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:

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

Sec. 3. As used in this act:

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

For purposes of this act, the conscience of an entity shall be determined by reference to its existing or proposed religious,
moral, or ethical guidelines, mission statement, constitution, bylaws, articles of incorporation, or regulations.

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

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

(i) A phase of patient medical care, treatment, or procedure, including, but not limited to, 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.

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

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

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

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

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

(iv) A home for the aged, as defined in section 20106 of the
(v) A hospital, as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

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

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

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

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

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

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

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

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

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

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

(e) "Health provider" means any of the following:
(i) An individual employed, contracted, or granted privileges to provide or assist in the provision of a health care service.

(ii) 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.

(f) "Participate in a health care service" means 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.

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

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

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

(b) The objection is based on a disagreement with a health provider employed by, under contract to, or granted privileges by
the health facility regarding the medical appropriateness of a health care service for a specific patient, the patient has consented to the provision of the health care service, and the health facility routinely allows that health care service to be performed.

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

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

(a) Civil, criminal, or administrative liability.

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

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

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

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

(2) A health care payer and any person that owns, operates,
supervises, or manages a health care payer entity is not civilly, criminally, or administratively liable because the health care payer declines to pay for or arrange for payment of a health care service or declines to purchase or offer a contract, policy, or product that facilitates payment for a health care service, if the health care service violates the conscience of the payer.

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

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

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

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

(3) A health provider may request reasonable accommodation
under any of the following conditions:
(a) Upon being offered employment.
(b) At the time the health provider adopts an ethical, moral,
or religious belief system that conflicts with participation in a
health care service.
(c) Within 24 hours after he or she is asked or has received
notice that he or she is scheduled to participate in a health care
service to which he or she objects.

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

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

(6) An employer shall not ask a prospective employee regarding
his or her objection or potential objection to a health care
service unless participation in that health care service is a
regular or substantial portion of the normal course of duties for
the position or staff privileges the prospective employee is
seeking.

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

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

(9) The protections afforded to a health provider under this
section do not apply to a health provider who has 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) A patient's condition, in the reasonable medical judgment
of an attending physician or medical director, requires immediate
action and no other qualified health provider is available to
provide that health care service.

(b) There is a public health emergency.

(c) The health provider first submits a request
contemporaneously to a patient's requiring or requesting the objectionable health care service and no other health provider is available to provide the health care service.

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

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

(10) This section does not relieve a health provider from a duty that exists 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 health care service to which the health provider objects.

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

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

(a) Civil liability to another person.

(b) Criminal action.

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

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

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