

As Introduced

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H. B. No. 271

Representative Becker

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A B I L L

To amend sections 2305.234 and 2305.2341 of the 1
Revised Code to expand the immunity from liability 2
for health care professionals, health care 3
workers, and nonprofit health care referral 4
organizations when providing specific care to an 5
indigent and uninsured person. 6

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

Section 1. That sections 2305.234 and 2305.2341 of the 7
Revised Code be amended to read as follows: 8

Sec. 2305.234. (A) As used in this section: 9

(1) "Chiropractic claim," "medical claim," and "optometric 10
claim" have the same meanings as in section 2305.113 of the 11
Revised Code. 12

(2) "Dental claim" has the same meaning as in section 13
2305.113 of the Revised Code, except that it does not include any 14
claim arising out of a dental operation or any derivative claim 15
for relief that arises out of a dental operation. 16

(3) "Governmental health care program" has the same meaning 17
as in section 4731.65 of the Revised Code. 18

(4) "Health care facility or location" means a hospital, 19

clinic, ambulatory surgical facility, office of a health care professional or associated group of health care professionals, training institution for health care professionals, or any other place where medical, dental, or other health-related diagnosis, care, or treatment is provided to a person.

(5) "Health care professional" means any of the following who provide medical, dental, or other health-related diagnosis, care, or treatment:

(a) Physicians authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery;

(b) Registered nurses and licensed practical nurses licensed under Chapter 4723. of the Revised Code and individuals who hold a certificate of authority issued under that chapter that authorizes the practice of nursing as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner;

(c) Physician assistants authorized to practice under Chapter 4730. of the Revised Code;

(d) Dentists and dental hygienists licensed under Chapter 4715. of the Revised Code;

(e) Physical therapists, physical therapist assistants, occupational therapists, and occupational therapy assistants licensed under Chapter 4755. of the Revised Code;

(f) Chiropractors licensed under Chapter 4734. of the Revised Code;

(g) Optometrists licensed under Chapter 4725. of the Revised Code;

(h) Podiatrists authorized under Chapter 4731. of the Revised Code to practice podiatry;

(i) Dietitians licensed under Chapter 4759. of the Revised Code;	50 51
(j) Pharmacists licensed under Chapter 4729. of the Revised Code;	52 53
(k) Emergency medical technicians-basic, emergency medical technicians-intermediate, and emergency medical technicians-paramedic, certified under Chapter 4765. of the Revised Code;	54 55 56 57
(l) Respiratory care professionals licensed under Chapter 4761. of the Revised Code;	58 59
(m) Speech-language pathologists and audiologists licensed under Chapter 4753. of the Revised Code;	60 61
(n) Professional clinical counselors, professional counselors, independent social workers, social workers, independent marriage and family therapists, and marriage and family therapists, licensed under Chapter 4757. of the Revised Code;	62 63 64 65 66
(o) Psychologists licensed under Chapter 4732. of the Revised Code;	67 68
(p) Independent chemical dependency counselors, chemical dependency counselors III, chemical dependency counselors II, and chemical dependency counselors I, licensed under Chapter 4758. of the Revised Code.	69 70 71 72
(6) "Health care worker" means a person other than a health care professional who provides medical, dental, or other health-related care or treatment under the direction of a health care professional with the authority to direct that individual's activities, including medical technicians, medical assistants, dental assistants, orderlies, aides, and individuals acting in similar capacities.	73 74 75 76 77 78 79

(7) "Indigent and uninsured person" means a person who meets	80
all of the following requirements:	81
(a) The person's income is not greater than two hundred per	82
cent of the current poverty line as defined by the United States	83
office of management and budget and revised in accordance with	84
section 673(2) of the "Omnibus Budget Reconciliation Act of 1981,"	85
95 Stat. 511, 42 U.S.C. 9902, as amended.	86
(b) The person is not eligible to receive medical assistance	87
under Chapter 5111. of the Revised Code or assistance under any	88
other governmental health care program.	89
(c) Either of the following applies:	90
(i) The person is not a policyholder, certificate holder,	91
insured, contract holder, subscriber, enrollee, member,	92
beneficiary, or other covered individual under a health insurance	93
or health care policy, contract, or plan.	94
(ii) The person is a policyholder, certificate holder,	95
insured, contract holder, subscriber, enrollee, member,	96
beneficiary, or other covered individual under a health insurance	97
or health care policy, contract, or plan, but the insurer, policy,	98
contract, or plan denies coverage or is the subject of insolvency	99
or bankruptcy proceedings in any jurisdiction.	100
(8) "Nonprofit health care referral organization" means an	101
entity that is not operated for profit and refers patients to, or	102
arranges for the provision of, health-related diagnosis, care, or	103
treatment by a health care professional or health care worker.	104
(9) "Operation" means any procedure that involves cutting or	105
otherwise infiltrating human tissue by mechanical means, including	106
surgery, laser surgery, ionizing radiation, therapeutic	107
ultrasound, or the removal of intraocular foreign bodies.	108
"Operation" does not include the administration of medication by	109
injection, unless the injection is administered in conjunction	110

