) Optometrists licensed under Chapter 4725. of the Revised Code;	54 55
(h) Podiatrists authorized under Chapter 4731. of the Revised Code to practice podiatry;	56 57
(i) Dietitians licensed under Chapter 4759. of the Revised Code;	58 59
(j) Pharmacists licensed under Chapter 4729. of the Revised Code;	60 61
(k) Emergency medical technicians-basic, emergency medical technicians-intermediate, and emergency medical technicians- paramedic, certified under Chapter 4765. of the Revised Code;	62 63 64
(l) Respiratory care professionals licensed under Chapter 4761. of the Revised Code;	65 66
(m) Speech-language pathologists and audiologists licensed under Chapter 4753. of the Revised Code;	67 68
(n) Licensed professional clinical counselors, licensed professional counselors, independent social workers, social workers, independent marriage and family therapists, and marriage and family therapists, licensed under Chapter 4757. of the Revised Code;	69 70 71 72 73
(o) Psychologists licensed under Chapter 4732. of the	74

Revised Code;	75
(p) Independent chemical dependency counselors-clinical supervisors, independent chemical dependency counselors, chemical dependency counselors III, and chemical dependency counselors II, licensed under Chapter 4758. of the Revised Code, and chemical dependency counselor assistants, prevention consultants, prevention specialists, prevention specialist assistants, and registered applicants, certified under that chapter.	76 77 78 79 80 81 82 83
(6) "Health care worker" means a person other than a health care professional who provides medical, dental, or other health-related care or treatment under the direction of a health care professional with the authority to direct that individual's activities, including medical technicians, medical assistants, dental assistants, orderlies, aides, <u>students enrolled in health care professional education programs,</u> and individuals acting in similar capacities.	84 85 86 87 88 89 90 91
(7) "Indigent and uninsured person" means a person who meets both of the following requirements:	92 93
(a) Relative to being indigent, the person's income is not greater than two hundred per cent of the federal poverty line, as defined by the United States office of management and budget and revised in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C. 9902, as amended, except in any case in which division (A) (7) (b) (iii) of this section includes a person whose income is greater than two hundred per cent of the federal poverty line.	94 95 96 97 98 99 100 101
(b) Relative to being uninsured, one of the following applies:	102 103

(i) The person is not a policyholder, certificate holder, 104
insured, contract holder, subscriber, enrollee, member, 105
beneficiary, or other covered individual under a health 106
insurance or health care policy, contract, or plan. 107

(ii) The person is a policyholder, certificate holder, 108
insured, contract holder, subscriber, enrollee, member, 109
beneficiary, or other covered individual under a health 110
insurance or health care policy, contract, or plan, but the 111
insurer, policy, contract, or plan denies coverage or is the 112
subject of insolvency or bankruptcy proceedings in any 113
jurisdiction. 114

(iii) ~~Until June 30, 2019, the~~ The person is eligible for 115
the medicaid program or is a medicaid recipient. 116

(iv) Except as provided in division (A)(7)(b)(iii) of this 117
section, the person is not eligible for or a recipient, 118
enrollee, or beneficiary of any governmental health care 119
program. 120

(8) "Nonprofit health care referral organization" means an 121
entity that is not operated for profit and refers patients to, 122
or arranges for the provision of, ~~health-related diagnosis,~~ 123
~~care, or treatment~~ health care services by a health care 124
professional or health care worker. 125

(9) "Operation" means any procedure that involves cutting 126
or otherwise infiltrating human tissue by mechanical means, 127
including surgery, laser surgery, ionizing radiation, 128
therapeutic ultrasound, or the removal of intraocular foreign 129
bodies. ~~"Operation" does not include the administration of~~ 130
~~medication by injection, unless the injection is administered in~~ 131
~~conjunction with a procedure infiltrating human tissue by~~ 132

~~mechanical means other than the administration of medicine by
injection. "Operation" does not include routine dental
restorative procedures, the sealing of teeth, or extractions of
teeth that are not impacted.~~ 133
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(10) "Tort action" means a civil action for damages for 137
injury, death, or loss to person or property other than a civil 138
action for damages for a breach of contract or another agreement 139
between persons or government entities. 140

