

As Introduced

**129th General Assembly
Regular Session
2011-2012**

H. B. No. 518

Representatives Sears, Landis

**Cosponsors: Representatives Henne, Hackett, Boose, Buchy, Amstutz,
Grossman, Adams, J., Rosenberger, Thompson, Stebelton, Wachtmann,
Sprague, McGregor**

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A B I L L

To amend sections 119.12, 2305.25, and 2305.252 and 1
to enact sections 4121.132 and 4121.443 of the 2
Revised Code to statutorily allow the Bureau of 3
Workers' Compensation to summarily suspend a 4
provider's certification to participate in the 5
Health Partnership Program, to specify procedures 6
for that suspension, and to exempt documents, 7
reports, and evidence pertaining to a workers' 8
compensation fraud investigation from the Public 9
Records Law. 10

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

Section 1. That sections 119.12, 2305.25, and 2305.252 be 11
amended and sections 4121.132 and 4121.443 of the Revised Code be 12
enacted to read as follows: 13

Sec. 119.12. Any party adversely affected by any order of an 14
agency issued pursuant to an adjudication denying an applicant 15
admission to an examination, or denying the issuance or renewal of 16
a license or registration of a licensee, or revoking or suspending 17

a license, or allowing the payment of a forfeiture under section 18
4301.252 of the Revised Code may appeal from the order of the 19
agency to the court of common pleas of the county in which the 20
place of business of the licensee is located or the county in 21
which the licensee is a resident, except that appeals from 22
decisions of the liquor control commission, the state medical 23
board, state chiropractic board, and board of nursing, and 24
decisions of the bureau of workers' compensation regarding 25
participation in the health partnership program created in 26
sections 4121.44 and 4121.441 of the Revised Code shall be to the 27
court of common pleas of Franklin county. If any party appealing 28
from the order is not a resident of and has no place of business 29
in this state, the party may appeal to the court of common pleas 30
of Franklin county. 31

Any party adversely affected by any order of an agency issued 32
pursuant to any other adjudication may appeal to the court of 33
common pleas of Franklin county, except that appeals from orders 34
of the fire marshal issued under Chapter 3737. of the Revised Code 35
may be to the court of common pleas of the county in which the 36
building of the aggrieved person is located and except that 37
appeals under division (B) of section 124.34 of the Revised Code 38
from a decision of the state personnel board of review or a 39
municipal or civil service township civil service commission shall 40
be taken to the court of common pleas of the county in which the 41
appointing authority is located or, in the case of an appeal by 42
the department of rehabilitation and correction, to the court of 43
common pleas of Franklin county. 44

This section does not apply to appeals from the department of 45
taxation. 46

Any party desiring to appeal shall file a notice of appeal 47
with the agency setting forth the order appealed from and stating 48
that the agency's order is not supported by reliable, probative, 49

and substantial evidence and is not in accordance with law. The 50
notice of appeal may, but need not, set forth the specific grounds 51
of the party's appeal beyond the statement that the agency's order 52
is not supported by reliable, probative, and substantial evidence 53
and is not in accordance with law. The notice of appeal shall also 54
be filed by the appellant with the court. In filing a notice of 55
appeal with the agency or court, the notice that is filed may be 56
either the original notice or a copy of the original notice. 57
Unless otherwise provided by law relating to a particular agency, 58
notices of appeal shall be filed within fifteen days after the 59
mailing of the notice of the agency's order as provided in this 60
section. For purposes of this paragraph, an order includes a 61
determination appealed pursuant to division (C) of section 119.092 62
of the Revised Code. The amendments made to this paragraph by Sub. 63
H.B. 215 of the 128th general assembly are procedural, and this 64
paragraph as amended by those amendments shall be applied 65
retrospectively to all appeals pursuant to this paragraph filed 66
before ~~the effective date of those amendments~~ September 13, 2010, 67
but not earlier than May 7, 2009, which was the date the supreme 68
court of Ohio released its opinion and judgment in *Medcorp, Inc.* 69
v. Ohio Dep't. of Job and Family Servs. (2009), 121 Ohio St.3d 70
622. 71

