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132nd General Assembly
Regular Session
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Sub. H. B. No. 7

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, 2323.40, and 2323.451 of the 3
Revised Code to grant qualified civil immunity 4
to certain medical providers and emergency 5
medical technicians who provide emergency 6
medical services as a result of a disaster and 7
through 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 that 18
any loss of a chance of recovery or survival by 19
itself is not an injury, death, or loss for 20
which damages may be recovered; to provide civil 21
immunity to certain medical providers regarding 22
the discharge of a patient with a mental 23
condition that threatens the safety of the 24



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patient or others; to permit access to peer 25
review committee documents during authorized 26
inspections by the Director of Health while 27
preserving their confidentiality; and to clarify 28
the definition of "medical claim." 29

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

Section 1. That sections 2305.113, 2305.252, 2305.51, and 30
2317.43 be amended and sections 2305.2311, 2317.44, 2317.45, 31
2323.40, and 2323.451 of the Revised Code be enacted to read as 32
follows: 33

Sec. 2305.113. (A) Except as otherwise provided in this 34
section, an action upon a medical, dental, optometric, or 35
chiropractic claim shall be commenced within one year after the 36
cause of action accrued. 37

(B) (1) If prior to the expiration of the one-year period 38
specified in division (A) of this section, a claimant who 39
allegedly possesses a medical, dental, optometric, or 40
chiropractic claim gives to the person who is the subject of 41
that claim written notice that the claimant is considering 42
bringing an action upon that claim, that action may be commenced 43
against the person notified at any time within one hundred 44
eighty days after the notice is so given. 45

(2) A claimant who allegedly possesses a medical claim and 46
who intends to give to the person who is the subject of that 47
claim the written notice described in division (B) (1) of this 48
section shall give that notice by sending it by certified mail, 49
return receipt requested, addressed to any of the following: 50

<u>(a) The person's residence;</u>	51
<u>(b) The person's professional practice;</u>	52
<u>(c) The person's employer;</u>	53
<u>(d) The address of the person on file with the state</u>	54
<u>medical board or other appropriate agency that issued the</u>	55
<u>person's professional license.</u>	56
<u>(3) An insurance company shall not consider the existence</u>	57
<u>or nonexistence of a written notice described in division (B) (1)</u>	58
<u>of this section in setting the liability insurance premium rates</u>	59
<u>that the company may charge the company's insured person who is</u>	60
<u>notified by that written notice.</u>	61
(C) Except as to persons within the age of minority or of	62
unsound mind as provided by section 2305.16 of the Revised Code,	63
and except as provided in division (D) of this section, both of	64
the following apply:	65
(1) No action upon a medical, dental, optometric, or	66
chiropractic claim shall be commenced more than four years after	67
the occurrence of the act or omission constituting the alleged	68
basis of the medical, dental, optometric, or chiropractic claim.	69
(2) If an action upon a medical, dental, optometric, or	70
chiropractic claim is not commenced within four years after the	71
occurrence of the act or omission constituting the alleged basis	72
of the medical, dental, optometric, or chiropractic claim, then,	73
any action upon that claim is barred.	74
(D) (1) If a person making a medical claim, dental claim,	75
optometric claim, or chiropractic claim, in the exercise of	76
reasonable care and diligence, could not have discovered the	77
injury resulting from the act or omission constituting the	78

alleged basis of the claim within three years after the 79
occurrence of the act or omission, but, in the exercise of 80
reasonable care and diligence, discovers the injury resulting 81
from that act or omission before the expiration of the four-year 82
period specified in division (C)(1) of this section, the person 83
may commence an action upon the claim not later than one year 84
after the person discovers the injury resulting from that act or 85
omission. 86

(2) If the alleged basis of a medical claim, dental claim, 87
optometric claim, or chiropractic claim is the occurrence of an 88
act or omission that involves a foreign object that is left in 89
the body of the person making the claim, the person may commence 90
an action upon the claim not later than one year after the 91
person discovered the foreign object or not later than one year 92
after the person, with reasonable care and diligence, should 93
have discovered the foreign object. 94

