SUPPORT SB 1173 (Dash 2 Amendment)

Shield clinics and hospitals from manufacturer liability – Addressing the impact of *Brown v. Providence*

Background

In May 2024, the Oregon Supreme Court issued a ruling in *Brown v. Providence* that significantly altered the legal landscape for health care providers in the state. This decision has made **Oregon a standalone outlier whose highest court permits a strict liability claim against hospitals and clinics** for defective products, regardless of whether they designed, manufactured, or had any control over the product in question.

SB 1173 restores longstanding legal protections by clarifying that **health care facilities are not subject to product liability in civil actions for products provided to patients, as long as the facility did not manufacture or design the product**. We support SB 1173 with the adoption of the -2 amendment, which includes the following two provisions:

- clarifies that a health care facility may be subject to a civil action for a product that a health care facility or hospital-affiliated clinic offers to the general public in a retail setting.
- extends the exemption from a product liability civil claim to hospital-affiliated clinics, professional corporations formed to practice medicine or provide health care services, and residential care facilities. The amendment also clarifies the scope of a physician's immunity from product liability

The problem

Health care settings use thousands of products and medical supplies every day—from IV bags and surgical instruments to implants and prescription medications. Under the *Brown* decision:

- Hospitals and clinics can be treated as **sellers** of these products, exposing them to the same liability standards as manufacturers.
- Liability can be imposed **without a finding of negligence**.
- Plaintiffs no longer need to pursue claims against the product's manufacturer, as liability can rest solely with the provider.

Implications for Oregon's health care system

1. **Benefits manufacturers of products at the expense of hospitals and clinics**
   Rather than sue the manufacturer of the defective product, a plaintiff could choose to sue the hospital or clinic where services were provided.
2. **Increased legal risk for providers**
   Clinics and hospitals face significant new legal exposure for using medications or products that they did not design or produce.
3. **Chilling effect on innovation and treatment options**
   Providers may avoid using promising **new treatments** or engaging in the common, evidence-based practice of **off-label prescribing**—especially in early stages of innovation—due to the fear of strict liability.
4. **Threat to independent and physician-owned clinics**
   Smaller, independent clinics may not have the resources to absorb this new legal risk, which could lead to **consolidation**, reduced access, and a decline in **community-based health care options**.

Senate Bill 1173 seeks to restore balance by clarifying that **strict products liability should not apply to hospitals and clinics**. Oregon law has already provided this exception for individual physicians since 2009.

To ensure consistency, prevent legal ambiguity, and protect the full spectrum of care delivery, **SB 1173 should be amended to explicitly include medical clinics as well as hospitals**.

Conclusion

The extension of strict products liability to hospitals and clinics threatens the viability of medical practice in Oregon, discourages innovation, and introduces unnecessary legal exposure. Including clinics in this legislative fix is essential to prevent further erosion of Oregon's health care infrastructure. SB 1173 offers a timely and necessary correction.

Contacts:

Kevin Campbell, Contract Lobbyist
Hospital Association of Oregon
kevin@victorygrp.com

Mark Bonanno, Legal Counsel
Oregon Medical Association
mark@theoma.org