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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, 2305.51, and 2317.43 1
and to enact sections 2305.2311, 2317.44, 2 2317.45, and 2323.451 of the Revised Code to 3 grant qualified civil immunity to certain 4 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; and to clarify the definition 22
of "medical claim." 23

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

Section 1. That sections 2305.113, 2305.51, and 2317.43 be 24
amended and sections 2305.2311, 2317.44, 2317.45, and 2323.451 25
of the Revised Code be enacted to read as follows: 26

Sec. 2305.113. (A) Except as otherwise provided in this 27
section, an action upon a medical, dental, optometric, or 28
chiropractic claim shall be commenced within one year after the 29
cause of action accrued. 30

(B) (1) If prior to the expiration of the one-year period 31
specified in division (A) of this section, a claimant who 32
allegedly possesses a medical, dental, optometric, or 33
chiropractic claim gives to the person who is the subject of 34
that claim written notice that the claimant is considering 35
bringing an action upon that claim, that action may be commenced 36
against the person notified at any time within one hundred 37
eighty days after the notice is so given. 38

(2) A claimant who allegedly possesses a medical claim and 39
who intends to give to the person who is the subject of that 40
claim the written notice described in division (B) (1) of this 41
section shall give that notice by sending it by certified mail, 42
return receipt requested, addressed to any of the following: 43

(a) The person's residence; 44

(b) The person's professional practice; 45

(c) The person's employer; 46

(d) The address of the person on file with the state 47
medical board or other appropriate agency that issued the 48
person's professional license. 49

(3) An insurance company shall not consider the existence 50
or nonexistence of a written notice described in division (B) (1) 51
of this section in setting the liability insurance premium rates 52
that the company may charge the company's insured person who is 53
notified by that written notice. 54

(C) Except as to persons within the age of minority or of 55
unsound mind as provided by section 2305.16 of the Revised Code, 56
and except as provided in division (D) of this section, both of 57
the following apply: 58

(1) No action upon a medical, dental, optometric, or 59
chiropractic claim shall be commenced more than four years after 60
the occurrence of the act or omission constituting the alleged 61
basis of the medical, dental, optometric, or chiropractic claim. 62

(2) If an action upon a medical, dental, optometric, or 63
chiropractic claim is not commenced within four years after the 64
occurrence of the act or omission constituting the alleged basis 65
of the medical, dental, optometric, or chiropractic claim, then, 66
any action upon that claim is barred. 67

(D) (1) If a person making a medical claim, dental claim, 68
optometric claim, or chiropractic claim, in the exercise of 69
reasonable care and diligence, could not have discovered the 70
injury resulting from the act or omission constituting the 71
alleged basis of the claim within three years after the 72
occurrence of the act or omission, but, in the exercise of 73
reasonable care and diligence, discovers the injury resulting 74
from that act or omission before the expiration of the four-year 75

period specified in division (C) (1) of this section, the person 76
may commence an action upon the claim not later than one year 77
after the person discovers the injury resulting from that act or 78
omission. 79

(2) If the alleged basis of a medical claim, dental claim, 80
optometric claim, or chiropractic claim is the occurrence of an 81
act or omission that involves a foreign object that is left in 82
the body of the person making the claim, the person may commence 83
an action upon the claim not later than one year after the 84
person discovered the foreign object or not later than one year 85
after the person, with reasonable care and diligence, should 86
have discovered the foreign object. 87

(3) A person who commences an action upon a medical claim, 88
dental claim, optometric claim, or chiropractic claim under the 89
circumstances described in division (D) (1) or (2) of this 90
section has the affirmative burden of proving, by clear and 91
convincing evidence, that the person, with reasonable care and 92
diligence, could not have discovered the injury resulting from 93
the act or omission constituting the alleged basis of the claim 94
within the three-year period described in division (D) (1) of 95
this section or within the one-year period described in division 96
(D) (2) of this section, whichever is applicable. 97

