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Representative Cupp

**Cosponsors: Representatives Antani, Becker, Henne, Huffman, McClain, Schaffer,
Scherer, Smith, R., Sprague**

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 or mass hazard; to 7
provide that certain communications made 8
regarding an unanticipated outcome of medical 9
care, the development or implementation of 10
standards under federal laws, and an insurer's 11
reimbursement policies on health care are 12
inadmissible as evidence in a medical claim; to 13
provide that medical bills itemizing charges are 14
inadmissible as evidence and a payment for 15
medical services accepted by a defendant from an 16
insurer is admissible as evidence of the 17
reasonableness of the charges; to specify the 18
manner of sending a notice of intent to file a 19
medical claim and provide a procedure for the 20
discovery of other potential claims within a 21
specified period after the filing of a medical 22

claim; to provide that any loss of a chance of 23
recovery or survival by itself is not an injury, 24
death, or loss for which damages may be 25
recovered; to provide civil immunity to certain 26
medical providers regarding the discharge of a 27
patient with a mental condition that threatens 28
the safety of the patient or others; to require 29
that governmental agencies that receive peer 30
review committee records maintain their 31
confidentiality; and to clarify the definition 32
of "medical claim." 33

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

Section 1. That sections 2305.113, 2305.252, 2305.51, 34
2317.421, 2317.43, and 2323.41 be amended and sections 35
2305.2311, 2317.44, 2317.45, 2323.40, and 2323.451 of the 36
Revised Code be enacted to read as follows: 37

Sec. 2305.113. (A) Except as otherwise provided in this 38
section, an action upon a medical, dental, optometric, or 39
chiropractic claim shall be commenced within one year after the 40
cause of action accrued. 41

(B) (1) If prior to the expiration of the one-year period 42
specified in division (A) of this section, a claimant who 43
allegedly possesses a medical, dental, optometric, or 44
chiropractic claim gives to the person who is the subject of 45
that claim written notice that the claimant is considering 46
bringing an action upon that claim, that action may be commenced 47
against the person notified at any time within one hundred 48

eighty days after the notice is so given. 49

(2) A claimant who allegedly possesses a medical claim and 50
who intends to give to the person who is the subject of that 51
claim the written notice described in division (B) (1) of this 52
section shall give that notice by sending it by certified mail, 53
return receipt requested, addressed to any of the following: 54

(a) The person's residence; 55

(b) The person's professional practice; 56

(c) The person's employer; 57

(d) The address of the person on file with the state 58
medical board or other appropriate agency that issued the 59
person's professional license. 60

(3) An insurance company shall not consider the existence 61
or nonexistence of a written notice described in division (B) (1) 62
of this section in setting the liability insurance premium rates 63
that the company may charge the company's insured person who is 64
notified by that written notice. 65

(C) Except as to persons within the age of minority or of 66
unsound mind as provided by section 2305.16 of the Revised Code, 67
and except as provided in division (D) of this section, both of 68
the following apply: 69

(1) No action upon a medical, dental, optometric, or 70
chiropractic claim shall be commenced more than four years after 71
the occurrence of the act or omission constituting the alleged 72
basis of the medical, dental, optometric, or chiropractic claim. 73

(2) If an action upon a medical, dental, optometric, or 74
chiropractic claim is not commenced within four years after the 75
occurrence of the act or omission constituting the alleged basis 76

of the medical, dental, optometric, or chiropractic claim, then, 77
any action upon that claim is barred. 78

(D) (1) If a person making a medical claim, dental claim, 79
optometric claim, or chiropractic claim, in the exercise of 80
reasonable care and diligence, could not have discovered the 81
injury resulting from the act or omission constituting the 82
alleged basis of the claim within three years after the 83
occurrence of the act or omission, but, in the exercise of 84
reasonable care and diligence, discovers the injury resulting 85
from that act or omission before the expiration of the four-year 86
period specified in division (C) (1) of this section, the person 87
may commence an action upon the claim not later than one year 88
after the person discovers the injury resulting from that act or 89
omission. 90

(2) If the alleged basis of a medical claim, dental claim, 91
optometric claim, or chiropractic claim is the occurrence of an 92
act or omission that involves a foreign object that is left in 93
the body of the person making the claim, the person may commence 94
an action upon the claim not later than one year after the 95
person discovered the foreign object or not later than one year 96
after the person, with reasonable care and diligence, should 97
have discovered the foreign object. 98

(3) A person who commences an action upon a medical claim, 99
dental claim, optometric claim, or chiropractic claim under the 100
circumstances described in division (D) (1) or (2) of this 101
section has the affirmative burden of proving, by clear and 102
convincing evidence, that the person, with reasonable care and 103
diligence, could not have discovered the injury resulting from 104
the act or omission constituting the alleged basis of the claim 105
within the three-year period described in division (D) (1) of 106

this section or within the one-year period described in division 107
(D) (2) of this section, whichever is applicable. 108

