



Judicial Impact Statement

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April 12, 2017

Prepared By Marta Mudri, Esq., Legislative Counsel

HOUSE BILL 7 (MEDICAL MALPRACTICE)

TITLE INFORMATION

To amend sections 2305.113, 2305.252, 2305.51, 2317.421, 2317.43, and 2323.41 and to enact sections 2305.2311, 2317.44, 2317.45, 2323.40, and 2323.451 of the Revised Code to grant qualified civil immunity to certain medical providers who provide emergency medical services as a result of a disaster; to provide that certain communications made regarding an unanticipated outcome of medical care, the development or implementation of standards under federal laws, and an insurer's reimbursement policies on health care are inadmissible as evidence in a medical claim; to provide that medical bills itemizing charges are inadmissible as evidence and an amount accepted as full payment for medical services is admissible as evidence of the reasonableness of the charges; to specify the manner of sending a notice of intent to file a medical claim and provide a procedure for the discovery of other potential claims within a specified period after the filing of a medical claim; to provide that any loss of a chance of recovery or survival by itself is not an injury, death, or loss for which damages may be recovered; to provide civil immunity to certain medical providers regarding the discharge of a patient with a mental condition that threatens the safety of the patient or others; to require that governmental agencies that receive peer review committee records maintain their confidentiality; and to clarify the definition of "medical claim."

IMPACT SUMMARY

House Bill 7 will not have a positive impact on Ohio courts and their ability to fairly and effectively administer justice. The bill increases confusion in medical malpractice cases and unconstitutionally impacts evidence rules, which are the domain of the court.

BACKGROUND

Portions of House Bill 7 have been introduced in past General Assemblies, most recently as HB 276 and HB 103 in the 130th G.A., and as HB 559 in the 131st. Former bills introduced usually included the 180-day notice provision, meant to prevent "shot-gunning" defendants, or naming unnecessary medical providers in a lawsuit, an affidavit of merit, and an "I'm sorry" statute.

Sponsor

Rep. Cupp

Version

As Introduced

What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

JUDICIAL IMPACT

R.C. 2305.113 - Providing a 180-day notice. The one-year Ohio statute of limitations for malpractice cases has existed since 1894. Current law provides that, if prior to the expiration of the one-year period of limitations for filing an action on a medical claim, a claimant gives the subject of the claim written notice that the claimant intends to bring an action, the action may be commenced against the person notified at any time within 180 days after the notice is given. The provisions of HB 7, such as lines at 756 - 767, would add new, confusing language about how the extra 180-days may be used, making this law more difficult to parse and apply correctly. Division (E) of 2305.311 (at lines 772-778) will cause confusion when compared to Division (F) (lines 779-781.) Division (E) says that Division (D) of the same statute does not modify or affect the statute of limitations; yet immediately afterwards Division (F) appears to enact a 180-day statute of repose. In that way, Division (F) would conflict with the existing statute of repose in R.C. 2305.113 at Division (C). In an effort to avoid unnecessarily naming medical providers as defendants, the bill adds too much complexity, which will only add cost and delay.

R.C. 2317.43 - Statements of Error or Fault. The bill would add statements of error and fault to a list of sentiments already not admissible as evidence in a medical claim. No other civil action bars such statements, which are established exceptions to the hearsay rules of evidence. Furthermore, error and fault are the foundation of a medical claim and the jury should be able to hear such statements and make its own determinations. The purported purpose of restricting such evidence is to encourage doctors to communicate effectively with patients after an "unanticipated outcome," in order to avoid litigation and lower settlement amounts. Unfortunately, to accomplish this, the statutory provisions impact an entirely different situation - one in which litigation has commenced. In litigation, it is the trier of facts who should weigh all relevant evidence, including a statement of error or fault.

In Sec. 2317.43(B), the bill would make certain communications inadmissible, even after they are shared with other parties. Records that are shared and become public record should also be admissible as evidence and available to a jury.

Under the Modern Courts Amendment, any alterations of the rules of evidence are the exclusive purview of the Ohio Supreme Court and must follow the rule-making procedures established in the Ohio Constitution.

R.C. 2317.421, 2317.44, 2317.45 - Medical Bill, Insurer Reimbursement Policies, and Federal Standards Inadmissible as Evidence. Under the Modern Courts Amendment, any alterations of the rules of evidence are the exclusive purview of the Ohio Supreme Court and must follow the rule-making procedures established in the Ohio Constitution.

RECOMMENDATION

The Ohio Judicial Conference does not recommend passage of House Bill 7.