

As Reported by the House Judiciary Committee

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Sub. H. B. No. 276

Representative Stautberg

**Cosponsors: Representatives Becker, Blair, Blessing, Hackett, Hottinger,
Johnson, Scherer, Sears, Smith**

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A B I L L

To amend section 2317.43 and to enact sections 1
2317.44 and 2317.45 of the Revised Code to provide 2
that certain statements and communications made 3
regarding an unanticipated outcome of medical 4
care, the development or implementation of 5
standards under certain federal laws, and an 6
insurer's reimbursement policies and determination 7
regarding health care services are inadmissible as 8
evidence in a medical claim. 9

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

Section 1. That section 2317.43 be amended and sections 10
2317.44 and 2317.45 of the Revised Code be enacted to read as 11
follows: 12

Sec. 2317.43. (A) In any civil action brought by an alleged 13
victim of an unanticipated outcome of medical care or in any 14
arbitration proceeding related to such a civil action, any and all 15
statements, affirmations, gestures, or conduct expressing apology, 16
sympathy, commiseration, condolence, compassion, error, fault, or 17
a general sense of benevolence that are made by a health care 18

provider ~~or~~, an employee of a health care provider, or a 19
representative of a health care provider to the alleged victim, a 20
relative of the alleged victim, or a representative of the alleged 21
victim, and that relate to the discomfort, pain, suffering, 22
injury, or death of the alleged victim as the result of the 23
unanticipated outcome of medical care are inadmissible as evidence 24
of an admission of liability or as evidence of an admission 25
against interest. 26

(B) In any civil action brought by an alleged victim of an 27
unanticipated outcome of medical care, in any arbitration 28
proceeding related to such a civil action, or in any other civil 29
proceeding, any communications made by a health care provider, an 30
employee of a health care provider, or a representative of a 31
health care provider to the alleged victim, a relative or 32
acquaintance of the alleged victim, or a representative of the 33
alleged victim following an unanticipated outcome and made as part 34
of a review conducted in good faith by the health care provider, 35
an employee of the health care provider, or a representative of 36
the health care provider into the cause of or reasons for an 37
unanticipated outcome, are inadmissible as evidence unless the 38
communications are recorded in the medical record of the alleged 39
victim. Nothing in this section requires a review to be conducted. 40

(C) For purposes of this section, unless the context 41
otherwise requires: 42

(1) "Health care provider" has the same meaning as in 43
division (B)(5) of section 2317.02 of the Revised Code. 44

(2) "Relative" means a victim's spouse, parent, grandparent, 45
stepfather, stepmother, child, grandchild, brother, sister, half 46
brother, half sister, or spouse's parents. The term includes said 47
relationships that are created as a result of adoption. In 48
addition, "relative" includes any person who has a family-type 49

relationship with a victim. 50

(3) "Representative of an alleged victim" means a legal 51
guardian, attorney, person designated to make decisions on behalf 52
of a patient under a medical power of attorney, or any person 53
recognized in law or custom as a patient's agent. 54

(4) "Representative of a health care provider" means an 55
attorney, health care provider, employee of a health care 56
provider, or other person designated by a health care provider or 57
an employee of a health care provider to participate in a review 58
conducted by a health care provider or employee of a health care 59
provider. 60

(5) "Review" means the policy, procedures, and activities 61
undertaken by or at the direction of a health care provider, 62
employee of a health care provider, or person designated by a 63
health care provider or employee of a health care provider with 64
the purpose of determining the cause of or reasons for an 65
unanticipated outcome, and initiated and completed during the 66
first forty-five days following the occurrence or discovery of an 67
unanticipated outcome. A review may be extended for a longer 68
period if necessary upon written notice to the patient, relative 69
of the patient, or representative of the patient. 70

(6) "Unanticipated outcome" means the outcome of a medical 71
treatment or procedure that differs from an expected result or any 72
outcome that is adverse or not satisfactory to the patient. 73

Sec. 2317.44. (A) As used in this section: 74

(1) "Health care provider" means any person or entity against 75
whom a medical claim may be asserted in a civil action. 76

(2) "Medical claim" has the same meaning as in section 77
2305.113 of the Revised Code. 78

(B) Any guideline, regulation, or other standard under any 79

provision of the "Patient Protection and Affordable Care Act," 80
Pub. L. 111-148, 124 Stat. 119 (2010), 42 U.S.C. 18001 et seq., as 81
amended, Title XVIII of the "Social Security Act," 42 U.S.C. 1395 82
et seq., as amended, and Title XIX of the "Social Security Act," 83
42 U.S.C. 1396 et seq., as amended, shall not be construed to 84
establish the standard of care or duty of care owed by a health 85
care provider to a patient in a medical claim and is not 86
admissible as evidence for or against any party in any civil 87
action based upon the medical claim or in any civil or 88
administrative action involving the licensing or licensure status 89
of the health care provider. 90

Sec. 2317.45. (A) As used in this section: 91

(1) "Health care provider" means any person or entity against 92
whom a medical claim may be asserted in a civil action. 93

(2) "Insurer" means any public or private entity doing or 94
authorized to do any insurance business in this state. "Insurer" 95
includes a self-insuring employer and the United States centers 96
for medicare and medicaid services. 97

(3) "Medical claim" has the same meaning as in section 98
2305.113 of the Revised Code. 99

(4) "Reimbursement determination" means an insurer's 100
determination of whether the insurer will reimburse a health care 101
provider for health care services and the amount of that 102
reimbursement. 103

(5) "Reimbursement policies" means an insurer's policies and 104
procedures governing its decisions regarding the reimbursement of 105
a health care provider for health care services, the method of 106
reimbursement, and the data upon which those policies and 107
procedures are based, including, but not limited to, data from 108
national research groups and other patient safety data. 109

(B) Any insurer's reimbursement policies or reimbursement 110
determination or regulations issued by the United States centers 111
for medicare and medicaid services or the Ohio department of 112
medicaid regarding the health care services provided to the 113
patient in any civil action based on a medical claim are not 114
admissible as evidence for or against any party in the action and 115
may not be used to establish a standard of care or breach of that 116
standard of care in the action. 117

Section 2. That existing section 2317.43 of the Revised Code 118
is hereby repealed. 119