with a procedure infiltrating human tissue by mechanical means 111
other than the administration of medicine by injection. 112
"Operation" does not include routine dental restorative 113
procedures, the scaling of teeth, or extractions of teeth that are 114
not impacted. 115

(10) "Tort action" means a civil action for damages for 116
injury, death, or loss to person or property other than a civil 117
action for damages for a breach of contract or another agreement 118
between persons or government entities. 119

(11) "Volunteer" means an individual who provides any 120
medical, dental, or other health-care related diagnosis, care, or 121
treatment without the expectation of receiving and without receipt 122
of any compensation or other form of remuneration from an indigent 123
and uninsured person, another person on behalf of an indigent and 124
uninsured person, any health care facility or location, any 125
nonprofit health care referral organization, or any other person 126
or government entity. 127

~~(12) "Community control sanction" has the same meaning as in 128
section 2929.01 of the Revised Code. 129~~

~~(13) "Deep sedation" means a drug induced depression of 130
consciousness during which a patient cannot be easily aroused but 131
responds purposefully following repeated or painful stimulation, a 132
patient's ability to independently maintain ventilatory function 133
may be impaired, a patient may require assistance in maintaining a 134
patent airway and spontaneous ventilation may be inadequate, and 135
cardiovascular function is usually maintained. 136~~

~~(14) "General anesthesia" means a drug induced loss of 137
consciousness during which a patient is not arousable, even by 138
painful stimulation, the ability to independently maintain 139
ventilatory function is often impaired, a patient often requires 140
assistance in maintaining a patent airway, positive pressure 141~~

~~ventilation may be required because of depressed spontaneous 142
ventilation or drug induced depression of neuromuscular function, 143
and cardiovascular function may be impaired. 144~~

(B)(1) Subject to ~~divisions~~ division (F) ~~and (C)(3)~~ of this 145
section, a health care professional who is a volunteer and 146
complies with division (B)(2) of this section is not liable in 147
damages to any person or government entity in a tort or other 148
civil action, including an action on a medical, dental, 149
chiropractic, optometric, or other health-related claim, for 150
injury, death, or loss to person or property that allegedly arises 151
from an action or omission of the volunteer in the provision to an 152
indigent and uninsured person of medical, dental, or other 153
health-related diagnosis, care, or treatment, including the 154
provision of samples of medicine and other medical products, 155
unless the action or omission constitutes willful or wanton 156
misconduct. 157

(2) To qualify for the immunity described in division (B)(1) 158
of this section, a health care professional shall do all of the 159
following prior to providing diagnosis, care, or treatment: 160

(a) Determine, in good faith, that the indigent and uninsured 161
person is mentally capable of giving informed consent to the 162
provision of the diagnosis, care, or treatment and is not subject 163
to duress or under undue influence; 164

(b) Inform the person of the provisions of this section, 165
including notifying the person that, by giving informed consent to 166
the provision of the diagnosis, care, or treatment, the person 167
cannot hold the health care professional liable for damages in a 168
tort or other civil action, including an action on a medical, 169
dental, chiropractic, optometric, or other health-related claim, 170
unless the action or omission of the health care professional 171
constitutes willful or wanton misconduct; 172

(c) Obtain the informed consent of the person and a written waiver, signed by the person or by another individual on behalf of and in the presence of the person, that states that the person is mentally competent to give informed consent and, without being subject to duress or under undue influence, gives informed consent to the provision of the diagnosis, care, or treatment subject to the provisions of this section. A written waiver under division (B)(2)(c) of this section shall state clearly and in conspicuous type that the person or other individual who signs the waiver is signing it with full knowledge that, by giving informed consent to the provision of the diagnosis, care, or treatment, the person cannot bring a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, against the health care professional unless the action or omission of the health care professional constitutes willful or wanton misconduct.