(3) A person who commences an action upon a medical claim, 95
dental claim, optometric claim, or chiropractic claim under the 96
circumstances described in division (D)(1) or (2) of this 97
section has the affirmative burden of proving, by clear and 98
convincing evidence, that the person, with reasonable care and 99
diligence, could not have discovered the injury resulting from 100
the act or omission constituting the alleged basis of the claim 101
within the three-year period described in division (D)(1) of 102
this section or within the one-year period described in division 103
(D)(2) of this section, whichever is applicable. 104

(E) As used in this section: 105

(1) "Hospital" includes any person, corporation, 106
association, board, or authority that is responsible for the 107
operation of any hospital licensed or registered in the state, 108

including, but not limited to, those that are owned or operated 109
by the state, political subdivisions, any person, any 110
corporation, or any combination of the state, political 111
subdivisions, persons, and corporations. "Hospital" also 112
includes any person, corporation, association, board, entity, or 113
authority that is responsible for the operation of any clinic 114
that employs a full-time staff of physicians practicing in more 115
than one recognized medical specialty and rendering advice, 116
diagnosis, care, and treatment to individuals. "Hospital" does 117
not include any hospital operated by the government of the 118
United States or any of its branches. 119

(2) "Physician" means a person who is licensed to practice 120
medicine and surgery or osteopathic medicine and surgery by the 121
state medical board or a person who otherwise is authorized to 122
practice medicine and surgery or osteopathic medicine and 123
surgery in this state. 124

(3) "Medical claim" means any claim that is asserted in 125
any civil action against a physician, podiatrist, hospital, 126
home, or residential facility, against any employee or agent of 127
a physician, podiatrist, hospital, home, or residential 128
facility, or against a licensed practical nurse, registered 129
nurse, advanced practice registered nurse, physical therapist, 130
physician assistant, emergency medical technician-basic, 131
emergency medical technician-intermediate, or emergency medical 132
technician-paramedic, and that arises out of the medical 133
diagnosis, care, or treatment of any person. "Medical claim" 134
includes the following: 135

(a) Derivative claims for relief that arise from the ~~plan~~ 136
~~of care,~~ medical diagnosis, care, or treatment of a person; 137

(b) Derivative claims for relief that arise from the plan 138

<u>of care prepared for a resident of a home;</u>	139
(c) <u>(c)</u> Claims that arise out of the plan of care, medical diagnosis, <u>care,</u> or treatment of any person <u>or claims that arise out of the plan of care prepared for a resident of a home and to which both types of claims</u> either of the following applies:	140 141 142 143
(i) The claim results from acts or omissions in providing medical care.	144 145
(ii) The claim results from the hiring, training, supervision, retention, or termination of caregivers providing medical diagnosis, care, or treatment.	146 147 148
(d) <u>(d)</u> Claims that arise out of the plan of care, medical diagnosis, or treatment of any person and that are brought under section 3721.17 of the Revised Code;	149 150 151
(d) <u>(e)</u> Claims that arise out of skilled nursing care or personal care services provided in a home pursuant to the plan of care, medical diagnosis, or treatment.	152 153 154
(4) "Podiatrist" means any person who is licensed to practice podiatric medicine and surgery by the state medical board.	155 156 157
(5) "Dentist" means any person who is licensed to practice dentistry by the state dental board.	158 159
(6) "Dental claim" means any claim that is asserted in any civil action against a dentist, or against any employee or agent of a dentist, and that arises out of a dental operation or the dental diagnosis, care, or treatment of any person. "Dental claim" includes derivative claims for relief that arise from a dental operation or the dental diagnosis, care, or treatment of a person.	160 161 162 163 164 165 166