(11) "Volunteer" means an individual who provides any 141
~~medical, dental, or other health care related diagnosis, care,
or treatment~~ health care service without the expectation of 142
receiving and without receipt of any compensation or other form 143
of remuneration from an indigent and uninsured person, another 144
person on behalf of an indigent and uninsured person, any health 145
care facility or location, any nonprofit health care referral 146
organization, or any other person or government entity. 147
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(12) "Community control sanction" has the same meaning as 149
in section 2929.01 of the Revised Code. 150

~~(13) "Deep sedation" means a drug-induced depression of
consciousness during which a patient cannot be easily aroused
but responds purposefully following repeated or painful
stimulation, a patient's ability to independently maintain
ventilatory function may be impaired, a patient may require
assistance in maintaining a patent airway and spontaneous
ventilation may be inadequate, and cardiovascular function is
usually maintained.~~ 151
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~~(14) "General anesthesia" means a drug-induced loss of
consciousness during which a patient is not arousable, even by
painful stimulation, the ability to independently maintain~~ 159
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~~ventilatory function is often impaired, a patient often requires~~ 162
~~assistance in maintaining a patent airway, positive pressure~~ 163
~~ventilation may be required because of depressed spontaneous~~ 164
~~ventilation or drug-induced depression of neuromuscular~~ 165
~~function, and cardiovascular function may be impaired.~~ 166

(B) (1) Subject to divisions (F) and (G) (3) of this 167
section, a health care professional who is a volunteer and 168
complies with division (B) (2) of this section is not liable in 169
damages to any person or government entity in a tort or other 170
civil action, including an action on a medical, dental, 171
chiropractic, optometric, or other health-related claim, for 172
injury, death, or loss to person or property that allegedly 173
arises from an action or omission of the volunteer in the 174
provision to an indigent and uninsured person of ~~medical,~~ 175
~~dental, or other health-related diagnosis, care, or treatment,~~ 176
~~including the provision of samples of medicine and other medical~~ 177
~~products~~ a health care service, unless the action or omission 178
constitutes willful or wanton misconduct. 179

(2) To qualify for the immunity described in division (B) 180
(1) of this section, a health care professional shall do all of 181
the following prior to providing ~~diagnosis, care, or treatment~~ a 182
health care service: 183

(a) Determine, in good faith, that the indigent and 184
uninsured person is mentally capable of giving informed consent 185
to the provision of the ~~diagnosis, care, or treatment~~ health 186
care service and is not subject to duress or under undue 187
influence; 188

(b) Inform the person of the provisions of this section, 189
including notifying the person that, by giving informed consent 190
to the provision of the ~~diagnosis, care, or treatment~~ health 191

care service, the person cannot hold the health care 192
professional liable for damages in a tort or other civil action, 193
including an action on a medical, dental, chiropractic, 194
optometric, or other health-related claim, unless the action or 195
omission of the health care professional constitutes willful or 196
wanton misconduct; 197

(c) Obtain the informed consent of the person and a 198
written waiver, signed by the person or by another individual on 199
behalf of and in the presence of the person, that states that 200
the person is mentally competent to give informed consent and, 201
without being subject to duress or under undue influence, gives 202
informed consent to the provision of the ~~diagnosis, care, or~~ 203
~~treatment~~ health care service subject to the provisions of this 204
section. A written waiver under division (B) (2) (c) of this 205
section shall state clearly and in conspicuous type that the 206
person or other individual who signs the waiver is signing it 207
with full knowledge that, by giving informed consent to the 208
provision of the ~~diagnosis, care, or treatment~~ health care 209
service, the person cannot bring a tort or other civil action, 210
including an action on a medical, dental, chiropractic, 211
optometric, or other health-related claim, against the health 212
care professional unless the action or omission of the health 213
care professional constitutes willful or wanton misconduct. 214

(3) A physician or podiatrist who is not covered by 215
medical malpractice insurance, but complies with division (B) (2) 216
of this section, is not required to comply with division (A) of 217
section 4731.143 of the Revised Code. 218

(C) Subject to divisions (F) and (G) (3) of this section, 219
health care workers who are volunteers are not liable in damages 220
to any person or government entity in a tort or other civil 221

action, including an action upon a medical, dental, 222
chiropractic, optometric, or other health-related claim, for 223
injury, death, or loss to person or property that allegedly 224
arises from an action or omission of the health care worker in 225
the provision to an indigent and uninsured person of ~~medical,~~ 226
~~dental, or other health-related diagnosis, care, or treatment~~ a 227
health care service, unless the action or omission constitutes 228
willful or wanton misconduct. 229