(E) As used in this section: 98

(1) "Hospital" includes any person, corporation, 99
association, board, or authority that is responsible for the 100
operation of any hospital licensed or registered in the state, 101
including, but not limited to, those that are owned or operated 102
by the state, political subdivisions, any person, any 103
corporation, or any combination of the state, political 104
subdivisions, persons, and corporations. "Hospital" also 105

includes any person, corporation, association, board, entity, or 106
authority that is responsible for the operation of any clinic 107
that employs a full-time staff of physicians practicing in more 108
than one recognized medical specialty and rendering advice, 109
diagnosis, care, and treatment to individuals. "Hospital" does 110
not include any hospital operated by the government of the 111
United States or any of its branches. 112

(2) "Physician" means a person who is licensed to practice 113
medicine and surgery or osteopathic medicine and surgery by the 114
state medical board or a person who otherwise is authorized to 115
practice medicine and surgery or osteopathic medicine and 116
surgery in this state. 117

(3) "Medical claim" means any claim that is asserted in 118
any civil action against a physician, podiatrist, hospital, 119
home, or residential facility, against any employee or agent of 120
a physician, podiatrist, hospital, home, or residential 121
facility, or against a licensed practical nurse, registered 122
nurse, advanced practice registered nurse, physical therapist, 123
physician assistant, emergency medical technician-basic, 124
emergency medical technician-intermediate, or emergency medical 125
technician-paramedic, and that arises out of the medical 126
diagnosis, care, or treatment of any person. "Medical claim" 127
includes the following: 128

(a) ~~Derivative claims for relief that arise from the plan~~ 129
~~of care,~~ medical diagnosis, care, or treatment of a person; 130

(b) Derivative claims for relief that arise from the plan 131
of care prepared for a resident of a home; 132

(c) Claims that arise out of the ~~plan of care,~~ medical 133
diagnosis, care, or treatment of any person or claims that arise 134

out of the plan of care prepared for a resident of a home and to 135
which both types of claims either of the following applies: 136

(i) The claim results from acts or omissions in providing 137
medical care. 138

(ii) The claim results from the hiring, training, 139
supervision, retention, or termination of caregivers providing 140
medical diagnosis, care, or treatment. 141

~~(e)~~ (d) Claims that arise out of the plan of care, medical 142
diagnosis, or treatment of any person and that are brought under 143
section 3721.17 of the Revised Code; 144

~~(d)~~ (e) Claims that arise out of skilled nursing care or 145
personal care services provided in a home pursuant to the plan 146
of care, medical diagnosis, or treatment. 147

(4) "Podiatrist" means any person who is licensed to 148
practice podiatric medicine and surgery by the state medical 149
board. 150

(5) "Dentist" means any person who is licensed to practice 151
dentistry by the state dental board. 152

(6) "Dental claim" means any claim that is asserted in any 153
civil action against a dentist, or against any employee or agent 154
of a dentist, and that arises out of a dental operation or the 155
dental diagnosis, care, or treatment of any person. "Dental 156
claim" includes derivative claims for relief that arise from a 157
dental operation or the dental diagnosis, care, or treatment of 158
a person. 159

(7) "Derivative claims for relief" include, but are not 160
limited to, claims of a parent, guardian, custodian, or spouse 161
of an individual who was the subject of any medical diagnosis, 162

care, or treatment, dental diagnosis, care, or treatment, dental 163
operation, optometric diagnosis, care, or treatment, or 164
chiropractic diagnosis, care, or treatment, that arise from that 165
diagnosis, care, treatment, or operation, and that seek the 166
recovery of damages for any of the following: 167

(a) Loss of society, consortium, companionship, care, 168
assistance, attention, protection, advice, guidance, counsel, 169
instruction, training, or education, or any other intangible 170
loss that was sustained by the parent, guardian, custodian, or 171
spouse; 172

(b) Expenditures of the parent, guardian, custodian, or 173
spouse for medical, dental, optometric, or chiropractic care or 174
treatment, for rehabilitation services, or for other care, 175
treatment, services, products, or accommodations provided to the 176
individual who was the subject of the medical diagnosis, care, 177
or treatment, the dental diagnosis, care, or treatment, the 178
dental operation, the optometric diagnosis, care, or treatment, 179
or the chiropractic diagnosis, care, or treatment. 180

