

# As Passed by the House

124th General Assembly

Regular Session

2001-2002

Am. Sub. H. B. No. 412

REPRESENTATIVES Seitz, Schmidt, Kearns, Webster, Raga, Brinkman,  
DeWine, Setzer, Husted, Faber, Gilb, Fessler, Hoops, Schaffer, Lendrum,  
Flowers, Olman, Sullivan, Ogg, G. Smith, Trakas, Peterson, Clancy,  
Callender, Roman, Wolpert, Latta, Womer Benjamin, Calvert, Carey, Kilbane,  
Reidelbach, Aslanides, Widowfield, Niehaus, Williams, Blasdel, Buehrer,  
Stapleton, Manning, Damschroder, Evans, Cates, Hughes, Grendell, Young

---

## A B I L L

To amend sections 2305.11, 2315.21, 2711.23, 2711.24, 1  
3721.02, and 3721.17 and to enact section 5111.411 2  
of the Revised Code relative to the results of a 3  
home inspection or nursing facility survey, 4  
liability of a residential care facility or a home 5  
for punitive damages, and expansion of the 6  
definition of "medical claim" in the statute of 7  
limitations. 8

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

**Section 1.** That sections 2305.11, 2315.21, 2711.23, 2711.24, 9  
3721.02, and 3721.17 be amended and section 5111.411 of the 10  
Revised Code be enacted to read as follows: 11

**Sec. 2305.11.** (A) An action for libel, slander, malicious 12  
prosecution, or false imprisonment, an action for malpractice 13  
other than an action upon a medical, dental, optometric, or 14  
chiropractic claim, or an action upon a statute for a penalty or 15

forfeiture shall be commenced within one year after the cause of  
action accrued, provided that an action by an employee for the  
payment of unpaid minimum wages, unpaid overtime compensation, or  
liquidated damages by reason of the nonpayment of minimum wages or  
overtime compensation shall be commenced within two years after  
the cause of action accrued.

(B)(1) Subject to division (B)(2) of this section, an action  
upon a medical, dental, optometric, or chiropractic claim shall be  
commenced within one year after the cause of action accrued,  
except that, if prior to the expiration of that one-year period, a  
claimant who allegedly possesses a medical, dental, optometric, or  
chiropractic claim gives to the person who is the subject of that  
claim written notice that the claimant is considering bringing an  
action upon that claim, that action may be commenced against the  
person notified at any time within one hundred eighty days after  
the notice is so given.

(2) Except as to persons within the age of minority or of  
unsound mind, as provided by section 2305.16 of the Revised Code:

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

(b) If an action upon a medical, dental, optometric, or  
chiropractic claim is not commenced within four years after the  
occurrence of the act or omission constituting the alleged basis  
of the medical, dental, optometric, or chiropractic claim, then,  
notwithstanding the time when the action is determined to accrue  
under division (B)(1) of this section, any action upon that claim  
is barred.

(C) A civil action for unlawful abortion pursuant to section

2919.12 of the Revised Code, a civil action authorized by division  
(H) of section 2317.56 of the Revised Code, a civil action  
pursuant to division (B)(1) or (2) of section 2307.51 of the  
Revised Code for performing a dilation and extraction procedure or  
attempting to perform a dilation and extraction procedure in  
violation of section 2919.15 of the Revised Code, and a civil  
action pursuant to division (B)(1) or (2) of section 2307.52 of  
the Revised Code for terminating or attempting to terminate a  
human pregnancy after viability in violation of division (A) or  
(B) of section 2919.17 of the Revised Code shall be commenced  
within one year after the performance or inducement of the  
abortion, within one year after the attempt to perform or induce  
the abortion in violation of division (A) or (B) of section  
2919.17 of the Revised Code, within one year after the performance  
of the dilation and extraction procedure, or, in the case of a  
civil action pursuant to division (B)(2) of section 2307.51 of the  
Revised Code, within one year after the attempt to perform the  
dilation and extraction procedure.