(D) Subject to divisions (F) and (G) (3) of this section, a 230
nonprofit health care referral organization is not liable in 231
damages to any person or government entity in a tort or other 232
civil action, including an action on a medical, dental, 233
chiropractic, optometric, or other health-related claim, for 234
injury, death, or loss to person or property that allegedly 235
arises from an action or omission of the nonprofit health care 236
referral organization in referring indigent and uninsured 237
persons to, or arranging for the provision of, ~~medical, dental,~~ 238
~~or other health-related diagnosis, care, or treatment~~ a health 239
care service by a health care professional described in division 240
(B) (1) of this section or a health care worker described in 241
division (C) of this section, unless the action or omission 242
constitutes willful or wanton misconduct. 243

(E) Subject to divisions (F) and (G) (3) of this section 244
and to the extent that the registration requirements of section 245
3701.071 of the Revised Code apply, a health care facility or 246
location associated with a health care professional described in 247
division (B) (1) of this section, a health care worker described 248
in division (C) of this section, or a nonprofit health care 249
referral organization described in division (D) of this section 250
is not liable in damages to any person or government entity in a 251
tort or other civil action, including an action on a medical, 252

dental, chiropractic, optometric, or other health-related claim, 253
for injury, death, or loss to person or property that allegedly 254
arises from an action or omission of the health care 255
professional or worker or nonprofit health care referral 256
organization relative to the ~~medical, dental, or other health-~~ 257
~~related diagnosis, care, or treatment~~ health care service 258
provided to an indigent and uninsured person on behalf of or at 259
the health care facility or location, unless the action or 260
omission constitutes willful or wanton misconduct. 261

(F) (1) Except as provided in division (F) (2) of this 262
section, the immunities provided by divisions (B), (C), (D), and 263
(E) of this section are not available to a health care 264
professional, health care worker, nonprofit health care referral 265
organization, or health care facility or location if, at the 266
time of an alleged injury, death, or loss to person or property, 267
the health care professionals or health care workers involved 268
are providing ~~one~~ either of the following: 269

(a) ~~Any medical, dental, or other health-related~~ 270
~~diagnosis, care, or treatment~~ A health care service pursuant to 271
a community service work order entered by a court under division 272
(B) of section 2951.02 of the Revised Code or imposed by a court 273
as a community control sanction; 274

(b) ~~Performance of an operation to which any one of the~~ 275
~~following applies:-~~ 276

~~(i) The operation requires the administration of deep~~ 277
~~sedation or general anesthesia.-~~ 278

~~(ii) The operation is a procedure that is not typically~~ 279
~~performed in an office.-~~ 280

~~(iii) The individual involved is a health care-~~ 281

~~professional, and the operation is beyond the scope of practice— 282
or the education, training, and competence, as applicable, of— 283
the health care professional.— 284~~

~~(c) Delivery of a baby or any other—The purposeful 285
termination of a human pregnancy other than by delivery of a 286
baby. 287~~

(2) Division (F) (1) of this section does not apply when a 288
health care professional or health care worker provides ~~medical, 289
dental, or other health related diagnosis, care, or treatment—a 290
health care service that is necessary to preserve the life of a 291
person in a medical emergency. 292~~

(G) (1) This section does not create a new cause of action 293
or substantive legal right against a health care professional, 294
health care worker, nonprofit health care referral organization, 295
or health care facility or location. 296

(2) This section does not affect any immunities from civil 297
liability or defenses established by another section of the 298
Revised Code or available at common law to which a health care 299
professional, health care worker, nonprofit health care referral 300
organization, or health care facility or location may be 301
entitled in connection with the provision of emergency or other 302
~~medical, dental, or other health related diagnosis, care, or— 303
treatment health care services. 304~~

(3) This section does not grant an immunity from tort or 305
other civil liability to a health care professional, health care 306
worker, nonprofit health care referral organization, or health 307
care facility or location for actions that are outside the scope 308
of authority of ~~the health care professionals—professional or 309
health care ~~workers~~ worker involved. 310~~

~~In the case of the diagnosis, care, or treatment of an indigent and uninsured person who is eligible for the medicaid program or is a medicaid recipient, this section grants an immunity from tort or other civil liability only if the person's diagnosis, care, or treatment is provided in a free clinic, as defined in section 3701.071 of the Revised Code.~~

(4) This section does not affect any legal responsibility of a health care professional, health care worker, or nonprofit health care referral organization to comply with any applicable law of this state or rule of an agency of this state.

