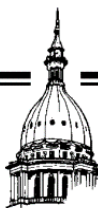




**Senate Fiscal Agency**  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

Senate Bill 136 (Substitute S-1 as reported)  
Sponsor: Senator John Moolenaar  
Committee: Health Policy

Date Completed: 4-10-13

### **RATIONALE**

Legislation was enacted in 1978 to protect a medical institution's choice not to provide abortions, and to protect health care workers who oppose abortion from professional, civil, and criminal penalties for declining to perform or participate in the procedure. Over the years, some people have become concerned about other religious or ethical conflicts that may arise in the delivery of health care--the dispensing of contraceptive drugs, or the removal of a patient from life support, for example. In addition, some have pointed out that moral dilemmas may arise not only among those who would perform certain health care services, but also among those who would finance them, including health insurance companies ("payers"), as well as insurance subscribers and employers that pay for their workers' health benefits ("purchasers"). As a result, it has been suggested that the law should allow individual health care providers, students and employees of institutions that train providers, and medical facilities to decline to provide any service that conflicts with their established moral code; allow insurance companies to exclude from their policies coverage for services they find objectionable; and allow insurers and health care purchasers to opt out of paying for coverage and services as a matter of conscience.

### **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 participating in a health care service, and decline to participate in that service.**
- **Allow a health care payer to decline to offer a contract, policy, or product that paid for, or facilitated payment for, a health care service that violated the payer's conscience.**
- **Allow a health care purchaser to decline to purchase or contribute financially toward the purchase of a contract, policy, or product that included coverage for a health care service that violated the purchaser's conscience.**
- **Allow a health provider employed by, under contract with, or granted privileges by a county medical care facility or nursing home to request accommodation to avoid participating in an act to remove a life-sustaining device, if he or she objected to such an act as a matter of conscience.**
- **Require an employer (other than a county medical care facility or nursing home) that employed, contracted with, or granted privileges to a health provider to adopt and implement a policy to address situations in which a health provider had an objection to participating in a health care service as a matter of conscience.**
- **Require a university, college, or educational institution where education and training regarding the provision of a health care service**

- were conducted to adopt a similar policy applicable to its students, faculty, and staff members.
- Prohibit an employer from asking a prospective health provider about his or her objection to participating in a health care service, or from refusing to employ, contract with, or grant privileges to a provider who requested accommodation, unless the service was a regular or substantial portion of the normal course of duties.
- Prohibit an employer from penalizing a health provider and prohibit a university, college, or educational institution from refusing admission to an individual or penalizing a student or member of its faculty or staff for expressing a conscientious objection or requesting an accommodation to avoid participating in a health care service.
- Protect a payer who asserted an objection from civil, criminal, and administrative liability.
- Protect a facility or provider who asserted an objection or requested reasonable accommodation from civil liability; criminal, administrative, and licensure action; and discrimination regarding eligibility for a grant, contract, or program.
- Prohibit discrimination against a 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 fine of up to \$1,000 per day or per occurrence for a violation of the proposed Act.

The required policies would have to be adopted and implemented within six months after the bill took effect.

"Conscience" would mean sincerely held convictions arising from a belief in God or the tenets of an established religion, or from the ethical or moral principles of a generally recognized philosophy or belief system to which an individual asserting those convictions can refer as a basis for those

convictions. 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 Facility

A health facility could assert as a matter of conscience an objection to participating in a health care service, and could decline to participate in a service that violated its conscience.

A health facility could not assert a matter of conscience objection if the objection were based on the patient or the 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 for other patients with similar medical conditions.

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 liability to another person.
- Criminal action.
- Administrative or licensure action.
- Eligibility discrimination against the facility in a grant, contract, or program.

"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 hospital.
- A hospice or hospice residence.
- A nursing home.

In addition, the term would include the private practice office of a health professional licensed or otherwise authorized to engage in the practice of a health profession, 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 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 to a human patient 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:

- A licensed, registered, or certified individual employed, contracted, or granted privileges to participate in a health care service (excluding an individual employed by or under an independent contract with a health care payer to provide case or disease management services).
- A faculty or staff member or a student of a university, college, or educational institution in an educational program where a health care service is provided, or where education and training regarding the provision of a health care service are conducted.

#### Health Care Payer & Purchaser

A health care payer could decline to offer a contract, policy, or product that paid for, arranged payment for, or facilitated the payment of a health care service that violated the payer's conscience.