(E) As used in this section: 109

(1) "Hospital" includes any person, corporation, 110
association, board, or authority that is responsible for the 111
operation of any hospital licensed or registered in the state, 112
including, but not limited to, those that are owned or operated 113
by the state, political subdivisions, any person, any 114
corporation, or any combination of the state, political 115
subdivisions, persons, and corporations. "Hospital" also 116
includes any person, corporation, association, board, entity, or 117
authority that is responsible for the operation of any clinic 118
that employs a full-time staff of physicians practicing in more 119
than one recognized medical specialty and rendering advice, 120
diagnosis, care, and treatment to individuals. "Hospital" does 121
not include any hospital operated by the government of the 122
United States or any of its branches. 123

(2) "Physician" means a person who is licensed to practice 124
medicine and surgery or osteopathic medicine and surgery by the 125
state medical board or a person who otherwise is authorized to 126
practice medicine and surgery or osteopathic medicine and 127
surgery in this state. 128

(3) "Medical claim" means any claim that is asserted in 129
any civil action against a physician, podiatrist, hospital, 130
home, or residential facility, against any employee or agent of 131
a physician, podiatrist, hospital, home, or residential 132
facility, or against a licensed practical nurse, registered 133
nurse, advanced practice registered nurse, physical therapist, 134
physician assistant, emergency medical technician-basic, 135
emergency medical technician-intermediate, or emergency medical 136

technician-paramedic, and that arises out of the medical	137
diagnosis, care, or treatment of any person. "Medical claim"	138
includes the following:	139
(a) Derivative claims for relief that arise from the plan	140
of care, medical diagnosis, <u>care,</u> or treatment of a person;	141
(b) <u>Derivative claims for relief that arise from the plan</u>	142
<u>of care prepared for a resident of a home;</u>	143
(c) <u>Claims that arise out of the plan of care, medical</u>	144
<u>diagnosis, <u>care,</u> or treatment of any person <u>or claims that arise</u></u>	145
<u>out of the plan of care prepared for a resident of a home and to</u>	146
<u>which <u>both types of claims</u> either of the following applies:</u>	147
(i) The claim results from acts or omissions in providing	148
medical care.	149
(ii) The claim results from the hiring, training,	150
supervision, retention, or termination of caregivers providing	151
medical diagnosis, care, or treatment.	152
(e) <u>(d)</u> Claims that arise out of the plan of care, medical	153
diagnosis, or treatment of any person and that are brought under	154
section 3721.17 of the Revised Code;	155
(d) <u>(e)</u> Claims that arise out of skilled nursing care or	156
personal care services provided in a home pursuant to the plan	157
of care, medical diagnosis, or treatment.	158
(4) "Podiatrist" means any person who is licensed to	159
practice podiatric medicine and surgery by the state medical	160
board.	161
(5) "Dentist" means any person who is licensed to practice	162
dentistry by the state dental board.	163

(6) "Dental claim" means any claim that is asserted in any 164
civil action against a dentist, or against any employee or agent 165
of a dentist, and that arises out of a dental operation or the 166
dental diagnosis, care, or treatment of any person. "Dental 167
claim" includes derivative claims for relief that arise from a 168
dental operation or the dental diagnosis, care, or treatment of 169
a person. 170

(7) "Derivative claims for relief" include, but are not 171
limited to, claims of a parent, guardian, custodian, or spouse 172
of an individual who was the subject of any medical diagnosis, 173
care, or treatment, dental diagnosis, care, or treatment, dental 174
operation, optometric diagnosis, care, or treatment, or 175
chiropractic diagnosis, care, or treatment, that arise from that 176
diagnosis, care, treatment, or operation, and that seek the 177
recovery of damages for any of the following: 178

(a) Loss of society, consortium, companionship, care, 179
assistance, attention, protection, advice, guidance, counsel, 180
instruction, training, or education, or any other intangible 181
loss that was sustained by the parent, guardian, custodian, or 182
spouse; 183

(b) Expenditures of the parent, guardian, custodian, or 184
spouse for medical, dental, optometric, or chiropractic care or 185
treatment, for rehabilitation services, or for other care, 186
treatment, services, products, or accommodations provided to the 187
individual who was the subject of the medical diagnosis, care, 188
or treatment, the dental diagnosis, care, or treatment, the 189
dental operation, the optometric diagnosis, care, or treatment, 190
or the chiropractic diagnosis, care, or treatment. 191

(8) "Registered nurse" means any person who is licensed to 192
practice nursing as a registered nurse by the board of nursing. 193