(5) This section does not affect any legal responsibility of a health care facility or location to comply with any applicable law of this state, rule of an agency of this state, or local code, ordinance, or regulation that pertains to or regulates building, housing, air pollution, water pollution, sanitation, health, fire, zoning, or safety.

Sec. 3701.071. (A) As used in this section:

(1) "Free clinic" means a nonprofit organization exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," as amended, or a program component of a nonprofit organization, to which both of the following apply:

(a) Its primary mission is to provide health care services for free or for a minimal administrative fee to individuals with limited resources.

(b) It facilitates the delivery of health care services through the use of volunteer health care professionals and voluntary care networks.

(2) "Health care service" and "Indigent indigent and

uninsured person" ~~has~~ have the same ~~meaning~~ meanings as in 340
section 2305.234 of the Revised Code. 341

(3) "Nonprofit shelter or health care facility" means a 342
charitable nonprofit corporation organized and operated pursuant 343
to Chapter 1702. of the Revised Code, or any charitable 344
organization not organized and not operated for profit, that 345
provides shelter, health care services, or shelter and health 346
care services to indigent and uninsured persons. "Nonprofit 347
shelter or health care facility" includes any such shelter or 348
facility that is operated as or includes a free clinic. 349
"Nonprofit shelter or health care facility" does not include a 350
hospital, as defined in section 3727.01 of the Revised Code, a 351
facility licensed under Chapter 3721. of the Revised Code, or a 352
medical facility that is operated for profit. 353

(B) A nonprofit shelter or health care facility operating 354
in this state shall register on the first day of January each 355
year with the department of health. ~~The~~ 356

The immunity provided by division (E) of section 2305.234 357
of the Revised Code is not available to a nonprofit shelter or 358
health care facility until the shelter or facility registers 359
with the department in accordance with this section. During the 360
period in which a nonprofit shelter or health care facility is 361
registered, the immunity that is available to the shelter or 362
facility extends to any alternate or temporary location that is 363
used by the shelter or facility to facilitate the provision of 364
health care services, including any type of vehicle or other 365
unit used as part of a mobile health care program. 366

(C) A nonprofit shelter or health care facility operating 367
in this state shall keep records of all patients who receive 368
~~medical, dental, or other health related diagnosis, care, or~~ 369

~~treatment~~ health care services at the shelter or facility. The 370
department of health shall monitor the quality of care provided 371
to patients at nonprofit shelters or health care facilities. The 372
monitoring program may be conducted by contracting with another 373
entity or through any other method authorized by law. The 374
department may solicit and accept funds from private sources to 375
fund the monitoring program. 376

(D) A free clinic operating in this state shall compile 377
information on medicaid eligibility and application requirements 378
and procedures and display copies of that information in a 379
prominent location for the benefit of persons who seek or 380
receive health care services from the clinic. 381

Sec. 3701.074. As used in this section, "health care 382
facility or location," "health care professional," "health care 383
service," "health care worker," "indigent and uninsured person," 384
"nonprofit health care referral organization," and "volunteer" 385
have the same meanings as in section 2305.234 of the Revised 386
Code. 387

The department of health shall prepare an annual report 388
regarding the provision to indigent and uninsured persons of 389
health care services by volunteers in this state. The report 390
shall include information regarding the efficacy of access and 391
treatment outcomes of the health care services provided. The 392
department shall annually submit a copy of the report to the 393
general assembly in accordance with section 101.68 of the 394
Revised Code. 395

All persons designated by the department shall submit to 396
the department information requested by the department to 397
prepare the report. All health care facilities or locations, 398
health care professionals, health care workers, and nonprofit 399

health care referral organizations shall grant to the department 400
access to all records related to health care services provided 401
to indigent and uninsured persons by volunteers. 402

In the absence of willful or wanton misconduct, a person 403
who furnishes information to the department under this section 404
with respect to any patient the person examined or treated is 405
not liable in damages to any person for furnishing the 406
information and is not subject to professional disciplinary 407
action for betrayal of a professional confidence for furnishing 408
the information. The information is not subject to introduction 409
into evidence in any civil action against the provider. A person 410
who furnishes information to the department under this section 411
is not liable for the misuse or improper release of the 412
information by the department or by any person. 413