"Health care payer" would mean an entity or employer that purchases, contracts for, pays for, arranges for payment of, or facilitates payment of any health care service, including health maintenance organizations,

health plans, health plan sponsors, Blue Cross Blue Shield of Michigan (BCBSM), insurance companies, and management services organizations. The term would not include an individual.

A health care payer and any person that owned, operated, supervised, or managed a health care payer would not be civilly, criminally, or administratively liable because the payer declined to pay for, arrange for payment of, or facilitate 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.

A health care purchaser could decline to 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. ("Health care purchaser" would mean an individual, entity, or employer seeking to purchase or who has purchased a health insurance contract, policy, or product.)

The provisions regarding payers and purchasers would not relieve an individual who received a health care service, or who was responsible for the full or partial payment of a service that a patient received, from paying unless the individual provided notice of his or her objection to the service before it was rendered. This provision and the following provision would not apply to

the parent or guardian of an unemancipated minor who was responsible for payment of the minor's health care service, unless the service was provided with the consent of the parent or guardian.

An individual who received a health care service or who was responsible for payment of a service that a patient received would be responsible for his or her share of the payment for a service that was provided under any of the following circumstances:

- The service was provided under the stated wishes of a competent patient.
- The service was stipulated under an existing power of attorney for health care or a durable power of attorney and designation of patient advocate.
- If either of the first two conditions did not apply, the service was in the patient's best interests as determined by or was consistent with the orders of the attending physician or his or her designee.

#### Health Provider & Employer Policy

Except as provided below concerning a county medical care facility or nursing home, within six months after the bill took effect, an employer that employed, contracted with, or granted privileges to a health provider would have to adopt and implement a policy to address situations in which the health provider had an objection to participating in a health care service as a matter of conscience. An employer that was subject to this requirement and that, on the bill's effective date, already had an adopted and implemented policy in effect that complied with the proposed Act would not have to adopt and implement a new policy.

("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, or conduct medical or scientific research for a health care service.)

The employer would have to include in the policy a statement that a health provider would not be penalized for expressing an objection to, or requesting accommodation to avoid, participating in a health service.

The employer would have to establish a process by which a health provider could

request an accommodation to address his or her objection to participating in a service. The employer could require the provider to make his or her request in writing. In addition, the employer would have to establish a process by which requests for accommodation would be granted or denied, and notice of the decision given to the requesting health provider.

These requirements would not apply to an employer that is a county medical care facility under Section 20104 of the Public Health Code, or a nursing home as defined in the Code. Beginning six months after the bill's effective date, a health provider employed by either of those employers could request accommodation to avoid participating in a health care service to which he or she objected as a matter of conscience, but only for a service that was an act to remove a life-sustaining device, including a ventilator or apparatus for nonoral hydration or nutrition; or was patient care subsequent to the removal of a life-sustaining device. The provider would have to make the request for accommodation in writing and give it directly to his or her assigned supervisor. The provider would have to include in the request an explanation of his or her objection and the specific service to which or she objected.

(Under Section 20104 of the Public Health Code, "county medical care facility" means a nursing care facility, other than a hospital long-term care unit, that provides organized nursing care and medical treatment to at least seven unrelated individuals who are suffering or recovering from illness, injury, or infirmity; and that is owned by a county or counties.

The Code defines "nursing home" as a nursing care facility that provides organized nursing care and medical treatment to seven or more unrelated individuals suffering or recovering from illness, injury, or infirmity. The term does not include a hospital, veterans facility, hospice residence, or hospice, or a unit in a State correctional facility.)

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

- Upon being offered employment, entering into a contract, or privileges being granted.
- At the time the provider adopted sincerely held convictions under which he or she objected as a matter of conscience to participating in the health care service for which he or she was requesting an accommodation.
- Within 24 hours after he or she was asked, received notice, or became aware that he or she was scheduled to participate in a service to which he or she objected.

An employer could not ask a prospective health provider regarding his or her objection or potential objection to participating in a health care service, or refuse to employ, enter into a contract with, or grant privileges to a health provider because the employer knew he or she had requested accommodation previously or was requesting it currently, unless participation in the service met the following requirements, as applicable:

- The service was a regular or substantial portion of the normal course of duties for the employed or contracted position or under staff privileges.
- For an employer that was a county medical care facility or nursing home, the service was one to which a provider could object to participate as a matter of conscience as provided in the Act.