(7) "Derivative claims for relief" include, but are not 167
limited to, claims of a parent, guardian, custodian, or spouse 168
of an individual who was the subject of any medical diagnosis, 169
care, or treatment, dental diagnosis, care, or treatment, dental 170
operation, optometric diagnosis, care, or treatment, or 171
chiropractic diagnosis, care, or treatment, that arise from that 172
diagnosis, care, treatment, or operation, and that seek the 173
recovery of damages for any of the following: 174

(a) Loss of society, consortium, companionship, care, 175
assistance, attention, protection, advice, guidance, counsel, 176
instruction, training, or education, or any other intangible 177
loss that was sustained by the parent, guardian, custodian, or 178
spouse; 179

(b) Expenditures of the parent, guardian, custodian, or 180
spouse for medical, dental, optometric, or chiropractic care or 181
treatment, for rehabilitation services, or for other care, 182
treatment, services, products, or accommodations provided to the 183
individual who was the subject of the medical diagnosis, care, 184
or treatment, the dental diagnosis, care, or treatment, the 185
dental operation, the optometric diagnosis, care, or treatment, 186
or the chiropractic diagnosis, care, or treatment. 187

(8) "Registered nurse" means any person who is licensed to 188
practice nursing as a registered nurse by the board of nursing. 189

(9) "Chiropractic claim" means any claim that is asserted 190
in any civil action against a chiropractor, or against any 191
employee or agent of a chiropractor, and that arises out of the 192
chiropractic diagnosis, care, or treatment of any person. 193
"Chiropractic claim" includes derivative claims for relief that 194
arise from the chiropractic diagnosis, care, or treatment of a 195
person. 196

(10) "Chiropractor" means any person who is licensed to practice chiropractic by the state chiropractic board.	197 198
(11) "Optometric claim" means any claim that is asserted in any civil action against an optometrist, or against any employee or agent of an optometrist, and that arises out of the optometric diagnosis, care, or treatment of any person. "Optometric claim" includes derivative claims for relief that arise from the optometric diagnosis, care, or treatment of a person.	199 200 201 202 203 204 205
(12) "Optometrist" means any person licensed to practice optometry by the state board of optometry.	206 207
(13) "Physical therapist" means any person who is licensed to practice physical therapy under Chapter 4755. of the Revised Code.	208 209 210
(14) "Home" has the same meaning as in section 3721.10 of the Revised Code.	211 212
(15) "Residential facility" means a facility licensed under section 5123.19 of the Revised Code.	213 214
(16) "Advanced practice registered nurse" means any certified nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, or certified nurse-midwife who holds a certificate of authority issued by the board of nursing under Chapter 4723. of the Revised Code.	215 216 217 218 219
(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.	220 221 222 223
(18) "Physician assistant" means any person who is	224

licensed as a physician assistant under Chapter 4730. of the 225
Revised Code. 226

(19) "Emergency medical technician-basic," "emergency 227
medical technician-intermediate," and "emergency medical 228
technician-paramedic" means any person who is certified under 229
Chapter 4765. of the Revised Code as an emergency medical 230
technician-basic, emergency medical technician-intermediate, or 231
emergency medical technician-paramedic, whichever is applicable. 232

(20) "Skilled nursing care" and "personal care services" 233
have the same meanings as in section 3721.01 of the Revised 234
Code. 235

Sec. 2305.2311. (A) As used in this section: 236

(1) "Advanced practice registered nurse" means an 237
individual who holds a current, valid license issued under 238
Chapter 4723. of the Revised Code to practice as an advanced 239
practice registered nurse. 240

(2) "Dentist" has the same meaning as in section 2305.231 241
of the Revised Code. 242

(3) "Disaster" means any occurrence of widespread personal 243
injury or loss of life that results from any natural or 244
technological phenomenon or act of a human, or an epidemic and 245
is declared to be a disaster by the federal government, the 246
state government, or a political subdivision of this state. 247

(4) "Emergency medical technician" means an EMT-basic, an 248
EMT-I, or a paramedic. 249

