

**As Introduced**

**130th General Assembly  
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**H. B. No. 103**

**Representative Huffman**

**Cosponsors: Representatives Becker, Buchy, Conditt, Grossman, Hottinger,  
Pillich, Stebelton, Wachtmann**

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**A B I L L**

To amend section 2305.113 and to enact section 1  
2323.451 of the Revised Code to specify the manner 2  
of sending a notice of intent to file a medical 3  
claim and to provide a procedure for the discovery 4  
of other potential defendants within a specified 5  
period after the filing of a medical claim. 6

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

**Section 1.** That section 2305.113 be amended and section 7  
2323.451 of the Revised Code be enacted to read as follows: 8

**Sec. 2305.113.** (A) Except as otherwise provided in this 9  
section, an action upon a medical, dental, optometric, or 10  
chiropractic claim shall be commenced within one year after the 11  
cause of action accrued. 12

(B)(1) If prior to the expiration of the one-year period 13  
specified in division (A) of this section, a claimant who 14  
allegedly possesses a medical, dental, optometric, or chiropractic 15  
claim gives to the person who is the subject of that claim written 16  
notice that the claimant is considering bringing an action upon 17  
that claim, that action may be commenced against the person 18

notified at any time within one hundred eighty days after the 19  
notice is so given. 20

(2) A claimant who allegedly possesses a medical claim and 21  
who intends to give to the person who is the subject of that claim 22  
the written notice described in division (B)(1) of this section 23  
shall send the notice by certified mail, return receipt requested, 24  
addressed to any of the following: 25

(a) The person's residence; 26

(b) The person's professional practice; 27

(c) The person's employer; 28

(d) The address of the person on file with the state medical 29  
board or other appropriate agency that issued the person's 30  
professional license. 31

(3) An insurance company shall not consider the existence or 32  
nonexistence of a written notice described in division (B)(1) of 33  
this section in setting the liability insurance premium rates that 34  
the company may charge the company's insured person who is 35  
notified by that written notice. 36

(C) Except as to persons within the age of minority or of 37  
unsound mind as provided by section 2305.16 of the Revised Code, 38  
and except as provided in division (D) of this section, both of 39  
the following apply: 40

(1) No action upon a medical, dental, optometric, or 41  
chiropractic claim shall be commenced more than four years after 42  
the occurrence of the act or omission constituting the alleged 43  
basis of the medical, dental, optometric, or chiropractic claim. 44

(2) If an action upon a medical, dental, optometric, or 45  
chiropractic claim is not commenced within four years after the 46  
occurrence of the act or omission constituting the alleged basis 47  
of the medical, dental, optometric, or chiropractic claim, then, 48

any action upon that claim is barred. 49

(D)(1) If a person making a medical claim, dental claim, 50  
optometric claim, or chiropractic claim, in the exercise of 51  
reasonable care and diligence, could not have discovered the 52  
injury resulting from the act or omission constituting the alleged 53  
basis of the claim within three years after the occurrence of the 54  
act or omission, but, in the exercise of reasonable care and 55  
diligence, discovers the injury resulting from that act or 56  
omission before the expiration of the four-year period specified 57  
in division (C)(1) of this section, the person may commence an 58  
action upon the claim not later than one year after the person 59  
discovers the injury resulting from that act or omission. 60

(2) If the alleged basis of a medical claim, dental claim, 61  
optometric claim, or chiropractic claim is the occurrence of an 62  
act or omission that involves a foreign object that is left in the 63  
body of the person making the claim, the person may commence an 64  
action upon the claim not later than one year after the person 65  
discovered the foreign object or not later than one year after the 66  
person, with reasonable care and diligence, should have discovered 67  
the foreign object. 68

(3) A person who commences an action upon a medical claim, 69  
dental claim, optometric claim, or chiropractic claim under the 70  
circumstances described in division (D)(1) or (2) of this section 71  
has the affirmative burden of proving, by clear and convincing 72  
evidence, that the person, with reasonable care and diligence, 73  
could not have discovered the injury resulting from the act or 74  
omission constituting the alleged basis of the claim within the 75  
three-year period described in division (D)(1) of this section or 76  
within the one-year period described in division (D)(2) of this 77  
section, whichever is applicable. 78

(E) As used in this section: 79

(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 that are owned or operated by the state, political subdivisions, any person, any corporation, or any combination of the state, political subdivisions, persons, and corporations. "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.

