Aida S. Montano *Legislative Service Commission*

Sub. H.B. 412

124th General Assembly
(As Reported by H. Civil and Commercial Law)

Reps. **Seitz, Schneider, Schmidt, Kearns, Webster, Raga, Brinkman, DeWine, Setzer, Britton, Husted, Faber, Gilb, Fessler, Hoops, Schaffer, Lendrum, Rhine, Flowers, Olman, Sullivan, Ogg, G. Smith, Trakas, Peterson, Clancy, Callender, Roman, Wolpert, Latta, Womer Benjamin, Calvert, Carey, Kilbane, Reidelbach, Aslanides, Widowfield, Niehaus**

BILL SUMMARY

- Specifies that the results of an inspection or investigation of a home, including any statement of deficiencies and all findings and deficiencies cited in the statement on the basis of the inspection or investigation, must be used solely to determine the home's compliance with the Nursing Home and Residential Care Facility Law or any other chapter of the Revised Code in any action or proceeding other than a resident's action for violation of the resident's rights.

- Specifies that the results of a survey of a nursing facility, including any statement of deficiencies and all findings and deficiencies cited in the statement on the basis of the survey, must be used solely to determine the nursing facility's compliance with certification requirements under the Social Security Act or with the Medical Assistance Programs Law or any other chapter of the Revised Code.

- Specifically authorizes a resident's guardian or other legally authorized representative to bring an action on behalf of the resident or the resident's estate against any person or home that commits a violation of the resident's rights and specifically permits a resident's spouse, parent, or adult child to bring such an action if the resident is unable to do so.

- Specifically permits injunctive relief against a violation of a resident's rights and the recovery of compensatory damages based on negligence.

- Requires the plaintiff or plaintiff's counsel in an action brought by or on behalf of a resident or former resident of a home for injury, death, or loss to person or property, to 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 against the liability of the home for the cost of medical services and care arising out of injury, disease, or disability of the resident or former resident.

- Specifies certain factors that a trier of fact must consider when determining the amount of an award of punitive or exemplary damages against a home or licensed residential facility.

- Modifies the definition of "medical claim" in the Statute of Limitations to include claims against a home or licensed residential facility or an employee or agent of the home or facility, claims resulting from acts or omissions in providing health care or from the hiring, training, supervision, retention, or termination of health caregivers, and claims brought under the Residents' Rights Law.

- Provides that the provisions in the Arbitration Law pertaining to the validity and enforceability of arbitration agreements for controversies involving medical care, diagnosis, or treatment do not apply to homes or licensed residential facilities.

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CONTENT AND OPERATION

Results of home inspection or investigation

Continuing law

The Nursing Home and Residential Care Facility Law requires the Director of Health to license "homes" (see **COMMENT** 1) and to establish procedures to be followed in inspecting and licensing homes. The Director may inspect a home at any time. Generally, the Director must inspect each home at least once prior to the issuance of a license and at least once every 15 months thereafter. Generally, the State Fire Marshal or a township, municipal, or other legally constituted fire department approved by the Marshal also must inspect a home prior to issuance of a license, at least once every 15 months thereafter, and at any other time requested by the Director. The Director may enter at any time, for the purposes of investigation, any institution, residence, facility, or other structure that has been reported to the Director or that the Director has reasonable cause to believe is operating as a nursing home, residential care facility, or home for the aging without a valid license required by law or, in the case of a county home or district home, is operating despite the revocation of its residential care facility license. (R.C. 3721.02.)

Operation of the bill

The bill specifies that the results of an inspection or investigation of a home that is conducted under continuing law as described above, including any statement of deficiencies and all findings and deficiencies cited in the statement on the basis of the inspection or investigation, must be used *solely* to determine the home's compliance with R.C. Chapter 3721. (Nursing Home and Residential Care Facility Law) or another chapter of the Revised Code in any action or proceeding *other than* an action commenced by a resident whose residents' rights under the Residents' Rights Law are violated. Those results of an inspection or investigation, that statement of deficiencies, and the findings and deficiencies cited in that statement cannot be used in any court or in any action or proceeding that is pending in any court and are *not admissible in evidence* in any action or proceeding unless that action or proceeding is an appeal of an action by the Department of Health under R.C. Chapter 3721. or is an action by any department or agency of the state to enforce R.C. Chapter 3721. or another chapter of the Revised Code. (R.C. 3721.02(E).)

