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Opinion: Liability protection for health care industry would be an unnecessary barrier to justice

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Jake Cornett and Paula Boga

Cornett is executive director of Disability Rights Oregon. He lives in Portland. Boga is executive director of The Arc of Oregon. She lives in Keizer.

Shortly after [34 people with COVID-19 died](#) at the Healthcare at Foster Creek nursing home last April, the Oregon health care lobby went to Gov. Kate Brown [with a request](#): Would she grant providers limited immunity from civil litigation during the COVID-19 emergency, similar to executive action that New York Gov. Andrew Cuomo took early in the pandemic?

Brown rightly ignored the request. Legislators, too, have so far declined to provide such liability protection. But health care lobbyists have only continued to press for legislation shielding hospitals, doctors and insurers from civil lawsuits over injury or death during COVID-19 except in cases of gross negligence. With the upcoming legislative session, we urge Oregon's elected officials to remain firm in their resolve in rejecting any such proposal, which would deny justice by dramatically rewriting Oregon's liability laws.

Under current medical liability law, physicians, health maintenance organizations, and hospitals that harm Oregonians through their negligence can be found responsible for this harm and ordered by a court to make a consumer whole. These cases are hard to win because in many ways the deck is stacked against patients -who must prove the medical provider did not deliver the same care that an ordinarily careful physicians would have provided to another patient in similar circumstances. However, these laws play a powerful role in making sure health care companies take seriously their responsibility for providing quality care to all patients, including people with disabilities.

But a legislative proposal under consideration would shield businesses from lawsuits for failing to fulfill these responsibilities. Under the proposal, which Disability Rights Oregon was able to review, "gross negligence" must be proven, a nearly impossible standard that requires a high degree of recklessness. Adopting such a high bar for liability would remove an important incentive for businesses to act responsibly.

The early draft also appears to grant hospitals liability protection even for non-COVID-19 cases, so long as the patient saw a doctor or hospital during the COVID-19 emergency period. While it remains to be

seen exactly who would be granted such protection and other details of the proposed bill, let us be clear: this concept of mass immunity from lawsuits is not acceptable in any shape or form.

Such legislation would deny justice for harm caused to people like Sarah McSweeney, a 45-year-old Oregon City woman. Sarah loved going out to coffee, getting her hair done and taking trips with friends. She also experienced intellectual and physical disabilities. On April 21, Sarah was admitted to Providence Hospital with a slight fever. Hospital bureaucrats immediately pressed her guardian to sign a Do Not Resuscitate order for Sarah — as if having a disability should make her less deserving of lifesaving efforts. Sarah’s guardian and care team refused, explaining that Sarah’s life was full and happy. Sarah tragically died on May 10. When Disability Rights Oregon investigated, we found multiple records and statements made about her “quality of life” and remain concerned that the hospital may not have provided Sarah with the medical care she needed because she had a disability.

We believe Sarah’s family and loved ones deserve justice for Sarah. Changing Oregon’s liability laws to shield hospitals from negligence would take that away.

For the 950,000 Oregonians with disabilities who face barriers to accessing the same care as everyone else, eliminating this layer of protection would result in less oversight of their health and safety during a public health crisis, and fewer ways to fix harmful practices.

There’s been no flood of COVID-related medical liability lawsuits since the pandemic started. This proposed legislation is a solution in search of a problem. With the Oregon Legislature convening in weeks, our legislative leaders shouldn’t rubber stamp a New York solution that leaves Oregonians with disabilities, older adults, and people of color—the people most harmed during COVID—paying the price.

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