

SENATE BILL No. 975

February 16, 2012, Introduced by Senators MOOLENAAR, JANSEN, KAHN, COLBECK, GREEN, PROOS, SCHUITMAKER, WALKER, BOOHER, HILDENBRAND, MARLEAU, KOWALL, PAVLOV, BRANDENBURG, MEEKHOF, CASPERSON, EMMONS, HUNE, NOFS, ROBERTSON, ROCCA, PAPPAGEORGE and HANSEN and referred to the Committee on Health Policy.

A bill to protect religious liberty and rights of conscience in the areas of health care and medical and scientific research as it pertains to employment, education and training, and providing or participating in health care services and to the purchasing of or providing for the purchase of health insurance; to provide immunity from liability; and to prescribe penalties and provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "religious liberty and conscience protection act".

3 Sec. 3. As used in this act:

4 (a) "Conscience" means religious beliefs, moral convictions,
5 or ethical principles sincerely held by an individual or entity.

6 For purposes of this act, the conscience of an entity shall be
7 determined by reference to its existing or proposed religious,

1 moral, or ethical guidelines, mission statement, constitution,
2 bylaws, articles of incorporation, or regulations.

3 (b) "Health care payer" or "payer" means an individual,
4 entity, or employer that purchases, contracts for, pays for, or
5 arranges for the payment of, in whole or in part, any health care
6 service, including, but not limited to, health maintenance
7 organizations, health plans, insurance companies, or management
8 services organizations.

9 (c) "Health care service" or "service" means any of the
10 following:

11 (i) A phase of patient medical care, treatment, or procedure,
12 including, but not limited to, patient referral, therapy, testing,
13 diagnosis or prognosis, research instruction, prescribing, surgery,
14 dispensing or administering a device, drug, or medication, or other
15 medical care rendered by a health provider or health facility.

16 (ii) Medical or scientific research directed toward developing
17 a therapeutic means of treating an illness, disease, or health
18 condition.

19 (d) "Health facility" means any of the following:

20 (i) A clinical laboratory, as defined in section 20104 of the
21 public health code, 1978 PA 368, MCL 333.20104.

22 (ii) A county medical care facility, as defined in section
23 20104 of the public health code, 1978 PA 368, MCL 333.20104.

24 (iii) A freestanding surgical outpatient facility, as defined in
25 section 20104 of the public health code, 1978 PA 368, MCL
26 333.20104.

27 (iv) A home for the aged, as defined in section 20106 of the

1 public health code, 1978 PA 368, MCL 333.20106.

2 (v) A hospital, as defined in section 20106 of the public
3 health code, 1978 PA 368, MCL 333.20106.

4 (vi) A hospice, as defined in section 20106 of the public
5 health code, 1978 PA 368, MCL 333.20106.

6 (vii) A hospice residence, as defined in section 21401 of the
7 public health code, 1978 PA 368, MCL 333.21401.

8 (viii) A nursing home, as defined in section 20109 of the public
9 health code, 1978 PA 368, MCL 333.20109.

10 (ix) A facility or agency listed in subparagraphs (i) to (viii)
11 located in a university, college, or other educational institution.

12 (x) The private practice office of a physician. As used in
13 this subparagraph, "physician" means an individual licensed or
14 otherwise authorized to engage in the practice of medicine or
15 osteopathic medicine and surgery under article 15 of the public
16 health code, 1978 PA 368, MCL 333.16101 to 333.18838.

17 (xi) A medical clinic that provides health care services.

18 (xii) A public or private institution that provides health care
19 services.

20 (xiii) A teaching institution that provides health care
21 services.

22 (xiv) A pharmacy that provides health care services. As used in
23 this subparagraph, "pharmacy" means that term as defined in section
24 17707 of the public health code, 1978 PA 368, MCL 333.17707.

25 (xv) Any other person or legal entity that provides health care
26 services.

27 (e) "Health provider" means any of the following:

1 (i) An individual employed, contracted, or granted privileges
2 to provide or assist in the provision of a health care service.

3 (ii) A faculty or staff member or a student of a university,
4 college, or educational institution where a health care service is
5 provided or where education and training regarding the provision of
6 a health care service is conducted.

