

D R A F T

SUMMARY

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

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

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

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

(1) “COVID-19 emergency period” means the time in which any declaration of a state of emergency issued by the Governor related to COVID-19, and any extension of the declaration, is in effect.

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

(3)(a) “Health care facility” means:

(A) A hospital;

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

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

- 1 **(D) An outpatient renal dialysis facility as defined in ORS 442.015;**
2 **(E) An extended stay center as defined in ORS 441.026;**
3 **(F) A mental health treatment facility;**
4 **(G) A residential training facility or residential training home, as**
5 **those terms are defined in ORS 443.400;**
6 **(H) A residential treatment facility or residential treatment home,**
7 **as those terms are defined in ORS 443.400;**
8 **(I) A facility established under ORS 430.335 for treatment of sub-**
9 **stance abuse disorders;**
10 **(J) A community mental health program or community develop-**
11 **mental disabilities program established under ORS 430.620;**
12 **(K) An outpatient service or residential facility, as those terms are**
13 **defined in ORS 430.010;**
14 **(L) An outpatient clinic, including a medical clinic, community**
15 **health clinic, student health center and dental clinic; or**
16 **(M) A hospital-affiliated clinic as defined in ORS 442.612.**
17 **(b) “Health care facility” does not mean:**
18 **(A) A long term care facility as defined in ORS 442.015;**
19 **(B) A residential care facility as defined in ORS 443.400;**
20 **(C) An establishment furnishing primarily domiciliary care as de-**
21 **scribed in ORS 443.205; or**
22 **(D) A facility licensed or approved under the rules of the Depart-**
23 **ment of Corrections.**
24 **(4) “Health care provider” means:**
25 **(a) A physician licensed under ORS chapter 677;**
26 **(b) A nurse licensed under ORS 678.040 to 678.101;**
27 **(c) An advance practice registered nurse who meets the require-**
28 **ments of ORS 678.025;**
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**
31 **(f) A dental hygienist licensed under ORS 680.010 to 680.205.**

1 (5) "Health care services" means supplies and services, including
2 services provided by telemedicine, provided by a health care facility,
3 health maintenance organization or health care provider in a location
4 other than a facility listed in subsection (3)(b) of this section, that
5 involve the:

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

7 (b) Assessment or care of an individual with a confirmed or sus-
8 pected case of COVID-19; or

9 (c) Care of any other individual who presents at a health care fa-
10 cility or to a health care provider during the COVID-19 emergency
11 period and during a time when COVID-19 emergency rules are in ef-
12 fect.

13 (6) "Health maintenance organization" has the meaning given that
14 term in ORS 750.005.

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

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

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

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

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

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

3 **(a) Acts or omissions constituting gross negligence;**

4 **(b) Reckless, wanton or intentional misconduct;**

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

6 **(d) Fraud;**

7 **(e) Deceptive acts or practices; or**

8 **(f) The delay or cancellation of a nonurgent or elective procedure**
9 **in response to a COVID-19 emergency rule that is not based on a rea-**
10 **sonable interpretation of the available medical evidence and that puts**
11 **a patient at risk of irreversible harm. Criteria for determining**
12 **whether a delay or cancellation puts a patient at risk of irreversible**
13 **harm 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.**

20 **(3) This section does not limit the obligation of a health care pro-**
21 **vider, health maintenance organization or health care facility to**
22 **comply with any other applicable rule, guidance or law.**

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

26 **SECTION 3.** **(1) A health care facility, health maintenance organ-**
27 **ization or health care provider may move at any time to strike a claim**
28 **in a civil action that is barred by section 2 of this 2021 Act. A motion**
29 **to strike under this section shall be treated as a motion to dismiss**
30 **under ORCP 21 A but is not subject to ORCP 21 F. Upon granting a**
31 **motion under this section, the court shall enter a judgment of dis-**

1 missal without prejudice. If the court denies a motion under this sec-
2 tion, the court shall enter a limited judgment denying the motion.

3 (2)(a) A health care facility, health maintenance organization or
4 health care provider that moves to strike a claim under this section
5 has the initial burden of making a prima facie showing that the claim
6 is barred under section 2 of this 2021 Act.

7 (b) If the health care facility, health maintenance organization or
8 health care provider meets this burden, the burden shifts to the
9 plaintiff in the action to establish that a genuine issue of material fact
10 exists that the claim is not barred under section 2 of this 2021 Act. If
11 the plaintiff meets the burden under this paragraph, the court shall
12 deny the motion.

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

17 (A) The fact that the determination has been made and the sub-
18 stance of the determination may not be admitted in evidence at any
19 later stage of the case; and

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

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

25 SECTION 5. This 2021 Act being necessary for the immediate pres-
26 ervation of the public peace, health and safety, an emergency is de-
27 clared to exist, and this 2021 Act takes effect on its passage.

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