(9) "Chiropractic claim" means any claim that is asserted	194
in any civil action against a chiropractor, or against any	195
employee or agent of a chiropractor, and that arises out of the	196
chiropractic diagnosis, care, or treatment of any person.	197
"Chiropractic claim" includes derivative claims for relief that	198
arise from the chiropractic diagnosis, care, or treatment of a	199
person.	200
(10) "Chiropractor" means any person who is licensed to	201
practice chiropractic by the state chiropractic board.	202
(11) "Optometric claim" means any claim that is asserted	203
in any civil action against an optometrist, or against any	204
employee or agent of an optometrist, and that arises out of the	205
optometric diagnosis, care, or treatment of any person.	206
"Optometric claim" includes derivative claims for relief that	207
arise from the optometric diagnosis, care, or treatment of a	208
person.	209
(12) "Optometrist" means any person licensed to practice	210
optometry by the state board of optometry.	211
(13) "Physical therapist" means any person who is licensed	212
to practice physical therapy under Chapter 4755. of the Revised	213
Code.	214
(14) "Home" has the same meaning as in section 3721.10 of	215
the Revised Code.	216
(15) "Residential facility" means a facility licensed	217
under section 5123.19 of the Revised Code.	218
(16) "Advanced practice registered nurse" means any	219
certified nurse practitioner, clinical nurse specialist,	220
certified registered nurse anesthetist, or certified nurse-	221
midwife who holds a certificate of authority issued by the board	222

of nursing under Chapter 4723. of the Revised Code.	223
(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.	224 225 226 227
(18) "Physician assistant" means any person who is licensed as a physician assistant under Chapter 4730. of the Revised Code.	228 229 230
(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.	231 232 233 234 235 236
(20) "Skilled nursing care" and "personal care services" have the same meanings as in section 3721.01 of the Revised Code.	237 238 239
<u>Sec. 2305.2311.</u> (A) As used in this section:	240
<u>(1) "Dentist" has the same meaning as in section 2305.231 of the Revised Code.</u>	241 242
<u>(2) "Disaster" means any imminent threat or actual occurrence of widespread personal injury, epidemic, or loss of life that results from any natural phenomenon or act of a human.</u>	243 244 245
<u>(3) "Hospital" and "medical claim" have the same meanings as in section 2305.113 of the Revised Code.</u>	246 247
<u>(4) "Mass hazard" means any actual or imminent threat to the survival or overall health, safety, or welfare of the civilian population that is caused by any natural, human-made,</u>	248 249 250

<u>or technological event.</u>	251
<u>(5) "Optometrist" means a person who is licensed under Chapter 4725. of the Revised Code to practice optometry.</u>	252 253
<u>(6) "Physician" means an individual who is authorized under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.</u>	254 255 256 257
<u>(7) "Physician assistant" means an individual who is authorized under Chapter 4730. of the Revised Code to practice as a physician assistant.</u>	258 259 260
<u>(8) "Reckless disregard" as it applies to a given physician, physician assistant, dentist, optometrist, or hospital rendering emergency medical services means conduct that a physician, physician assistant, dentist, optometrist, or hospital knew or should have known, at the time those services were rendered, created an unreasonable risk of injury, death, or loss to person or property so as to affect the life or health of another and that risk was substantially greater than that which is necessary to make the conduct negligent.</u>	261 262 263 264 265 266 267 268 269
<u>(9) "Tort action" means a civil action for damages for injury, death, or loss to person or property other than a civil action for damages for a breach of contract or another agreement between persons or governmental entities. "Tort action" includes an action on a medical claim.</u>	270 271 272 273 274
<u>(B) Subject to division (C) (3) of this section, a physician, physician assistant, dentist, optometrist, or hospital that provides emergency medical services, first-aid treatment, or other emergency professional care, including the provision of any medication or other medical product, as a</u>	275 276 277 278 279

result of a disaster or mass hazard is not liable in damages to 280
any person in a tort action for injury, death, or loss to person 281
or property that allegedly arises from an act or omission of the 282
physician, physician assistant, dentist, optometrist, or 283
hospital in the physician's, physician assistant's, dentist's, 284
optometrist's, or hospital's provision of those services or that 285
treatment or care if that act or omission does not constitute 286
reckless disregard for the consequences so as to affect the life 287
or health of the patient. 288

(C) (1) This section does not create a new cause of action 289
or substantive legal right against a physician, physician 290
assistant, dentist, optometrist, or hospital. 291

(2) This section does not affect any immunities from civil 292
liability or defenses established by another section of the 293
Revised Code or available at common law to which a physician, 294
physician assistant, dentist, optometrist, or hospital may be 295
entitled in connection with the provision of emergency medical 296
services, first-aid treatment, or other emergency professional 297
care. 298

(3) This section does not grant an immunity from tort or 299
other civil liability to a physician, physician assistant, 300
dentist, optometrist, or hospital for actions that are outside 301
the scope of authority of the physician, physician assistant, 302
dentist, optometrist, or hospital. 303

(4) This section does not affect any legal responsibility 304
of a physician, physician assistant, dentist, optometrist, or 305
hospital to comply with any applicable law of this state or rule 306
of an agency of this state. 307

