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CONSCIENTIOUS OBJECTOR STATUS FOR HEALTH CARE PROVIDERS

House Bill 5290
Sponsor: Rep. Stephen Ehardt
Committee: Health Policy

Complete to 4-26-00

A SUMMARY OF HOUSE BILL 5290 AS INTRODUCED 2-3-00

The bill would add a new provision to the Public Health Code to allow a health care provider to refuse to participate in a health care service based on a professional, ethical, moral, or religious ground. Under the bill, "health care provider" would include all of the health professions regulated under Article 15 of the code (e.g., physicians, dentists, social workers, physical therapists, etc.), a student of a health facility, or a person employed by a health care institution who directly or indirectly participates in a health care service. A "health care service" would be defined as an action intended to maintain, improve, or restore the health or physical comfort of an individual.

Under the bill, a health care provider would have to give written notification to his or her employer of a conscientious objection, based on the above mentioned grounds, to participating in a health care service. "Participation" would mean, at a minimum, to refer, counsel, perform, administer, prescribe, dispense, treat, withhold, withdraw, diagnose, test, evaluate, train, research, prepare, or provide material or physical assistance in a health care service. The notice would have to be given upon learning that he or she may have to participate in a service or at any time considered to be necessary. If a provider were asked to participate in a health care service before giving written notice of an objection, he or she would have to notify the employer, in writing, at least 24 hours before the service was scheduled. If notification could not be done within this time frame, the employer would have to make a reasonable effort to exclude the provider from participating in the health care service or find a replacement for the provider if the provider still claimed (either orally or in writing) to have a conscientious objection to participation. The written conscientious objection would have to be retained by the provider's employer and would be valid for the duration of his or her employment, or until rescinded in writing by the provider.

Retaliatory measures to a conscientious objection such as civil liability to another person, criminal action, refusal of staff privileges at a health facility or agency, administrative or licensure action, or an involuntary change in terms or conditions of employment or disciplinary action by a provider's employer would be prohibited. The bill would also prohibit a person or governmental agency from refusing to employ or grant staff privileges to a provider who has or was in the process of asserting a conscientious objection, unless participation in the health care service being objected to had been indicated as a part of the normal course of duties in the posting for that position or for staff privileges. Further, a medical school or other institution offering health care training could not

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refuse admission to a person who had filed a conscientious objection. A provider who had filed a conscientious objection and who had been discriminated against in such things as hiring or promotion could bring a civil action for damages or reinstatement of employment. Damages up to three times the amount of proven damages and attorney fees could be awarded. A civil action could also include a petition for injunctive relief against a person or agency (including a governmental agency) which was alleged to have penalized or discriminated against a provider who had filed a conscientious objection.

In addition, the bill would extend a similar right to assert a conscientious objection to providing health care services to a health facility on professional, ethical, moral, or religious grounds. "Health facility", which under the code includes a clinical laboratory, county medical care facility, freestanding surgical outpatient facility, health maintenance organization, home for the aged, hospital, nursing home, hospice and hospice residence, university or college facility, ambulance operation, and medical first response service, would be expanded to also include a private physician's office; a public or private institution; a teaching institution; a pharmacy; and a corporation, partnership, or sole proprietorship that provided a health care service.

A health facility would have to provide a conscientious objection to a health care service through written notice, written postings, or in writing at the time an individual sought to obtain that health care service from the facility. A facility's conscientious objection could not be the basis for criminal, civil, or administrative liability, nor could it be the basis for eligibility discrimination against the facility for a grant, contract, or program, where providing the objectionable service was not expressly required as a condition of eligibility.

Violations of the bill's provisions would fall under existing penalties for violations of the code and would constitute misdemeanor offenses. Penalties could range from fines up to \$1,000 for each day a violation continued, or in the case of violations involving discrimination by or to a health facility, imprisonment for up to six months or a fine up to \$2,000, or both.

MCL 333.20199 et al.

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