

SB 780 -1, -2, -3 STAFF MEASURE SUMMARY

Senate Committee On Judiciary and Ballot Measure 110 Implementation

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Meeting Dates: 3/24, 4/8

WHAT THE MEASURE DOES:

Prohibits claims against health care providers, health maintenance organizations (HMO), or health care facility arising from acts or omissions performed while rendering health care services and in order to comply with COVID-19 emergency rules in effect at the time of the act or omission. Excludes long term care facilities, residential care facilities, domiciliary care facilities, and Department of Correction facilities from liability protection. Does not provide immunity to gross negligence, reckless, wanton, or intentional misconduct, false claims brought on or behalf of the state, fraud, or deceptive acts or practices. Does not provide immunity for delay or cancellation of nonurgent or elective procedures in response to a COVID-19 emergency rule that was not based on a reasonable interpretation of available medical evidence and put patient at risk of irreversible harms. Provides criteria for irreversible harm. Specifies no limitation on other obligations under law, rule or guidance and that other causes of action are not limited, including for whistleblower protections or discrimination. Specifies process for striking prohibited claims. Places initial burden of showing prima facie bar of claim on hospital, HMO, provider, or facility. Shifts burden to plaintiff to establish genuine issue of material fact that claim is not barred. Applies to claims arising during COVID-19 emergency period. Declares emergency, effective on passage.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

- 1 Defines covered entities and covered providers and provides immunity for covered entities if covered provider would have received immunity. Allows claims against covered providers arising from acts or omissions performed at a long term care facility, residential care facilities, an establishment furnishing domiciliary care, or a facility licensed or approved under the rules of the Department of Corrections.
- 2 Incorporates -1 but adds additional excluded entities: juvenile detention facility, local correctional facility, lockup, regional correctional facility, and youth correctional facility.
- 3 Incorporates -1 and -2. Includes additional whistleblower protections. Makes it an unlawful employment practice for a hospital or health maintenance organization to discharge, demote, suspend, discriminate, or retaliate against an employee if the employee, in good faith, reports what the employee reasonably believes is a violation of the standard of care by a hospital or HMO or health care provider at the hospital during the COVID-19 emergency period. Makes it an unlawful employment practice to retaliate for testifying or participating in proceeding involving claim for injuries related to health care during the COVID-19 emergency. Requires an employee to have sufficient qualifications to evaluate the standard of care during the COVID-19 emergency period in order to have protection for reporting.

BACKGROUND:

On March 8, 2020, Governor Brown declared a state of emergency due to COVID-19 infections. At the time, there were 14 presumptive or confirmed cases in the state. As of March 23rd, 2021, there were nearly 162,000 cases and 2,378 deaths in Oregon. On March 19th, 2020, Governor Brown issued Executive Order 20-10, which required all care settings, including hospitals, outpatient clinics, and dental clinics, to cancel or reschedule all elective and nonurgent procedures to conserve personal protective equipment (PPE) and other health care

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resources.

Senate Bill 780 prohibits some legal actions against certain health care organizations and health care providers during the COVID-19 state of emergency. In order to receive the immunity, the health care provider must have been providing care so as to comply with the COVID-19 emergency rule in effect at the time of the act or omission. Liability protection is not given to acts taken with gross negligence; reckless, wanton, or intentional misconduct, false claims, fraud, or deceptive acts or practices. Liability protection is also not given to delays or cancellations of elective or non-urgent procedures that create an irreversible risk of harm to the patient. The measure does not exclude claims for other reasons, such as discrimination or retaliation. Senate Bill 780 creates a process for striking a barred claim early in the legal process. The measure applies to claims arising during the COVID-19 emergency period and declares an emergency.