The filing of a notice of appeal shall not automatically 72
operate as a suspension of the order of an agency. If it appears 73
to the court that an unusual hardship to the appellant will result 74
from the execution of the agency's order pending determination of 75
the appeal, the court may grant a suspension and fix its terms. If 76
an appeal is taken from the judgment of the court and the court 77
has previously granted a suspension of the agency's order as 78
provided in this section, the suspension of the agency's order 79
shall not be vacated and shall be given full force and effect 80
until the matter is finally adjudicated. No renewal of a license 81
or permit shall be denied by reason of the suspended order during 82

the period of the appeal from the decision of the court of common 83
pleas. In the case of an appeal from the state medical board or 84
state chiropractic board, the court may grant a suspension and fix 85
its terms if it appears to the court that an unusual hardship to 86
the appellant will result from the execution of the agency's order 87
pending determination of the appeal and the health, safety, and 88
welfare of the public will not be threatened by suspension of the 89
order. This provision shall not be construed to limit the factors 90
the court may consider in determining whether to suspend an order 91
of any other agency pending determination of an appeal. 92

The final order of adjudication may apply to any renewal of a 93
license or permit which has been granted during the period of the 94
appeal. 95

Notwithstanding any other provision of this section, any 96
order issued by a court of common pleas or a court of appeals 97
suspending the effect of an order of the liquor control commission 98
issued pursuant to Chapter 4301. or 4303. of the Revised Code that 99
suspends, revokes, or cancels a permit issued under Chapter 4303. 100
of the Revised Code or that allows the payment of a forfeiture 101
under section 4301.252 of the Revised Code shall terminate not 102
more than six months after the date of the filing of the record of 103
the liquor control commission with the clerk of the court of 104
common pleas and shall not be extended. The court of common pleas, 105
or the court of appeals on appeal, shall render a judgment in that 106
matter within six months after the date of the filing of the 107
record of the liquor control commission with the clerk of the 108
court of common pleas. A court of appeals shall not issue an order 109
suspending the effect of an order of the liquor control commission 110
that extends beyond six months after the date on which the record 111
of the liquor control commission is filed with a court of common 112
pleas. 113

Notwithstanding any other provision of this section, any 114

order issued by a court of common pleas suspending the effect of 115
an order of the state medical board or state chiropractic board 116
that limits, revokes, suspends, places on probation, or refuses to 117
register or reinstate a certificate issued by the board or 118
reprimands the holder of the certificate shall terminate not more 119
than fifteen months after the date of the filing of a notice of 120
appeal in the court of common pleas, or upon the rendering of a 121
final decision or order in the appeal by the court of common 122
pleas, whichever occurs first. 123

Within thirty days after receipt of a notice of appeal from 124
an order in any case in which a hearing is required by sections 125
119.01 to 119.13 of the Revised Code, the agency shall prepare and 126
certify to the court a complete record of the proceedings in the 127
case. Failure of the agency to comply within the time allowed, 128
upon motion, shall cause the court to enter a finding in favor of 129
the party adversely affected. Additional time, however, may be 130
granted by the court, not to exceed thirty days, when it is shown 131
that the agency has made substantial effort to comply. The record 132
shall be prepared and transcribed, and the expense of it shall be 133
taxed as a part of the costs on the appeal. The appellant shall 134
provide security for costs satisfactory to the court of common 135
pleas. Upon demand by any interested party, the agency shall 136
furnish at the cost of the party requesting it a copy of the 137
stenographic report of testimony offered and evidence submitted at 138
any hearing and a copy of the complete record. 139

Notwithstanding any other provision of this section, any 140
party desiring to appeal an order or decision of the state 141
personnel board of review shall, at the time of filing a notice of 142
appeal with the board, provide a security deposit in an amount and 143
manner prescribed in rules that the board shall adopt in 144
accordance with this chapter. In addition, the board is not 145
required to prepare or transcribe the record of any of its 146

proceedings unless the appellant has provided the deposit 147
described above. The failure of the board to prepare or transcribe 148
a record for an appellant who has not provided a security deposit 149
shall not cause a court to enter a finding adverse to the board. 150

Unless otherwise provided by law, in the hearing of the 151
appeal, the court is confined to the record as certified to it by 152
the agency. Unless otherwise provided by law, the court may grant 153
a request for the admission of additional evidence when satisfied 154
that the additional evidence is newly discovered and could not 155
with reasonable diligence have been ascertained prior to the 156
hearing before the agency. 157

The court shall conduct a hearing on the appeal and shall 158
give preference to all proceedings under sections 119.01 to 119.13 159
of the Revised Code, over all other civil cases, irrespective of 160
the position of the proceedings on the calendar of the court. An 161
appeal from an order of the state medical board issued pursuant to 162
division (G) of either section 4730.25 or 4731.22 of the Revised 163
Code, or the state chiropractic board issued pursuant to section 164
4734.37 of the Revised Code, or the liquor control commission 165
issued pursuant to Chapter 4301. or 4303. of the Revised Code 166
shall be set down for hearing at the earliest possible time and 167
takes precedence over all other actions. The hearing in the court 168
of common pleas shall proceed as in the trial of a civil action, 169
and the court shall determine the rights of the parties in 170
accordance with the laws applicable to a civil action. At the 171
hearing, counsel may be heard on oral argument, briefs may be 172
submitted, and evidence may be introduced if the court has granted 173
a request for the presentation of additional evidence. 174

The court may affirm the order of the agency complained of in 175
the appeal if it finds, upon consideration of the entire record 176
and any additional evidence the court has admitted, that the order 177
is supported by reliable, probative, and substantial evidence and 178

is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The court shall award compensation for fees in accordance with section 2335.39 of the Revised Code to a prevailing party, other than an agency, in an appeal filed pursuant to this section.