(D) As used in this section:

(1) "Hospital" includes any person, corporation, association,  
board, or authority that is responsible for the operation of any  
hospital licensed or registered in the state, including, but not  
limited to, those ~~which~~ that are owned or operated by the state,  
political subdivisions, any person, any corporation, or any  
combination thereof. "Hospital" also includes any person,  
corporation, association, board, entity, or authority that is  
responsible for the operation of any clinic that employs a  
full-time staff of physicians practicing in more than one  
recognized medical specialty and rendering advice, diagnosis,  
care, and treatment to individuals. "Hospital" does not include  
any hospital operated by the government of the United States or  
any of its branches.

47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78

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

(3) "Medical claim" means any claim that is asserted in any civil action against a physician, podiatrist, ~~or~~ hospital, home, or residential facility, against any employee or agent of a physician, podiatrist, ~~or~~ hospital, home, or residential facility, or against a registered nurse or physical therapist, and that arises out of the medical diagnosis, care, or treatment of any person. "Medical claim" includes derivative the following:

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

(b) Claims resulting from acts or omissions in providing health care or from the hiring, training, supervision, retention, or termination of health caregivers;

(c) Claims brought under section 3721.17 of the Revised Code.

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

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

(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.

(7) "Derivative claims for relief" include, but are not

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

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

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

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

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

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

(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.

(12) "Optometrist" means any person licensed to practice optometry by the state board of optometry.

(13) "Physical therapist" means any person who is licensed to practice physical therapy under Chapter 4755. of the Revised Code.

(14) "Home" has the same meaning as in section 3721.10 of the Revised Code.

(15) "Residential facility" means a facility licensed under section 5123.19 of the Revised Code.

**Sec. 2315.21.** (A) As used in this section:

(1) "Tort action" means a civil action for damages for injury or loss to person or property. "Tort action" includes a product liability claim for damages for injury or loss to person or property that is subject to sections 2307.71 to 2307.80 of the Revised Code, but does not include a civil action for damages for a breach of contract or another agreement between persons.

(2) "Trier of fact" means the jury or, in a nonjury action, the court.

(3) "Home" has the same meaning as in section 3721.10 of the Revised Code.

(B) Subject to division (D) of this section, punitive or exemplary damages are not recoverable from a defendant in question in a tort action unless both of the following apply:

(1) The actions or omissions of that defendant demonstrate

malice, aggravated or egregious fraud, oppression, or insult, or  
that defendant as principal or master authorized, participated in,  
or ratified actions or omissions of an agent or servant that so  
demonstrate+.

(2) The plaintiff in question has adduced proof of actual  
damages that resulted from actions or omissions as described in  
division (B)(1) of this section.

(C)(1) In a tort action, the trier of fact shall determine  
the liability of any defendant for punitive or exemplary damages  
and the amount of those damages.

(2) In a tort action, the burden of proof shall be upon a  
plaintiff in question, by clear and convincing evidence, to  
establish that the plaintiff is entitled to recover punitive or  
exemplary damages.

(D) This section does not apply to tort actions against the  
state in the court of claims or to the extent that another section  
of the Revised Code expressly provides any of the following:

(1) Punitive or exemplary damages are recoverable from a  
defendant in question in a tort action on a basis other than that  
the actions or omissions of that defendant demonstrate malice,  
aggravated or egregious fraud, oppression, or insult, or on a  
basis other than that the defendant in question as principal or  
master authorized, participated in, or ratified actions or  
omissions of an agent or servant that so demonstrate+.

(2) Punitive or exemplary damages are recoverable from a  
defendant in question in a tort action irrespective of whether the  
plaintiff in question has adduced proof of actual damages+.

(3) The burden of proof upon a plaintiff in question to  
recover punitive or exemplary damages from a defendant in question  
in a tort action is one other than clear and convincing evidence+.

(4) Punitive or exemplary damages are not recoverable from a defendant in question in a tort action.

(E) When determining the amount of an award of punitive or exemplary damages against either a home or a residential facility licensed under section 5123.19 of the Revised Code, the trier of fact shall consider all of the following:

(1) The ability of the home or residential facility to pay the award of punitive or exemplary damages based on the home's or residential facility's assets, income, and net worth;

(2) Whether the amount of punitive or exemplary damages is sufficient to deter future tortious conduct;

(3) The financial ability of the home or residential facility, both currently and in the future, to provide accommodations, personal care services, and skilled nursing care.