(5) "EMT-basic" means an individual who holds a current, 250
valid certificate issued under section 4765.30 of the Revised 251
Code to practice as an emergency medical technician-basic. 252

(6) "EMT-I" means an individual who holds a current, valid certificate issued under section 4765.30 of the Revised Code to practice as an emergency medical technician-intermediate. 253
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(7) "Health care provider" means an advanced practice registered nurse, a registered nurse, a dentist, an optometrist, a physician, a physician assistant, or a hospital. 256
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(8) "Hospital" and "medical claim" have the same meanings as in section 2305.113 of the Revised Code. 259
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(9) "Optometrist" means a person who is licensed under Chapter 4725. of the Revised Code to practice optometry. 261
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(10) "Paramedic" means an individual who holds a current, valid certificate issued under section 4765.30 of the Revised Code to practice as an emergency medical technician-paramedic. 263
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(11) "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. 266
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(12) "Physician assistant" means an individual who is authorized under Chapter 4730. of the Revised Code to practice as a physician assistant. 270
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(13) "Reckless disregard" as it applies to a given health care provider or emergency medical technician rendering emergency medical services, first-aid treatment, or other emergency professional care, including the provision of any medication or other medical product, means conduct that a health care provider or emergency medical technician knew or should have known, at the time those services or that treatment or care were rendered, created an unreasonable risk of injury, death, or loss to person or property so as to affect the life or health of 273
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another and that risk was substantially greater than that which 282
is necessary to make the conduct negligent. 283

(14) "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

(15) "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
emergency medical technician. 307

(2) This section does not affect any immunities from civil 308
liability or defenses established by another section of the 309
Revised Code or available at common law to which a health care 310

provider or emergency medical technician may be entitled in 311
connection with the provision of emergency medical services, 312
first-aid treatment, or other emergency professional care, 313
including the provision of medication or other medical product. 314

(3) This section does not grant an immunity from tort or 315
other civil liability to a health care provider or emergency 316
medical technician for actions that are outside the scope of 317
authority of the health care provider or emergency medical 318
technician. 319

(4) This section does not affect any legal responsibility 320
of a health care provider or emergency medical technician to 321
comply with any applicable law of this state or rule of an 322
agency of this state. 323

(5) This section applies only to the provision of 324
emergency medical services, first-aid treatment, or other 325
emergency professional care, including the provision of any 326
medication or other medical product, by a health care provider 327
or emergency medical technician as a result of a disaster and 328
through the duration of the disaster. 329

(D) This section does not apply to a tort action alleging 330
wrongful death against a health care provider or emergency 331
medical technician that provides emergency medical services, 332
first-aid treatment, or other emergency professional care, 333
including the provision of any medication or other medical 334
product, that allegedly arises from an act or omission of the 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 action conferred by this section are in addition to and not in limitation of any immunity conferred on a mental health professional or organization or on a physician, physician assistant, advanced practice registered nurse, or hospital by any other section of the Revised Code or by judicial precedent.

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

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

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

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

(a) Any communications made by a health care provider, an 610
employee of a health care provider, or a representative of a 611
health care provider to the alleged victim, a relative or 612
acquaintance of the alleged victim, or a representative of the 613
alleged victim; 614

(b) Any communications made by an alleged victim, a 615
relative or acquaintance of the alleged victim, or a 616
representative of the alleged victim to the health care 617
provider, an employee of a health care provider, or a 618
representative of a health care provider. 619

(2) Nothing in this section requires a review to be 620
conducted. 621

(C) For purposes of this section, unless the context 622
otherwise requires: 623

(1) "Health care provider" has the same meaning as in 624
division (B) (5) of section 2317.02 of the Revised Code. 625

(2) "Relative" means a victim's spouse, parent, 626
grandparent, stepfather, stepmother, child, grandchild, brother, 627
sister, half brother, half sister, or spouse's parents. The term 628
includes said relationships that are created as a result of 629
adoption. In addition, "relative" includes any person who has a 630
family-type relationship with a victim. 631

