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BILL



ANALYSIS

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Senate Bill 975 (as introduced 2-16-12)
Sponsor: Senator John Moolenaar
Committee: Health Policy

Date Completed: 3-7-12

CONTENT

The bill would create the "Religious Liberty and Conscience Protection Act" to do the following:

- **Allow a health facility to assert as a matter of conscience an objection to providing a health care service, and decline to provide that service.**
- **Allow a health care payer to decline to pay for a health care service that violated the payer's conscience.**
- **Allow a health provider to request reasonable accommodation from his or her employer to avoid providing or participating in a health care service to which he or she objected as a matter of conscience.**
- **Require an employer to develop a plan for reasonable accommodation with the provider within seven days after receiving the request.**
- **Prohibit an employer from asking a prospective employee about his or her objection to a health care service, or refusing employment or staff privileges based upon an objection, unless that service were a regular or substantial portion of the normal course of duties for that position.**
- **Allow an employer to give at least 60 days' notice of termination of employment to a health provider who submitted a request regarding a health care service that constituted a regular or substantial portion of the position.**
- **Provide several exceptions to the proposed protections for a health provider.**

- **Protect a facility, payer, or provider who asserted an objection or requested reasonable accommodation from civil, criminal, and administrative liability and action.**
- **Prohibit discrimination against a facility or payer that asserted an objection, or a provider who requested reasonable accommodation.**
- **Allow a provider to bring a civil action if he or she were discriminated against as a result of his or her request for reasonable accommodation.**
- **Prescribe a civil infraction penalty for a violation of the proposed Act.**

Health Facility

A health facility could assert as a matter of conscience an objection to providing a health care service, and could decline to provide a service that violated its conscience. A health facility would have to apply an objection equally to all patients that it served, subject to the proposed Act.

A health facility could not assert a matter of conscience objection if the objection were based on the status of a patient or group of patients, or a patient's insurance coverage, ability to pay, or method of payment. A health facility also could not assert an objection that was based on a disagreement with a health provider employed by, under contract to, or granted privileges by the facility regarding the medical appropriateness of a health care service for

a specific patient, if the patient had consented to the provision of the service, and the facility routinely allowed that service to be performed.

A health facility would have to give notice of its assertion of an objection through written public notice or personally in writing at the time an individual sought to obtain the service.

A health facility's assertion of an objection under the Act could not be a basis for any of the following:

- Civil, criminal, or administrative liability.
- Eligibility discrimination against the facility in a grant, contract, or program, where providing the service was not expressly required as a condition of eligibility.

"Health facility" would mean any of the following, including those facilities or agencies located in a university, college, or other educational institution:

- A clinical laboratory.
- A county medical care facility.
- A freestanding surgical outpatient facility.
- A home for the aged.
- A hospital.
- A hospice or hospice residence.
- A nursing home.

In addition, the term would include the private practice office of a physician licensed to practice medicine or osteopathic medicine and surgery; and any of the following that provides health care services:

- A medical clinic.
- A public or private institution.
- A teaching institution.
- A pharmacy.
- Any other person or legal entity.

"Health care service" would mean a phase of patient medical care, treatment, or procedure, including patient referral; therapy; testing; diagnosis or prognosis; research instruction; prescribing; surgery; dispensing or administering a device, drug, or medication; or other medical care rendered by a health provider or health facility. "Health care service" also would mean medical or scientific research directed toward developing a therapeutic means of

treating an illness, disease, or health condition.

"Health provider" would mean any of the following:

- An individual employed, contracted, or granted privileges to provide or assist in the provision of a health care service.
- A faculty or staff member or a student of a university, college, or educational institution where a health care service is provided, or where education and training regarding the provision of a health care service is conducted.

"Conscience" would mean religious beliefs, moral convictions, or ethical principles held sincerely by an individual or entity. An entity's conscience would have to be determined by reference to existing or proposed religious, moral, or ethical guidelines, mission statement, constitution, bylaws, articles of incorporation, or regulations.

Health Care Payer

A health care payer could decline to do any of the following:

- Pay or arrange payment for, or offer a contract, policy, or product that facilitated payment for, a health care service that violated the payer's conscience.
- Purchase or contribute financially toward the purchase of a contract, policy, or product that included coverage for a service that violated the payer's conscience.

A health care payer and any person that owned, operated, supervised, or managed a health care payer entity would not be civilly, criminally, or administratively liable because the payer declined to pay for or arrange for payment of a service, or declined to purchase or offer a contract, policy, or product that facilitated payment for a service, if the service violated the payer's conscience.