Results of nursing facility survey

Continuing law

The Department of Health must conduct a survey, titled a standard survey, of every "nursing facility" (see **COMMENT** 2) in Ohio on a statewide average of not more than once every 12 months. Each nursing facility must undergo a standard survey at least once every 15 months as a condition of meeting "certification requirements" (see **COMMENT** 3). The Department may extend a standard survey; such a survey is titled an extended survey. The Department may conduct surveys in addition to standard surveys when it considers them necessary. (R.C. 5111.39(A) and (B)--not in the bill.)

Operation of the bill

The bill specifies that the results of a survey of a nursing facility that is conducted under continuing law as described above, including any statement of deficiencies and all findings and deficiencies cited in the statement on the basis of the survey, must be used *solely* to determine the nursing facility's compliance with certification requirements or with R.C. Chapter 5111. (Medical Assistance Programs Law) or another chapter of the Revised Code. Those results of a survey, that statement of deficiencies, and the findings and deficiencies cited in that statement cannot be used in any court or in any action or proceeding that is pending in any court and are *not admissible in evidence* in any action or proceeding unless that action or proceeding is an appeal of an administrative action by the Department of Job and Family Services or contracting agency under R.C. Chapter 5111. or is an action by any department or agency of the state to enforce R.C. Chapter 5111. or another chapter of the Revised Code. (R.C. 5111.411.)

Relief for violation of residents' rights

Existing law

R.C. 3721.10 to 3721.17 (Residents' Rights Law) contain provisions pertaining to the rights of a "resident" of a "home" (see **COMMENT** 4). Any resident whose rights under those provisions are violated has a cause of action against any person or home committing the violation. The action may be commenced by the resident or by the resident's *sponsor* (see **COMMENT** 5) on behalf of the resident.

If compensatory damages are awarded for a violation of the resident's rights, R.C. 2315.21 (see "***Factors in determining punitive or exemplary damages***," below), *except divisions (E)(1) and (2) of that section* (see

COMMENT 6), applies to an award of punitive or exemplary damages for the violation. This provision is considered to be purely remedial in operation and must be applied in a remedial manner in any civil action in which this law is relevant, whether the action is pending in court or commenced on or after July 9, 1998.

The court may award to the prevailing party reasonable attorney's fees limited to the work reasonably performed. (R.C. 3721.17(I).)

Operation of the bill

The bill modifies existing law in the following manners:

(1) It specifies that an action against any person or home committing a violation of the resident's rights may be commenced by the resident or by the resident's *legal guardian or other legally authorized representative* (instead of *sponsor*) on behalf of the resident *or the resident's estate* (added by the bill). The bill further provides that if the resident is unable to do so, the resident's spouse, parent, or adult child also may commence the action on behalf of the resident or the resident's estate, and the result of that action binds the resident or the resident's estate. (R.C. 3721.17(I)(1).)

(2) It specifically permits the plaintiff in an action filed as described above to 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. If compensatory damages are awarded for a violation of the resident's rights, R.C. 2315.21 (see "***Factors in determining punitive or exemplary damages***," below) applies to an award of punitive or exemplary damages for the violation. The bill removes the exception, described above in "***Existing law***," to the application of R.C. 2315.21 to an award of punitive or exemplary damages for the violation (see **COMMENT** 6). (R.C. 3721.17(I)(2)(a).)

(3) It limits the award of reasonable attorney's fees as described above in "***Existing law***" to cases in which only injunctive relief is granted (R.C. 3721.17(I)(2)(b)).

(4) It provides that within 30 days after the filing of a complaint in an action brought as described above in paragraph (1) by or on behalf of a resident or former resident of a home, the plaintiff or plaintiff's counsel must 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 the Recovery Rights Law (see

COMMENT 7) against the liability of the home for the cost of medical services and care arising out of injury, disease, or disability of the resident or former resident (R.C. 3721.17(I)(4)).

Factors in determining punitive or exemplary damages

Continuing law

Generally, punitive or exemplary damages are not recoverable from a defendant in question in a "tort action" (see definition, below) 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 (1), above.

In a tort action, the trier of fact must determine the liability of any defendant for punitive or exemplary damages and the amount of those damages. In a tort action, the burden of proof is upon a plaintiff in question, by clear and convincing evidence, to establish that the plaintiff is entitled to recover punitive or exemplary damages. (R.C. 2315.21(B) and (C).)