(D) This section does not apply to a tort action alleging 308

wrongful death against a physician, physician assistant, 309
dentist, optometrist, or hospital that provides emergency 310
medical services, first-aid treatment, or other emergency 311
professional care, including the provision of any medication or 312
other medical product that allegedly arises from an act or 313
omission of the physician, physician assistant, dentist, 314
optometrist, or hospital in the physician's, physician 315
assistant's, dentist's, optometrist's, or hospital's provision 316
of those services or that treatment or care as a result of a 317
disaster or mass hazard. 318

Sec. 2305.252. (A) Proceedings and records within the 319
scope of a peer review committee of a health care entity shall 320
be held in confidence and shall not be subject to discovery or 321
introduction in evidence in any civil action against a health 322
care entity or health care provider, including both individuals 323
who provide health care and entities that provide health care, 324
arising out of matters that are the subject of evaluation and 325
review by the peer review committee. No individual who attends a 326
meeting of a peer review committee, serves as a member of a peer 327
review committee, works for or on behalf of a peer review 328
committee, or provides information to a peer review committee 329
shall be permitted or required to testify in any civil action as 330
to any evidence or other matters produced or presented during 331
the proceedings of the peer review committee or as to any 332
finding, recommendation, evaluation, opinion, or other action of 333
the committee or a member thereof. 334

Information, documents, or records otherwise available 335
from original sources are not to be construed as being 336
unavailable for discovery or for use in any civil action merely 337
because they were produced or presented during proceedings of a 338
peer review committee, but the information, documents, or 339

records are available only from the original sources and cannot 340
be obtained from the peer review committee's proceedings or 341
records. 342

The release of any information, documents, or records that 343
were produced or presented during proceedings of a peer review 344
committee or created to document the proceedings does not affect 345
the confidentiality of any other information, documents, or 346
records produced or presented during those proceedings or 347
created to document them. Only the information, documents, or 348
records actually released cease to be privileged under this 349
section. 350

Nothing in this section precludes health care entities 351
from sharing information, documents, or records that were 352
produced or presented during proceedings of a peer review 353
committee or created to document them as long as the 354
information, documents, or records are used only for peer review 355
purposes. 356

An individual who testifies before a peer review 357
committee, serves as a representative of a peer review 358
committee, serves as a member of a peer review committee, works 359
for or on behalf of a peer review committee, or provides 360
information to a peer review committee shall not be prevented 361
from testifying as to matters within the individual's knowledge, 362
but the individual cannot be asked about the individual's 363
testimony before the peer review committee, information the 364
individual provided to the peer review committee, or any opinion 365
the individual formed as a result of the peer review committee's 366
activities. 367

An order by a court to produce for discovery or for use at 368
trial the proceedings or records described in this section is a 369

final order. 370

(B) Division (A) of this section applies to a peer review 371
committee of the bureau of workers' compensation that is 372
responsible for reviewing the professional qualifications and 373
the performance of providers certified by the bureau to 374
participate in the health partnership program created under 375
sections 4121.44 and 4121.441 of the Revised Code, except that 376
the proceedings and records within the scope of the peer review 377
committee are subject to discovery or court subpoena and may be 378
admitted into evidence in any criminal action or administrative 379
or civil action initiated, prosecuted, or adjudicated by the 380
bureau involving an alleged violation of applicable statutes or 381
administrative rules. The bureau may share proceedings and 382
records within the scope of the peer review committee, including 383
claimant records and claim file information, with law 384
enforcement agencies, licensing boards, and other governmental 385
agencies that are prosecuting, adjudicating, or investigating 386
alleged violations of applicable statutes or administrative 387
rules. If the bureau shares proceedings or records with a law 388
enforcement agency, licensing board, or another governmental 389
agency pursuant to this division, that sharing does not affect 390
the confidentiality of the record. Recipients of claimant 391
records and claim file information provided by the bureau 392
pursuant to this division shall take appropriate measures to 393
maintain the confidentiality of the information. 394

(C) A peer review committee may share proceedings and 395
records within the scope of the peer review committee, including 396
documents regarding patient care and medical care provided by 397
physicians and nurses, with law enforcement agencies, licensing 398
boards, regulatory agencies, and other governmental agencies 399
that are prosecuting, investigating, or adjudicating alleged 400

violations of applicable statutes or administrative rules. 401
However, the sharing of those proceedings or records with any of 402
those agencies or boards shall not affect the confidentiality of 403
the proceedings and records under division (A) of this section. 404
Any recipient of the records that are provided under this 405
division shall take appropriate measures to maintain the 406
confidentiality of the information contained in the records. 407

Sec. 2305.51. (A) (1) As used in this section: 408

(a) "Civil Rights" has the same meaning as in section 409
5122.301 of the Revised Code. 410