The judgment of the court shall be final and conclusive unless reversed, vacated, or modified on appeal. These appeals may be taken either by the party or the agency, shall proceed as in the case of appeals in civil actions, and shall be pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code. An appeal by the agency shall be taken on questions of law relating to the constitutionality, construction, or interpretation of statutes and rules of the agency, and, in the appeal, the court may also review and determine the correctness of the judgment of the court of common pleas that the order of the agency is not supported by any reliable, probative, and substantial evidence in the entire record.

The court shall certify its judgment to the agency or take any other action necessary to give its judgment effect.

Sec. 2305.25. As used in this section and sections 2305.251 to 2305.253 of the Revised Code:

(A)(1) "Health care entity" means an entity, whether acting on its own behalf or on behalf of or in affiliation with other health care entities, that conducts as part of its regular business activities professional credentialing or quality review activities involving the competence of, professional conduct of, or quality of care provided by health care providers, including both individuals who provide health care and entities that provide

health care.	210
(2) "Health care entity" includes any entity described in	211
division (A)(1) of this section, regardless of whether it is a	212
government entity; for-profit or nonprofit corporation; limited	213
liability company; partnership; professional corporation; state or	214
local society composed of physicians, dentists, optometrists,	215
psychologists, or pharmacists; or other health care organization.	216
(B) "Health insuring corporation" means an entity that holds	217
a certificate of authority under Chapter 1751. of the Revised	218
Code. "Health insuring corporation" includes wholly owned	219
subsidiaries of a health insuring corporation.	220
(C) "Hospital" means either of the following:	221
(1) An institution that has been registered or licensed by	222
the department of health as a hospital;	223
(2) An entity, other than an insurance company authorized to	224
do business in this state, that owns, controls, or is affiliated	225
with an institution that has been registered or licensed by the	226
department of health as a hospital.	227
(D) "Incident report or risk management report" means a	228
report of an incident involving injury or potential injury to a	229
patient as a result of patient care provided by health care	230
providers, including both individuals who provide health care and	231
entities that provide health care, that is prepared by or for the	232
use of a peer review committee of a health care entity and is	233
within the scope of the functions of that committee.	234
(E)(1) "Peer review committee" means a utilization review	235
committee, quality assessment committee, performance improvement	236
committee, tissue committee, credentialing committee, or other	237
committee that does either of the following:	238
(a) Conducts professional credentialing or quality review	239

activities involving the competence of, professional conduct of, 240
or quality of care provided by health care providers, including 241
both individuals who provide health care and entities that provide 242
health care; 243

(b) Conducts any other attendant hearing process initiated as 244
a result of a peer review committee's recommendations or actions. 245

(2) "Peer review committee" includes all of the following: 246

(a) A peer review committee of a hospital or long-term care 247
facility or a peer review committee of a nonprofit health care 248
corporation that is a member of the hospital or long-term care 249
facility or of which the hospital or facility is a member; 250

(b) A peer review committee of a community mental health 251
center; 252

(c) A board or committee of a hospital, a long-term care 253
facility, or other health care entity when reviewing professional 254
qualifications or activities of health care providers, including 255
both individuals who provide health care and entities that provide 256
health care; 257

(d) A peer review committee, professional standards review 258
committee, or arbitration committee of a state or local society 259
composed of members who are in active practice as physicians, 260
dentists, optometrists, psychologists, or pharmacists; 261

(e) A peer review committee of a health insuring corporation 262
that has at least a two-thirds majority of member physicians in 263
active practice and that conducts professional credentialing and 264
quality review activities involving the competence or professional 265
conduct of health care providers that adversely affects or could 266
adversely affect the health or welfare of any patient; 267

(f) A peer review committee of a health insuring corporation 268
that has at least a two-thirds majority of member physicians in 269

active practice and that conducts professional credentialing and 270
quality review activities involving the competence or professional 271
conduct of a health care facility that has contracted with the 272
health insuring corporation to provide health care services to 273
enrollees, which conduct adversely affects, or could adversely 274
affect, the health or welfare of any patient; 275