**Sec. 2711.23.** (A) To be valid and enforceable, any arbitration agreements pursuant to sections 2711.01 and 2711.22 of the Revised Code for controversies involving hospital or medical care, diagnosis, or treatment ~~which~~ that are entered into prior to rendering such care, diagnosis, or treatment shall include or be subject to the following conditions:

~~(A)~~(1) The agreement shall provide that medical or hospital care, diagnosis, or treatment will be provided whether or not the patient signs the agreement to arbitrate.

~~(B)~~(2) The agreement shall provide that the patient, or the patient's spouse, or the personal representative of ~~his~~ the patient's estate in the event of the patient's death or incapacity, shall have a right to withdraw the patient's consent to arbitrate ~~his~~ the patient's claim by notifying the physician or hospital in writing within sixty days after the patient's discharge from the hospital for any claim arising out of



hospitalization, or within sixty days after the termination of the 229  
physician-patient relationship for the physical condition involved 230  
for any claim against a physician. Nothing in this division shall 231  
be construed to mean that the spouse of a competent patient can 232  
withdraw over the objection of the patient the consent of the 233  
patient to arbitrate~~+~~. 234

~~(C)~~(3) The agreement shall provide that the decision whether 235  
or not to sign the agreement is solely a matter for the patient's 236  
determination without any influence by the physician or hospital~~+~~. 237

~~(D)~~(4) The agreement shall, ~~if appropriate,~~ provide, if 238  
appropriate, that its terms constitute a waiver of any right to a 239  
trial in court, or a waiver of any right to a trial by jury~~+~~. 240

~~(E)~~(5) The agreement shall provide that the arbitration 241  
expenses shall be divided equally between the parties to the 242  
agreement~~+~~. 243

~~(F)~~(6) Any arbitration panel shall consist of three persons, 244  
no more than one of whom shall be a physician or the 245  
representative of a hospital~~+~~. 246

~~(G)~~(7) The arbitration agreement shall be separate from any 247  
other agreement, consent, or document~~+~~. 248

~~(H)~~(8) The agreement shall not be submitted to a patient for 249  
approval when the patient's condition prevents the patient from 250  
making a rational decision whether or not to agree~~+~~. 251

~~(I)~~(9) Filing of a medical claim, ~~as defined in division (D)~~ 252  
~~of section 2305.11 of the Revised Code,~~ within the sixty days 253  
provided for withdrawal of a patient from the arbitration 254  
agreement shall be deemed a withdrawal from ~~such~~ that agreement~~+~~. 255

~~(J)~~(10) The agreement shall contain a separately stated 256  
notice that clearly informs the patient of ~~his~~ the patient's 257  
rights under division ~~(B)~~(A)(2) of this section. 258

(B) As used in this section, the terms "hospital": 259

(1) "Hospital" and "physician" shall have the same meanings 260  
set forth as in division (D) of section 2305.11 of the Revised 261  
Code. 262

(2) "Medical claim" has the same meaning as in division (D) 263  
of section 2305.11 of the Revised Code, except that it does not 264  
include a claim against a home or residential facility or an 265  
employee or agent of a home or residential facility. 266

(3) "Home" has the same meaning as in section 3721.10 of the 267  
Revised Code. 268

(4) "Residential facility" means a facility licensed under 269  
section 5123.19 of the Revised Code. 270

(C) The provisions of this division section apply to 271  
hospitals, doctors of medicine, doctors of osteopathic medicine, 272  
and doctors of podiatric medicine. 273

(D) This section does not apply to homes or residential 274  
facilities. 275

**Sec. 2711.24. (A)** To the extent it is in ten-point type and 276  
is executed in the following form, an arbitration agreement of the 277  
type stated in section 2711.23 of the Revised Code shall be 278  
presumed valid and enforceable in the absence of proof by a 279  
preponderance of the evidence that the execution of the agreement 280  
was induced by fraud, that the patient executed the agreement as a 281  
direct result of the willful or negligent disregard by the 282  
physician or hospital of the patient's right not to so execute, or 283  
that the patient executing the agreement was not able to 284  
communicate effectively in spoken and written English or any other 285  
language in which the agreement is written: 286