A person, public or private institution, or public official could not discriminate against a health care payer or any person, association, corporation, or other entity operating an existing payer or attempt to establish a new payer, in any manner,

including denial, deprivation, or disqualification with respect to licensure, aid, assistance, benefit, privilege, or authorization because the payer was planning, proposing, or operating a payer that declined to pay for or arrange for payment of a service that violated the payer's conscience.

A public official, agency, or other entity could not deny any form of aid, assistance, grants, or benefits to, or in any other manner coerce, disqualify, or discriminate against, an existing or proposed health care payer because the payer declined to pay for or arrange for the payment of a service that violated the payer's conscience.

"Health care payer" would mean an individual, entity, or employer that purchases, contracts for, pays for, or arranges for the payment of any health care service, including health maintenance organizations, health plans, insurance companies, or management services organizations.

Health Provider

A health provider could request reasonable accommodation to avoid providing or participating in a health care service to which he or she objected as a matter of conscience. ("Participate in a health care service" would mean to instruct, advise, provide, perform, assist in, refer to a particular provider or institution for, admit for purposes of providing, conduct medical or scientific research for, or facilitate payment for a health care service.)

A health provider would have to request reasonable accommodation in writing and give the request directly to his or her supervisor. The provider would have to include in the written statement an explanation of his or her objection and the service or services to which he or she specifically objected to providing or participating in.

A health provider could request reasonable accommodation under any of the following conditions:

- Upon being offered employment.
- At the time the provider adopted an ethical, moral, or religious belief system

that conflicted with participation in a health care service.

- Within 24 hours after he or she was asked or received notice that he or she was scheduled to participate in a service to which he or she objected.

An employer would have to retain a provider's written request for the duration of the person's employment. The request would be valid for the duration of the provider's employment or until he or she rescinded it in writing.

Within seven days after receiving a request, an employer would have to develop a plan for reasonable accommodation with the provider to ensure that the provider would not be scheduled or requested to participate in a service to which he or she objected.

An employer could not ask a prospective employee about his or her objection or potential objection to a health care service unless participation in that service was a regular or substantial portion of the normal course of duties for the position or staff privileges the prospective employee was seeking.

An employer could not refuse employment or staff privileges to a health provider because he or she was known to have previously requested or was currently requesting reasonable accommodation, unless participation in that service was a regular or substantial portion of the normal course of duties for that position or those privileges.

A medical school or other institution for the education or training of a health provider could not penalize or refuse admission to an individual because he or she had filed with the school or institution a request for reasonable accommodation.

The protections afforded to a health provider under the Act would not apply to a provider who submitted to his or her supervisor a written request regarding providing or participating in a certain health care service under any of the following circumstances:

- A patient's condition, in the reasonable medical judgment of an attending physician or medical director, required immediate action and no other qualified

- provider was available to provide the service.
- There was a public health emergency.
- The provider first submitted a request contemporaneously to a patient's requiring or requesting the objectionable service and no other provider was available to provide that service.
- The request was based on the status, insurance coverage, ability to pay, or payment method of a patient or group of patients.
- The request was made in the presence of a patient seeking a service to which the provider objected.

The Act would not relieve a health provider from a duty that existed under any other law pertaining to current standards of acceptable health care practice and procedure to inform a patient of the patient's condition, prognosis, or risk of receiving or forgoing relevant health care services for the condition, including the availability of a service to which the provider objected.

Subject to a collective bargaining agreement, if a health provider submitted a request regarding a health care service that constituted a regular or substantial portion of the provider's current and defined position at that time, the employer could give the provider at least 60 days' notice of the termination of his or her employment.

A provider's objection to providing or participating in a health care service could not be the basis for any of the following:

- Civil liability to another person.
- Criminal action.
- Administrative or licensure action.

If a provider were required by his or her employer to participate in a service more than seven days after the provider submitted a request regarding that service, the provider would be immune from civil liability in an action arising from his or her participation.

A civil action for damages and/or reinstatement of employment could be brought against a person, including a governmental agency, health facility, or other employer, for penalizing or discriminating against a health provider, including penalizing or discriminating in hiring, promotion, transfer, a term or

condition of employment, licensing, or granting of staff privileges or appointments, solely because that provider had submitted a request for reasonable accommodation. Civil damages could be awarded equal to the amount of proven damages and attorney fees. A civil action could include a petition for injunctive relief against a person alleged to have penalized or discriminated against a health provider.

Violations & Penalties

A person who violated the proposed Act would be responsible for a State civil infraction and could be ordered to pay a maximum fine of \$1,000 for each day the violation continued or for each occurrence.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have no fiscal impact on the Department of Licensing and Regulatory Affairs. Any revenue collected under the civil fines established in the bill would benefit public libraries.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.