(g) A peer review committee of a sickness and accident 276
insurer that has at least a two-thirds majority of physicians in 277
active practice and that conducts professional credentialing and 278
quality review activities involving the competence or professional 279
conduct of health care providers that adversely affects or could 280
adversely affect the health or welfare of any patient; 281

(h) A peer review committee of a sickness and accident 282
insurer that has at least a two-thirds majority of physicians in 283
active practice and that conducts professional credentialing and 284
quality review activities involving the competence or professional 285
conduct of a health care facility that has contracted with the 286
insurer to provide health care services to insureds, which conduct 287
adversely affects, or could adversely affect, the health or 288
welfare of any patient; 289

(i) A peer review committee of any insurer authorized under 290
Title XXXIX of the Revised Code to do the business of medical 291
professional liability insurance in this state that conducts 292
professional quality review activities involving the competence or 293
professional conduct of health care providers that adversely 294
affects or could affect the health or welfare of any patient; 295

(j) A peer review committee of the bureau of workers' 296
compensation or the industrial commission that is responsible for 297
reviewing the professional qualifications and the performance of 298
providers certified by the bureau to participate in the health 299
partnership program or for conducting medical examinations or file 300
reviews for the bureau or the commission; 301

(k) Any other peer review committee of a health care entity.	302
(F) "Physician" means an individual authorized to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.	303 304 305
(G) "Sickness and accident insurer" means an entity authorized under Title XXXIX of the Revised Code to do the business of sickness and accident insurance in this state.	306 307 308
(H) "Tort action" means a civil action for damages for injury, death, or loss to a patient of a health care entity. "Tort action" includes a product liability claim, as defined in section 2307.71 of the Revised Code, and an asbestos claim, as defined in section 2307.91 of the Revised Code, but does not include a civil action for a breach of contract or another agreement between persons.	309 310 311 312 313 314 315
Sec. 2305.252. (A) Proceedings and records within the scope of a peer review committee of a health care entity shall be held in confidence and shall not be subject to discovery or introduction in evidence in any civil action against a health care entity or health care provider, including both individuals who provide health care and entities that provide health care, arising out of matters that are the subject of evaluation and review by the peer review committee. No individual who attends a meeting of a peer review committee, serves as a member of a peer review committee, works for or on behalf of a peer review committee, or provides information to a peer review committee shall be permitted or required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the peer review committee or as to any finding, recommendation, evaluation, opinion, or other action of the committee or a member thereof. Information, documents, or records otherwise available from original sources are not to be construed as being unavailable	316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332

for discovery or for use in any civil action merely because they 333
were produced or presented during proceedings of a peer review 334
committee, but the information, documents, or records are 335
available only from the original sources and cannot be obtained 336
from the peer review committee's proceedings or records. An 337
individual who testifies before a peer review committee, serves as 338
a representative of a peer review committee, serves as a member of 339
a peer review committee, works for or on behalf of a peer review 340
committee, or provides information to a peer review committee 341
shall not be prevented from testifying as to matters within the 342
individual's knowledge, but the individual cannot be asked about 343
the individual's testimony before the peer review committee, 344
information the individual provided to the peer review committee, 345
or any opinion the individual formed as a result of the peer 346
review committee's activities. An order by a court to produce for 347
discovery or for use at trial the proceedings or records described 348
in this section is a final order. 349

(B) Division (A) of this section applies to a peer review 350
committee of the bureau of workers' compensation that is 351
responsible for reviewing the professional qualifications and the 352
performance of providers certified by the bureau to participate in 353
the health partnership program created under sections 4121.44 and 354
4121.441 of the Revised Code, except that the proceedings and 355
records within the scope of the peer review committee are subject 356
to discovery or court subpoena and may be admitted into evidence 357
in any criminal action or administrative or civil action 358
initiated, prosecuted, or adjudicated by the bureau involving an 359
alleged violation of applicable law or administrative rule. The 360
bureau may share proceedings and records within the scope of the 361
peer review committee, including claimant records and claim file 362
information, with law enforcement agencies, licensing boards, and 363
other governmental agencies that are prosecuting, adjudicating, or 364
investigating alleged violations of applicable law or 365

administrative rule. Recipients of claimant records and claim file 366
information provided by the bureau pursuant to this division shall 367
take appropriate measures to maintain the confidentiality of the 368
information. 369

Sec. 4121.132. (A) As used in this section, "workers' 370
compensation fraud investigation" means any investigation 371
conducted by the administrator of workers' compensation or a 372
designee of the administrator under the authority of division (F) 373
of section 4121.13 of the Revised Code that relates to a 374
fraudulent workers' compensation act. 375