Information reported under this section that is protected 414
health information pursuant to section 3701.17 of the Revised 415
Code shall be released only in accordance with that section. 416
Information that does not identify an individual may be released 417
in summary, statistical, or aggregate form. 418

The director of health shall adopt rules as necessary to 419
carry out the purposes of this section. The rules shall be 420
adopted in accordance with Chapter 119. of the Revised Code and 421
establish standards and procedures for submitting to the 422
department information concerning health care services provided 423
to indigent and uninsured persons by volunteers. 424

Sec. 5119.44. As used in this section, "free clinic" has 425
the same meaning as in section ~~2305.2341~~3701.071 of the Revised 426
Code. 427

(A) The department of mental health and addiction services 428

may provide certain goods and services for the department of 429
mental health and addiction services, the department of 430
developmental disabilities, the department of rehabilitation and 431
correction, the department of youth services, and other state, 432
county, or municipal agencies requesting such goods and services 433
when the department of mental health and addiction services 434
determines that it is in the public interest, and considers it 435
advisable, to provide these goods and services. The department 436
of mental health and addiction services also may provide goods 437
and services to agencies operated by the United States 438
government and to public or private nonprofit agencies, other 439
than free clinics, that are funded in whole or in part by the 440
state if the public or private nonprofit agencies are designated 441
for participation in this program by the director of mental 442
health and addiction services for community addiction services 443
providers and community mental health services providers, the 444
director of developmental disabilities for community 445
developmental disabilities agencies, the director of 446
rehabilitation and correction for community rehabilitation and 447
correction agencies, or the director of youth services for 448
community youth services agencies. 449

Designated community agencies or services providers shall 450
receive goods and services through the department of mental 451
health and addiction services only in those cases where the 452
designating state agency certifies that providing such goods and 453
services to the agency or services provider will conserve public 454
resources to the benefit of the public and where the provision 455
of such goods and services is considered feasible by the 456
department of mental health and addiction services. 457

(B) The department of mental health and addiction services 458
may permit free clinics to purchase certain goods and services 459

to the extent the purchases fall within the exemption to the 460
Robinson-Patman Act, 15 U.S.C. 13 et seq., applicable to 461
nonprofit institutions, in 15 U.S.C. 13c, as amended. 462

(C) The goods and services that may be provided by the 463
department of mental health and addiction services under 464
divisions (A) and (B) of this section may include: 465

(1) Procurement, storage, processing, and distribution of 466
food and professional consultation on food operations; 467

(2) Procurement, storage, and distribution of medical and 468
laboratory supplies, dental supplies, medical records, forms, 469
optical supplies, and sundries, subject to section 5120.135 of 470
the Revised Code; 471

(3) Procurement, storage, repackaging, distribution, and 472
dispensing of drugs, the provision of professional pharmacy 473
consultation, and drug information services; 474

(4) Other goods and services. 475

(D) The department of mental health and addiction services 476
may provide the goods and services designated in division (C) of 477
this section to its institutions and to state-operated 478
community-based mental health or addiction services providers. 479

(E) After consultation with and advice from the director 480
of developmental disabilities, the director of rehabilitation 481
and correction, and the director of youth services, the 482
department of mental health and addiction services may provide 483
the goods and services designated in division (C) of this 484
section to the department of developmental disabilities, the 485
department of rehabilitation and correction, and the department 486
of youth services. 487

(F) The cost of administration of this section shall be 488
determined by the department of mental health and addiction 489
services and paid by the agencies, services providers, or free 490
clinics receiving the goods and services to the department for 491
deposit in the state treasury to the credit of the Ohio pharmacy 492
services fund, which is hereby created. The fund shall be used 493
to pay the cost of administration of this section to the 494
department. 495

(G) Whenever a state agency fails to make a payment for 496
goods and services provided under this section within thirty-one 497
days after the date the payment was due, the office of budget 498
and management may transfer moneys from the state agency to the 499
department of mental health and addiction services. The amount 500
transferred shall not exceed the amount of overdue payments. 501
Prior to making a transfer under this division, the office of 502
budget and management shall apply any credits the state agency 503
has accumulated in payments for goods and services provided 504
under this section. 505

(H) Purchases of goods and services under this section are 506
not subject to section 307.86 of the Revised Code. 507

Section 2. That existing sections 2305.234, 3701.071, and 508
5119.44 and section 2305.2341 of the Revised Code are hereby 509
repealed. 510