

As Reported by the Senate Judiciary--Civil Justice Committee

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**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.

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(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

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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

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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

<u>(B) As used in this section, the terms "hospital":</u>	259
<u>(1) "Hospital" and "physician" shall have the same meanings set forth as in division (D) of section 2305.11 of the Revised Code.</u>	260 261 262
<u>(2) "Medical claim" has the same meaning as in division (D) of section 2305.11 of the Revised Code, except that it does not include a claim against a home or residential facility or an employee or agent of a home or residential facility.</u>	263 264 265 266
<u>(3) "Home" has the same meaning as in section 3721.10 of the Revised Code.</u>	267 268
<u>(4) "Residential facility" means a facility licensed under section 5123.19 of the Revised Code.</u>	269 270
<u>(C) The provisions of this division section apply to hospitals, doctors of medicine, doctors of osteopathic medicine, and doctors of podiatric medicine.</u>	271 272 273
<u>(D) This section does not apply to homes or residential facilities.</u>	274 275
Sec. 2711.24. (A) To the extent it is in ten-point type and is executed in the following form, an arbitration agreement of the type stated in section 2711.23 of the Revised Code shall be presumed valid and enforceable in the absence of proof by a preponderance of the evidence that the execution of the agreement was induced by fraud, that the patient executed the agreement as a direct result of the willful or negligent disregard by the physician or hospital of the patient's right not to so execute, or that the patient executing the agreement was not able to communicate effectively in spoken and written English or any other language in which the agreement is written:	276 277 278 279 280 281 282 283 284 285 286
"AGREEMENT TO RESOLVE FUTURE MALPRACTICE	287
CLAIM BY BINDING ARBITRATION	288

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

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

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

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

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

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

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

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

(5) The patient must be furnished with two copies of this agreement. 319
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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 351
Revised Code. 352

(3) "Residential facility" means a facility licensed under 353
section 5123.19 of the Revised Code. 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 358
facilities. 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

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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) (1) Except as otherwise provided in this section, the 427
results of an inspection or investigation of a home that is 428
conducted under this section, including any statement of 429
deficiencies and all findings and deficiencies cited in the 430
statement on the basis of the inspection or investigation, shall 431
be used solely to determine the home's compliance with this 432
chapter or another chapter of the Revised Code in any action or 433
proceeding other than an action commenced under division (I) of 434
section 3721.17 of the Revised Code. Those results of an 435
inspection or investigation, that statement of deficiencies, and 436
the findings and deficiencies cited in that statement shall not be 437
used in any court or in any action or proceeding that is pending 438
in any court and are not admissible in evidence in any action or 439
proceeding unless that action or proceeding is an appeal of an 440
action by the department of health under this chapter or is an 441
action by any department or agency of the state to enforce this 442
chapter or another chapter of the Revised Code. 443

(2) Nothing in division (E)(1) of this section prohibits the 444

results of an inspection or investigation conducted under this 445
section from being used in a criminal investigation or 446
prosecution. 447

Sec. 3721.17. (A) Any resident who believes that the 448
resident's rights under sections 3721.10 to 3721.17 of the Revised 449
Code have been violated may file a grievance under procedures 450
adopted pursuant to division (A)(2) of section 3721.12 of the 451
Revised Code. 452

When the grievance committee determines a violation of 453
sections 3721.10 to 3721.17 of the Revised Code has occurred, it 454
shall notify the administrator of the home. If the violation 455
cannot be corrected within ten days, or if ten days have elapsed 456
without correction of the violation, the grievance committee shall 457
refer the matter to the department of health. 458

(B) Any person who believes that a resident's rights under 459
sections 3721.10 to 3721.17 of the Revised Code have been violated 460
may report or cause reports to be made of the information directly 461
to the department of health. No person who files a report is 462
liable for civil damages resulting from the report. 463

(C)(1) Within thirty days of receiving a complaint under this 464
section, the department of health shall investigate any complaint 465
referred to it by a home's grievance committee and any complaint 466
from any source that alleges that the home provided substantially 467
less than adequate care or treatment, or substantially unsafe 468
conditions, or, within seven days of receiving a complaint, refer 469
it to the attorney general, if the attorney general agrees to 470
investigate within thirty days. 471