(8) "Registered nurse" means any person who is licensed to 181
practice nursing as a registered nurse by the board of nursing. 182

(9) "Chiropractic claim" means any claim that is asserted 183
in any civil action against a chiropractor, or against any 184
employee or agent of a chiropractor, and that arises out of the 185
chiropractic diagnosis, care, or treatment of any person. 186
"Chiropractic claim" includes derivative claims for relief that 187
arise from the chiropractic diagnosis, care, or treatment of a 188
person. 189

(10) "Chiropractor" means any person who is licensed to 190
practice chiropractic by the state chiropractic board. 191

(11) "Optometric claim" means any claim that is asserted	192
in any civil action against an optometrist, or against any	193
employee or agent of an optometrist, and that arises out of the	194
optometric diagnosis, care, or treatment of any person.	195
"Optometric claim" includes derivative claims for relief that	196
arise from the optometric diagnosis, care, or treatment of a	197
person.	198
(12) "Optometrist" means any person licensed to practice	199
optometry by the state board of optometry.	200
(13) "Physical therapist" means any person who is licensed	201
to practice physical therapy under Chapter 4755. of the Revised	202
Code.	203
(14) "Home" has the same meaning as in section 3721.10 of	204
the Revised Code.	205
(15) "Residential facility" means a facility licensed	206
under section 5123.19 of the Revised Code.	207
(16) "Advanced practice registered nurse" means any	208
certified nurse practitioner, clinical nurse specialist,	209
certified registered nurse anesthetist, or certified nurse-	210
midwife who holds a certificate of authority issued by the board	211
of nursing under Chapter 4723. of the Revised Code.	212
(17) "Licensed practical nurse" means any person who is	213
licensed to practice nursing as a licensed practical nurse by	214
the board of nursing pursuant to Chapter 4723. of the Revised	215
Code.	216
(18) "Physician assistant" means any person who is	217
licensed as a physician assistant under Chapter 4730. of the	218
Revised Code.	219

(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.

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

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

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

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

(3) "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 and is declared to be a disaster by the federal government, the state government, or a political subdivision of this state.

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

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

(6) "EMT-I" means an individual who holds a current, valid certificate issued under section 4765.30 of the Revised Code to

<u>practice as an emergency medical technician-intermediate.</u>	248
<u>(7) "Health care provider" means an advanced practice</u>	249
<u>registered nurse, a registered nurse, a pharmacist, a dentist,</u>	250
<u>an optometrist, a physician, a physician assistant, or a</u>	251
<u>hospital.</u>	252
<u>(8) "Hospital" and "medical claim" have the same meanings</u>	253
<u>as in section 2305.113 of the Revised Code.</u>	254
<u>(9) "Optometrist" means a person who is licensed under</u>	255
<u>Chapter 4725. of the Revised Code to practice optometry.</u>	256
<u>(10) "Paramedic" means an individual who holds a current,</u>	257
<u>valid certificate issued under section 4765.30 of the Revised</u>	258
<u>Code to practice as an emergency medical technician-paramedic.</u>	259
<u>(11) "Pharmacist" means an individual who holds a current,</u>	260
<u>valid license issued under Chapter 4729. of the Revised Code to</u>	261
<u>practice as a pharmacist.</u>	262
<u>(12) "Physician" means an individual who is authorized</u>	263
<u>under Chapter 4731. of the Revised Code to practice medicine and</u>	264
<u>surgery, osteopathic medicine and surgery, or podiatric medicine</u>	265
<u>and surgery.</u>	266
<u>(13) "Physician assistant" means an individual who is</u>	267
<u>authorized under Chapter 4730. of the Revised Code to practice</u>	268
<u>as a physician assistant.</u>	269
<u>(14) "Reckless disregard" as it applies to a given health</u>	270
<u>care provider or emergency medical technician rendering</u>	271
<u>emergency medical services, first-aid treatment, or other</u>	272
<u>emergency professional care, including the provision of any</u>	273
<u>medication or other medical product, means conduct that a health</u>	274
<u>care provider or emergency medical technician knew or should</u>	275

have known, at the time those services or that treatment or care 276
were rendered, created an unreasonable risk of injury, death, or 277
loss to person or property so as to affect the life or health of 278
another and that risk was substantially greater than that which 279
is necessary to make the conduct negligent. 280

