

April 3, 2020

Honorable Governor Kate Brown  
Oregon State Capitol  
900 Court St NE  
Salem OR 87301

*(Submitted electronically)*

RE: Liability Protections for Oregon's Health Care System that is Implementing the COVID-19 Response

Dear Governor Kate Brown,

Oregon is facing an unprecedented public health crisis as the health and welfare of every citizen is threatened by COVID-19. As representatives of the hospitals, health care providers and long term care communities in Oregon delivering frontline care for patients, we value the work done to date by your office to declare a state of emergency and issue all-important executive orders that serve as critical tools to help manage this crisis. Additional immediate action is necessary to protect those charged with delivering and overseeing care during this crisis.

Recognizing the immense pressure our full continuum of Oregon's health care system is currently under and the importance of the care they deliver, we urge you to follow the lead of other states by providing immediate liability protection for those implementing your orders to provide care for Oregonians from nurses, physicians, hospitals and the long term care communities. Healthcare workers need to focus on caring for Oregonians and should not be worried by the threat of lawsuits they might face for following guidance and protocols required by the State through your Executive Orders.

Your Executive Orders 20-03, 20-10, and 20-12 were important first steps in preparing Oregon for a surge of COVID-19 patients. The orders had an immediate impact on the health care community and not only brought to bear state resources critically needed during a state of emergency but also changed how health care is being delivered in Oregon.

We know you understand that the undersigned organizations and their members put patient and resident safety first and are working around the clock to do all they can to maintain safety and continue to provide a high-level of care. COVID-19 is indiscriminate though and has required changes in our health care system to minimize the spread of the disease so our system is able to weather the damage COVID-19 will cause. We know our frontline providers in Oregon, like their colleagues around the country and in other countries, are there because they are dedicated to

caring for people and they are doing the best they can with the tools they have on hand. And, this crisis, involving a pandemic, limited supplies and equipment, and rapidly evolving state and federal guidance, regulations, and law is forcing change in how care is being delivered. The health care system in Oregon needs assurance that such drastic change in how care is delivered, in order to curb the spread of COVID-19, will not cause further systemic damage nor put health care providers at risk while they are responding to this crisis.

Already, Executive Order 20-10 has drastically impacted the delivery of care. Many medical practices are suspending operations to free up resources for an expected patient surge. Health care providers are carefully evaluating how to triage patients who need access to services for many other medical conditions not related to COVID-19. Those providers are making new and difficult decisions about which patients to see and treat immediately, and which patients can wait for care until Executive Order 20-10 is lifted. Health care providers also are required to alter how they provide and prioritize medical services to patients due to a limitation of resources and surging demand for acute and critical care services, coupled with growing shortages of staffing, equipment and facilities.

Further, the necessary policy within Executive Order 20-12 that directed Oregonians to stay home, has shifted many non-emergency health care services to alternative methods of delivery such as telehealth, or required delays in providing health care. The policies the state is implementing are necessary to lessen the impact of a patient surge. All of these competing needs, however, can alter the standard of care in communities and locations in which health care providers are rendering medical services. There is risk associated with these new actions for everyone responding to this crisis.

### **A Recommended Solution**

On March 23, 2020, New York Governor Cuomo issued an executive order that included a careful statute-by-statute and temporary modification of state law that was intended to assure maximum resources are brought to bear in the response to the COVID-19 crisis. Because of those needed changes, the order also carefully provided some limited immunity for the difficult choices and altered standards of care needed to respond to the crisis. We are requesting that a similar approach be taken here in Oregon.

We believe that providing these safeguards for the health care community through the executive order process is the best approach to ensuring protections are in place through the state of emergency to protect Oregon's providers who are showing up to care for others during this crisis. We believe the Governor has the power under ORS 401.168 to modify and address these issues through an Executive Order and does not require a statutory change to be adopted by the Oregon Legislature, especially when the need to protect frontline providers is immediate.

We request the following three actions be taken:

- **Action 1—Issue Executive Order Providing Limited Immunity**  
*During this state of emergency and public health emergency, health care providers, health care facilities, and long term care facilities and agencies that are within this state and responding to the emergency conditions are immune from civil liability for any injury,*

death or loss that results from their acts or omissions while rendering, withholding or delaying medical or other care and services unless it is alleged and proved by the complaining party that the provider, facility, or agency was grossly negligent under a community standard of care that accounts for this COVID-19 related state of emergency in rendering, withholding or delaying of medical or other care and services. The covered acts or omissions include those related to personal protective equipment and COVID-19 tests.

- **Action 2—Modify Executive Order No. 20-10 to Add New Provision**

7. A health care facility or health care provider shall not be liable for injury, death or loss that results from an act or omission taken to comply with this order and Executive Order 20-03 except in the case of willful misconduct or gross negligence under a community standard of care that accounts for this COVID-19 related state of emergency.

- **Action 3—Issue Executive Order Suspending Application of Certain Provisions of ORS 30.800**

To ensure health care facilities and health care providers are able to respond to the state’s COVID-19 emergency, provisions of ORS 30.800 that limit the protections afforded by the law to specific locations and to emergency and volunteer services are suspended. During the state’s COVID-19 emergency, all health care facilities and health care providers are qualified for the protections of ORS 30.800 for services performed during the emergency.

### Cooperative Approach with the Health Care Community

We are committed to working closely with your office to ensure the safety of patients during this time of crisis and to develop needed protections for health care facilities and frontline providers who are being asked to make difficult choices and respond to the crisis to care for Oregonians. We are open to discussion of the request above and other potential and meaningful solutions.