(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, hospital, home, or residential facility, against any employee or agent of a physician, podiatrist, hospital, home, or residential facility, or against a licensed practical nurse, registered nurse, advanced practice registered nurse, physical therapist, physician assistant, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, and that arises out of the medical diagnosis, care, or treatment of any person. "Medical claim" includes the following:

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

(b) Claims that arise out of the medical diagnosis, care, or

treatment of any person and to which either of the following	112
applies:	113
(i) The claim results from acts or omissions in providing	114
medical care.	115
(ii) The claim results from the hiring, training,	116
supervision, retention, or termination of caregivers providing	117
medical diagnosis, care, or treatment.	118
(c) Claims that arise out of the medical diagnosis, care, or	119
treatment of any person and that are brought under section 3721.17	120
of the Revised Code.	121
(4) "Podiatrist" means any person who is licensed to practice	122
podiatric medicine and surgery by the state medical board.	123
(5) "Dentist" means any person who is licensed to practice	124
dentistry by the state dental board.	125
(6) "Dental claim" means any claim that is asserted in any	126
civil action against a dentist, or against any employee or agent	127
of a dentist, and that arises out of a dental operation or the	128
dental diagnosis, care, or treatment of any person. "Dental claim"	129
includes derivative claims for relief that arise from a dental	130
operation or the dental diagnosis, care, or treatment of a person.	131
(7) "Derivative claims for relief" include, but are not	132
limited to, claims of a parent, guardian, custodian, or spouse of	133
an individual who was the subject of any medical diagnosis, care,	134
or treatment, dental diagnosis, care, or treatment, dental	135
operation, optometric diagnosis, care, or treatment, or	136
chiropractic diagnosis, care, or treatment, that arise from that	137
diagnosis, care, treatment, or operation, and that seek the	138
recovery of damages for any of the following:	139
(a) Loss of society, consortium, companionship, care,	140
assistance, attention, protection, advice, guidance, counsel,	141

instruction, training, or education, or any other intangible loss 142  
that was sustained by the parent, guardian, custodian, or spouse; 143

(b) Expenditures of the parent, guardian, custodian, or 144  
spouse for medical, dental, optometric, or chiropractic care or 145  
treatment, for rehabilitation services, or for other care, 146  
treatment, services, products, or accommodations provided to the 147  
individual who was the subject of the medical diagnosis, care, or 148  
treatment, the dental diagnosis, care, or treatment, the dental 149  
operation, the optometric diagnosis, care, or treatment, or the 150  
chiropractic diagnosis, care, or treatment. 151

(8) "Registered nurse" means any person who is licensed to 152  
practice nursing as a registered nurse by the board of nursing. 153

(9) "Chiropractic claim" means any claim that is asserted in 154  
any civil action against a chiropractor, or against any employee 155  
or agent of a chiropractor, and that arises out of the 156  
chiropractic diagnosis, care, or treatment of any person. 157  
"Chiropractic claim" includes derivative claims for relief that 158  
arise from the chiropractic diagnosis, care, or treatment of a 159  
person. 160

(10) "Chiropractor" means any person who is licensed to 161  
practice chiropractic by the state chiropractic board. 162

(11) "Optometric claim" means any claim that is asserted in 163  
any civil action against an optometrist, or against any employee 164  
or agent of an optometrist, and that arises out of the optometric 165  
diagnosis, care, or treatment of any person. "Optometric claim" 166  
includes derivative claims for relief that arise from the 167  
optometric diagnosis, care, or treatment of a person. 168

(12) "Optometrist" means any person licensed to practice 169  
optometry by the state board of optometry. 170

(13) "Physical therapist" means any person who is licensed to 171  
practice physical therapy under Chapter 4755. of the Revised Code. 172