(3) A physician or podiatrist who is not covered by medical malpractice insurance, but complies with division (B)(2) of this section, is not required to comply with division (A) of section 4731.143 of the Revised Code.

(C) Subject to ~~divisions~~ division (F) and ~~(G)(3)~~ of this section, health care workers who are volunteers are not liable in damages to any person or government entity in a tort or other civil action, including an action upon a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the health care worker in the provision to an indigent and uninsured person of medical, dental, or other health-related diagnosis, care, or treatment, unless the action or omission constitutes willful or wanton misconduct.

(D) Subject to ~~divisions~~ division (F) and ~~(G)(3)~~ of this section, a nonprofit health care referral organization is not

liable in damages to any person or government entity in a tort or 205
other civil action, including an action on a medical, dental, 206
chiropractic, optometric, or other health-related claim, for 207
injury, death, or loss to person or property that allegedly arises 208
from an action or omission of the nonprofit health care referral 209
organization in referring indigent and uninsured persons to, or 210
arranging for the provision of, medical, dental, or other 211
health-related diagnosis, care, or treatment by a health care 212
professional described in division (B)(1) of this section or a 213
health care worker described in division (C) of this section, 214
unless the action or omission constitutes willful or wanton 215
misconduct. 216

(E) Subject to ~~divisions~~ division (F) and ~~(G)(3)~~ of this 217
section and to the extent that the registration requirements of 218
section 3701.071 of the Revised Code apply, a health care facility 219
or location associated with a health care professional described 220
in division (B)(1) of this section, a health care worker described 221
in division (C) of this section, or a nonprofit health care 222
referral organization described in division (D) of this section is 223
not liable in damages to any person or government entity in a tort 224
or other civil action, including an action on a medical, dental, 225
chiropractic, optometric, or other health-related claim, for 226
injury, death, or loss to person or property that allegedly arises 227
from an action or omission of the health care professional or 228
worker or nonprofit health care referral organization relative to 229
the medical, dental, or other health-related diagnosis, care, or 230
treatment provided to an indigent and uninsured person on behalf 231
of or at the health care facility or location, unless the action 232
or omission constitutes willful or wanton misconduct. 233

~~(F)(1) Except as provided in division (F)(2) of this section,~~ 234
~~the~~ The immunities provided by divisions (B), (C), (D), and (E) of 235
this section are not available to a health care professional, 236

health care worker, nonprofit health care referral organization, 237
or health care facility or location if, at the time of an alleged 238
injury, death, or loss to person or property, the health care 239
professionals or health care workers involved are providing ~~one of~~ 240
~~the following:~~ 241

~~(a) Any medical, dental, or other health-related diagnosis,~~ 242
~~care, or treatment pursuant to a community service work order~~ 243
~~entered by a court under division (B) of section 2951.02 of the~~ 244
~~Revised Code or imposed by a court as a community control~~ 245
~~sanction;~~ 246

~~(b) Performance of an operation to which any one of the~~ 247
~~following applies:~~ 248

~~(i) The operation requires the administration of deep~~ 249
~~sedation or general anesthesia.~~ 250

~~(ii) The operation is a procedure that is not typically~~ 251
~~performed in an office.~~ 252

~~(iii) The individual involved is a health care professional,~~ 253
~~and the operation is beyond the scope of practice or the~~ 254
~~education, training, and competence, as applicable, of the health~~ 255
~~care professional.~~ 256

~~(c) Delivery of a baby or any other the purposeful~~ 257
~~termination of a human pregnancy.~~ 258

~~(2) Division (F)(1) of this section does not apply when a~~ 259
~~health care professional or health care worker provides medical,~~ 260
~~dental, or other health-related diagnosis, care, or treatment that~~ 261
~~is necessary to preserve the life of a person in a medical~~ 262
~~emergency.~~ 263

(G)(1) This section does not create a new cause of action or 264
substantive legal right against a health care professional, health 265
care worker, nonprofit health care referral organization, or 266

health care facility or location. 267

(2) This section does not affect any immunities from civil 268
liability or defenses established by another section of the 269
Revised Code or available at common law to which a health care 270
professional, health care worker, nonprofit health care referral 271
organization, or health care facility or location may be entitled 272
in connection with the provision of emergency or other medical, 273
dental, or other health-related diagnosis, care, or treatment. 274

~~(3) This section does not grant an immunity from tort or 275
other civil liability to a health care professional, health care 276
worker, nonprofit health care referral organization, or health 277
care facility or location for actions that are outside the scope 278
of authority of health care professionals or health care workers. 279~~