(15) "Registered nurse" means an individual who holds a 281
current, valid license issued under Chapter 4723. of the Revised 282
Code to practice as a registered nurse. 283

(16) "Tort action" means a civil action for damages for 284
injury, death, or loss to person or property other than a civil 285
action for damages for a breach of contract or another agreement 286
between persons or governmental entities. "Tort action" includes 287
an action on a medical claim. 288

(B) Subject to division (C) (3) of this section, a health 289
care provider or emergency medical technician that provides 290
emergency medical services, first-aid treatment, or other 291
emergency professional care, including the provision of any 292
medication or other medical product, as a result of a disaster 293
is not liable in damages to any person in a tort action for 294
injury, death, or loss to person or property that allegedly 295
arises from an act or omission of the health care provider or 296
emergency medical technician in the health care provider's or 297
emergency medical technician's provision of those services or 298
that treatment or care if that act or omission does not 299
constitute reckless disregard for the consequences so as to 300
affect the life or health of the patient. 301

(C) (1) This section does not create a new cause of action 302
or substantive legal right against a health care provider or 303
emergency medical technician. 304

(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. 305
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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. 312
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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. 317
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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. 321
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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 health care provider or emergency medical technician in the health care provider's or emergency medical technician's 327
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provision of those services or that treatment or care as a 335
result of a disaster. 336

Sec. 2305.51. (A) (1) As used in this section: 337

(a) "Civil Rights" has the same meaning as in section 338
5122.301 of the Revised Code. 339

(b) "Mental health client or patient" means an individual 340
who is receiving mental health services from a mental health 341
professional or organization. 342

(c) "Mental health organization" means an organization 343
that engages one or more mental health professionals to provide 344
mental health services to one or more mental health clients or 345
patients. 346

(d) "Mental health professional" means an individual who 347
is licensed, certified, or registered under the Revised Code, or 348
otherwise authorized in this state, to provide mental health 349
services for compensation, remuneration, or other personal gain. 350

(e) "Mental health service" means a service provided to an 351
individual or group of individuals involving the application of 352
medical, psychiatric, psychological, professional counseling, 353
social work, marriage and family therapy, or nursing principles 354
or procedures to either of the following: 355

(i) The assessment, diagnosis, prevention, treatment, or 356
amelioration of mental, emotional, psychiatric, psychological, 357
or psychosocial disorders or diseases, as described in the most 358
recent edition of the diagnostic and statistical manual of 359
mental disorders published by the American psychiatric 360
association; 361

(ii) The assessment or improvement of mental, emotional, 362

psychiatric, psychological, or psychosocial adjustment or 363
functioning, regardless of whether there is a diagnosable, pre- 364
existing disorder or disease. 365

(f) "Knowledgeable person" means an individual who has 366
reason to believe that a mental health client or patient has the 367
intent and ability to carry out an explicit threat of inflicting 368
imminent and serious physical harm to or causing the death of a 369
clearly identifiable potential victim or victims and who is 370
either an immediate family member of the client or patient or an 371
individual who otherwise personally knows the client or patient. 372

(g) "Advanced practice registered nurse" has the same 373
meaning as in section 4723.01 of the Revised Code. 374

(h) "Hospital" has the same meaning as in section 2305.25 375
of the Revised Code. 376

(i) "Physician" means an individual authorized under 377
Chapter 4731. of the Revised Code to practice medicine and 378
surgery or osteopathic medicine and surgery. 379

(j) "Physician assistant" has the same meaning as in 380
section 4730.01 of the Revised Code. 381

(2) For the purpose of this section, in the case of a 382
threat to a readily identifiable structure, "clearly 383
identifiable potential victim" includes any potential occupant 384
of the structure. 385

