

SB 780 A STAFF MEASURE SUMMARY

Carrier: Sen. Prozanski

**Senate Committee On Judiciary and Ballot Measure 110
Implementation**

Action Date: 04/13/21
Action: Do pass with amendments. (Printed A-Eng.)
Vote: 4-2-1-0
Yeas: 4 - Dembrow, Gelser, Manning Jr, Prozanski
Nays: 2 - Linthicum, Thatcher
Exc: 1 - Heard
Fiscal: No fiscal impact
Revenue: No revenue impact
Prepared By: Channa Newell, Counsel
Meeting Dates: 3/24, 4/13

WHAT THE MEASURE DOES:

Prohibits claims against health care providers, hospitals, health maintenance organizations (HMO), or covered entities 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. Provides immunity for covered entities if covered provider would have received immunity. Excludes long term care facilities, residential care facilities, domiciliary care facilities, Department of Corrections facilities, juvenile detention facilities, local correctional facilities, lockup, regional correctional facilities, and youth correctional facilities from liability protection. Does not provide immunity for 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. 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 to a direct supervisor or person in authority to take corrective action 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. Provides factors relative to determination of whether employee has sufficient qualifications to evaluate standard of care. Applies to claims arising during COVID-19 emergency period. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Effects of COVID-19 pandemic on provision of health care
- Efforts of interim work group
- Increased protections for workers reporting violations of standard of care
- Goal to protect health care providers following rules and guidance
- Process for striking claim

EFFECT OF AMENDMENT:

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, a facility licensed or approved under the rules of the Department of Corrections, juvenile detention facility, local correctional facility, lockup, regional correctional facility, and youth correctional facility. 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 to a direct supervisor or person in authority to take corrective action 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. Provides factors relative to determination of whether employee has sufficient qualifications to evaluate standard of care.

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 April 15, 2021, there were over 172,000 cases and 2,449 deaths in Oregon. On March 19, 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 resources.

Senate Bill 780 A prohibits some legal actions against 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 nonurgent 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 and provides whistleblower protections for workers who report violations of the standard of care. Senate Bill 780 A 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.