(3) "Representative of an alleged victim" means a legal 632
guardian, attorney, person designated to make decisions on 633
behalf of a patient under a medical power of attorney, or any 634
person recognized in law or custom as a patient's agent. 635

(4) "Representative of a health care provider" means an attorney, health care provider, employee of a health care provider, or other person designated by a health care provider or an employee of a health care provider to participate in a review conducted by a health care provider or employee of a health care provider. 636
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(5) "Review" means the policy, procedures, and activities undertaken by or at the direction of a health care provider, employee of a health care provider, or person designated by a health care provider or employee of a health care provider with the purpose of determining the cause of or reasons for an unanticipated outcome, and initiated and completed during the first forty-five days following the occurrence or discovery of an unanticipated outcome. A review shall be initiated by verbal communication to the patient, relative of the patient, or representative of the patient by the health care provider, employee of a health care provider, or person designated by a health care provider or employee of a health care provider. The verbal communication shall be followed by a written document explaining the review process. A review may be extended for a longer period if necessary upon written notice to the patient, relative of the patient, or representative of the patient. 642
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(6) "Unanticipated outcome" means the outcome of a medical treatment or procedure that differs from an expected result or any outcome that is adverse or not satisfactory to the patient. 658
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Sec. 2317.44. (A) As used in this section: 661

(1) "Health care provider" means any person or entity against whom a medical claim may be asserted in a civil action. 662
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(2) "Medical claim" has the same meaning as in section 664

2305.113 of the Revised Code. 665

(B) Any guideline, regulation, or other standard under any 666
provision of the "Patient Protection and Affordable Care Act," 667
124 Stat. 119 (2010), 42 U.S.C. 18001 et seq., as amended, Title 668
XVIII of the "Social Security Act," 42 U.S.C. 1395 et seq., as 669
amended, and Title XIX of the "Social Security Act," 42 U.S.C. 670
1396 et seq., as amended, shall not be construed to establish 671
the standard of care or duty of care owed by a health care 672
provider to a patient in a medical claim and is not admissible 673
as evidence for or against any party in any civil action based 674
upon the medical claim or in any civil or administrative action 675
involving the licensing or licensure status of the health care 676
provider. 677

Sec. 2317.45. (A) As used in this section: 678

(1) "Health care provider" means any person or entity 679
against whom a medical claim may be asserted in a civil action. 680

(2) "Insurer" means any public or private entity doing or 681
authorized to do any insurance business in this state. "Insurer" 682
includes a self-insuring employer and the United States centers 683
for medicare and medicaid services. 684

(3) "Medical claim" has the same meaning as in section 685
2305.113 of the Revised Code. 686

(4) "Reimbursement determination" means an insurer's 687
determination of whether the insurer will reimburse a health 688
care provider for health care services and the amount of that 689
reimbursement. 690

(5) "Reimbursement policies" means an insurer's policies 691
and procedures governing its decisions regarding the 692
reimbursement of a health care provider for health care services 693

and the method of reimbursement. 694

(B) Any insurer's reimbursement policies or reimbursement 695
determination or regulations issued by the United States centers 696
for medicare and medicaid services or the Ohio department of 697
medicaid regarding the health care services provided to the 698
patient in any civil action based on a medical claim are not 699
admissible as evidence for or against any party in the action 700
and may not be used to establish a standard of care or breach of 701
that standard of care in the action. 702

Sec. 2323.40. (A) As used in this section, "medical claim" 703
has the same meaning as in section 2305.113 of the Revised Code. 704

(B) In any civil action upon a medical claim, in order for 705
the plaintiff to recover any damages resulting from the alleged 706
injury, death, or loss to person, the plaintiff shall establish 707
by a preponderance of the evidence that the act or omission of 708
the defendant in rendering medical care or treatment is a 709
deviation from the required standard of medical care or 710
treatment and the direct and proximate cause of the injury, 711
death, or loss to person. Direct and proximate cause of the 712
injury, death, or loss to person is established by evidence 713
showing that it is more likely than not that the defendant's act 714
or omission was a cause in fact of the injury, death, or loss to 715
person. Any loss or diminution of a chance of recovery or 716
survival by itself is not an injury, death, or loss to person 717
for which damages may be recovered. 718