"AGREEMENT TO RESOLVE FUTURE MALPRACTICE 287

CLAIM BY BINDING ARBITRATION 288

In the event of any dispute or controversy arising out of the 289  
diagnosis, treatment, or care of the patient by the provider of 290  
medical services, the dispute or controversy shall be submitted to 291  
binding arbitration. 292

Within fifteen days after a party to this agreement has given 293  
written notice to the other of demand for arbitration of ~~said~~ that 294  
dispute or controversy, the parties to the dispute or controversy 295  
shall each appoint an arbitrator and give notice of ~~such~~ the 296  
appointment to the other. Within a reasonable time after ~~such~~ 297  
notices have been given, the two arbitrators so selected shall 298  
select a neutral arbitrator and give notice of the selection 299  
thereof of a neutral arbitrator to the parties. The arbitrators 300  
shall hold a hearing within a reasonable time from the date of 301  
notice of selection of the neutral arbitrator. 302

Expenses of the arbitration shall be shared equally by the 303  
parties to this agreement. 304

The patient, by signing this agreement, also acknowledges 305  
that ~~he~~ the patient has been informed that: 306

(1) Medical or hospital care, diagnosis, or treatment will be 307  
provided whether or not the patient signs the agreement to 308  
arbitrate~~+~~. 309

(2) The agreement may not even be submitted to a patient for 310  
approval when the patient's condition prevents the patient from 311  
making a rational decision whether or not to agree~~+~~. 312

(3) The decision whether or not to sign the agreement is 313  
solely a matter for the patient's determination without any 314  
influence by the physician or hospital~~+~~. 315

(4) The agreement waives the patient's right to a trial in 316  
court for any future malpractice claim ~~he~~ the patient may have 317  
against the physician or hospital~~+~~. 318

(5) The patient must be furnished with two copies of this agreement. 319  
320

PATIENT'S RIGHT TO CANCEL 321  
HIS AGREEMENT TO ARBITRATE 322

The patient, or the patient's spouse or the personal 323  
representative of ~~his~~ the patient's estate in the event of the 324  
patient's death or incapacity, has the right to cancel this 325  
agreement to arbitrate by notifying the physician or hospital in 326  
writing within sixty days after the patient's discharge from the 327  
hospital for any claim against a hospital, or within sixty days 328  
after the termination of the physician-patient relationship for 329  
the physical condition involved for claims against physicians. The 330  
patient, or ~~his~~ the patient's spouse or representative, as 331  
appropriate, may cancel this agreement by merely writing 332  
"cancelled" on the face of one of ~~his~~ the patient's copies of the 333  
agreement, signing ~~his~~ the patient's name under ~~such that~~ word, 334  
and mailing, by certified mail, return receipt requested, ~~such~~ 335  
that copy to the physician or hospital within ~~such the~~ sixty-day 336  
period. 337

Filing of a medical claim in a court within the sixty days 338  
provided for cancellation of the arbitration agreement by the 339  
patient will cancel the agreement without any further action by 340  
the patient. 341

Date: 342

..... 343

Signature of Provider of Medical Services 344

..... 345

Signature of Patient" 346

(B) As used in this section ~~the terms "hospital":~~ 347

(1) "Hospital" and "physician" have the same meanings ~~set~~ 348  
~~forth~~ as in division (D) of section 2305.11 of the Revised Code. 349

The 350

(2) "Home" has the same meaning as in section 3721.10 of the Revised Code. 351  
352

(3) "Residential facility" means a facility licensed under section 5123.19 of the Revised Code. 353  
354

(C) The provisions of this ~~division~~ section apply to 355  
hospitals, doctors of medicine, doctors of osteopathic medicine, 356  
and doctors of podiatric medicine. 357

