

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
91st General Assembly  
Regular Session, 2017

# A Bill

HOUSE BILL 1628

By: Representative B. Smith  
By: Senators Rapert, Collins-Smith

## For An Act To Be Entitled

AN ACT TO CREATE THE HEALTHCARE FREEDOM OF CONSCIENCE  
ACT; AND FOR OTHER PURPOSES.

### Subtitle

TO CREATE THE HEALTHCARE FREEDOM OF  
CONSCIENCE ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 17, Chapter 80, is amended to add an additional subchapter to read as follows:

Subchapter 4 – Healthcare Freedom of Conscience Act

17-80-401. Title.

This subchapter shall be known and may be cited as the "Healthcare Freedom of Conscience Act".

17-80-402. Legislative findings – Purpose.

(a) The General Assembly finds that:

(1) The public policy of the state is to respect and protect the fundamental right of conscience of individuals and entities who provide healthcare services; and

(2) Without comprehensive protection, healthcare rights of conscience may be violated in various ways, including without limitation harassment, demotion, salary reduction, transfer, termination, loss of staffing privileges, denial of aid or benefits, administrative penalty,



punishment, or sanction, and refusal to license or certify.

(b) The purpose of this subchapter is to:

(1) Protect as a basic civil right the right of healthcare providers, healthcare institutions, and healthcare payers to decline to counsel, advise, provide, perform, assist, or participate in providing or performing healthcare services that may violate their consciences; and

(2) Prohibit all forms of discrimination, disqualification, coercion, disability, or liability upon a healthcare provider, healthcare institution, and healthcare payer that declines to provide or perform any healthcare service that violates their consciences.

17-80-403. Definitions.

As used in this subchapter:

(1) "Conscience" means the religious, moral, or ethical principles held by a healthcare provider, institution, or payer which may be determined by reference to existing or proposed religious, moral, or ethical guidelines, mission statements, constitutions, bylaws, articles of incorporation, regulations, or other relevant documents;

(2) "Discriminate" means an adverse action taken in retaliation as a result of the conscience of an individual or entity, including without limitation:

(A) Termination;

(B) Transfer;

(C) Refusal of staff privileges;

(D) Denial, deprivation, or disqualification or licensure or certification;

(E) Adverse administrative or disciplinary action;

(F) Demotion;

(G) Loss of career specialty;

(H) Reassignment to a different shift;

(I) Reduction of wages or benefits;

(J) Refusal to award any grant, contract, or other program;

(K) Refusal to provide residency training opportunities;

(L) Refusal to authorize the creation, expansion, improvement, acquisition, affiliation, or merger; or

(M) Other penalty or disciplinary retaliatory action;

(3) "Employer" means an individual or entity that pays for or provides health benefits or health insurance coverage as a benefit to the employees of the individual or entity;

(4) "Healthcare institution" means a public or private organization, corporation, partnership, sole proprietorship, association, agency, network, joint venture, or other entity involved in providing healthcare services, including without limitation:

(A) A hospital;

(B) A clinic;

(C) A medical center;

(D) An ambulatory surgical center;

(E) A private physician's office;

(F) A pharmacy;

(G) A nursing home;

(H) A medical school that is part of an institution of higher education;

(I) A nursing school;

(J) A medical training facility;

(K) A person, association, corporation, or other entity attempting to establish a new healthcare institution or operating an existing healthcare institution; or

(L) Other institution or location where healthcare services are provided to a person;

(5) "Healthcare payer" means an entity or employer that contracts, pays, or arranges for payment of a healthcare service or product, including without limitation:

(A) A health management organization;

(B) A health plan;

(C) An insurance company;

(D) A management services organization;

(E) A person, association, corporation, or other entity that owns, operates, supervises, or manages a healthcare payer; or

(F) A person, association, corporation or other entity attempting to establish a new healthcare payer or operating an existing healthcare payer;

(6) "Healthcare provider" means an individual who may be asked to participate in any way in a healthcare service, including without limitation:

- (A) A physician;
- (B) A physician's assistant;
- (C) A nurse;
- (D) A nurse's aide;
- (E) A medical assistant;
- (F) A healthcare institution employee;
- (G) A pharmacist;
- (H) A researcher;
- (I) A student or faculty of a medical school or nursing school;

(J) A counselor;  
(K) A social worker; or  
(L) Any professional, paraprofessional, or other individual who furnishes or assists in the providing or performing of healthcare services;

(7) "Healthcare service" means a phase of patient medical care, treatment, or procedure, including without limitation:

- (A) Patient referral;
- (B) Counseling;
- (C) Therapy;
- (D) Testing;
- (E) Research;
- (F) Instruction;
- (G) Prescribing, dispensing, or administering of any drug, medication, or device;
- (H) Surgery; or
- (I) Other care or treatment provided by a healthcare provider or healthcare institution; and

(8) "Reasonably accommodate" or "reasonable accommodation" means an arrangement to accommodate beliefs or practices consistent with Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., as existing on January 1, 2017.

17-80-404. Freedom of conscience for healthcare providers.(a) A healthcare provider:

(1) Has the right to not participate in a healthcare service that violates his or her conscience; and

(2) Shall not be required to participate in a healthcare service that violates his or her conscience.

(b) A healthcare provider shall not be civilly, criminally, or administratively liable for declining to participate in a healthcare service that violates his or her conscience.

(c) Except as provided in subsections (d) and (e) of this section, a person, healthcare provider, health institution, public institution, private institution, public official, or any board or agency that certifies competency in medical specialties shall not discriminate against a healthcare provider in any manner based upon his or her declining to participate in a healthcare service that violates his or her conscience.