(b) "Mental health client or patient" means an individual 411
who is receiving mental health services from a mental health 412
professional or organization. 413

(c) "Mental health organization" means an organization 414
that engages one or more mental health professionals to provide 415
mental health services to one or more mental health clients or 416
patients. 417

(d) "Mental health professional" means an individual who 418
is licensed, certified, or registered under the Revised Code, or 419
otherwise authorized in this state, to provide mental health 420
services for compensation, remuneration, or other personal gain. 421

(e) "Mental health service" means a service provided to an 422
individual or group of individuals involving the application of 423
medical, psychiatric, psychological, professional counseling, 424
social work, marriage and family therapy, or nursing principles 425
or procedures to either of the following: 426

(i) The assessment, diagnosis, prevention, treatment, or 427
amelioration of mental, emotional, psychiatric, psychological, 428
or psychosocial disorders or diseases, as described in the most 429

recent edition of the diagnostic and statistical manual of 430
mental disorders published by the American psychiatric 431
association; 432

(ii) The assessment or improvement of mental, emotional, 433
psychiatric, psychological, or psychosocial adjustment or 434
functioning, regardless of whether there is a diagnosable, pre- 435
existing disorder or disease. 436

(f) "Knowledgeable person" means an individual who has 437
reason to believe that a mental health client or patient has the 438
intent and ability to carry out an explicit threat of inflicting 439
imminent and serious physical harm to or causing the death of a 440
clearly identifiable potential victim or victims and who is 441
either an immediate family member of the client or patient or an 442
individual who otherwise personally knows the client or patient. 443

(g) "Advanced practice registered nurse" and "registered 444
nurse" have the same meanings as in section 4723.01 of the 445
Revised Code. 446

(h) "Hospital" has the same meaning as in section 2305.25 447
of the Revised Code. 448

(i) "Physician" means an individual authorized under 449
Chapter 4731. of the Revised Code to practice medicine and 450
surgery or osteopathic medicine and surgery. 451

(j) "Physician assistant" has the same meaning as in 452
section 4730.01 of the Revised Code. 453

(2) For the purpose of this section, in the case of a 454
threat to a readily identifiable structure, "clearly 455
identifiable potential victim" includes any potential occupant 456
of the structure. 457

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

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

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

(3) Establish and undertake a documented treatment plan that is reasonably calculated, according to appropriate standards of professional practice, to eliminate the possibility that the client or patient will carry out the threat, and, concurrent with establishing and undertaking the treatment plan, initiate arrangements for a second opinion risk assessment

through a management consultation about the treatment plan with, 488
in the case of a mental health organization, the clinical 489
director of the organization, or, in the case of a mental health 490
professional who is not acting as part of a mental health 491
organization, any mental health professional who is licensed to 492
engage in independent practice; 493

(4) Communicate to a law enforcement agency with 494
jurisdiction in the area where each potential victim resides, 495
where a structure threatened by a mental health client or 496
patient is located, or where the mental health client or patient 497
resides, and if feasible, communicate to each potential victim 498
or a potential victim's parent or guardian if the potential 499
victim is a minor or has been adjudicated incompetent, all of 500
the following information: 501

(a) The nature of the threat; 502

(b) The identity of the mental health client or patient 503
making the threat; 504

(c) The identity of each potential victim of the threat. 505

(C) All of the following apply when a mental health 506
professional or organization takes one or more of the actions 507
set forth in divisions (B) (1) to (4) of this section: 508

(1) The mental health professional or organization shall 509
consider each of the alternatives set forth and shall document 510
the reasons for choosing or rejecting each alternative. 511

(2) The mental health professional or organization may 512
give special consideration to those alternatives which, 513
consistent with public safety, would least abridge the rights of 514
the mental health client or patient established under the 515
Revised Code, including the rights specified in sections 5122.27 516

to 5122.31 of the Revised Code. 517

(3) The mental health professional or organization is not 518
required to take an action that, in the exercise of reasonable 519
professional judgment, would physically endanger the 520
professional or organization, increase the danger to a potential 521
victim, or increase the danger to the mental health client or 522
patient. 523

(4) The mental health professional or organization is not 524
liable in damages in a civil action, and shall not be made 525
subject to disciplinary action by any entity with licensing or 526
other regulatory authority over the professional or 527
organization, for disclosing any confidential information about 528
a mental health client or patient that is disclosed for the 529
purpose of taking any of the actions. 530

(D) Notwithstanding any other provision of the Revised 531
Code, a physician, physician assistant, advanced practice 532
registered nurse, registered nurse, employee or independent 533
contractor of a hospital emergency department, or hospital is 534
not liable in damages in a civil action, and shall not be made 535
subject to disciplinary action by any entity with licensing or 536
other regulatory authority, for doing either of the following: 537

