

---

# LEGISLATIVE UPDATE

Prepared for OAFP

May 31, 2020

## **Liability Protection**

Businesses are concerned about liability from the Coronavirus and Executive Orders. Liability lawsuits are already being filed around the country for:

- Customer and employee exposure to COVID-19
- Refusing service because customer fails to abide by social distancing. Fawn Barrie with the Oregon Liability Reform Coalition told the House Judiciary Committee, "Businesses are in the difficult position of being liable if they do and liable if they don't."
- Medical care not provided as a result of the Governor's Executive Order
- PPE product design and use
- Handling of private health information

As a result, a coalition of businesses are asking the Governor and Legislature for liability protection for:

- Healthcare workers and facilities operating under state guidelines
- Business, non-profit and educational institutions that are following public health guidelines
- Manufacturers and users of PPE.

Their liability request is only for the duration of the COVID-19 Emergency and the protection would not cover instances of gross negligence or reckless behavior.

Trial lawyers oppose the request saying it would be too difficult to anticipate all the scenarios that could arise that put workers and consumers at risk, and they say consumers have a right to their day in court if they are harmed.

So far, 32 states have passed some form of liability protection related to the coronavirus.

## **CCO and Behavioral Health Integration**

The House Behavioral Health Committee discussed continuing efforts to integrate CCOs and behavioral health, focusing on the unique challenges of the coronavirus crisis.

Steve Allen, Director of Behavioral Health at the Oregon Health Authority, said OHA's goal is to increase service access for those impacted by the COVID-19 virus and its response who were not previously in the system, and change how services are delivered to those who already receive them. OHA is:

- Working with the Centers for Medicare and Medicaid Services to ensure provider pay parity for remote and in-person services,
- Using federal Coronavirus Relief Fund grants to make sure providers have the technology they need to reach patients, and patients have the technology they need to receive remote services; create a "one stop shop" website for consumers

to search for behavioral health providers that fit their needs; and support recovery services like Alcoholics Anonymous,

- Doing media outreach to educate consumers who have not accessed services before about how to access them,
- Supporting county mental health programs by paying some of their quarterly funds up front, and allowing them to free up certain funds to address the changing service landscape,
- Increasing suicide counselling and prevention trainings, including additional funding for 24/7 “warm lines” that help people avert crises, and
- Coordinating with the Oregon Department of Education to roll out behavioral health and suicide prevention information to students, parents and teachers when schools reopen.

OHA reported that across all physical, behavioral and dental health, CCO utilization is down 50%. Of all CCO telemedicine visits, uptake has been the largest in behavioral health. Some telehealth, such as dental consultations, have been very successful, and OHA may want to continue them long-term.

When asked about the biggest challenges facing Oregon and CCOs during the COVID-19 crisis, Steve Allen responded, “I am afraid that we will not have the right kind or capacity to meet the need of both populations [those who have used services before and those who have not].” Regarding the proposed budget cuts to the behavioral health system, he added that these would “further undermine our ability to meet the needs of Oregonians, when arguably, their needs could not be greater.”

### **Behavioral Health Workforce**

“We don’t have an adequate workforce, and its uneven around the state,” Steve Allen, OHA, told the House Behavioral Health Subcommittee. Efforts to address these shortages are ongoing. “We know it’s a critical piece. If we don’t solve this, we won’t have the behavioral health system we need,” Allen added.

In response to coronavirus and its response, Oregon has implemented temporary measures allowing retired practitioners to practice. Many longer-term ideas were floated to increase Oregon’s behavioral health workforce, from loan repayment to increasing academic funding, collective bargaining, and pay parity with physical health providers.

Committee Chair Rep. Andrea Salinas (D-Lake Oswego) said, “We’re going to hit a peak of need that we haven’t met yet. That makes me nervous.” Chris Bouneff from the National Alliance on Mental Health Oregon responded that behavioral health needs “all hands on deck,” just like we have seen from physical health professionals. “We have to have a discussion, and that is: what is our equivalent [to the physical health professionals’ response to COVID-19] with our trained and peer workforce?”

### **Workers Comp Claims for COVID-19**

Since the beginning of the coronavirus pandemic, 286 Oregonians have filed workers’ comp claims for on-the-job exposure or illness. Most of the claims are from workers in the health care industry, including nursing homes. To date, 74 of those claims have been denied following a negative COVID-19 test.

In order for COVID-19 to be considered a work-related illness, workers must prove the exposure occurred in the course of their employment. If the claim is accepted, workers comp would cover medical services and wage-replacement benefits, as well as disability benefits in some cases.

## **Unemployment Insurance**

Since March, 440,000 Oregonians have filed unemployment claims with the state. But the Employment Department told legislators that to date, 200,000 have not yet received any payment. Some claims are still being processed; others just haven't yet been paid.

About half of all processed claims in the last two months come from hotel and food service (23.3%), health care (14.9% and retail (12.6%) sectors.

About 45% of the new claims came from industries where the average wage was below \$45,000.

Legislators on the House Business & Labor Committee were so upset with the presentation by Employment Department director Kay Erickson, they called her back for a three-hour session on Saturday to answer questions. During the hearing, Rep. Jeff Barker (D-Aloha) expressed his frustration saying, "Huge gap in what people are receiving and what they should be receiving." He went on to say, "You've been overwhelmed. Maybe someone needs to take over leadership of the department and get it resolved."

During a separate presentation on the financing of Oregon's Unemployment Insurance program, the House Revenue Committee was told the state's Unemployment Fund is in good shape financially. Revenue Committee staff said during Great Recession (2008-2009), Oregon was one of the few states whose UI program remained solvent. Currently there is \$5B in the trust fund to pay unemployed workers.

###