Sec. 2323.451. (A) As used in this section, "medical 719
claim" has the same meaning as in section 2305.113 of the 720
Revised Code. 721

(B) At the time of filing a complaint asserting a medical 722

claim, the plaintiff shall file with the complaint, pursuant to 723
rule 10(D) of the Rules of Civil Procedure, an affidavit of 724
merit relative to each defendant named in the complaint or a 725
motion to extend the period of time to file an affidavit of 726
merit. 727

(C) The parties may conduct discovery as permitted by the 728
Rules of Civil Procedure. Additionally, for the period of time 729
specified in division (D)(2) of this section, the parties may 730
seek to discover the existence or identity of any other 731
potential medical claims or defendants that are not included or 732
named in the complaint. All parties shall provide the discovery 733
under this division in accordance with the Rules of Civil 734
Procedure. 735

(D)(1) Within the period of time specified in division (D) 736
(2) of this section, the plaintiff, in an amendment to the 737
complaint pursuant to rule 15 of the Rules of Civil Procedure, 738
may join in the action any additional medical claim or defendant 739
if the original one-year period of limitation applicable to that 740
additional medical claim or defendant had not expired prior to 741
the date the original complaint was filed. The plaintiff shall 742
file an affidavit of merit supporting the joinder of the 743
additional medical claim or defendant or a motion to extend the 744
period of time to file an affidavit of merit pursuant to rule 745
10(D) of the Rules of Civil Procedure with the amendment to the 746
complaint. 747

(2) If a complaint is filed under this section prior to 748
the expiration of the one-year period of limitation applicable 749
to medical claims under section 2305.113 of the Revised Code, 750
then the period of time in which the parties may conduct the 751
discovery under division (C) of this section and in which the 752

plaintiff may join in the action any additional medical claim or 753
defendant under division (D) (1) of this section shall be equal 754
to the balance of any days remaining from the filing of the 755
complaint to the expiration of that one-year period of 756
limitation, plus one hundred eighty days from the filing of the 757
complaint. 758

(E) Division (D) of this section does not modify or affect 759
and shall not be construed as modifying or affecting any 760
provision of the Revised Code or rule of common law that applies 761
to the commencement of the period of limitation for medical 762
claims that are asserted or defendants that are joined after the 763
expiration of the period of time described in that division. 764

(F) After the expiration of one hundred eighty days 765
following the filing of a complaint asserting a medical claim, 766
the plaintiff shall not join any additional medical claim or 767
defendant to the action unless the medical claim is for wrongful 768
death, and the period of limitation for the claim under section 769
2125.02 of the Revised Code has not expired. 770

Section 2. That existing sections 2305.113, 2305.252, 771
2305.51, and 2317.43 of the Revised Code are hereby repealed. 772

Section 3. The General Assembly finds that in civil 773
actions based upon a medical claim, the negligent act or 774
omission of the responsible party must be shown to have been the 775
direct and proximate cause of the injury, death, or loss to 776
person complained of. The General Assembly also finds that the 777
application of the so-called loss of chance doctrine in those 778
actions improperly alters or eliminates the requirement of 779
direct and proximate causation. Therefore, the Ohio Supreme 780
Court decision adopting the loss of chance doctrine in *Roberts* 781
v. Ohio Permanente Medical Group, Inc. (1996), 76 Ohio St.3d 782

483, is hereby abrogated by enacting section 2323.40 of the Revised Code in this act.

Section 4. (A) Section 2323.451 of the Revised Code, as enacted by this act, applies to a civil action that is based upon a medical claim and that is filed on or after the effective date of this act.

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