(D) This section does not apply to homes or residential facilities. 358  
359

**Sec. 3721.02. (A)** The director of health shall license homes 360  
and establish procedures to be followed in inspecting and 361  
licensing homes. The director may inspect a home at any time. Each 362  
home shall be inspected by the director at least once prior to the 363  
issuance of a license and at least once every fifteen months 364  
thereafter. The state fire marshal or a township, municipal, or 365  
other legally constituted fire department approved by the marshal 366  
shall also inspect a home prior to issuance of a license, at least 367  
once every fifteen months thereafter, and at any other time 368  
requested by the director. A home does not have to be inspected 369  
prior to issuance of a license by the director, state fire 370  
marshal, or a fire department if ownership of the home is assigned 371  
or transferred to a different person and the home was licensed 372  
under this chapter immediately prior to the assignment or 373  
transfer. The director may enter at any time, for the purposes of 374  
investigation, any institution, residence, facility, or other 375  
structure ~~which~~ that has been reported to the director or that the 376  
director has reasonable cause to believe is operating as a nursing 377  
home, residential care facility, or home for the aging without a 378  
valid license required by section 3721.05 of the Revised Code or, 379  
in the case of a county home or district home, is operating 380

despite the revocation of its residential care facility license. 381  
The director may delegate the director's authority and duties 382  
under this chapter to any division, bureau, agency, or official of 383  
the department of health. 384

(B) A single facility may be licensed both as a nursing home 385  
pursuant to this chapter and as an adult care facility pursuant to 386  
Chapter 3722. of the Revised Code if the director determines that 387  
the part or unit to be licensed as a nursing home can be 388  
maintained separate and discrete from the part or unit to be 389  
licensed as an adult care facility. 390

(C) In determining the number of residents in a home for the 391  
purpose of licensing, the director shall consider all the 392  
individuals for whom the home provides accommodations as one group 393  
unless one of the following is the case: 394

~~(A)~~(1) The home is a home for the aging, in which case all 395  
the individuals in the part or unit licensed as a nursing home 396  
shall be considered as one group, and all the individuals in the 397  
part or unit licensed as a rest home shall be considered as 398  
another group. 399

~~(B)~~(2) The home is both a nursing home and an adult care 400  
facility. In that case, all the individuals in the part or unit 401  
licensed as a nursing home shall be considered as one group, and 402  
all the individuals in the part or unit licensed as an adult care 403  
facility shall be considered as another group. 404

~~(C)~~(3) The home maintains, in addition to a nursing home or 405  
residential care facility, a separate and discrete part or unit 406  
that provides accommodations to individuals who do not require or 407  
receive skilled nursing care and do not receive personal care 408  
services from the home, in which case the individuals in the 409  
separate and discrete part or unit shall not be considered in 410  
determining the number of residents in the home if the separate 411  
and discrete part or unit is in compliance with the Ohio basic 412

building code established by the board of building standards under 413  
Chapters 3781. and 3791. of the Revised Code and the home permits 414  
the director, on request, to inspect the separate and discrete 415  
part or unit and speak with the individuals residing there, if 416  
they consent, to determine whether the separate and discrete part 417  
or unit meets the requirements of this division. 418

(D) The director of health shall charge an application fee 419  
and an annual renewal licensing and inspection fee of one hundred 420  
dollars for each fifty persons or part thereof of a home's 421  
licensed capacity. All fees collected by the director for the 422  
issuance or renewal of licenses shall be deposited into the state 423  
treasury to the credit of the general operations fund created in 424  
section 3701.83 of the Revised Code for use only in administering 425  
and enforcing this chapter and rules adopted under it. 426

(E) The results of an inspection or investigation of a home 427  
that is conducted under this section, including any statement of 428  
deficiencies and all findings and deficiencies cited in the 429  
statement on the basis of the inspection or investigation, shall 430  
be used solely to determine the home's compliance with this 431  
chapter or another chapter of the Revised Code in any action or 432  
proceeding other than an action commenced under division (I) of 433  
section 3721.17 of the Revised Code. Those results of an 434  
inspection or investigation, that statement of deficiencies, and 435  
the findings and deficiencies cited in that statement shall not be 436  
used in any court or in any action or proceeding that is pending 437  
in any court and are not admissible in evidence in any action or 438  
proceeding unless that action or proceeding is an appeal of an 439  
action by the department of health under this chapter or is an 440  
action by any department or agency of the state to enforce this 441  
chapter or another chapter of the Revised Code. 442

**Sec. 3721.17.** (A) Any resident who believes that the 443

resident's rights under sections 3721.10 to 3721.17 of the Revised Code have been violated may file a grievance under procedures adopted pursuant to division (A)(2) of section 3721.12 of the Revised Code.