(2) Within thirty days of receiving a complaint under this 472
section, the department of health may investigate any alleged 473
violation of sections 3721.10 to 3721.17 of the Revised Code, or 474

of rules, policies, or procedures adopted pursuant to those 475
sections, not covered by division (C)(1) of this section, or it 476
may, within seven days of receiving a complaint, refer the 477
complaint to the grievance committee at the home where the alleged 478
violation occurred, or to the attorney general if the attorney 479
general agrees to investigate within thirty days. 480

(D) If, after an investigation, the department of health 481
finds probable cause to believe that a violation of sections 482
3721.10 to 3721.17 of the Revised Code, or of rules, policies, or 483
procedures adopted pursuant to those sections, has occurred at a 484
home that is certified under the medicare or medicaid program, it 485
shall cite one or more findings or deficiencies under sections 486
5111.35 to 5111.62 of the Revised Code. If the home is not so 487
certified, the department shall hold an adjudicative hearing 488
within thirty days under Chapter 119. of the Revised Code. 489

(E) Upon a finding at an adjudicative hearing under division 490
(D) of this section that a violation of sections 3721.10 to 491
3721.17 of the Revised Code, or of rules, policies, or procedures 492
adopted pursuant thereto, has occurred, the department of health 493
shall make an order for compliance, set a reasonable time for 494
compliance, and assess a fine pursuant to division (F) of this 495
section. The fine shall be paid to the general revenue fund only 496
if compliance with the order is not shown to have been made within 497
the reasonable time set in the order. The department of health may 498
issue an order prohibiting the continuation of any violation of 499
sections 3721.10 to 3721.17 of the Revised Code. 500

Findings at the hearings conducted under this section may be 501
appealed pursuant to Chapter 119. of the Revised Code, except that 502
an appeal may be made to the court of common pleas of the county 503
in which the home is located. 504

The department of health shall initiate proceedings in court 505
to collect any fine assessed under this section ~~which~~ that is 506

unpaid thirty days after the violator's final appeal is exhausted. 507

(F) Any home found, pursuant to an adjudication hearing under 508
division (D) of this section, to have violated sections 3721.10 to 509
3721.17 of the Revised Code, or rules, policies, or procedures 510
adopted pursuant to those sections may be fined not less than one 511
hundred nor more than five hundred dollars for a first offense. 512
For each subsequent offense, the home may be fined not less than 513
two hundred nor more than one thousand dollars. 514

A violation of sections 3721.10 to 3721.17 of the Revised 515
Code is a separate offense for each day of the violation and for 516
each resident who claims the violation. 517

(G) No home or employee of a home shall retaliate against any 518
person who: 519

(1) Exercises any right set forth in sections 3721.10 to 520
3721.17 of the Revised Code, including, but not limited to, filing 521
a complaint with the home's grievance committee or reporting an 522
alleged violation to the department of health; 523

(2) Appears as a witness in any hearing conducted under this 524
section or section 3721.162 of the Revised Code; 525

(3) Files a civil action alleging a violation of sections 526
3721.10 to 3721.17 of the Revised Code, or notifies a county 527
prosecuting attorney or the attorney general of a possible 528
violation of sections 3721.10 to 3721.17 of the Revised Code. 529

If, under the procedures outlined in this section, a home or 530
its employee is found to have retaliated, the violator may be 531
fined up to one thousand dollars. 532

(H) When legal action is indicated, any evidence of criminal 533
activity found in an investigation under division (C) of this 534
section shall be given to the prosecuting attorney in the county 535
in which the home is located for investigation. 536

(I)(1)(a) Any resident whose rights under sections 3721.10 to 537
3721.17 of the Revised Code are violated has a cause of action 538
against any person or home committing the violation. ~~The action~~ 539
~~may be commenced by the resident or by the resident's sponsor on~~ 540
~~behalf of the resident.~~ 541

(b) An action under division (I)(1)(a) of this section may be 542
commenced by the resident or by the resident's legal guardian or 543
other legally authorized representative on behalf of the resident 544
or the resident's estate. If the resident or the resident's legal 545
guardian or other legally authorized representative is unable to 546
commence an action under that division on behalf of the resident, 547
the following persons in the following order of priority have the 548
right to and may commence an action under that division on behalf 549
of the resident or the resident's estate: 550