7 (f) "Participate in a health care service" means to instruct,
8 advise, provide, perform, assist in, refer to a particular provider
9 or institution for, admit for purposes of providing, conduct
10 medical or scientific research for, or facilitate payment for a
11 health care service.

12 Sec. 5. (1) A health facility may assert as a matter of
13 conscience an objection to providing a health care service and may
14 decline to provide a health care service that violates its
15 conscience pursuant to this section. If a health facility asserts
16 as a matter of conscience an objection to providing a health care
17 service under this section, the health facility shall apply that
18 objection equally to all patients that it serves, subject to this
19 act.

20 (2) A health facility shall not assert a matter of conscience
21 objection under subsection (1) under either of the following
22 circumstances:

23 (a) The objection is based on the patient's or a group of
24 patients' status, or a patient's insurance coverage, ability to
25 pay, or method of payment.

26 (b) The objection is based on a disagreement with a health
27 provider employed by, under contract to, or granted privileges by

1 the health facility regarding the medical appropriateness of a
2 health care service for a specific patient, the patient has
3 consented to the provision of the health care service, and the
4 health facility routinely allows that health care service to be
5 performed.

6 (3) A health facility shall provide notice of its assertion of
7 an objection to providing a health care service described in
8 subsection (1) through written public notice or personally in
9 writing at the time an individual seeks to obtain that health care
10 service from the health facility.

11 (4) A health facility's assertion of an objection as described
12 in subsection (1) to providing a health care service shall not be a
13 basis for any of the following:

14 (a) Civil, criminal, or administrative liability.

15 (b) Eligibility discrimination against the health facility in
16 a grant, contract, or program, where providing the health care
17 service is not expressly required as a condition of eligibility for
18 the grant, contract, or program.

19 Sec. 7. (1) A health care payer may decline to do any of the
20 following:

21 (a) Pay or arrange payment for, or offer a contract, policy,
22 or product that facilitates payment for, a health care service that
23 violates the conscience of the payer.

24 (b) Purchase or financially contribute toward the purchase of
25 a contract, policy, or product that includes coverage for a health
26 care service that violates the conscience of the payer.

27 (2) A health care payer and any person that owns, operates,

1 supervises, or manages a health care payer entity is not civilly,
2 criminally, or administratively liable because the health care
3 payer declines to pay for or arrange for payment of a health care
4 service or declines to purchase or offer a contract, policy, or
5 product that facilitates payment for a health care service, if the
6 health care service violates the conscience of the payer.

7 (3) A person, public or private institution, or public
8 official shall not discriminate against a health care payer or any
9 person, association, corporation, or other entity operating an
10 existing health care payer or attempt to establish a new health
11 care payer, in any manner, including, but not limited to, denial,
12 deprivation, or disqualification with respect to licensure, aid,
13 assistance, benefit, privilege, or authorization because the health
14 care payer is planning, proposing, or operating a health care payer
15 that declines to pay for or arrange payment of a health care
16 service that violates the conscience of the payer.

17 (4) A public official, agency, or other entity shall not deny
18 any form of aid, assistance, grants, or benefits to, or in any
19 other manner coerce, disqualify, or discriminate against, a health
20 care payer because the existing or proposed health care payer
21 declines to pay for or arrange for the payment of a health care
22 service that violates the conscience of the payer.

23 Sec. 9. (1) A health provider may request reasonable
24 accommodation to avoid providing or participating in a health care
25 service to which the health provider objects as a matter of
26 conscience.

27 (2) A health provider shall request reasonable accommodation

1 described in subsection (1) in writing. The health provider shall
2 give the written request directly to his or her supervisor. The
3 health provider shall include in the written statement an
4 explanation of his or her objection and the health care service or
5 services to which he or she specifically objects to providing or
6 participating in under this section.

7 (3) A health provider may request reasonable accommodation
8 under any of the following conditions:

9 (a) Upon being offered employment.

10 (b) At the time the health provider adopts an ethical, moral,
11 or religious belief system that conflicts with participation in a
12 health care service.

13 (c) Within 24 hours after he or she is asked or has received
14 notice that he or she is scheduled to participate in a health care
15 service to which he or she objects.

