
Civil Rights & Judiciary Committee

SSB 5271

Brief Description: Amending the necessary elements of proof of injury during the state of emergency declared due to the COVID-19 pandemic.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Wagoner, Pedersen and Dhingra).

<p style="text-align: center;">Brief Summary of Substitute Bill</p> <ul style="list-style-type: none">• Establishes specific factors that must be considered in a civil action when determining whether a health care provider followed the required standard of care during the period of the COVID-19 state of emergency.
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Hearing Date: 3/16/21

Staff: Edie Adams (786-7180).

Background:

A civil tort action against a health care provider for the recovery of damages for injury or death resulting from the provision of health care must be based on one of the following grounds:

- The health care provider failed to follow the required standard of care.
- The health care provider promised that the injury suffered would not occur.
- The injury resulted from health care to which the patient did not consent.

In a civil action based on failure to follow the required standard of care, the plaintiff must show not only that the provider failed to follow the accepted standard of care, but also that the failure was a proximate cause of the injuries suffered. Failure to follow the accepted standard of care means that the health care provider failed to exercise the degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the same profession or class,

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and acting in the same or similar circumstances.

On February 29, 2020, the Governor proclaimed that a state of emergency exists in all counties in the state of Washington due to the outbreak of COVID-19. During the course of the pandemic, federal, state, and local agencies have issued guidance and recommendations addressing clinical and treatment protocols for health care providers, and the Governor has issued proclamations addressing the provision of health care services, including imposing restrictions on non-emergent medical and dental procedures.

Summary of Substitute Bill:

New provisions are established governing the necessary elements of proof in a civil tort action based on a health care provider's failure to follow the standard of care for acts or omissions occurring during the period of the COVID-19 state of emergency.

In a civil tort action against a health care provider that is based on acts or omissions occurring during the period of the COVID-19 state of emergency, the determination of whether the provider failed to follow the standard of care must take into account whether the act or omission:

- was in good faith based on guidance, direction, or recommendations, including in interim or preliminary form, published by the federal government, the state of Washington or its departments, divisions, agencies, or agents, or local governments in the state, or departments, divisions, agencies, or agents thereof, in response to the COVID-19 pandemic and applicable to the health care provider; or
- was due to a lack of resources including, but not limited to, available facility capacity, staff, and supplies, directly attributable to the COVID-19 pandemic.

These factors apply only if relevant to the determination of whether the health care provider followed the standard of care, as determined by the court. If a provider presents evidence of these factors, the injured patient or the patient's representative is permitted to present rebuttal evidence, so long as the evidence is otherwise admissible.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.