(B) A mental health professional or mental health 386
organization may be held liable in damages in a civil action, or 387
may be made subject to disciplinary action by an entity with 388
licensing or other regulatory authority over the professional or 389
organization, for serious physical harm or death resulting from 390
failing to predict, warn of, or take precautions to provide 391

protection from the violent behavior of a mental health client 392
or patient, only if the client or patient or a knowledgeable 393
person has communicated to the professional or organization an 394
explicit threat of inflicting imminent and serious physical harm 395
to or causing the death of one or more clearly identifiable 396
potential victims, the professional or organization has reason 397
to believe that the client or patient has the intent and ability 398
to carry out the threat, and the professional or organization 399
fails to take one or more of the following actions in a timely 400
manner: 401

(1) Exercise any authority the professional or 402
organization possesses to hospitalize the client or patient on 403
an emergency basis pursuant to section 5122.10 of the Revised 404
Code; 405

(2) Exercise any authority the professional or 406
organization possesses to have the client or patient 407
involuntarily or voluntarily hospitalized under Chapter 5122. of 408
the Revised Code; 409

(3) Establish and undertake a documented treatment plan 410
that is reasonably calculated, according to appropriate 411
standards of professional practice, to eliminate the possibility 412
that the client or patient will carry out the threat, and, 413
concurrent with establishing and undertaking the treatment plan, 414
initiate arrangements for a second opinion risk assessment 415
through a management consultation about the treatment plan with, 416
in the case of a mental health organization, the clinical 417
director of the organization, or, in the case of a mental health 418
professional who is not acting as part of a mental health 419
organization, any mental health professional who is licensed to 420
engage in independent practice; 421

(4) Communicate to a law enforcement agency with 422
jurisdiction in the area where each potential victim resides, 423
where a structure threatened by a mental health client or 424
patient is located, or where the mental health client or patient 425
resides, and if feasible, communicate to each potential victim 426
or a potential victim's parent or guardian if the potential 427
victim is a minor or has been adjudicated incompetent, all of 428
the following information: 429

(a) The nature of the threat; 430

(b) The identity of the mental health client or patient 431
making the threat; 432

(c) The identity of each potential victim of the threat. 433

(C) All of the following apply when a mental health 434
professional or organization takes one or more of the actions 435
set forth in divisions (B) (1) to (4) of this section: 436

(1) The mental health professional or organization shall 437
consider each of the alternatives set forth and shall document 438
the reasons for choosing or rejecting each alternative. 439

(2) The mental health professional or organization may 440
give special consideration to those alternatives which, 441
consistent with public safety, would least abridge the rights of 442
the mental health client or patient established under the 443
Revised Code, including the rights specified in sections 5122.27 444
to 5122.31 of the Revised Code. 445

(3) The mental health professional or organization is not 446
required to take an action that, in the exercise of reasonable 447
professional judgment, would physically endanger the 448
professional or organization, increase the danger to a potential 449
victim, or increase the danger to the mental health client or 450

patient. 451

(4) The mental health professional or organization is not 452
liable in damages in a civil action, and shall not be made 453
subject to disciplinary action by any entity with licensing or 454
other regulatory authority over the professional or 455
organization, for disclosing any confidential information about 456
a mental health client or patient that is disclosed for the 457
purpose of taking any of the actions. 458

(D) Notwithstanding any other provision of the Revised 459
Code, a physician, physician assistant, advanced practice 460
registered nurse, or hospital is not liable in damages in a 461
civil action, and shall not be made subject to disciplinary 462
action by any entity with licensing or other regulatory 463
authority, for doing either of the following: 464

(1) Failing to discharge or to allow a patient to leave 465
the facility if the physician, physician assistant, advanced 466
practice registered nurse, or hospital believes in the good 467
faith exercise of professional medical, advanced practice 468
registered nursing, or physician assistant judgment according to 469
appropriate standards of professional practice that the patient 470
has a mental health condition that threatens the safety of the 471
patient or others; 472

(2) Discharging a patient whom the physician, physician 473
assistant, advanced practice registered nurse, or hospital 474
believes in the good faith exercise of professional medical, 475
advanced practice registered nursing, or physician assistant 476
judgment according to appropriate standards of professional 477
practice not to have a mental health condition that threatens 478
the safety of the patient or others. 479

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

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

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

(2) If any statements, affirmations, gestures, or conduct that are described in division (A) (1) of this section or any reference to them are included in the medical record pertaining to the victim of an unanticipated outcome of medical care, only the portions of the medical record that include those statements, affirmations, gestures, or conduct or any reference to them are inadmissible as evidence of an admission of liability or as evidence of an admission against interest.

