

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

**PROPOSED AMENDMENTS TO
SENATE BILL 780**

1 On page 1 of the printed bill, delete lines 4 through 30 and delete pages
2 2 and 3 and insert:

3 **“SECTION 1. As used in sections 1 to 3 of this 2021 Act:**

4 **“(1)(a) ‘Covered entity’ means a corporation, partnership or associ-**
5 **ation or any other form of legal or business entity that:**

6 **“(A) Directly, or indirectly through one or more intermediaries,**
7 **controls, or is controlled by, or is under common control with a cov-**
8 **ered provider;**

9 **“(B) Directs the rendering of health care services by a covered**
10 **provider;**

11 **“(C) Owns or operates a hospital, health maintenance organization**
12 **or health care entity; or**

13 **“(D) Employs a health care provider.**

14 **“(b) ‘Covered entity’ does not include a long term care facility as**
15 **defined in ORS 442.015, a residential care facility as defined in ORS**
16 **443.400, an establishment furnishing primarily domiciliary care as de-**
17 **scribed in ORS 443.205 or a facility licensed or approved under the rules**
18 **of the Department of Corrections.**

19 **“(2) ‘Covered provider’ means a health care provider, health main-**
20 **tenance organization, hospital or health care entity.**

21 **“(3) ‘COVID-19 emergency period’ means the time in which any**

1 **declaration of a state of emergency issued by the Governor related to**
2 **COVID-19, and any extension of the declaration, is in effect.**

3 **“(4) ‘COVID-19 emergency rule’ means an executive order, order of**
4 **the Public Health Director, declaration, directive or other state or**
5 **federal authorization, policy, statement, guidance, rule or regulation**
6 **that creates a standard or waives, suspends or modifies otherwise ap-**
7 **licable state or federal law, regulations or standards regarding the**
8 **rendering of health care services, including those regarding the**
9 **standard of care during the COVID-19 emergency period and the use**
10 **of telemedicine during the COVID-19 emergency period.**

11 **“(5)(a) ‘Health care entity’ means a corporation, partnership or as-**
12 **sociation or any other form of legal or business entity that renders**
13 **health care services, including but not limited to:**

14 **“(A) An ambulatory surgical center as defined in ORS 442.015;**

15 **“(B) A hospital-affiliated clinic or affiliated clinic as defined in ORS**
16 **442.612; or**

17 **“(C) An outpatient clinic, including a medical clinic, community**
18 **health clinic, student health center or dental clinic.**

19 **“(b) ‘Health care entity’ does not include a long term care facility**
20 **as defined in ORS 442.015, a residential care facility as defined in ORS**
21 **443.400, an establishment furnishing primarily domiciliary care as de-**
22 **scribed in ORS 443.205 or a facility licensed or approved under the rules**
23 **of the Department of Corrections.**

24 **“(6) ‘Health care provider’ means:**

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

26 **“(b) An advanced practice registered nurse who meets the require-**
27 **ments of ORS 678.025;**

28 **“(c) A nurse licensed under ORS 678.040 to 678.101;**

29 **“(d) A physician assistant licensed under ORS 677.505 to 677.525;**

30 **“(e) A dentist licensed under ORS 679.060 to 679.180; or**

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

2 “(7) ‘Health care services’ means supplies and services, including
3 services provided by telemedicine, that involve the:

4 “(a) Treatment, diagnosis, prevention or mitigation of COVID-19;
5 “(b) Assessment or care of an individual with a confirmed or sus-
6 pected case of COVID-19; or

7 “(c) Assessment, care or clinically or medically related prevention,
8 diagnostic or treatment services of any other individual during the
9 COVID-19 emergency period and during a time when COVID-19 emer-
10 gency rules are in effect.

11 “(8) ‘Health maintenance organization’ has the meaning given that
12 term in ORS 750.005.

13 “(9) ‘Hospital’ has the meaning given that term in ORS 442.015 and
14 includes hospital satellites and any location where the Oregon Health
15 Authority allows hospital services to be provided during the COVID-19
16 emergency period, including but not limited to temporarily licensed
17 additional hospital space on-campus or off-campus and temporary or
18 mobile on-campus locations.