(d) Action taken by a health institution or employer of a healthcare provider is not discrimination under this subchapter if the action is taken as a reasonable accommodation to the conscience rights of a healthcare provider.

(e) This section does not prohibit an employer or potential employer of a healthcare provider from designating the participation in a healthcare service as a fundamental requirement for a position by providing a written certification that the healthcare service is directly related and essential to a core purpose of the employer.

(f) This section applies only to individual healthcare services and does not authorize a healthcare provider to refuse to provide healthcare services to a patient based on the identity or status of the patient.

17-80-405. Freedom of conscience for healthcare institutions.

(a) Except as provided in subsection (d) of this section, a healthcare institution:

(1) Has the right to not participate in a healthcare service that violates the conscience of the healthcare institution;

(2) Shall not be required to participate in a healthcare service that violates the conscience of the healthcare institution; and

(3) Shall not be civilly, criminally, or administratively liable

for declining to provide or participate in a healthcare service that violates the conscience of the healthcare institution.

(b) A person, public institution, private institution, or public official shall not discriminate against a healthcare institution in any manner based upon declining to provide or participate in a healthcare service that violates the conscience of the healthcare institution.

(c) A public official, agency, institution, or entity shall not deny any form of aid, assistance, grant, or benefit in any manner to coerce, disqualify, or discriminate against a healthcare institution in any manner based upon declining to provide or participate in a healthcare service that violates the conscience of the healthcare institution.

(d) Subsection (a) of this section applies only if the healthcare institution:

(1) Promptly informs the patient or an individual authorized to make healthcare decisions for the patient that the healthcare institution will not provide the healthcare services for reasons of conscience; and

(2)(A) If a request for transfer is made by the patient or on the behalf of the patient, makes all reasonable efforts to assist in a prompt transfer of the patient and provides continuing care to the patient until a transfer can be effected or until a determination has been made that a transfer cannot be effected.

(B) If a transfer cannot be effected, the healthcare institution shall not be compelled to provide or participate in a healthcare service that violates the conscience of the healthcare institution.

(e) This section applies only to individual healthcare services and does not authorize a healthcare provider to refuse to provide healthcare services to a patient based on the identity or status of the patient.

17-80-406. Freedom of conscience for health payers.

(a) Except as provided in subsections (c) and (d) of this section, a healthcare payer:

(1) Has the right to decline to pay for a healthcare service that violates the conscience of the healthcare payer;

(2) Shall not be required to pay or arrange for payment of a healthcare service that violates the conscience of the healthcare payer; and

(3) Shall not be civilly, criminally, or administratively liable

for declining to pay or arrange for payment of a healthcare service that violates the conscience of the healthcare payer.

(b) A person, public institution, private institution, or public official shall not discriminate against a healthcare payer in any manner based upon declining to pay or arrange for payment of a healthcare service that violates the conscience of the healthcare payer.

(c)(1) A healthcare payer shall file its conscience policies annually with the State Insurance Department.

(2) The annual filing shall include:

(A) A comprehensive list by billing code of any and all products, services, and procedures that the healthcare payer shall not make payment for reasons of conscience; and

(B) Other relevant information that may be required by rule of the department.

(3) A copy of the filing shall be provided annually to each beneficiary of the healthcare payer and made available to the general public by posting the information on the website of the healthcare payer.

(4) An annual filing shall not be required for any year in which the healthcare payer will not exercise its conscience rights under this subchapter.

(d) A healthcare payer shall not use a conscience objection to:

(1) Refuse to contract with a healthcare provider, healthcare institution, or beneficiary; or

(2) Refuse or reduce payments:

(A) To a beneficiary, healthcare provider, or healthcare institution for any product, services, or procedure that are not included in the annual filing required in subsection (c) of this section; or

(B) For healthcare services to a patient based upon the identity or status of the patient.

(e) A healthcare payer shall not compel by undue influence, fraud, or duress a beneficiary, healthcare provider, or healthcare institution to accept a contract or contract amendment that violates the conscience of the beneficiary, healthcare provider, or healthcare institution.

(f) The department may issue rules and take other actions as necessary or appropriate to enforce this section.

17-80-407. Appropriate services and life-sustaining treatment.

This subchapter does not condone, authorize, or approve withholding appropriate provision of healthcare services or life-sustaining treatment to patients.

17-80-408. Civil remedies.

(a)(1) A civil action for damages or injunctive relief, or both, may be brought for a violation of this subchapter.

(2) A claim that the violation of this subchapter was necessary to prevent additional burden or expense on any other healthcare provider, healthcare institution, healthcare payer, individual, or patient shall not be an affirmative defense.

(b)(1) Unless their sovereign immunity is protected under Arkansas Constitution, Article 5, § 20, an individual, association, corporation, entity, or healthcare institution injured by a public individual, private individual, association, agency, entity, or corporation as a result of any conduct prohibited by this subchapter may commence a civil action.

(2)(A) Upon a finding of a violation of this subchapter, the aggrieved party shall be entitled to recover treble damages, including without limitation damages related to:

(i) Pain and suffering sustained by the individual, association, corporation, entity, or healthcare institution;

(ii) The cost of the civil action; and

(iii) Reasonable attorney's fees.

(B) However, the total amount of damages shall not be less than five thousand dollars (\$5,000) for each violation in addition to the costs of the civil action and reasonable attorney's fees.

(3) Damages shall be cumulative and are not exclusive of other remedies that may be afforded under state or federal law.

(c) A court may award injunctive relief including without limitation ordering the reinstatement of a healthcare provider to his or her prior position.

17-80-409. Applicability.

This subchapter is supplemental to existing conscience protections within the Arkansas Code and does not affect the existing conscience

protection laws within the state.