When the grievance committee determines a violation of sections 3721.10 to 3721.17 of the Revised Code has occurred, it shall notify the administrator of the home. If the violation cannot be corrected within ten days, or if ten days have elapsed without correction of the violation, the grievance committee shall refer the matter to the department of health.

(B) Any person who believes that a resident's rights under sections 3721.10 to 3721.17 of the Revised Code have been violated may report or cause reports to be made of the information directly to the department of health. No person who files a report is liable for civil damages resulting from the report.

(C)(1) Within thirty days of receiving a complaint under this section, the department of health shall investigate any complaint referred to it by a home's grievance committee and any complaint from any source that alleges that the home provided substantially less than adequate care or treatment, or substantially unsafe conditions, or, within seven days of receiving a complaint, refer it to the attorney general, if the attorney general agrees to investigate within thirty days.

(2) Within thirty days of receiving a complaint under this section, the department of health may investigate any alleged violation of sections 3721.10 to 3721.17 of the Revised Code, or of rules, policies, or procedures adopted pursuant to those sections, not covered by division (C)(1) of this section, or it may, within seven days of receiving a complaint, refer the complaint to the grievance committee at the home where the alleged violation occurred, or to the attorney general if the attorney general agrees to investigate within thirty days.



(D) If, after an investigation, the department of health 476  
finds probable cause to believe that a violation of sections 477  
3721.10 to 3721.17 of the Revised Code, or of rules, policies, or 478  
procedures adopted pursuant to those sections, has occurred at a 479  
home that is certified under the medicare or medicaid program, it 480  
shall cite one or more findings or deficiencies under sections 481  
5111.35 to 5111.62 of the Revised Code. If the home is not so 482  
certified, the department shall hold an adjudicative hearing 483  
within thirty days under Chapter 119. of the Revised Code. 484

(E) Upon a finding at an adjudicative hearing under division 485  
(D) of this section that a violation of sections 3721.10 to 486  
3721.17 of the Revised Code, or of rules, policies, or procedures 487  
adopted pursuant thereto, has occurred, the department of health 488  
shall make an order for compliance, set a reasonable time for 489  
compliance, and assess a fine pursuant to division (F) of this 490  
section. The fine shall be paid to the general revenue fund only 491  
if compliance with the order is not shown to have been made within 492  
the reasonable time set in the order. The department of health may 493  
issue an order prohibiting the continuation of any violation of 494  
sections 3721.10 to 3721.17 of the Revised Code. 495

Findings at the hearings conducted under this section may be 496  
appealed pursuant to Chapter 119. of the Revised Code, except that 497  
an appeal may be made to the court of common pleas of the county 498  
in which the home is located. 499

The department of health shall initiate proceedings in court 500  
to collect any fine assessed under this section ~~which~~ that is 501  
unpaid thirty days after the violator's final appeal is exhausted. 502

(F) Any home found, pursuant to an adjudication hearing under 503  
division (D) of this section, to have violated sections 3721.10 to 504  
3721.17 of the Revised Code, or rules, policies, or procedures 505  
adopted pursuant to those sections may be fined not less than one 506  
hundred nor more than five hundred dollars for a first offense. 507

For each subsequent offense, the home may be fined not less than 508  
two hundred nor more than one thousand dollars. 509

A violation of sections 3721.10 to 3721.17 of the Revised 510  
Code is a separate offense for each day of the violation and for 511  
each resident who claims the violation. 512

(G) No home or employee of a home shall retaliate against any 513  
person who: 514

(1) Exercises any right set forth in sections 3721.10 to 515  
3721.17 of the Revised Code, including, but not limited to, filing 516  
a complaint with the home's grievance committee or reporting an 517  
alleged violation to the department of health; 518

(2) Appears as a witness in any hearing conducted under this 519  
section or section 3721.162 of the Revised Code; 520

(3) Files a civil action alleging a violation of sections 521  
3721.10 to 3721.17 of the Revised Code, or notifies a county 522  
prosecuting attorney or the attorney general of a possible 523  
violation of sections 3721.10 to 3721.17 of the Revised Code. 524

If, under the procedures outlined in this section, a home or 525  
its employee is found to have retaliated, the violator may be 526  
fined up to one thousand dollars. 527