19 “(10) ‘Telemedicine’ means the provision of health care services to
20 a patient by a health care provider from a distance using electronic
21 communications, including synchronous audio and video communi-
22 cation, audio-only telephone communication, store-and-forward tech-
23 nology or any other form of two-way electronic communication.

24 “SECTION 2. (1) A person may not bring a claim against a covered
25 provider arising from acts or omissions performed:

26 “(a) In the course of rendering health care services; and
27 “(b) In order to comply with the COVID-19 emergency rule or rules
28 applicable to the act or omission that are in effect at the time of the
29 act or omission.

30 “(2) The immunity provided in subsection (1) of this section does

1 **not apply to:**

2 **“(a) Acts or omissions constituting gross negligence;**

3 **“(b) Reckless, wanton or intentional misconduct;**

4 **“(c) False claims actions brought by or on behalf of the state;**

5 **“(d) Fraud;**

6 **“(e) Deceptive acts or practices;**

7 **“(f) The delay or cancellation of a nonurgent or elective procedure**
8 **in response to a COVID-19 emergency rule that puts a patient at risk**
9 **of irreversible harm based on the medical evidence available at the**
10 **time of the delay or cancellation. Criteria for determining whether a**
11 **delay or cancellation puts a patient at risk of irreversible harm based**
12 **on the medical evidence available at the time of the delay or cancel-**
13 **lation include, but are not limited to:**

14 **“(A) Threat to the patient’s life;**

15 **“(B) Threat of irreversible harm to the patient’s physical or mental**
16 **health;**

17 **“(C) Threat of permanent dysfunction of an extremity or organ;**

18 **“(D) Risk of cancer metastasis or progression of staging; and**

19 **“(E) Risk of rapidly worsening condition; or**

20 **“(g) An act or omission performed by a covered provider at a long**
21 **term care facility as defined in ORS 442.015, a residential care facility**
22 **as defined in ORS 443.400, an establishment furnishing primarily**
23 **domiciliary care as described in ORS 443.205 or a facility licensed or**
24 **approved under the rules of the Department of Corrections.**

25 **“(3) A person may not bring a claim against a covered entity arising**
26 **from acts or omissions performed by a covered provider if the covered**
27 **provider would have immunity under subsection (1) of this section.**

28 **“(4) This section does not limit the obligation of a covered provider**
29 **to comply with any other applicable rule, guidance or law.**

30 **“(5) This section does not limit any other cause of action or remedy**

1 available to any person, including any action for whistleblower pro-
2 tections or discrimination.

3 **“SECTION 3. (1) A covered provider or covered entity may move**
4 **at any time to strike a claim in a civil action that is barred by section**
5 **2 of this 2021 Act. A motion to strike under this section shall be**
6 **treated as a motion to dismiss under ORCP 21 A but is not subject to**
7 **ORCP 21 F. Upon granting a motion under this section, the court shall**
8 **enter a judgment of dismissal without prejudice. If the court denies a**
9 **motion under this section, the court shall enter a limited judgment**
10 **denying the motion.**

11 **“(2)(a) A covered provider or covered entity that moves to strike a**
12 **claim under this section has the initial burden of making a prima facie**
13 **showing that the claim is barred under section 2 of this 2021 Act.**

14 **“(b) If the covered provider or covered entity meets this burden, the**
15 **burden shifts to the plaintiff in the action to establish that a genuine**
16 **issue of material fact exists that the claim is not barred under section**
17 **2 of this 2021 Act. If the plaintiff meets the burden under this para-**
18 **graph, the court shall deny the motion.**

19 **“(c) The court shall only consider the pleadings and supporting and**
20 **opposing affidavits in making a determination whether a genuine issue**
21 **of material fact exists. If the court determines that a genuine issue**
22 **of material fact exists:**

23 **“(A) The fact that the determination has been made and the sub-**
24 **stance of the determination may not be admitted in evidence at any**
25 **later stage of the case; and**

26 **“(B) The determination does not affect the burden of proof or**
27 **standard of proof that is applied in the proceeding.**

28 **“SECTION 4. Sections 1 to 3 of this 2021 Act apply to claims arising**
29 **from acts or omissions that occur during the COVID-19 emergency**
30 **period, as defined in section 1 of this 2021 Act.**

