

**As Passed by the House**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**Sub. H. B. No. 7**

**Representative Cupp**

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

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**A BILL**

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

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

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

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

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

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

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

(a) The person's residence; 47

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

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

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

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

(E) As used in this section: 101

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<u>emergency medical technician.</u>	307
<u>(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.</u>	308 309 310 311 312 313 314
<u>(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.</u>	315 316 317 318 319
<u>(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.</u>	320 321 322 323
<u>(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.</u>	324 325 326 327 328 329
<u>(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</u>	330 331 332 333 334 335

health care provider or emergency medical technician in the 336  
health care provider's or emergency medical technician's 337  
provision of those services or that treatment or care as a 338  
result of a disaster. 339

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) A mental health professional or mental health 483

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

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

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

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

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

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

(a) The nature of the threat; 527

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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