

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

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As Engrossed: H3/9/21
A Bill

SENATE BILL 289

By: Senators K. Hammer, Beckham, Bledsoe, Flippo, T. Garner, Gilmore, Hester, Irvin, B. Johnson, M. Johnson, Rapert, G. Stubblefield, D. Sullivan
By: Representatives B. Smith, Beck, Bentley, Breaux, Brown, Cloud, Gazaway, Ladyman, Lowery, Lundstrum, McCollum, Payton, Penzo, Richmond, Rye, Speaks, Womack

For An Act To Be Entitled

AN ACT TO CREATE THE MEDICAL ETHICS AND DIVERSITY
ACT; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE MEDICAL ETHICS AND
DIVERSITY 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 5 – Medical Ethics and Diversity Act

17-80-501. Title.

This subchapter shall be known and may be cited as the "Medical Ethics and Diversity Act".

17-80-502. Legislative findings and purpose.

(a) The General Assembly finds that:

(1) The right of conscience is a fundamental and unalienable right;

(2) The right of conscience was central to the founding of the United States, has been deeply rooted in the history and tradition of the United States for centuries, and has been central to the practice of medicine



through the Hippocratic oath for millennia;

(3) Despite its importance, threats to the right of conscience of medical practitioners, healthcare institutions, and healthcare payers have become increasingly more common and severe in recent years;

(4) The swift pace of scientific advancement and the expansion of medical capabilities, along with the notion that medical practitioners, healthcare institutions, and healthcare payers are mere public utilities, promise only to exacerbate the current crisis unless something is done to restore the importance of the right of conscience; and

(5) It is the public policy of this state to protect the right of conscience of medical practitioners, healthcare institutions, and healthcare payers.

(b) It is the purpose of this subchapter to protect all medical practitioners, healthcare institutions, and healthcare payers from discrimination, punishment, or retaliation as a result of any instance of conscientious medical objection.

17-80-503. Definitions.

As used in this subchapter:

(1)(A) "Conscience" means the religious, moral, or ethical beliefs or principles of a medical practitioner, healthcare institution, or healthcare payer.

(B) "Conscience" of an institutional entity or corporate body may be determined by reference to existing or proposed documents, including without limitation any published religious, moral, or ethical guidelines or directives, mission statements, constitutions, bylaws, articles of incorporation, policies, regulations, or other relevant documents;

(2)(A) "Discriminate" means to take an adverse action against, or communicate a threat of adverse action to, any medical practitioner, healthcare institution, or healthcare payer as a result of a decision by a medical practitioner, healthcare institution, or healthcare payer to decline to participate in a healthcare service on the basis of the conscience of the medical practitioner, healthcare institution, or healthcare payer, including without limitation:

(i) Termination;

(ii) Refusal of staff privileges;

- (iii) Refusal of board certification;
 - (iv) Adverse administrative or disciplinary action;
 - (v) Demotion;
 - (vi) Loss of career specialty;
 - (vii) Reduction of wages, benefits, or privileges;
 - (viii) Refusal to award any grant, contract, or other program;
 - (ix) Refusal to provide residency training opportunities;
 - (x) Refusal to authorize the creation, expansion, improvement, acquisition, affiliation, or merger of a healthcare institution;
 - (xi) Reassignment to a different shift or job title;
 - (xii) Addition or increase of administrative duties;
 - (xiii) Denial, deprivation, or disqualification of licensure;
 - (xiv) Disqualification from or withholding of financial aid or other financial assistance; and
 - (xv) Any other penalty or disciplinary retaliatory action, whether executed or threatened.
- (B) "Discrimination" does not include the negotiation or purchase of insurance by a nongovernment entity;
- (3) "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 training facility;
 - (I) An individual, association, corporation, or other entity attempting to establish a new healthcare institution or operating an existing healthcare institution; and

(J) Any other institution or location where healthcare services are provided to an individual;

(4) "Healthcare payer" means an employer, health plan, health maintenance organization, insurance company, management services organization, or any other entity that pays for or arranges for the payment of any healthcare service provided to a patient, whether the payment is made in whole or in part;

(5) "Healthcare service" means medical care provided to a patient at any time over the entire course of treatment, including without limitation:

(A) Initial examination;

(B) Patient referral;

(C) Counseling or psychological therapy;

(D) Therapy;

(E) Testing;

(F) Research;

(G) Diagnosis or prognosis;

(H) Instruction;

(I) Dispensing or administering, or both, of any drug, medication, or device;

(J) Set up or performance of a surgery or other procedure;

(K) Recordkeeping and recordmaking procedures and notes related to treatment; and

(L) Other care or services provided by a medical practitioner or healthcare institution;

(6) "Medical practitioner" means an individual who is:

(A) A physician;

(B) A physician assistant;

(C) An advanced practice registered nurse or other nurse practitioner;

(D) A pharmacist;

(E) A medical researcher or laboratory technician to the extent that he or she is requested to actively and materially participate in medical research or testing that violates his or her conscience;

(F) A counselor, social worker, psychologist, or other mental health professional to the extent that he or she is requested to

actively and materially provide or participate in a type of counseling or referral for a healthcare service that violates his or her conscience;

(G) A student of counseling, psychology, social work, or other mental health studies to the extent that he or she is asked to actively and materially participate in a type of counseling or referral for a healthcare service that violates his or her conscience; or

(H) A nurse, pharmacy technician, surgical technician, allied health professional, student, faculty member, contractor, or employee who is requested to actively and materially participate in a surgery, procedure, or medication administration or dispensing that violates his or her conscience; and

(7) "Participate" means to provide, perform, assist with, facilitate, refer for, counsel for, advise with regard to, admit for the purposes of providing, or take part in any way in providing any healthcare service or any form of healthcare service.