(B) All documents, reports, and evidence in the possession of 376
the administrator or the administrator's designee that pertain to 377
a workers' compensation fraud investigation are confidential law 378
enforcement investigatory records under section 149.43 of the 379
Revised Code. Notwithstanding the requirements of that section, 380
the administrator shall not prohibit public inspection of the 381
records that pertain to a workers' compensation fraud 382
investigation for a period longer than two years after the date 383
the investigation is closed. 384

(C) Except when made confidential or otherwise exempt from 385
section 149.43 of the Revised Code, all documents, reports, and 386
evidence in the possession of the administrator or the 387
administrator's designee that do not pertain to a workers' 388
compensation fraud investigation are public records under section 389
149.43 of the Revised Code, and are not by that possession alone 390
confidential law enforcement investigatory records. 391

(D) All documents, reports, and evidence in the possession of 392
the bureau of workers' compensation special investigation 393
department or the administrator's designee that pertain to a 394
workers' compensation fraud investigation are not subject to 395
subpoena in civil actions or administrative proceeding by any 396

court or tribunal of this state until opened for public inspection 397
by the administrator in accordance with division (B) of this 398
section or with section 149.43 of the Revised Code, unless the 399
administrator or the administrator's designee consents. 400

(E) Notwithstanding divisions (B), (C), and (D) of this 401
section, the administrator may do either of the following: 402

(1) Share documents, reports, and evidence that are the 403
subject of this section with any of the following persons or 404
entities, provided that the recipient agrees to maintain the 405
confidential or privileged status of the confidential or 406
privileged document, report, or evidence and has authority to do 407
so: 408

(a) Any person employed by, or acting on behalf of, the 409
administrator; 410

(b) Local, state, federal, and international regulatory and 411
law enforcement agencies; 412

(c) Local, state, and federal prosecutors. 413

(2) Disclose documents, reports, and evidence that are the 414
subject of this section in the furtherance of any regulatory or 415
legal action brought by or on behalf of the administrator or the 416
state, resulting from the exercise of the administrator's official 417
duties. 418

(F) The administrator may enter into agreements with the 419
persons or entities listed in division (E) of this section 420
governing the sharing and use of documents, reports, and evidence 421
consistent with the requirements of this section. 422

(G) No waiver of any applicable privilege or claim of 423
confidentiality in the documents, reports, and evidence described 424
in this section shall occur as a result of sharing or receiving 425
documents, reports, and evidence as authorized in divisions (E) or 426

(F) of this section. 427

(H) The administrator and the administrator's designee are 428
not subject to subpoena in civil actions by any court of this 429
state to testify concerning any matter of which they have 430
knowledge pursuant to a pending workers' compensation fraud 431
investigation by the administrator. 432

Sec. 4121.443. (A) The bureau of workers' compensation may 433
summarily suspend the certification of a provider to participate 434
in the health partnership program created under sections 4121.44 435
and 4121.441 of the Revised Code without a prior hearing if the 436
bureau determines any of the following apply to the provider: 437

(1) The professional license, certification, or registration 438
held by the provider has been revoked or suspended. 439

(2) The provider has been convicted of or has pleaded guilty 440
to a violation of section 2913.48 or sections 2923.31 to 2923.36 441
of the Revised Code or any other criminal offense related to the 442
delivery of or billing for health care benefits. 443

(3) The continued participation by the provider in the health 444
partnership program presents a danger to the health and safety of 445
claimants. 446

(B) The bureau shall issue a written order of summary 447
suspension by certified mail or in person in accordance with 448
section 119.07 of the Revised Code. The order shall not be subject 449
to suspension by the court during pendency of any appeal filed 450
under section 119.12 of the Revised Code. If the provider subject 451
to the summary suspension requests an adjudicatory hearing by the 452
bureau, the date set for the hearing shall be not later than 453
fifteen days, but not earlier than seven days, after the provider 454
requests the hearing, unless otherwise agreed to by both the 455
bureau and the provider. 456

(C) Any summary suspension imposed under this section shall 457
remain in effect, unless reversed on appeal, until a final 458
adjudication order issued by the bureau pursuant to this section 459
and Chapter 119. of the Revised Code takes effect. The bureau 460
shall issue its final adjudication order within seventy-five days 461
after completion of its hearing. A failure to issue the order 462
within the seventy-five-day time period shall result in 463
dissolution of the summary suspension order but shall not 464
invalidate any subsequent, final adjudication order. 465

Section 2. That existing sections 119.12, 2305.25, and 466
2305.252 of the Revised Code are hereby repealed. 467