~~(4)~~ This section does not affect any legal responsibility of 280
a health care professional, health care worker, or nonprofit 281
health care referral organization to comply with any applicable 282
law of this state or rule of an agency of this state. 283

~~(5)~~(4) This section does not affect any legal responsibility 284
of a health care facility or location to comply with any 285
applicable law of this state, rule of an agency of this state, or 286
local code, ordinance, or regulation that pertains to or regulates 287
building, housing, air pollution, water pollution, sanitation, 288
health, fire, zoning, or safety. 289

Sec. 2305.2341. (A) The medical liability insurance 290
reimbursement program is hereby established. Free clinics and 291
federally qualified health center look-alikes, including the 292
clinics' and centers' staff and volunteer health care 293
professionals and volunteer health care workers, may participate 294
in the medical liability insurance reimbursement program 295
established by this section. The coverage provided under the 296
program shall be limited to claims that arise out of the 297

diagnosis, treatment, and care of patients of free clinics and 298
centers, as defined in division (D) of this section. 299

(B) A free clinic or federally qualified health center 300
look-alike is eligible to receive reimbursement under the medical 301
liability insurance reimbursement program for the premiums that 302
the clinic or center pays for medical liability insurance coverage 303
for the clinic or center, its staff, and volunteer health care 304
professionals and health care workers. Free clinics and federally 305
qualified health center look-alikes shall register with the 306
department of health by the thirty-first day of January of each 307
year in order to participate in and to obtain reimbursement under 308
the program. Clinics that register with the department in 309
accordance with this division shall receive priority over centers 310
that register for reimbursement. 311

Free clinics and federally qualified health center 312
look-alikes shall provide all of the following to the department 313
of health at the time of registration: 314

(1) A statement of the number of volunteer and paid health 315
care professionals and health care workers providing health care 316
services at the free clinic or federally qualified health center 317
look-alike at that time; 318

(2) A statement of the number of health care services 319
rendered by the free clinic or federally qualified health center 320
look-alike during the previous fiscal year; 321

(3) A signed form acknowledging that the free clinic or 322
federally qualified health center look-alike agrees to follow its 323
medical liability insurer's risk management and loss prevention 324
policies; 325

(4) A copy of the medical liability insurance policy 326
purchased by the free clinic or federally qualified health center 327
look-alike, or the policy's declaration page, and documentation of 328

the premiums paid by the clinic or center. 329

(C) The department of health shall reimburse free clinics and 330
federally qualified health center look-alikes participating in the 331
professional liability insurance reimbursement program for up to 332
eighty per cent of the premiums that the clinic or center pays for 333
medical liability insurance coverage up to twenty thousand 334
dollars. Appropriations to the department of health may be made 335
from the general fund of the state for this purpose. 336

(D) As used in this section: 337

(1) "Federally qualified health center look-alike" means a 338
public or not-for-profit health center that meets the eligibility 339
requirements to receive a federal public health services grant 340
under the "Public Health Services Act," 117 Stat. 2020, 42 U.S.C. 341
254b, as amended, but does not receive grant funding. 342

(2) "Free clinic" means a nonprofit organization exempt from 343
federal income taxation under section 501(c)(3) of the "Internal 344
Revenue Code of 1986," as amended, or a program component of a 345
nonprofit organization, whose primary mission is to provide health 346
care services for free or for a minimal administrative fee to 347
individuals with limited resources. A free clinic facilitates the 348
delivery of health care services through the use of volunteer 349
health care professionals and voluntary care networks. For this 350
purpose, a free clinic shall comply with all of the following: 351

(a) If a free clinic does request a minimal administrative 352
fee, a free clinic shall not deny an individual access to its 353
health care services based on an individual's ability to pay the 354
fee. 355

(b) A free clinic shall not bill a patient for health care 356
services rendered. 357

(c) Free clinics shall not perform operations, as defined by 358
~~divisions~~ division (A)(9) and ~~(F)(1)(b)~~ of section 2305.234 of the 359

Revised Code. 360

A clinic is not a free clinic if the clinic bills medicaid, 361
medicare, or other third-party payers for health care services 362
rendered at the clinic, and receives twenty-five per cent or more 363
of the clinic's annual revenue from the third-party payments. 364

(3) "Health care professional" and "health care worker" have 365
the same meanings as in section 2305.234 of the Revised Code. 366

Section 2. That existing sections 2305.234 and 2305.2341 of 367
the Revised Code are hereby repealed. 368