17-80-504. Right of conscience.

(a) A medical practitioner, healthcare institution, or healthcare payer:

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

(2) Is not required to participate in a healthcare service that violates his, her, or its conscience;

(3) Is not civilly, criminally, or administratively liable for declining to participate in a healthcare service that violates his, her, or its conscience;

(4) Is not civilly, criminally, or administratively liable for the exercise of conscience rights not to participate in a healthcare service by a medical practitioner employed, contracted, or granted admitting privileges by a healthcare institution; and

(5) Shall not be discriminated against in any manner based upon his, her, or its declining to participate in a healthcare service that violates his, her, or its conscience.

(b) Exercise of the right of conscience is limited to conscience-based objections to a particular healthcare service.

(c) A medical practitioner, healthcare institution, or healthcare

payer that holds himself, herself, or itself out to the public as religious, states in its governing documents that it has a religious purpose or mission, and has internal operating policies or procedures that implement its religious beliefs has the right to make employment, staffing, contracting, and admitting privilege decisions consistent with his, her, or its religious beliefs.

(d) The right of conscience described in subsection (a) of this section does not include the right to deny emergency medical care as required under 42 U.S.C. § 1395dd, as existing on January 1, 2021, or any other federal law governing emergency medical treatment, as existing on January 1, 2021.

(e)(1) When a medical practitioner declines to participate in a healthcare service for reasons of conscience, the medical practitioner shall alert the employing healthcare institution at the earliest reasonable time and comply with any applicable protocol developed under this section.

(2)(A) A healthcare institution may develop a protocol for situations in which a medical practitioner declines to participate in a healthcare service.

(B) The protocol shall provide for prompt patient access to medical records to facilitate transfer, if needed.

(3) This section does not require a healthcare institution or medical practitioner to perform a healthcare service, counsel, or refer a patient regarding a healthcare service that is contrary to the conscience of the medical practitioner or healthcare institution.

(f)(1) This section does not prohibit an employer or contracting healthcare institution from disclosing the specific healthcare services that an applicant would be required to participate in if he or she is hired for the position or contract.

(2) Upon being informed of the specific healthcare services required of the position or contract, the applicant shall disclose whether he, she, or it has a conscience objection to any of those required duties.

(3) However, a medical practitioner or healthcare institution shall be able to decline to participate in a healthcare service that violates his, her, or its conscience if the employer or contracting healthcare institution, after employment, adds healthcare services to a medical practitioner's or healthcare institution's duties that would require the

medical practitioner or healthcare institution to provide services that violate his, her, or its conscience.

(g)(1) A healthcare payer shall file its conscience policies annually with the State Insurance Department by including a comprehensive list by billing code of any and all products, services, and procedures that the healthcare payer shall not pay or make payment for reasons of conscience.

(2) The annual filing described in subdivision (g)(1) of this section shall:

(A) Be provided annually to each beneficiary of the healthcare payer and on the website of the healthcare payer; and

(B) Not be required for any year in which the healthcare payer will not exercise its conscience rights under this subchapter.

(h) A healthcare payer shall not use a conscience objection to refuse or reduce payments to a healthcare provider, healthcare institution, or beneficiary for any product, service, or procedure that is not included in the annual filing required under subdivision (g)(1) of this section.

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

(j) The department may issue rules and take any other action necessary or appropriate to enforce subdivisions (g)-(i) of this section.

17-80-505. Civil remedies.

(a)(1) A civil action for damages or injunctive relief, or both, may be brought by a medical practitioner, healthcare institution, or healthcare payer for a violation of this subchapter.

(2) A claim that the violation of this subchapter was necessary to prevent an additional burden or expense on another medical practitioner, healthcare institution, healthcare payer, or individual, including without limitation a patient, is not an affirmative defense.

(b)(1)(A) Upon a finding of a violation of this subchapter, the aggrieved party shall be entitled to recover three (3) times the amount of any damages incurred, including without limitation damages related to:

(i) The cost of the civil action; and

(ii) Reasonable attorney's fees.

(B) 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.

(2) 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 medical practitioner to his or her prior employment position or board certification or relicensure of a healthcare institution or healthcare payer.

17-80-506. Applicability.

This subchapter is supplemental to existing protections of the right of conscience within the Arkansas Code and does not affect the existing laws within the state concerning protection of the right of conscience.

/s/K. Hammer