"Tort action" means a civil action for damages for *injury* 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 R.C. 2307.71 to 2307.80, but does not include a civil action for damages for a breach of contract or another agreement between persons. (R.C. 2315.21(A)(1).)

Operation of the bill

The bill requires the trier of fact to consider *all* of the following when determining the amount of an award of punitive or exemplary damages against either a home or a "residential facility licensed under R.C. 5123.19" (see **COMMENT** 8) (hereafter "licensed residential facility") (R.C. 2315.21(E)):

(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.

The bill clarifies the definition of "tort action" to mean a civil action for damages for injury *or loss to* (added by the bill) person or property (R.C. 2315.21(A)).

Statute of limitations for medical claims

Existing law

Under current law, an action upon a *medical claim* must 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 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 180 days after the notice is so given.

Except as to persons within the age of minority or of unsound mind, as provided by R.C. 2305.16 (see **COMMENT** 9):

(1) In no event may any action upon a medical claim be commenced more than four years after the occurrence of the act or omission constituting the alleged basis of the medical claim.

(2) If an action upon a medical claim is not commenced within four years after the occurrence of the act or omission constituting the alleged basis of the medical claim, then, notwithstanding the time when the action is determined to accrue under the first paragraph, above, any action upon that claim is barred. (R.C. 2305.11(B).)

Existing law defines "medical claim" as any claim that is asserted in any civil action against a physician, podiatrist, or hospital, against any employee or agent of a physician, podiatrist, or hospital, 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 claims for relief that arise from the medical diagnosis, care, or treatment of a person. (R.C. 2305.11(D)(3).)

Operation of the bill

Definition of "medical claim". The bill modifies the definition of "medical claim" for purposes of the above described statute of limitations as any claim that is asserted in any civil action against a physician, podiatrist, hospital,

home or licensed residential facility (added by the bill, see **COMMENT** 4 and 8), against any employee or agent of a physician, podiatrist, hospital, *home, or licensed residential facility*, or against a registered nurse or physical therapist, and that arises out of the medical diagnosis, care, or treatment of any person. The bill additionally includes in the definition of "medical claim" (1) claims resulting from acts or omissions in providing health care or from the hiring, training, supervision, retention, or termination of health caregivers and (2) claims brought under the Residents' Rights Law. (R.C. 2305.11(D)(3).) (See **COMMENT** 10.)

Nonapplicability of arbitration provisions. The bill provides that the Arbitration Law provisions that specify the conditions for the validity and enforceability of arbitration agreements pursuant to that Law for controversies involving hospital or medical care, diagnosis, or treatment that are entered into prior to rendering such care, diagnosis, or treatment, do not apply to homes or licensed residential facilities. The bill modifies the definition of "medical claim" for purposes of those Arbitration Law provisions by providing that it does not include a claim against a home or licensed residential facility or an employee or agent of a home or licensed residential facility. (R.C. 2711.23(B) and (D).)

Under existing law, to the extent it is in ten-point type and is executed in the statutory form, an arbitration agreement of the type described above is 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. The bill provides that this provision does not apply to homes or licensed residential facilities. (R.C. 2711.24(A) and (D).)

COMMENT

1. R.C. 3721.01(A)(1), not in the bill, defines "home," as used in R.C. 3721.01 to 3721.09 and 3721.99, as an institution, residence, or facility that provides, for a period of more than 24 hours, whether for a consideration or not, accommodations to three or more unrelated individuals who are dependent upon the services of others, including a "nursing home, residential care facility, home for the aging" (see definitions, below), and the Ohio Veterans' Home. "Home" also means: (1) any facility that a person, as defined in R.C. 3702.51, proposes for certification as a skilled nursing facility or nursing facility under Title XVIII or XIX of the Social Security Act and for which a certificate of need, other than a certificate to recategorize hospital beds as described in R.C. 3702.522 or division (R)(7)(d) of the version of R.C. 3702.51 in effect immediately prior to April 20,

1995, has been granted to the person under R.C. 3702.51 to 3702.62 after August 5, 1989, or (2) a "county home or district home" (see definition, below) that is or has been licensed as a residential care facility.