16 (4) An employer shall retain a health provider's written
17 request filed under subsection (2) for the duration of the health
18 provider's employment. The written request is valid for the
19 duration of the health provider's employment or until rescinded by
20 the health provider in writing.

21 (5) Within 7 days after receiving a written request under
22 subsection (2), an employer shall develop a plan for reasonable
23 accommodation with the health provider to ensure that the health
24 provider will not be scheduled or requested to participate in a
25 health care service to which he or she specifically objects.

26 (6) An employer shall not ask a prospective employee regarding
27 his or her objection or potential objection to a health care

1 service unless participation in that health care service is a
2 regular or substantial portion of the normal course of duties for
3 the position or staff privileges the prospective employee is
4 seeking.

5 (7) An employer shall not refuse employment or staff
6 privileges to a health provider because the health provider is
7 known by the employer to have previously requested or is currently
8 requesting reasonable accommodation under subsection (1) unless
9 participation in that health care service is a regular or
10 substantial portion of the normal course of duties for that
11 position or staff privileges.

12 (8) A medical school or other institution for the education or
13 training of a health provider shall not refuse admission to an
14 individual or penalize that individual because the individual has
15 filed in writing with the medical school or other institution a
16 request for reasonable accommodation under subsection (1).

17 (9) The protections afforded to a health provider under this
18 section do not apply to a health provider who has submitted to his
19 or her supervisor a written request regarding providing or
20 participating in a certain health care service under any of the
21 following circumstances:

22 (a) A patient's condition, in the reasonable medical judgment
23 of an attending physician or medical director, requires immediate
24 action and no other qualified health provider is available to
25 provide that health care service.

26 (b) There is a public health emergency.

27 (c) The health provider first submits a request

1 contemporaneously to a patient's requiring or requesting the
2 objectionable health care service and no other health provider is
3 available to provide the health care service.

4 (d) The request is based on a patient's or a group of
5 patients' status or insurance coverage, ability to pay, or method
6 of payment.

7 (e) The request is made in the presence of a patient seeking a
8 health care service to which the health provider objects.

9 (10) This section does not relieve a health provider from a
10 duty that exists under any other law pertaining to current
11 standards of acceptable health care practice and procedure to
12 inform a patient of the patient's condition, prognosis, or risk of
13 receiving or forgoing relevant health care services for the
14 condition, including the availability of a health care service to
15 which the health provider objects.

16 (11) Subject to a collective bargaining agreement, if a health
17 provider submits a request regarding a health care service that at
18 the time the request is submitted constitutes a regular or
19 substantial portion of the health provider's current and defined
20 position, the employer may give the health provider not less than
21 60 days' notice of the termination of his or her employment.

22 (12) A health provider's objection to providing or
23 participating in a health care service as described in subsection
24 (1) shall not be the basis for any of the following:

25 (a) Civil liability to another person.

26 (b) Criminal action.

27 (c) Administrative or licensure action.

1 (13) If a health provider is required by his or her employer
2 to participate in a health care service more than 7 days after the
3 health provider has submitted a written request regarding that
4 health care service, the health provider is immune from civil
5 liability in an action arising from his or her participation in
6 that health care service.

7 Sec. 11. A civil action for damages or reinstatement of
8 employment, or both, may be brought against a person, including,
9 but not limited to, a governmental agency, health facility, or
10 other employer, for penalizing or discriminating against a health
11 provider, including, but not limited to, penalizing or
12 discriminating in hiring, promotion, transfer, a term or condition
13 of employment, licensing, or granting of staff privileges or
14 appointments, solely because that health provider has submitted a
15 request for reasonable accommodation under section 9. Civil damages
16 may be awarded equal to the amount of proven damages and attorney
17 fees. A civil action filed under this section may include a
18 petition for injunctive relief against a person alleged to have
19 penalized or discriminated against a health provider as described
20 in this section.

21 Sec. 13. A person who violates this act is responsible for a
22 state civil infraction and may be ordered to pay a fine of not more
23 than \$1,000.00 for each day the violation continues or a fine of
24 not more than \$1,000.00 for each occurrence.