(B) (1) When made as part of a review conducted in good faith by the health care provider, an employee of the health care provider, or a representative of the health care provider into the cause of or reasons for an unanticipated outcome of medical care, the following communications are inadmissible as evidence in any civil action brought by an alleged victim of an unanticipated outcome of medical care, in any arbitration proceeding related to such a civil action, or in any other civil proceeding, unless the communications are recorded in the medical record of the alleged victim, subject to division (A) (2) of this section: 510
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(a) Any communications made by a health care provider, an employee of a health care provider, or a representative of a health care provider to the alleged victim, a relative or acquaintance of the alleged victim, or a representative of the alleged victim; 521
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(b) Any communications made by an alleged victim, a relative or acquaintance of the alleged victim, or a representative of the alleged victim to the health care provider, an employee of a health care provider, or a representative of a health care provider. 526
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(2) Nothing in this section requires a review to be conducted. 531
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(C) For purposes of this section, unless the context otherwise requires: 533
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(1) "Health care provider" has the same meaning as in division (B) (5) of section 2317.02 of the Revised Code. 535
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(2) "Relative" means a victim's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, 537
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sister, half brother, half sister, or spouse's parents. The term 539
includes said relationships that are created as a result of 540
adoption. In addition, "relative" includes any person who has a 541
family-type relationship with a victim. 542

(3) "Representative of an alleged victim" means a legal 543
guardian, attorney, person designated to make decisions on 544
behalf of a patient under a medical power of attorney, or any 545
person recognized in law or custom as a patient's agent. 546

(4) "Representative of a health care provider" means an 547
attorney, health care provider, employee of a health care 548
provider, or other person designated by a health care provider 549
or an employee of a health care provider to participate in a 550
review conducted by a health care provider or employee of a 551
health care provider. 552

(5) "Review" means the policy, procedures, and activities 553
undertaken by or at the direction of a health care provider, 554
employee of a health care provider, or person designated by a 555
health care provider or employee of a health care provider with 556
the purpose of determining the cause of or reasons for an 557
unanticipated outcome, and initiated and completed during the 558
first forty-five days following the occurrence or discovery of 559
an unanticipated outcome. A review shall be initiated by verbal 560
communication to the patient, relative of the patient, or 561
representative of the patient by the health care provider, 562
employee of a health care provider, or person designated by a 563
health care provider or employee of a health care provider. The 564
verbal communication shall be followed by a written document 565
explaining the review process. A review may be extended for a 566
longer period if necessary upon written notice to the patient, 567
relative of the patient, or representative of the patient. 568

(6) "Unanticipated outcome" means the outcome of a medical treatment or procedure that differs from an expected result_or any outcome that is adverse or not satisfactory to the patient. 569
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Sec. 2317.44. (A) As used in this section: 572

(1) "Health care provider" means any person or entity against whom a medical claim may be asserted in a civil action. 573
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(2) "Medical claim" has the same meaning as in section 2305.113 of the Revised Code. 575
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(B) Any guideline, regulation, or other standard under any provision of the "Patient Protection and Affordable Care Act," 124 Stat. 119 (2010), 42 U.S.C. 18001 et seq., as amended, Title XVIII of the "Social Security Act," 42 U.S.C. 1395 et seq., as amended, and Title XIX of the "Social Security Act," 42 U.S.C. 1396 et seq., as amended, shall not be construed to establish the standard of care or duty of care owed by a health care provider to a patient in a medical claim and is not admissible as evidence for or against any party in any civil action based upon the medical claim or in any civil or administrative action involving the licensing or licensure status of the health care provider. 577
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Sec. 2317.45. (A) As used in this section: 589

(1) "Health care provider" means any person or entity against whom a medical claim may be asserted in a civil action. 590
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(2) "Insurer" means any public or private entity doing or authorized to do any insurance business in this state. "Insurer" includes a self-insuring employer and the United States centers for medicare and medicaid services. 592
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(3) "Medical claim" has the same meaning as in section 596