(1) Failing to discharge or to allow a patient to leave 538
the facility if the physician, physician assistant, nurse, 539
employee, independent contractor, or hospital believes in the 540
good faith exercise of professional medical or nursing judgment 541
according to appropriate standards of professional practice that 542
the patient has a mental health condition that threatens the 543
safety of the patient or others; 544

(2) Discharging a patient whom the physician, physician 545

assistant, nurse, employee, independent contractor, or hospital 546
believes in the good faith exercise of professional medical or 547
nursing judgment according to appropriate standards of 548
professional practice not to have a mental health condition that 549
threatens the safety of the patient or others. 550

(E) The immunities from civil liability and disciplinary 551
action conferred by this section are in addition to and not in 552
limitation of any immunity conferred on a mental health 553
professional or organization or on a physician, physician 554
assistant, advanced practice registered nurse, registered nurse, 555
employee or independent contractor of a hospital emergency 556
department, or hospital by any other section of the Revised Code 557
or by judicial precedent. 558

~~(E)~~ (F) This section does not affect the civil rights of a 559
mental health client or patient under Ohio or federal law. 560

Sec. 2317.421. (A) In an action for damages arising from 561
personal injury or wrongful death, a written bill or statement, 562
or any relevant portion ~~thereof~~ of a written bill or statement, 563
itemized by date, type of service rendered, and charge, shall, 564
if otherwise admissible, be prima-facie evidence of the 565
reasonableness of any charges and fees stated ~~therein~~ in the 566
bill or statement for dental medication and prosthetic devices 567
furnished, or ~~medical, dental, hospital,~~ and funeral services 568
rendered by the person, firm, or corporation issuing such bill 569
or statement, provided, that ~~such the~~ bill or statement shall be 570
prima-facie evidence of reasonableness only if the party 571
offering it delivers a copy ~~of it,~~ or the relevant portion 572
~~thereof, of it~~ to the attorney of record for each adverse party 573
not less than five days before trial. 574

(B) In an action for damages based upon a medical claim, 575

as defined in section 2305.113 of the Revised Code, a written 576
bill or statement or any relevant portion of a written bill or 577
statement itemizing the charges and fees for the medical 578
services rendered by the defendant medical provider or hospital 579
is not admissible as evidence of the reasonableness of the 580
medical charges and fees. Any evidence of an amount accepted by 581
the defendant from an insurer as full payment for the medical 582
services rendered by the defendant is admissible as evidence of 583
the reasonableness of the medical charges and fees for the 584
medical services rendered, and section 2323.41 of the Revised 585
Code does not apply to exclude that evidence. 586

Sec. 2317.43. (A) In any civil action brought by an 587
alleged victim of an unanticipated outcome of medical care or in 588
any arbitration proceeding related to such a civil action, any 589
and all statements, affirmations, gestures, or conduct 590
expressing apology, sympathy, commiseration, condolence, 591
compassion, error, fault, or a general sense of benevolence that 592
are made by a health care provider ~~or,~~ an employee of a health 593
care provider, or a representative of a health care provider to 594
the alleged victim, a relative of the alleged victim, or a 595
representative of the alleged victim, and that relate to the 596
discomfort, pain, suffering, injury, or death of the alleged 597
victim as the result of the unanticipated outcome of medical 598
care are inadmissible as evidence of an admission of liability 599
or as evidence of an admission against interest. 600

(B) (1) When made as part of a review conducted in good 601
faith by the health care provider, an employee of the health 602
care provider, or a representative of the health care provider 603
into the cause of or reasons for an unanticipated outcome of 604
medical care, the following communications are inadmissible as 605
evidence in any civil action brought by an alleged victim of an 606

unanticipated outcome of medical care, in any arbitration 607
proceeding related to such a civil action, or in any other civil 608
proceeding, unless the communications are recorded in the 609
medical record of the alleged victim: 610

(a) Any communications made by a health care provider, an 611
employee of a health care provider, or a representative of a 612
health care provider to the alleged victim, a relative or 613
acquaintance of the alleged victim, or a representative of the 614
alleged victim; 615

(b) Any communications made by an alleged victim, a 616
relative or acquaintance of the alleged victim, or a 617
representative of the alleged victim to the health care 618
provider, an employee of a health care provider, or a 619
representative of a health care provider. 620

(2) Nothing in this section requires a review to be 621
conducted. 622

(C) For purposes of this section, unless the context 623
otherwise requires: 624

(1) "Health care provider" has the same meaning as in 625
division (B) (5) of section 2317.02 of the Revised Code. 626

(2) "Relative" means a victim's spouse, parent, 627
grandparent, stepfather, stepmother, child, grandchild, brother, 628
sister, half brother, half sister, or spouse's parents. The term 629
includes said relationships that are created as a result of 630
adoption. In addition, "relative" includes any person who has a 631
family-type relationship with a victim. 632

