

1 State of Arkansas
2 93rd General Assembly
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4

A Bill

SENATE BILL 289

5 By: Senators K. Hammer, Beckham, Bledsoe, Flippo, T. Garner, Gilmore, Hester, Irvin, B. Johnson, M.
6 Johnson, Rapert, G. Stubblefield, D. Sullivan
7 By: Representatives B. Smith, Beck, Bentley, Breaux, Brown, Cloud, Gazaway, Ladyman, Lowery,
8 Lundstrum, McCollum, Payton, Penzo, Richmond, Rye, Speaks, Womack
9

For An Act To Be Entitled

11 AN ACT TO CREATE THE MEDICAL ETHICS AND DIVERSITY
12 ACT; AND FOR OTHER PURPOSES.
13
14

Subtitle

15 TO CREATE THE MEDICAL ETHICS AND
16 DIVERSITY ACT.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code Title 17, Chapter 80, is amended to add an
23 additional subchapter to read as follows:

Subchapter 5 – Medical Ethics and Diversity Act

17-80-501. Title.

27 This subchapter shall be known and may be cited as the "Medical Ethics
28 and Diversity Act".
29

17-80-502. Legislative findings and purpose.

(a) The General Assembly finds that:

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

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



1 through the Hippocratic oath for millennia;

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

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

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

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

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18 17-80-503. Definitions.

19 As used in this subchapter:

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

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

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

35 (i) Termination;

36 (ii) Refusal of staff privileges;

- 1 (iii) Refusal of board certification;
- 2 (iv) Adverse administrative or disciplinary action;
- 3 (v) Demotion;
- 4 (vi) Loss of career specialty;
- 5 (vii) Reduction of wages, benefits, or privileges;
- 6 (viii) Refusal to award any grant, contract, or
- 7 other program;
- 8 (ix) Refusal to provide residency training
- 9 opportunities;
- 10 (x) Refusal to authorize the creation, expansion,
- 11 improvement, acquisition, affiliation, or merger of a healthcare institution;
- 12 (xi) Reassignment to a different shift or job title;
- 13 (xii) Addition or increase of administrative duties;
- 14 (xiii) Denial, deprivation, or disqualification of
- 15 licensure;
- 16 (xiv) Disqualification from or withholding of
- 17 financial aid or other financial assistance; and
- 18 (xv) Any other penalty or disciplinary retaliatory
- 19 action, whether executed or threatened.
- 20 (B) "Discrimination" does not include the negotiation or
- 21 purchase of insurance by a nongovernment entity;
- 22 (3) "Healthcare institution" means a public or private
- 23 organization, corporation, partnership, sole proprietorship, association,
- 24 agency, network, joint venture, or other entity involved in providing
- 25 healthcare services, including without limitation:
- 26 (A) A hospital;
- 27 (B) A clinic;
- 28 (C) A medical center;
- 29 (D) An ambulatory surgical center;
- 30 (E) A private physician's office;
- 31 (F) A pharmacy;
- 32 (G) A nursing home;
- 33 (H) A medical training facility;
- 34 (I) An individual, association, corporation, or other
- 35 entity attempting to establish a new healthcare institution or operating an
- 36 existing healthcare institution; and

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

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

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

11 (A) Initial examination;

12 (B) Patient referral;

13 (C) Counseling or psychological therapy;

14 (D) Therapy;

15 (E) Testing;

16 (F) Research;

17 (G) Diagnosis or prognosis;

18 (H) Instruction;

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

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

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

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

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

27 (A) A physician;

28 (B) A physician's assistant;

29 (C) A nurse, including an advanced practice registered
30 nurse or other nurse practitioner;

31 (D) A nurse's aide;

32 (E) A medical assistant;

33 (F) A healthcare institution employee;

34 (G) A pharmacist;

35 (H) A pharmacy employee;

36 (I) A medical researcher;

1 (J) A student, employee, or faculty member of a medical
2 school or nursing school;

3 (K) A counselor;

4 (L) A social worker;

5 (M) An allied health professional;

6 (N) A laboratory technician;

7 (O) A healthcare provider; or

8 (P) Any professional, paraprofessional, or other
9 individual who furnishes or assists in the provision of a healthcare service;
10 and

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

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16 17-80-504. Right of conscience.

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

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

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

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

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

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

33 (b) A medical practitioner, healthcare institution, or healthcare
34 payer that holds himself, herself, or itself out to the public as religious,
35 states in its governing documents that it has a religious purpose or mission,
36 and has internal operating policies or procedures that implement its

1 religious beliefs has the right to make employment, staffing, contracting,
2 and admitting privilege decisions consistent with his, her, or its religious
3 beliefs.

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

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

12 (2) The annual filing described in subdivision (d)(1) of this
13 section shall:

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

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

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

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

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

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29 17-80-505. Civil remedies.

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

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

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

4 (i) The cost of the civil action; and

5 (ii) Reasonable attorney's fees.

6 (B) The total amount of damages shall not be less than
7 seven thousand five hundred dollars (\$7,500) for each violation in addition
8 to the costs of the civil action and reasonable attorney's fees.

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

11 (c) A court may award injunctive relief, including without limitation
12 ordering the reinstatement of a medical practitioner to his or her prior
13 employment position or board certification or relicensure of a healthcare
14 institution or healthcare payer.

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16 17-80-506. Applicability.

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