

Senate Bill 1802

Sponsored by Senator COURTNEY (at the request of Joint Committee on the Third Special Session of 2020)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Limits liability of health care providers, health maintenance organizations and hospitals for certain claims arising during COVID-19 emergency period.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to civil claims arising during the COVID-19 emergency period; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. As used in sections 1 to 3 of this 2020 third special session Act:**

5 (1) **"COVID-19 emergency period" means the time in which any declaration of a state of**
6 **emergency issued by the Governor related to COVID-19, and any extension of the declara-**
7 **tion, is in effect.**

8 (2) **"COVID-19 emergency rule" means an executive order, order of the Public Health**
9 **Director, declaration, directive or other state or federal authorization, policy, statement,**
10 **guidance, rule or regulation that creates a standard or waives, suspends or modifies other-**
11 **wise applicable state or federal law, regulations or standards regarding the rendering of**
12 **health care services, including those regarding the standard of care during the COVID-19**
13 **emergency period and use of telemedicine.**

14 (3)(a) **"Health care facility" means:**

15 (A) **A hospital;**

16 (B) **An ambulatory surgical center as defined in ORS 442.015;**

17 (C) **A freestanding birthing center as defined in ORS 442.015;**

18 (D) **An outpatient renal dialysis facility as defined in ORS 442.015;**

19 (E) **An extended stay center as defined in ORS 441.026;**

20 (F) **A mental health treatment facility;**

21 (G) **A residential training facility or residential training home, as those terms are defined**
22 **in ORS 443.400;**

23 (H) **A residential treatment facility or residential treatment home, as those terms are**
24 **defined in ORS 443.400;**

25 (I) **A facility established under ORS 430.335 for treatment of substance abuse disorders;**

26 (J) **A community mental health program or community developmental disabilities pro-**
27 **gram established under ORS 430.620;**

28 (K) **An outpatient service or residential facility, as those terms are defined in ORS**
29 **430.010;**

30 (L) **An outpatient clinic, including a medical clinic, community health clinic, student**
31 **health center and dental clinic; or**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (M) A hospital-affiliated clinic as defined in ORS 442.612.

2 (b) "Health care facility" does not mean:

3 (A) A long term care facility as defined in ORS 442.015;

4 (B) A residential care facility as defined in ORS 443.400;

5 (C) An establishment furnishing primarily domiciliary care as described in ORS 443.205;

6 or

7 (D) A facility licensed or approved under the rules of the Department of Corrections.

8 (3) "Health care provider" means:

9 (a) A physician licensed under ORS chapter 677;

10 (b) A nurse licensed under ORS 678.040 to 678.101;

11 (c) An advance practice registered nurse who meets the requirements of ORS 678.025;

12 (d) A physician assistant licensed under ORS 677.505 to 677.525;

13 (e) A dentist licensed under ORS 679.060 to 679.180; or

14 (f) A dental hygienist licensed under ORS 680.010 to 680.205.

15 (4) "Health care services" means supplies and services, including services provided by
16 telemedicine, provided by a health care facility, health maintenance organization or health
17 care provider in a location other than a facility listed in subsection (2)(b) of this section, that
18 involve the:

19 (a) Treatment, diagnosis, prevention or mitigation of COVID-19;

20 (b) Assessment or care of an individual with a confirmed or suspected case of COVID-19;

21 or

22 (c) Care of any other individual who presents at a health care facility or to a health care
23 provider during the COVID-19 emergency period and during a time when COVID-19 emer-
24 gency rules are in effect.

25 (5) "Health maintenance organization" has the meaning given that term in ORS 750.005.

26 (6) "Hospital" has the meaning given that term in ORS 442.015 and includes hospital
27 satellites and any location where the Oregon Health Authority allows hospital services to be
28 provided during the COVID-19 emergency period, including but not limited to temporarily li-
29 censed additional hospital space on-campus or off-campus and temporary or mobile on-
30 campus locations.

31 (7) "Telemedicine" means the provision of health care services to a patient by a health
32 care provider from a distance using electronic communications, including synchronous audio
33 and video communication, audio-only telephone communication, store-and-forward technol-
34 ogy or any other form of two-way electronic communication.

35 **SECTION 2.** (1) A person may not bring a claim against a health care provider, health
36 maintenance organization or health care facility arising from acts or omissions performed:

37 (a) In the course of rendering health care services; and

38 (b) In order to comply with COVID-19 emergency rules in effect at the time of the act
39 or omission.

40 (2) The immunity provided in subsection (1) of this section does not apply to:

41 (a) Acts or omissions constituting gross negligence;

42 (b) Reckless, wanton or intentional misconduct;

43 (c) False claims actions brought by or on behalf of the state;

44 (d) Fraud;

45 (e) Deceptive acts or practices; or

1 (f) The delay or cancellation of a nonurgent or elective procedure in response to a
 2 COVID-19 emergency rule that is not based on a reasonable interpretation of the available
 3 medical evidence and that puts a patient at risk of irreversible harm. Criteria for deter-
 4 mining whether a delay or cancellation puts a patient at risk of irreversible harm include,
 5 but are not limited to:

- 6 (A) Threat to the patient's life;
- 7 (B) Threat of irreversible harm to the patient's physical or mental health;
- 8 (C) Threat of permanent dysfunction of an extremity or organ;
- 9 (D) Risk of cancer metastasis or progression of staging; and
- 10 (E) Risk of rapidly worsening condition.

11 (3) This section does not limit the obligation of a health care provider, health mainte-
 12 nance organization or health care facility to comply with any other applicable rule, guidance
 13 or law.

14 (4) This section does not limit any other cause of action or remedy available to an injured
 15 party, including any action for whistleblower protections or discrimination.

16 **SECTION 3.** (1) A health care facility, health maintenance organization or health care
 17 provider may move at any time to strike a claim in a civil action that is barred by section
 18 2 of this 2020 third special session Act. A motion to strike under this section shall be treated
 19 as a motion to dismiss under ORCP 21 A but is not subject to ORCP 21 F. Upon granting a
 20 motion under this section, the court shall enter a judgment of dismissal without prejudice.
 21 If the court denies a motion under this section, the court shall enter a limited judgment
 22 denying the motion.

23 (2)(a) A health care facility, health maintenance organization or health care provider that
 24 moves to strike a claim under this section has the initial burden of making a prima facie
 25 showing that the claim is barred under section 2 of this 2020 third special session Act.

26 (b) If the health care facility, health maintenance organization or health care provider
 27 meets this burden, the burden shifts to the plaintiff in the action to establish that a genuine
 28 issue of material fact exists that the claim is not barred under section 2 of this 2020 third
 29 special session Act. If the plaintiff meets the burden under this paragraph, the court shall
 30 deny the motion.

31 (c) The court shall only consider the pleadings and supporting and opposing affidavits in
 32 making a determination whether a genuine issue of material fact exists. If the court deter-
 33 mines that a genuine issue of material fact exists:

34 (A) The fact that the determination has been made and the substance of the determi-
 35 nation may not be admitted in evidence at any later stage of the case; and

36 (B) The determination does not affect the burden of proof or standard of proof that is
 37 applied in the proceeding.

38 **SECTION 4.** Sections 1 to 3 of this 2020 third special session Act apply to claims arising
 39 from acts or omissions that occur during the COVID-19 emergency period, as defined in
 40 section 1 of this 2020 third special session Act.

41 **SECTION 5.** This 2020 third special session Act being necessary for the immediate pres-
 42 ervation of the public peace, health and safety, an emergency is declared to exist, and this
 43 2020 third special session Act takes effect on its passage.