(3) "Representative of an alleged victim" means a legal 633
guardian, attorney, person designated to make decisions on 634
behalf of a patient under a medical power of attorney, or any 635

person recognized in law or custom as a patient's agent. 636

(4) "Representative of a health care provider" means an 637
attorney, health care provider, employee of a health care 638
provider, or other person designated by a health care provider 639
or an employee of a health care provider to participate in a 640
review conducted by a health care provider or employee of a 641
health care provider. 642

(5) "Review" means the policy, procedures, and activities 643
undertaken by or at the direction of a health care provider, 644
employee of a health care provider, or person designated by a 645
health care provider or employee of a health care provider with 646
the purpose of determining the cause of or reasons for an 647
unanticipated outcome, and initiated and completed during the 648
first forty-five days following the occurrence or discovery of 649
an unanticipated outcome. A review shall be initiated by verbal 650
communication to the patient, relative of the patient, or 651
representative of the patient by the health care provider, 652
employee of a health care provider, or person designated by a 653
health care provider or employee of a health care provider. The 654
verbal communication shall be followed by a written document 655
explaining the review process. A review may be extended for a 656
longer period if necessary upon written notice to the patient, 657
relative of the patient, or representative of the patient. 658

(6) "Unanticipated outcome" means the outcome of a medical 659
treatment or procedure that differs from an expected result or 660
any outcome that is adverse or not satisfactory to the patient. 661

Sec. 2317.44. (A) As used in this section: 662

(1) "Health care provider" means any person or entity 663
against whom a medical claim may be asserted in a civil action. 664

(2) "Medical claim" has the same meaning as in section 665
2305.113 of the Revised Code. 666

(B) Any guideline, regulation, or other standard under any 667
provision of the "Patient Protection and Affordable Care Act," 668
124 Stat. 119 (2010), 42 U.S.C. 18001 et seq., as amended, Title 669
XVIII of the "Social Security Act," 42 U.S.C. 1395 et seq., as 670
amended, and Title XIX of the "Social Security Act," 42 U.S.C. 671
1396 et seq., as amended, shall not be construed to establish 672
the standard of care or duty of care owed by a health care 673
provider to a patient in a medical claim and is not admissible 674
as evidence for or against any party in any civil action based 675
upon the medical claim or in any civil or administrative action 676
involving the licensing or licensure status of the health care 677
provider. 678

Sec. 2317.45. (A) As used in this section: 679

(1) "Health care provider" means any person or entity 680
against whom a medical claim may be asserted in a civil action. 681

(2) "Insurer" means any public or private entity doing or 682
authorized to do any insurance business in this state. "Insurer" 683
includes a self-insuring employer and the United States centers 684
for medicare and medicaid services. 685

(3) "Medical claim" has the same meaning as in section 686
2305.113 of the Revised Code. 687

(4) "Reimbursement determination" means an insurer's 688
determination of whether the insurer will reimburse a health 689
care provider for health care services and the amount of that 690
reimbursement. 691

(5) "Reimbursement policies" means an insurer's policies 692
and procedures governing its decisions regarding the 693

reimbursement of a health care provider for health care 694
services, the method of reimbursement, and the data upon which 695
those policies and procedures are based, including, but not 696
limited to, data from national research groups and other patient 697
safety data. 698

(B) Any insurer's reimbursement policies or reimbursement 699
determination or regulations issued by the United States centers 700
for medicare and medicaid services or the Ohio department of 701
medicaid regarding the health care services provided to the 702
patient in any civil action based on a medical claim are not 703
admissible as evidence for or against any party in the action 704
and may not be used to establish a standard of care or breach of 705
that standard of care in the action. 706

Sec. 2323.40. (A) As used in this section, "medical claim" 707
has the same meaning as in section 2305.113 of the Revised Code. 708

(B) In any civil action upon a medical claim, in order for 709
the plaintiff to recover any damages resulting from the alleged 710
injury, death, or loss to person, the plaintiff shall establish 711
by a preponderance of the evidence that the act or omission of 712
the defendant in rendering medical care or treatment is a 713
deviation from the required standard of medical care or 714
treatment and the direct and proximate cause of the injury, 715
death, or loss to person. Direct and proximate cause of the 716
injury, death, or loss to person is established by evidence 717
showing that it is more likely than not that the defendant's act 718
or omission was a cause in fact of the injury, death, or loss to 719
person. Any loss or diminution of a chance of recovery or 720
survival by itself is not an injury, death, or loss to person 721
for which damages may be recovered. 722

Sec. 2323.41. (A) In any civil action upon a medical, 723

dental, optometric, or chiropractic claim, the defendant may 724
introduce evidence of any amount payable as a benefit to the 725
plaintiff as a result of the damages that result from an injury, 726
death, or loss to person or property that is the subject of the 727
claim, except if the source of collateral benefits has a 728
mandatory self-effectuating federal right of subrogation, a 729
contractual right of subrogation, or a statutory right of 730
subrogation. 731