(H) When legal action is indicated, any evidence of criminal 528  
activity found in an investigation under division (C) of this 529  
section shall be given to the prosecuting attorney in the county 530  
in which the home is located for investigation. 531

(I)(1) Any resident whose rights under sections 3721.10 to 532  
3721.17 of the Revised Code are violated has a cause of action 533  
against any person or home committing the violation. The action 534  
may be commenced by the resident or by the resident's ~~sponsor~~ 535  
legal guardian or other legally authorized representative on 536  
behalf of the resident or the resident's estate. Further, if the 537

resident is unable to do so, the resident's spouse, parent, or 538  
adult child also may commence the action on behalf of the resident 539  
or the resident's estate, and the result of that action shall bind 540  
the resident or the resident's estate. 541

(2)(a) The plaintiff in an action filed under division (I)(1) 542  
of this section may obtain injunctive relief against the violation 543  
of the resident's rights. The plaintiff also may recover 544  
compensatory damages based upon a showing, by a preponderance of 545  
the evidence, that the violation of the resident's rights resulted 546  
from a negligent act or omission of the person or home and that 547  
the violation was the proximate cause of the resident's injury, 548  
death, or loss to person or property. 549

(b) If compensatory damages are awarded for a violation of 550  
the resident's rights, section 2315.21 of the Revised Code, ~~except~~ 551  
~~divisions (E)(1) and (2) of that section,~~ shall apply to an award 552  
of punitive or exemplary damages for the violation. 553

~~(b)~~ (c) The court, in a case in which only injunctive relief 554  
is granted, may award to the prevailing party reasonable 555  
attorney's fees limited to the work reasonably performed. 556

(3) Division (I)(2)~~(a)~~ (b) of this section shall be 557  
considered to be purely remedial in operation and shall be applied 558  
in a remedial manner in any civil action in which this section is 559  
relevant, whether the action is pending in court or commenced on 560  
or after July 9, 1998. 561

(4) Within thirty days after the filing of a complaint in an 562  
action for damages brought against a home under division (I)(1) of 563  
this section by or on behalf of a resident or former resident of 564  
the home, the plaintiff or plaintiff's counsel shall send written 565  
notice of the filing of the complaint to the department of job and 566  
family services if the department has a right of recovery under 567  
section 5101.58 of the Revised Code against the liability of the 568  
home for the cost of medical services and care arising out of 569

injury, disease, or disability of the resident or former resident. 570

Sec. 5111.411. The results of a survey of a nursing facility 571  
that is conducted under section 5111.39 of the Revised Code, 572  
including any statement of deficiencies and all findings and 573  
deficiencies cited in the statement on the basis of the survey, 574  
shall be used solely to determine the nursing facility's 575  
compliance with certification requirements or with this chapter or 576  
another chapter of the Revised Code. Those results of a survey, 577  
that statement of deficiencies, and the findings and deficiencies 578  
cited in that statement shall not be used in any court or in any 579  
action or proceeding that is pending in any court and are not 580  
admissible in evidence in any action or proceeding unless that 581  
action or proceeding is an appeal of an administrative action by 582  
the department of job and family services or contracting agency 583  
under this chapter or is an action by any department or agency of 584  
the state to enforce this chapter or another chapter of the 585  
Revised Code. 586

**Section 2.** That existing sections 2305.11, 2315.21, 2711.23, 587  
2711.24, 3721.02, and 3721.17 of the Revised Code are hereby 588  
repealed. 589

**Section 3.** Nothing in this act applies to proceedings or 590  
appeals involving workers' compensation claims under Chapter 4121. 591  
or 4123. of the Revised Code. 592

**Section 4.** If any provision of section 2305.11, 2315.21, 593  
2711.23, 2711.24, 3721.02, or 3721.17 of the Revised Code, as 594  
amended by this act, any provision of section 5111.411 of the 595  
Revised Code, as enacted by this act, or the application of any 596  
provision of those sections to any person or circumstance is held 597  
invalid, the invalidity does not affect other provisions or 598

applications of the particular section or related sections that	599
can be given effect without the invalid provision or application,	600
and to this end the provisions of the particular section are	601
severable.	602