

SB 1803 -1, -3, -4 STAFF MEASURE SUMMARY

Joint Committee On The Third Special Session of 2020

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Meeting Dates: 12/21

WHAT THE MEASURE DOES:

Prohibits claim against hospital, health maintenance organization (HMO), health care provider, or location where health care services are provided for acts or omissions performed in the course of rendering health care and in order to comply with COVID-19 emergency rules in effect at the time of the act or omission. Specifies “health care services” as supplies and services, including telemedicine, provided in a location other than long-term care facilities, residential care facilities, domiciliary care facilities, or Department of Correction facilities. Defines health care provider as a physician, advance practice registered nurse, physician, dentist, or dental hygienist. Specifies that immunity does not apply to acts or omissions taken with gross negligence; reckless, wanton or intentional misconduct; false claims; fraud, or deceptive acts or practices. Specifies that claims brought for delay or cancelation of nonurgent or elective procedures that puts a person at risk of irreversible harm are not given immunity. Specifies no limitation on other obligations under law, rule or guidance and other causes of action are not limited, including for whistleblower protections or discrimination. Specifies process for striking prohibited claims. Places initial burden of showing prima facie bar of claim on hospital, HMO, provider, or facility. Shifts burden to plaintiff to establish genuine issue of material fact that claim is not barred. Applies to claims arising during COVID-19 emergency period. Declares emergency, effective on passage.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

- 1 Extends existing specific whistleblower protections and remedies for nursing staff of hospital to all employees of hospital for acts related to violation of a COVID-19 emergency rule.
- 3 Modifies structure for providing whistleblower protection found in (-1) amendment. Extends existing specific whistleblower protections and remedies for nursing staff of hospital to all employees of hospital for acts related to violation of a COVID-19 emergency rule.
- 4 Modifies provisions relating to when an action can be brought against entities that are facilities. Specifies that a claim may be brought against a location where health care services are provided if the claim does not arise from the decision, action, or failure of a health care provider and the location is not a hospital or HMO.

BACKGROUND:

On March 8, 2020, Governor Brown declared a state of emergency due to COVID-19 infections. At the time, there were 14 presumptive or confirmed cases in the state. As of December 20th, there were nearly 103,000 cases and 1,341 deaths. On March 19th, Governor Brown issued Executive Order 20-10, which required all care settings, including hospitals, outpatient clinics, and dental clinics, to cancel or reschedule all elective and nonurgent procedures to conserve personal protective equipment (PPE) and other health care resources.

Senate Bill 1803 prohibits some legal actions against health care providers during the COVID-19 state of emergency. In order to receive the immunity, the health care provider must have been providing care so as to comply with the COVID-19 emergency rule in effect at the time of the act or omission. Health care providers include entities, such as hospitals, health maintenance organizations, and some facilities. It also includes physicians, advance practice registered nurses, dentists, dental hygienists, and physician assistants. Certain

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facilities are excluded from the protections of the measure: long-term care facilities, residential care facilities, domiciliary facilities, and facilities operated by the Department of Corrections. Liability protection is not given to acts taken with gross negligence; reckless, wanton, or intentional misconduct, false claims, fraud, or deceptive acts or practices. Liability protection is also not given to delays or cancellations of elective or non-urgent procedures that create an irreversible risk of harm to the patient. The measure does not exclude claims for other reasons, such as discrimination or retaliation. Senate Bill 1803 creates a process for striking a barred claim early in the legal process. The measure applies to claims arising during the COVID-19 emergency period and declares an emergency.