(B) If the defendant elects to introduce evidence 732
described in division (A) of this section, the plaintiff may 733
introduce evidence of any amount that the plaintiff has paid or 734
contributed to secure the plaintiff's right to receive the 735
benefits of which the defendant has introduced evidence. 736

(C) A source of collateral benefits of which evidence is 737
introduced pursuant to division (A) of this section shall not 738
recover any amount against the plaintiff nor shall it be 739
subrogated to the rights of the plaintiff against a defendant. 740

(D) This section does not apply to exclude evidence in an 741
action based upon a medical claim of any amount accepted by a 742
defendant from an insurer as full payment for the medical care 743
or treatment of the plaintiff. That evidence is admissible to 744
prove the reasonableness of the charges and fees rendered by the 745
defendant for the medical care or treatment. 746

(E) As used in this section, "medical claim," "dental 747
claim," "optometric claim," and "chiropractic claim" have the 748
same meanings as in section 2305.113 of the Revised Code. 749

Sec. 2323.451. (A) As used in this section, "medical 750
claim" has the same meaning as in section 2305.113 of the 751
Revised Code. 752

(B) At the time of filing a complaint asserting a medical claim, the plaintiff shall file with the complaint, pursuant to rule 10(D) of the Rules of Civil Procedure, an affidavit of merit relative to each defendant named in the complaint or a motion to extend the period of time to file an affidavit of merit. 753
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(C) The parties may conduct discovery as permitted by the Rules of Civil Procedure. Additionally, for a period of one hundred eighty days following the filing of a complaint asserting a medical claim, the parties may seek to discover the existence or identity of any other potential medical claims or defendants that are not included or named in the complaint. All parties shall provide the discovery under this division in accordance with the Rules of Civil Procedure. 759
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(D) Within one hundred eighty days following the filing of a complaint asserting a medical claim, the plaintiff, in an amendment to the complaint pursuant to rule 15 of the Rules of Civil Procedure, may join in the action any additional medical claim or defendant if either the original one-year period of limitation applicable to that additional medical claim or defendant had not expired prior to the date the original complaint was filed or if the amendment to the complaint was filed within one hundred eighty days following service of the written notice applicable to that additional medical claim or defendant pursuant to divisions (B) (1) and (2) of section 2305.113 of the Revised Code. The plaintiff shall file an affidavit of merit supporting the joinder of the additional medical claim or defendant or a motion to extend the period of time to file an affidavit of merit pursuant to rule 10(D) of the Rules of Civil Procedure with the amendment to the complaint. 767
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(E) Division (D) of this section does not modify or affect 783
and shall not be construed as modifying or affecting any 784
provision of the Revised Code or rule of common law that applies 785
to the commencement of the period of limitation for medical 786
claims that are asserted or defendants that are joined after the 787
expiration of the one-hundred-eighty-day period described in 788
that division. 789

(F) After the expiration of one hundred eighty days 790
following the filing of a complaint asserting a medical claim, 791
the plaintiff shall not join any additional medical claim or 792
defendant to the action unless the medical claim is for wrongful 793
death, and the period of limitation for the claim under section 794
2125.02 of the Revised Code has not expired. 795

Section 2. That existing sections 2305.113, 2305.252, 796
2305.51, 2317.421, 2317.43, and 2323.41 of the Revised Code are 797
hereby repealed. 798

Section 3. The General Assembly finds that in civil 799
actions based upon a medical claim, the negligent act or 800
omission of the responsible party must be shown to have been the 801
direct and proximate cause of the injury, death, or loss to 802
person complained of. The General Assembly also finds that the 803
application of the so-called loss of chance doctrine in those 804
actions improperly alters or eliminates the requirement of 805
direct and proximate causation. Therefore, the Ohio Supreme 806
Court decision adopting the loss of chance doctrine in *Roberts* 807
v. Ohio Permanente Medical Group, Inc. (1996), 76 Ohio St.3d 808
483, is hereby abrogated by enacting section 2323.40 of the 809
Revised Code in this act. 810

Section 4. (A) Section 2323.451 of the Revised Code, as 811
enacted by this act, applies to a civil action that is based 812

upon a medical claim and that is filed on or after the effective 813
date of this act. 814

(B) As used in division (A) of this section, "medical 815
claim" has the same meaning as in section 2305.113 of the 816
Revised Code. 817

Section 5. Section 2305.113 of the Revised Code is 818
presented in this act as a composite of the section as amended 819
by Sub. H.B. 290 of the 130th General Assembly and Sub. S.B. 110 820
of the 131st General Assembly. The General Assembly, applying 821
the principle stated in division (B) of section 1.52 of the 822
Revised Code that amendments are to be harmonized if reasonably 823
capable of simultaneous operation, finds that the composite is 824
the resulting version of the section in effect prior to the 825
effective date of the section as presented in this act. 826