2305.113 of the Revised Code. 597

(4) "Reimbursement determination" means an insurer's 598
determination of whether the insurer will reimburse a health 599
care provider for health care services and the amount of that 600
reimbursement. 601

(5) "Reimbursement policies" means an insurer's policies 602
and procedures governing its decisions regarding the 603
reimbursement of a health care provider for health care services 604
and the method of reimbursement. 605

(B) Any insurer's reimbursement policies or reimbursement 606
determination or regulations issued by the United States centers 607
for medicare and medicaid services or the Ohio department of 608
medicaid regarding the health care services provided to the 609
patient in any civil action based on a medical claim are not 610
admissible as evidence for or against any party in the action 611
and may not be used to establish a standard of care or breach of 612
that standard of care in the action. 613

Sec. 2323.451. (A) (1) As used in this section, "medical 614
claim" has the same meaning as in section 2305.113 of the 615
Revised Code. 616

(2) This section may be used in lieu of, and not in 617
addition to, division (B) (1) of section 2305.113 of the Revised 618
Code. 619

(B) At the time of filing a complaint asserting a medical 620
claim, the plaintiff shall file with the complaint, pursuant to 621
rule 10(D) of the Rules of Civil Procedure, an affidavit of 622
merit relative to each defendant named in the complaint or a 623
motion to extend the period of time to file an affidavit of 624
merit. 625

(C) The parties may conduct discovery as permitted by the 626
Rules of Civil Procedure. Additionally, for the period of time 627
specified in division (D) (2) of this section, the parties may 628
seek to discover the existence or identity of any other 629
potential medical claims or defendants that are not included or 630
named in the complaint. All parties shall provide the discovery 631
under this division in accordance with the Rules of Civil 632
Procedure. 633

(D) (1) Within the period of time specified in division (D) 634
(2) of this section, the plaintiff, in an amendment to the 635
complaint pursuant to rule 15 of the Rules of Civil Procedure, 636
may join in the action any additional medical claim or defendant 637
if the original one-year period of limitation applicable to that 638
additional medical claim or defendant had not expired prior to 639
the date the original complaint was filed. The plaintiff shall 640
file an affidavit of merit supporting the joinder of the 641
additional medical claim or defendant or a motion to extend the 642
period of time to file an affidavit of merit pursuant to rule 643
10(D) of the Rules of Civil Procedure with the amendment to the 644
complaint. 645

(2) If a complaint is filed under this section prior to 646
the expiration of the one-year period of limitation applicable 647
to medical claims under section 2305.113 of the Revised Code, 648
then the period of time in which the parties may conduct the 649
discovery under division (C) of this section and in which the 650
plaintiff may join in the action any additional medical claim or 651
defendant under division (D) (1) of this section shall be equal 652
to the balance of any days remaining from the filing of the 653
complaint to the expiration of that one-year period of 654
limitation, plus one hundred eighty days from the filing of the 655
complaint. 656

(E) Subject to division (F) of this section, after the 657
expiration of the one-hundred-eighty-day period described in 658
division (D)(2) of this section, the plaintiff shall not join 659
any additional medical claim or defendant to the action unless 660
the medical claim is for wrongful death, and the period of 661
limitation for the claim under section 2125.02 of the Revised 662
Code has not expired. 663

(F) This section does not modify or affect and shall not 664
be construed as modifying or affecting any provision of the 665
Revised Code, rule of common law, or Ohio Rules of Civil 666
Procedure that applies to the commencement of the period of 667
limitation for medical claims that are asserted or defendants 668
that are joined after the expiration of the one-hundred-eighty- 669
day period described in division (D)(2) of this section. 670

Section 2. That existing sections 2305.113, 2305.51, and 671
2317.43 of the Revised Code are hereby repealed. 672

Section 3. (A) Section 2323.451 of the Revised Code, as 673
enacted by this act, applies to a civil action that is based 674
upon a medical claim and that is filed on or after the effective 675
date of this act. 676

(B) As used in division (A) of this section, "medical 677
claim" has the same meaning as in section 2305.113 of the 678
Revised Code. 679