



TO: Chair Prozanski, Vice Chair Thatcher, & Members of the Senate Committee on Judiciary and Ballot Measure 110 Implementation
FROM: Disability Rights Oregon
DATE: March 24, 2021
RE: Testimony Opposing SB 780

Chair Prozanski, Vice Chair Thatcher, and Members of the Committee:

While we're pleased to see SB 780 carve-out unlawful discrimination claims, Disability Rights Oregon submits this testimony opposing SB 780 and the -1 Amendment.

Since 1977 Disability Rights Oregon has been the State's Protection and Advocacy System.¹ We are authorized by Congress to protect, advocate, and enforce the rights of 950,000 Oregonians 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".² We are also mandated to "educate policymakers" on matters related to people with disabilities.³

PREVENTION: WHY LIABILITY LAWS MATTER 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. Liabilities laws create an incentive for businesses to prevent harm to customers, employees, and patients. SB 780 undermines the basic concept of liability in Oregon and rebalances incentives in favor of businesses who are negligent, at the cost of patients.

Under current and well established medical liability law, physicians, health maintenance organizations, and hospitals that harm Oregonians through their negligence can be found responsible for this harm. This results in the physicians, health maintenance organizations, or hospitals being ordered by the court to make a consumer whole. These cases are already difficult to win because a patient must prove the medical provider did not deliver the same care that an ordinarily careful physician would have provided to another patient in similar circumstances. Moreover, while physicians, health maintenance organizations, hospitals, 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.⁴

Notwithstanding these challenges, liability 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. The liability framework in current law balances personal

¹ See ORS 192.517

² See 42 U.S.C. § 15041 et seq; 42 U.S.C. § 10801 et seq.

³ See 42 U.S. Code § 15043(a)(2)(L).

⁴ See enclosed Guest Column published in the Oregonian on December 13, 2020.

responsibility of businesses with the right of patients. SB 780 upends that balance in favor of corporations—which will deny justice to patients.

DEVIATION FROM THE STANDARD PRACTICE OF HEALTHCARE IS ALREADY, UNNECESSARILY HAPPENING DURING THIS PANDEMIC

Disability Rights Oregon has investigated complaints and identified a series of serious deviations from established standards of care. These complaints have been widespread, coming from every corner of the State and from nearly every hospital system. This included substandard care provided to people with disabilities who were diagnosed with COVID-19 during the COVID-19 emergency period and people who were seeking care for other illnesses during the emergency period. See the reports from the National Public Radio's (NPR's) Investigation Unit, which has also investigated dozens of complaints in Oregon.⁵

SB 780 LINKS IMMUNITY FOR THE HARM TO PATIENTS TO BROADLY DEFINED COVID-19 EMERGENCY RULES, STATEMENTS, GUIDANCE, ETC.

SB 780 would immunize a wide array of healthcare providers when the provider has harmed a patient through negligence, so long as an attorney for the healthcare company could justify the change in medical practice with a tenuous connection to a single federal or state “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 the use of telemedicine.”⁶

This policy framework wrongly assumes that all statements, guidance, and policy statements have been lawful, good policy, and free from bias against people with disabilities, people of color, and older adults.

While SB 780-1 excludes discrimination claims from the modified court procedures and immunity, it continues to allow for healthcare providers to point to “rules applicable to the act or omission that are in effect at the time of the act or omission.”⁷ Even policies later rescinded can be relied upon if they were “in effect at the time of the act or omission”.

⁵ See enclosed and listen to the NPR article here: <https://www.npr.org/2020/12/14/945056176/as-hospitals-fear-being-overwhelmed-by-covid-19-do-the-disabled-get-the-same-acc> ; see also second NPR story here: https://www.npr.org/2020/12/14/946325888/when-hospitals-decide-who-deserves-treatment-npr-investigates-denial-of-care?utm_source=twitter.com&utm_medium=social&utm_campaign=atc&utm_term=nprnews&utm_content=2048

⁶ See definition of “COVID-19 emergency rule” under Sec. 1(4) of SB 780-1.

⁷ See Sec. 2(1)(b).

EXAMPLE OF SB 780-1'S HARM TO CONSUMERS: CHRISTINE GETMAN'S CARE AT A PORTLAND HOSPITAL

During the COVID-19 emergency period, Disability Rights Oregon received a complaint from Christine Getman about her treatment at a Portland-area hospital. Christine sought treatment for bacterial meningitis.

Christine runs Magic Wheelchair, a national nonprofit based out of Oregon that creates custom costumes for children in wheelchairs.⁸ Christine also has Type 2 Spinal Muscular Atrophy, a rare neurological disorder that weakens a person's muscles over time. She uses a wheelchair, can only move one finger on one hand, and has a tracheostomy tube for breathing. Christine requires assistance from her caregivers to eat, reposition her body, or use the bathroom.



During her treatment, the hospital denied access to her caregivers in an effort to comply with Governor Brown's Executive Order 20-10⁹ and the Oregon Health Authority's Interim COVID-19 Visitation Guidance for Acute Care Facilities.¹⁰

This meant Christine had to navigate her stay in the hospital alone, did not have access to her communication devices throughout her stay, and was without the supports she needed. See the article published in the *Oregonian* on June 15, 2020, for more of Christine's harrowing story. The hospital:

1. relied on state guidance restricting access to healthcare facilities when denying Christine the supports she needed; and
2. resulted in a deviation from the standard of care that would ordinarily be provided to a person in Christine's situation—resulting in harm to the patient.

While SB 780 does not prohibit a lawsuit on the basis of disability discrimination, a medical liability claim for negligence would be nearly impossible. This is not justice.

While we are pleased to see disability discrimination claims excluded, we urge the Committee to reject SB 780.

⁸ See <https://www.magicwheelchair.org/>

⁹ See https://www.oregon.gov/gov/Documents/executive_orders/eo_20-10.pdf

¹⁰ See list of essential individuals: <https://content.govdelivery.com/accounts/ORDHS/bulletins/282c1c0>