(14) "Home" has the same meaning as in section 3721.10 of the Revised Code. 173  
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(15) "Residential facility" means a facility licensed under section 5123.19 of the Revised Code. 175  
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(16) "Advanced practice registered nurse" means any certified nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, or certified nurse-midwife who holds a certificate of authority issued by the board of nursing under Chapter 4723. of the Revised Code. 177  
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(17) "Licensed practical nurse" means any person who is licensed to practice nursing as a licensed practical nurse by the board of nursing pursuant to Chapter 4723. of the Revised Code. 182  
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(18) "Physician assistant" means any person who holds a valid certificate to practice issued pursuant to Chapter 4730. of the Revised Code. 185  
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(19) "Emergency medical technician-basic," "emergency medical technician-intermediate," and "emergency medical technician-paramedic" means any person who is certified under Chapter 4765. of the Revised Code as an emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, whichever is applicable. 188  
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Sec. 2323.451. (A) As used in this section, "medical claim" has the same meaning as in section 2305.113 of the Revised Code. 194  
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(B) At the time of filing a complaint asserting a medical claim, the plaintiff shall file with the complaint, pursuant to rule 10(D) of the Rules of Civil Procedure, an affidavit of merit relative to each defendant named in the complaint or a motion to extend the period of time to file an affidavit of merit. 196  
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(C) The plaintiff may conduct discovery as permitted by the Rules of Civil Procedure. Additionally, for a period of one 201  
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hundred eighty days following the filing of a complaint asserting a medical claim, the plaintiff may seek to discover the existence or identity of any other potential medical claims or defendants that are not included or named in the complaint. Any defendant named in the complaint shall provide the discovery under this division in accordance with the Rules of Civil Procedure. 203  
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(D) Within one hundred eighty days following the filing of a complaint asserting a medical claim, the plaintiff, in an amendment to the complaint pursuant to rule 15 of the Rules of Civil Procedure, may join in the action any additional medical claim or defendant if the period of limitation applicable to that additional medical claim or defendant had not expired prior to the date the original complaint was filed. The plaintiff shall file an affidavit of merit supporting the joinder of the additional defendant or a motion to extend the period of time to file an affidavit of merit pursuant to rule 10(D) of the Rules of Civil Procedure. 209  
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(E) If, after more than one hundred eighty days following the filing of a complaint asserting a medical claim, the plaintiff first discovers the existence or identity of a potential medical claim or defendant that is not included or named in the complaint, the period of limitation for a medical claim against that potential defendant commences on the earlier of the date the plaintiff discovers the existence of the medical claim and identity of the potential defendant or the date upon which the plaintiff in the exercise of reasonable care and diligence should have discovered the alleged basis of the medical claim and the identity of the person against whom the medical claim could have been asserted. 220  
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(F) Divisions (D) and (E) of this section do not modify or affect and shall not be construed as modifying or affecting any provision of the Revised Code or rule of common law that applies 232  
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to the commencement of the period of limitation for a medical claim upon a cause of action that arises when the plaintiff discovers, or in the exercise of reasonable care and diligence, should have discovered the alleged basis of the medical claim and the identity of the person against whom the medical claim may be asserted. 235  
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(G) After the expiration of one hundred eighty days following the filing of a complaint asserting a medical claim, the plaintiff shall not join any additional medical claim or defendant to the action unless either of the following applies: 241  
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(1) The medical claim is for wrongful death, and the period of limitation for the claim under section 2125.02 of the Revised Code has not expired. 245  
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(2) The existence and identification of the additional medical claim or defendant is discovered in the exercise of reasonable care and diligence under division (E) of this section. 248  
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**Section 2.** That existing section 2305.113 of the Revised Code is hereby repealed. 251  
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**Section 3.** (A) Section 2323.451 of the Revised Code, as enacted by this act, applies to a civil action that is based upon a medical claim and that is filed on or after the effective date of this act. 253  
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(B) As used in division (A) of this section, "medical claim" has the same meaning as in section 2305.113 of the Revised Code. 257  
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