

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 7**

**Representative Cupp**

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

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**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 who intends to give to the person who is the subject of that claim the written notice described in division (B) (1) of this section shall give that notice by sending it by certified mail, return receipt requested, addressed to any of the following:

(a) The person's residence;

(b) The person's professional practice;

(c) The person's employer;

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

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

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

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

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

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 <del>plan</del>	139
<del>of care,</del> medical diagnosis, <u>care,</u> or treatment of a person;	140
(b) <u>Derivative claims for relief that arise from the plan</u>	141
<u>of care prepared for a resident of a home;</u>	142
(c) <u>Claims that arise out of the <del>plan of care,</del> medical</u>	143
diagnosis, <u>care,</u> or treatment of any person <u>or claims that arise</u>	144
<u>out of the plan of care prepared for a resident of a home and to</u>	145
which <u>both types of claims</u> 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
<del>(e)</del> (d) <u>Claims that arise out of the plan of care, medical</u>	152
diagnosis, or treatment of any person and that are brought under	153
section 3721.17 of the Revised Code;	154
<del>(d)</del> (e) <u>Claims that arise out of skilled nursing care or</u>	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 licensed to practice nursing as a licensed practical nurse by the board of nursing pursuant to Chapter 4723. of the Revised Code.	223 224 225 226
(18) "Physician assistant" means any person who is licensed as a physician assistant under Chapter 4730. of the Revised Code.	227 228 229
(19) "Emergency medical technician-basic," "emergency medical technician-intermediate," and "emergency medical technician-paramedic" means any person who is certified under Chapter 4765. of the Revised Code as an emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, whichever is applicable.	230 231 232 233 234 235
(20) "Skilled nursing care" and "personal care services" have the same meanings as in section 3721.01 of the Revised Code.	236 237 238
<b><u>Sec. 2305.2311.</u></b> (A) As used in this section:	239
<u>(1) "Dentist" has the same meaning as in section 2305.231 of the Revised Code.</u>	240 241
<u>(2) "Disaster" means any occurrence of widespread personal injury or loss of life that results from any natural or technological phenomenon or act of a human, or an epidemic.</u>	242 243 244
<u>(3) "Hospital" and "medical claim" have the same meanings as in section 2305.113 of the Revised Code.</u>	245 246
<u>(4) "Optometrist" means a person who is licensed under Chapter 4725. of the Revised Code to practice optometry.</u>	247 248

(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, 428  
psychiatric, psychological, or psychosocial adjustment or 429  
functioning, regardless of whether there is a diagnosable, pre- 430  
existing disorder or disease. 431

(f) "Knowledgeable person" means an individual who has 432  
reason to believe that a mental health client or patient has the 433  
intent and ability to carry out an explicit threat of inflicting 434  
imminent and serious physical harm to or causing the death of a 435  
clearly identifiable potential victim or victims and who is 436  
either an immediate family member of the client or patient or an 437  
individual who otherwise personally knows the client or patient. 438

(g) "Advanced practice registered nurse" has the same 439  
meaning as in section 4723.01 of the Revised Code. 440

(h) "Hospital" has the same meaning as in section 2305.25 441  
of the Revised Code. 442

(i) "Physician" means an individual authorized under 443  
Chapter 4731. of the Revised Code to practice medicine and 444  
surgery or osteopathic medicine and surgery. 445

(j) "Physician assistant" has the same meaning as in 446  
section 4730.01 of the Revised Code. 447

(2) For the purpose of this section, in the case of a 448  
threat to a readily identifiable structure, "clearly 449  
identifiable potential victim" includes any potential occupant 450  
of the structure. 451

(B) A mental health professional or mental health 452  
organization may be held liable in damages in a civil action, or 453  
may be made subject to disciplinary action by an entity with 454  
licensing or other regulatory authority over the professional or 455  
organization, for serious physical harm or death resulting from 456



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. 545

(E) The immunities from civil liability and disciplinary 546  
action conferred by this section are in addition to and not in 547  
limitation of any immunity conferred on a mental health 548  
professional or organization or on a physician, physician 549  
assistant, advanced practice registered nurse, or hospital by 550  
any other section of the Revised Code or by judicial precedent. 551

~~(E)~~ (F) This section does not affect the civil rights of a 552  
mental health client or patient under Ohio or federal law. 553

**Sec. 2317.421.** (A) In an action for damages arising from 554  
personal injury or wrongful death, a written bill or statement, 555  
or any relevant portion ~~thereof~~ of a written bill or statement, 556  
itemized by date, type of service rendered, and charge, shall, 557  
if otherwise admissible, be prima-facie evidence of the 558  
reasonableness of any charges and fees stated ~~therein~~ in the 559  
bill or statement for dental medication and prosthetic devices 560  
furnished, or ~~medical, dental, hospital,~~ and funeral services 561  
rendered by the person, firm, or corporation issuing such bill 562  
or statement, provided, that ~~such~~ the bill or statement shall be 563  
prima-facie evidence of reasonableness only if the party 564  
offering it delivers a copy ~~of it,~~ or the relevant portion 565  
~~thereof,~~ of it to the attorney of record for each adverse party 566  
not less than five days before trial. 567

(B) In an action for damages based upon a medical claim, 568  
as defined in section 2305.113 of the Revised Code, a written 569  
bill or statement or any relevant portion of a written bill or 570  
statement itemizing the charges and fees for the medical 571  
services rendered by the defendant medical provider or hospital 572  
is not admissible as evidence of the reasonableness of the 573  
medical charges and fees. Any evidence of an amount accepted as 574

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