(i) The resident's spouse; 551
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(ii) The resident's parent or adult child; 553

(iii) The resident's guardian if the resident is a minor 554
child; 555

(iv) The resident's brother or sister; 556

(v) The resident's niece, nephew, aunt, or uncle. 557

(c) Notwithstanding any law as to priority of persons 558
entitled to commence an action, if more than one eligible person 559
within the same level of priority seeks to commence an action on 560
behalf of a resident or the resident's estate, the court shall 561
determine, in the best interest of the resident or the resident's 562
estate, the individual to commence the action. A court's 563
determination under this division as to the person to commence an 564
action on behalf of a resident or the resident's estate shall bar 565
another person from commencing the action on behalf of the 566
resident or the resident's estate. 567

(d) The result of an action commenced pursuant to division (I)(1)(a) of this section by a person authorized under division (I)(1)(b) of this section shall bind the resident or the resident's estate that is the subject of the action. 568
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(2)(a) The plaintiff in an action filed under division (I)(1) of this section may obtain injunctive relief against the violation of the resident's rights. The plaintiff also may recover compensatory damages based upon a showing, by a preponderance of the evidence, that the violation of the resident's rights resulted from a negligent act or omission of the person or home and that the violation was the proximate cause of the resident's injury, death, or loss to person or property. 572
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(b) If compensatory damages are awarded for a violation of the resident's rights, section 2315.21 of the Revised Code, ~~except divisions (E)(1) and (2) of that section,~~ shall apply to an award of punitive or exemplary damages for the violation. 580
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~~(b)~~ (c) The court, in a case in which only injunctive relief is granted, may award to the prevailing party reasonable attorney's fees limited to the work reasonably performed. 584
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(3) Division (I)(2)~~(a)~~ (b) of this section shall be considered to be purely remedial in operation and shall be applied in a remedial manner in any civil action in which this section is relevant, whether the action is pending in court or commenced on or after July 9, 1998. 587
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(4) Within thirty days after the filing of a complaint in an action for damages brought against a home under division (I)(1)(a) of this section by or on behalf of a resident or former resident of the home, the plaintiff or plaintiff's counsel shall send written notice of the filing of the complaint to the department of job and family services if the department has a right of recovery under section 5101.58 of the Revised Code against the liability of 592
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the home for the cost of medical services and care arising out of 599
injury, disease, or disability of the resident or former resident. 600

Sec. 5111.411. The results of a survey of a nursing facility 601
that is conducted under section 5111.39 of the Revised Code, 602
including any statement of deficiencies and all findings and 603
deficiencies cited in the statement on the basis of the survey, 604
shall be used solely to determine the nursing facility's 605
compliance with certification requirements or with this chapter or 606
another chapter of the Revised Code. Those results of a survey, 607
that statement of deficiencies, and the findings and deficiencies 608
cited in that statement shall not be used in any court or in any 609
action or proceeding that is pending in any court and are not 610
admissible in evidence in any action or proceeding unless that 611
action or proceeding is an appeal of an administrative action by 612
the department of job and family services or contracting agency 613
under this chapter or is an action by any department or agency of 614
the state to enforce this chapter or another chapter of the 615
Revised Code. 616

Nothing in this section prohibits the results of a survey, a 617
statement of deficiencies, or the findings and deficiencies cited 618
in that statement on the basis of the survey under this section 619
from being used in a criminal investigation or prosecution. 620

Section 2. That existing sections 2305.11, 2315.21, 2711.23, 621
2711.24, 3721.02, and 3721.17 of the Revised Code are hereby 622
repealed. 623

Section 3. Nothing in this act applies to proceedings or 624
appeals involving workers' compensation claims under Chapter 4121. 625
or 4123. of the Revised Code. 626

Section 4. If any provision of section 2305.11, 2315.21, 627

As Reported by the Senate Judiciary--Civil Justice Committee

2711.23, 2711.24, 3721.02, or 3721.17 of the Revised Code, as 628
amended by this act, any provision of section 5111.411 of the 629
Revised Code, as enacted by this act, or the application of any 630
provision of those sections to any person or circumstance is held 631
invalid, the invalidity does not affect other provisions or 632
applications of the particular section or related sections that 633
can be given effect without the invalid provision or application, 634
and to this end the provisions of the particular section are 635
severable. 636