"Home" does not mean any of the following (R.C. 3721.01(A)(1)(c)):

(a) Except as described in (1) or (2), above, a public hospital or hospital as defined in R.C. 3701.01 or 5122.01;

(b) A residential facility for mentally ill persons as defined in R.C. 5119.22;

(c) A residential facility as defined in R.C. 5123.19;

(d) A habilitation center as defined in R.C. 5123.041;

(e) A community alternative home as defined in R.C. 3724.01;

(f) An adult care facility as defined in R.C. 3722.01;

(g) An alcohol or drug addiction program as defined in R.C. 3793.01;

(h) A facility licensed to provide methadone treatment under R.C. 3793.11;

(i) A facility providing services under contract with the Department of Mental Retardation and Developmental Disabilities under R.C. 5123.18;

(j) A facility operated by a hospice care program licensed under R.C. 3712.04 that is used exclusively for care of hospice patients;

(k) A facility, infirmary, or other entity that is operated by a religious order, provides care exclusively to members of religious orders who take vows of celibacy and live by virtue of their vows within the orders as if related, and does not participate in the Medicare program established under Title XVIII of the Social Security Act or the medical assistance program established under R.C. Chapter 5111. and Title XIX of the Social Security Act, if on January 1, 1994, the facility, infirmary, or entity was providing care exclusively to members of the religious order;

(l) A county home or district home that has never been licensed as a residential care facility.

R.C. 3721.01(A) includes the following relevant definitions:

> (6) "Nursing home" means a home used for the reception and care of individuals who by reason of

illness or physical or mental impairment require skilled nursing care and of individuals who require personal care services but not skilled nursing care. A nursing home is licensed to provide personal care services and skilled nursing care.

(7) "Residential care facility" means a home that provides either of the following:

(a) Accommodations for seventeen or more unrelated individuals and supervision and personal care services for three or more of those individuals who are dependent on the services of others by reason of age or physical or mental impairment;

(b) Accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, and, to at least one of those individuals, any of the skilled nursing care authorized by section 3721.011 of the Revised Code.

(8) "Home for the aging" means a home that provides services as a residential care facility and a nursing home, except that the home provides its services only to individuals who are dependent on the services of others by reason of both age and physical or mental impairment.

The part or unit of a home for the aging that provides services only as a residential care facility is licensed as a residential care facility. The part or unit that may provide skilled nursing care beyond the extent authorized by section 3721.011 of the Revised Code is licensed as a nursing home.

(9) "County home" and "district home" mean a county home or district home operated under Chapter 5155. of the Revised Code.

2. "Nursing facility" means a facility, or a distinct part of a facility, that is certified as a nursing facility by the Director of Health in accordance with Title XIX of the Social Security Act, and is not an intermediate care facility for the

mentally retarded. "Nursing facility" includes a facility, or a distinct part of a facility, that is certified as a nursing facility by the Director of Health in accordance with Title XIX of the Social Security Act, and is certified as a skilled nursing facility by the Director in accordance with Title XVIII of the Social Security Act. (R.C. 5111.35(J) and 5111.20(M), not in the bill.)

3. "Certification requirements" means the requirements for nursing facilities established under sections 1819 and 1919 of the Social Security Act (R.C. 5111.35(A)--not in the bill).

4. R.C. 3721.10(A), not in the bill, defines "home," as used in R.C. 3721.10 to 3721.18 (Residents' Rights Law), as: (a) a home as defined in R.C. 3721.01 (see **COMMENT** 1), (b) any facility or part of a facility not defined as a home under R.C. 3721.01 that is certified as a skilled nursing facility under Title XVIII of the Social Security Act or as a nursing facility as defined in R.C. 5111.20 (see **COMMENT** 2), or (c) a county home or district home operated pursuant to R.C. Chapter 5155.

"Resident" means a resident or a patient of a home (R.C. 3721.10(B)).

5. "Sponsor" means an adult relative, friend, or guardian of a resident who has an interest or responsibility in the resident's welfare (R.C. 3721.10(D)--not in the bill).

