

Senate Bill 1803

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 hospitals, health maintenance organizations, health care providers and locations where health care services are provided for certain claims arising during COVID-19 emergency period.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to health care provided during the COVID-19 emergency period; and declaring an emer-
3 gency.

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

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

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

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

15 (3) **"Health care provider" means:**

16 (a) **A physician licensed under ORS chapter 677;**

17 (b) **An advance practice registered nurse who meets the requirements of ORS 678.025;**

18 (c) **A physician assistant licensed under ORS 677.505 to 677.525;**

19 (d) **A dentist licensed under ORS 679.060 to 679.180; or**

20 (e) **A dental hygienist licensed under ORS 680.010 to 680.205.**

21 (4) **"Health care services" means supplies and services, including services provided by**
22 **telemedicine, provided by a hospital, health maintenance organization or health care provider**
23 **in a location other than a long term care facility as defined in ORS 442.015, a residential care**
24 **facility as defined in ORS 443.400, an establishment furnishing primarily domiciliary care as**
25 **described in ORS 443.205 or a facility licensed or approved under the rules of the Department**
26 **of Corrections that involve the:**

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

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

29 **or**

30 (c) **Care of any other individual who presents at a hospital or to a health maintenance**

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 organization or health care provider during the COVID-19 emergency period and during a
 2 time when COVID-19 emergency rules are in effect.

3 (5) “Health maintenance organization” has the meaning given that term in ORS 750.005.

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

9 (7) “Telemedicine” means the provision of health care services to a patient by a health
 10 care provider from a distance using electronic communications, including synchronous audio
 11 and video communication, audio-only telephone communication, store-and-forward technol-
 12 ogy or any other form of two-way electronic communication.

13 **SECTION 2.** (1) A person may not bring a claim against a hospital, a health maintenance
 14 organization, a health care provider or a location where health care services are provided
 15 arising from acts or omissions performed:

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

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

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

20 (a) Acts or omissions constituting gross negligence;

21 (b) Reckless, wanton or intentional misconduct;

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

23 (d) Fraud;

24 (e) Deceptive acts or practices; or

25 (f) The delay or cancellation of a nonurgent or elective procedure in response to a
 26 COVID-19 emergency rule that puts a patient at risk of irreversible harm based on the
 27 medical evidence available at the time of the delay or cancellation. Criteria for determining
 28 whether a delay or cancellation puts a patient at risk of irreversible harm based on the
 29 medical evidence available at the time of the delay or cancellation include, but are not lim-
 30 ited to:

31 (A) Threat to the patient’s life;

32 (B) Threat of irreversible harm to the patient’s physical or mental health;

33 (C) Threat of permanent dysfunction of an extremity or organ;

34 (D) Risk of cancer metastasis or progression of staging; and

35 (E) Risk of rapidly worsening condition.

36 (3) This section does not limit the obligation of a hospital, health maintenance organiza-
 37 tion, health care provider or location where health care services are provided to comply with
 38 any other applicable rule, guidance or law.

39 (4) This section does not limit any other cause of action or remedy available to any per-
 40 son, including any action for whistleblower protections or discrimination.

41 **SECTION 3.** (1) A hospital, health maintenance organization, health care provider or lo-
 42 cation where health care services are provided may move at any time to strike a claim in a
 43 civil action that is barred by section 2 of this 2020 third special session Act. A motion to
 44 strike under this section shall be treated as a motion to dismiss under ORCP 21 A but is not
 45 subject to ORCP 21 F. Upon granting a motion under this section, the court shall enter a

1 judgment of dismissal without prejudice. If the court denies a motion under this section, the
2 court shall enter a limited judgment denying the motion.

3 (2)(a) A hospital, health maintenance organization, health care provider or location where
4 health care services are provided that moves to strike a claim under this section has the
5 initial burden of making a prima facie showing that the claim is barred under section 2 of
6 this 2020 third special session Act.

7 (b) If the hospital, health maintenance organization, health care provider or location
8 where health care services are provided meets this burden, the burden shifts to the plaintiff
9 in the action to establish that a genuine issue of material fact exists that the claim is not
10 barred under section 2 of this 2020 third special session Act. If the plaintiff meets the burden
11 under this paragraph, the court shall deny the motion.

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

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

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

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

22 SECTION 5. This 2020 third special session Act being necessary for the immediate pres-
23 ervation of the public peace, health and safety, an emergency is declared to exist, and this
24 2020 third special session Act takes effect on its passage.
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