



TO: House Committee on Behavioral Health and Health Care
FROM: Disability Rights Oregon
DATE: February 6, 2024
RE: Opposition to HB 4081

Chair Nosse, Vice Chairs Nelson and Goodwin, and Members of the Committee,

Thank you for the opportunity to testify in opposition to two specific provisions in HB 4081—Sections 14 and 16. These provisions work to obscure the truth from the public, reduce transparency, and undercut meaningful accountability for people with disabilities who use emergency medical services in Oregon.

Why Liability Matters to People with Disabilities

Liability laws play a powerful role in making sure companies and providers take seriously their obligation to maintain a safe place of business and treat customers, employees, and patients fairly. Liability laws create an incentive for businesses to prevent harm to customers, employees, and patients. HB 4081 undermines the basic concept of liability in Oregon and rebalances incentives in favor of businesses who are negligent, at the cost of people who use emergency medical services.

Under current and well established medical liability law, emergency medical service providers that harm Oregonians through their negligence can be found responsible for this harm. This results in the emergency medical service provider being ordered by the court to make a consumer whole. These cases are already difficult to win because a patient must prove the provider did not deliver the same care that an ordinarily careful professional would have provided to another patient in similar circumstances. Moreover, emergency medical service providers and their insurance carriers have substantial resources to fight these claims in court, most patients do not—making access to justice even more difficult under current law.

Notwithstanding these challenges, liability laws play a powerful role in making sure health care providers take seriously their responsibility for providing quality care to all patients, including people with disabilities. The liability framework in current law balances personal responsibility of businesses and providers with the rights of patients. HB 4081 upends that balance in favor of corporations—which will deny justice to patients.

Access Authority of the State Protection and Advocacy System

Section 14(1) states:

“All findings and conclusions, interviews, reports, studies, communications and statements procured or provided by the Oregon Health Authority, the Emergency Medical Services Advisory Board or a regional emergency medical services advisory board in connection with obtaining data necessary to perform patient care quality assurance functions are confidential pursuant to ORS 192.338, 192.345 and 192.355.”

For the record, we will note, as the federally mandated State Protection and Advocacy System, Disability Rights Oregon has unique authority to obtain records related to the course of treatment of people with disabilities and people with mental illnesses, including during emergency medical services.¹ In cases of abuse or neglect, including death, our federal authority to access unredacted confidential records extends broadly to include peer reviews, findings and conclusions, interviews, reports, studies, communications and statements procured or provided by the Oregon Health Authority, the Emergency Medical Services Advisory Board or a regional emergency medical services advisory board in connection with obtaining data necessary to perform patient care quality assurance functions. **We ask the committee to clarify the legislature does not intend to interfere with the authority of Disability Rights Oregon—as the State Protection and Advocacy System—to access the findings and conclusions, interviews, reports, studies, communications, and statements contemplated in HB 4081.**

Undercutting Consumer Protections

Section 14(2)(a) states:

“All data, including written reports, notes, records and recommendations, received or compiled by the Emergency Medical Services Advisory Board or a regional emergency medical services advisory board... are confidential, privileged, inadmissible, and undiscoverable.”

This section significantly reduces transparency and accountability for people with disabilities who use emergency medical services in Oregon. When a person with a disability is harmed by the negligent action of an emergency medical service provider, that individual and their family deserves to learn what happened so they can make an informed choice about how they can be made whole. Under the proposed language, an entity that was involved in or tolerated egregious behaviors, such as sexual harassment or neglect, would proceed to hand over information to the Advisory Board and in doing so hide information and evidence—and shield themselves from litigation. **We ask the Committee to remove Section 14.**

¹ See 42 USC 10805(a)(4); 42 CFR 51.45(a); 42 U.S.C. § 15041 et seq.

Making it More Difficult to Access Justice when a Person with a Disability is Harmed

Section 16 states:

“(1) An emergency medical services provider may not be held liable for acting in accordance with approved emergency medical services plans. (2) A person who in good faith provides information to an emergency medical services data system is immune from any civil or criminal liability that might otherwise be incurred or imposed with respect to provision of the information.”

This section creates a loophole in Oregon’s liability framework by shielding people who act in accordance with approved emergency medical services plans—even when those plans are insufficient to prevent neglect or abuse. Liability laws create an incentive for businesses to prevent harm to patients. This section of HB 4081 undermines the basic concept of liability in Oregon and rebalances incentives in favor of businesses who are negligent, at the cost of people who use emergency medical services. This section will make it more difficult for people with disabilities who are harmed through negligence to get access to justice. **We ask the Committee to remove Section 16.**

Conclusion

People with disabilities need reliable, high-quality emergency medical services. While other sections of HB 4081 may help improve these services in Oregon, the harm caused by Sections 14 and 16 far outweighs those benefits and would make accessing justice more difficult when the system fails them and they are harmed. **We urge you to remove Section 14 and 16.**

About Disability Rights Oregon

Since 1977 Disability Rights Oregon has been the State's Protection and Advocacy System.² We are authorized by Congress to protect, advocate, and enforce the rights of people with disabilities under the U.S. Constitution and Federal and State laws, investigate abuse and neglect of people with disabilities, and “pursue administrative, legal, and other appropriate remedies”.³ We are also mandated to "educate policymakers" on matters related to people with disabilities.⁴

If you have any questions regarding DRO’s position on this legislation, please call Meghan Moyer at 503-432-5777 or email her at mmoyer@droregon.org.

² See ORS 192.517.

³ See 42 U.S.C. § 15041 et seq; 42 U.S.C. § 10801 et seq.

⁴ See 42 U.S. Code § 15043(a)(2)(L).