6. Division (D) of former R.C. 2315.21, which specified the circumstances in which that section did not apply, was amended by Am. Sub. H.B. 350 of the 121st General Assembly (Tort Reform Act) and renumbered division (E). Division (E)(1) and (2) of that section provided that R.C. 2315.21 did not apply to the extent that another section of the Revised Code expressly provided either of the following:

> (1) Punitive or exemplary damages are recoverable from a defendant in a tort action on a basis other than that the actions or omissions of that defendant demonstrate malice, aggravated or egregious fraud, or insult, or on a basis other than that the defendant 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 a tort action irrespective of whether the plaintiff *has been determined by the trier of fact to be entitled to recover*

> *compensatory damages for the injury or loss to person or property from a defendant.*

Sub. S.B. 108 of the 124th General Assembly, effective July 6, 2001, repealed R.C. 2315.21 as it resulted from Am. Sub. H.B. 350, and revived and amended that section. The bill amends that revived and amended version of R.C. 2315.21 (see "***Factors in determining punitive or exemplary damages***," above). The revival and amendment of R.C. 2315.21 by Sub. S.B. 108 resulted in the *nonapplicability* provisions found in former divisions (E)(1) and (2), as quoted above, being replaced by divisions (D)(1) and (2) of existing R.C. 2315.21. Division (D) currently provides in relevant part that R.C. 2315.21 does not apply to the extent that another section of the Revised Code expressly provides either 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*.

The italicized terminology in the quoted provisions of former R.C. 2315.21(E)(1) and (2) and current R.C. 2315.21(D)(1) and (2) reflect the differences in the respective provisions.

7. Under R.C. 5101.58, not in the bill, the acceptance by a recipient of certain public assistance gives a right of recovery to the Department of Job and Family Services against the liability of a third party for the cost of medical services and care arising out of injury, disease, or disability of the public assistance recipient. R.C. 5101.58 specifies the procedures for the exercise of that right of recovery.

8. R.C. 5123.19(A)(1), not in the bill, defines "residential facility" as a home or facility in which a mentally retarded or developmentally disabled person resides, except the home of a relative or legal guardian in which a mentally retarded or developmentally disabled person resides, a respite care home certified

under R.C. 5126.05, a county home or district home operated pursuant to R.C. Chapter 5155., or a dwelling in which the only mentally retarded or developmentally disabled residents are in an independent living arrangement or are being provided supported living.

Every person or government agency desiring to operate a residential facility must apply for licensure of the facility to the Director of Mental Retardation and Developmental Disabilities unless the residential facility is subject to R.C. 3721.02, 3722.04, 5103.03, or 5119.20. Notwithstanding R.C. Chapter 3721., a nursing home that is certified as an intermediate care facility for the mentally retarded under Title XIX of the Social Security Act, must apply for licensure of the portion of the home that is certified as an intermediate care facility for the mentally retarded. (R.C. 5123.19(B).)

9. R.C. 2305.16, not in the bill, provides for the tolling of the statute of limitations for persons who are entitled to bring certain actions and are within the age of minority or of unsound mind.

10. The bill's revision of the definition of "medical claim" in R.C. 2305.11(D)(3) may have a substantive effect on certain sections of the Revised Code that refer to "R.C. 2305.11" in the definition of "medical claim" in those sections. Following are brief descriptions of those sections:

R.C. 1337.11--Defines "medical claim" as used in the Durable Power of Attorney for Health Care Law. R.C. 1337.15(H)(1) provides that that Law and a durable power of attorney for health care do not affect or limit any potential tort or other civil liability of an attending or consulting physician, an employee or agent of a health care facility or an attending physician, health care personnel acting under the direction of an attending physician, a health care facility, an attorney in fact, or any other person, including, but not limited to, liability associated with a *medical claim*, that satisfies both of the following: (a) the liability arises out of a negligent action or omission in connection with the medical diagnosis, care, or treatment of a principal under a durable power of attorney for health care or arises out of any deviation from reasonable medical standards, and (b) the liability is based on the fact that the negligent action or omission, or the deviation, as described in (a), above, caused or contributed to the principal under the durable power of attorney for health care having a terminal condition or being in a permanently unconscious state, or otherwise caused or contributed to any injury to or the wrongful death of the principal.

R.C. 1751.67--Provides that this section, which prescribes the requirements and prohibitions pertaining to inpatient or follow-up care for maternity coverage by health insuring corporations, does *not* establish minimum standards of medical diagnosis, care, or treatment for inpatient or follow-up care for a mother or

newborn, and that a deviation from the care required to be covered under this section does not, solely on the basis of this section, give rise to a *medical claim* or to derivative claims for relief.

R.C. 2305.234--Subject to certain requirements, qualifications, and exceptions, grants to health care professionals and health care workers who are volunteers, and to nonprofit shelters or health care facilities associated with that type of health care professional or health care worker qualified immunity from liability in damages to any person or government entity in a tort or other civil action, including an action on 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 volunteer in the provision at a nonprofit shelter or health care facility 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.

R.C. 2305.27 (as revived and amended by Sub. S.B. 108 of the 124th General Assembly, effective July 6, 2001)--Generally provides that in any *medical claim*, an award of damages cannot be reduced by insurance proceeds or payments or other benefits paid under any insurance policy or contract if the premium or cost of that insurance policy or contract was paid either by or for the person who has obtained the award, or by the person's employer, or both, or by direct payments from the employer, but must be reduced by any other collateral recovery for medical and hospital care, custodial care or rehabilitation services, and loss of earned income; provides that unless otherwise expressly provided by statute, a collateral source of indemnity cannot be subrogated to the claimant against a physician, podiatrist, or hospital.

R.C. 2317.02--Provides that a physician, dentist, or chiropractor may testify or be compelled to testify (i.e., testimonial privilege does *not* apply) in any civil action, in accordance with the discovery provisions of the Rules of Civil Procedure in connection with a civil action, or in connection with a claim under the Workers' Compensation Law, if a *medical claim* is filed by the patient, the personal representative of the estate of the patient if deceased, or the patient's guardian or other legal representative, and only as to a communication made to the physician, dentist, or chiropractor by the patient in question in that relation, or the physician's, dentist's, or chiropractor's advice to the patient in question, that related causally or historically to physical or mental injuries that are relevant to issues in the *medical claim*.

R.C. 2323.56--Provides that this section, which pertains to claims for future damages in tort actions and periodic payment plans for future damages, does *not* apply to a tort or other civil action upon a *medical claim.*

R.C. 2323.57--Prescribes the procedures pertaining to claims for future damages in a civil action upon a *medical*, dental, optometric, or chiropractic *claim*, allowable future damages, and periodic payment plans for future damages. (In *Galayda v. Lake Hospital System, Inc*. (1994), 71 Ohio St.3d 421, the Ohio Supreme Court held that R.C. 2323.57, which requires a trial court upon motion of a party to order that any future damages award in excess of $200,000 be paid in a series of periodic payments, is unconstitutional in that it violates the Right to Jury Trial Clause and the Due Process Clause of the Ohio Constitution.)

R.C. 2711.21--Requires that if all of the parties to a *medical*, dental, optometric, or chiropractic *claim* agree to submit it to nonbinding arbitration, the controversy must be submitted to an arbitration board consisting of three arbitrators to be named by the court; provides that if decision of the arbitration board is not accepted by all parties to the *medical*, dental, optometric, or chiropractic *claim*, the claim must proceed as if it had not been submitted to nonbinding arbitration pursuant to this section; provides that nothing in this section can be construed to limit the right of any person to enter into an agreement to submit a controversy underlying a *medical*, dental, optometric, or chiropractic *claim* to binding arbitration.

R.C. 2743.43--Prescribes the requirements for a person to be deemed competent to give expert testimony on the liability issues in a *medical claim.*

R.C. 3923.63--Provides that this section, which prescribes the requirements and prohibitions pertaining to inpatient or follow-up care for maternity coverage in sickness and accident insurance policies, does *not* establish minimum standards of medical diagnosis, care, or treatment for inpatient or follow-up care for a mother or newborn, and that a deviation from the care required to be covered under this section does not, solely on the basis of this section, give rise to a *medical claim* or to derivative claims for relief.

R.C. 3923.64--Provides that this section, which prescribes the requirements and prohibitions pertaining to inpatient or follow-up care for maternity coverage in public employee benefit plans, does *not* establish minimum standards of medical diagnosis, care, or treatment for inpatient or follow-up care for a mother or newborn, and that a deviation from the care required to be covered under this section does not, solely on the basis of this section, give rise to a *medical claim* or to derivative claims for relief.

R.C. 5111.018--Provides that this section, which prescribes the requirements and prohibitions pertaining to inpatient or follow-up care for maternity coverage in medical assistance programs, does *not* establish minimum standards of medical diagnosis, care, or treatment for inpatient or follow-up care for a mother or newborn, and that a deviation from the care required to be covered

under this section does not, solely on the basis of this section, give rise to a *medical claim* or to derivative claims for relief.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	10-18-01	p.	968
Reported, H. Civil & Commercial Law	03-07-02	p.	1496

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