An employer could not penalize a health provider for expressing an objection to participating in a service or for requesting accommodation to avoid participation as a matter of conscience.

Upon receiving a request for accommodation to avoid participation, an employer would have to do all of the following:

- Give a written acknowledgment of the request within 24 hours, and include a description of the timeline for granting or denying the request.
- Promptly grant or deny the request and give notice of the decision to the provider, including the reason for any denial.
- Within seven days after granting a request, develop a plan for accommodation with the provider to ensure that he or she would not be

scheduled or requested 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 or period of contract or privileges. A request that was granted would be valid for the duration of the provider's employment or period of contract or privileges or until he or she rescinded it in writing.

The protections afforded to a health provider under the Act would not apply to a provider who submitted to his or her employer a written request for an accommodation to avoid participating in a health care service under any of the following circumstances:

- A patient's condition, in the reasonable medical judgment of an attending physician, medical director, or registered nurse, required immediate action to avoid permanent physical harm and no other qualified provider was available to provide the service.
- There was a public health emergency.
- The provider first submitted a request at the same time a patient required or requested the objectionable service and no other provider was available to provide that service.
- The request was based on the patient, or the patient's insurance coverage, ability to pay, or payment method.
- 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 current standards of acceptable health care practice and procedures 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.

A health provider's objection to participating in a health care service as authorized under the Act could not be the basis for any of the following:

- Civil liability to another person.
- Criminal action.
- Administrative or licensure action.
- Eligibility discrimination against the provider in a grant, contract, or

program, unless participation in the service was an objective of the grant, contract, or program.

Notwithstanding any law to the contrary, a county medical care facility or nursing home that had granted a request for an accommodation to a full-time health provider could include that provider as a full-time equivalent for the purposes of staffing levels and staffing ratios.

#### University, College, or Educational Institution

Within six months after the bill took effect, a university, college, or educational institution where education and training regarding the provision of a health care service were conducted would have to adopt and implement a policy applicable to its students or faculty or staff members that complied with provisions regarding an employer's policy. A university, college, or educational institution that, on the bill's effective date, already had adopted and implemented a policy that complied with the Act's requirements would not have to adopt and implement a new policy.

A university, college, or educational institution could not refuse admission to an individual or penalize a student or member of the faculty or staff for expressing an objection to or requesting accommodation to avoid participating in a health care service as a matter of conscience.

#### Civil Action

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.

#### Liability

The Act would not excuse or limit the liability of a health care payer, health facility, or health provider for a refusal to participate in a health care service under either of the following circumstances:

- The payer, facility, or provider had entered into a contract specifically to participate in that service.
- The payer, facility, or provider had accepted Federal or State money for the sole purpose of, and specifically conditioned upon, participation in the health care service.

#### 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.

#### Existing Objection to Abortion

The proposed Act would not repeal, supersede, or alter the conscience provisions of Sections 20181 to 20184 of the Public Health Code, or add additional requirements or conditions to those provisions. (Those sections allow a health facility or employee of a health facility to assert a conscientious objection to participation in abortion, protect facilities and employees who assert such an objection from liability, and prohibit a health facility from denying staff privileges or employment to and otherwise discriminating against employees who have participated in or expressed a willingness to participate in the termination of a pregnancy.)

#### Patient Rights

The proposed Act would not diminish or affect the rights of a patient residing in a county medical care facility or a nursing home, as those rights are enumerated in Sections 20201 to 20203 and 21765 of the Public Health Code. (Those sections do the following:

- Require a licensed health facility or agency that provides services directly to patients or residents to adopt a policy describing the rights and responsibilities of patients and residents, and require patients and residents to be treated in accordance with the policy.

- Prescribe guidelines for patient and resident rights and responsibilities.
- Require a nursing home to establish written policies and procedures to implement the protected rights, including a procedure for the investigation and resolution of patient complaints.)

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Religious freedom is one of the nation's founding principles and should be protected in the delivery of health care. Medical professionals, health care institutions, and insurance purchasers and payers should not have to participate in or pay for services that conflict with their religious beliefs or moral values.

Michigan has granted health facilities and health care workers protection against participation in abortion for more than 30 years. Since that law was enacted, a number of events and technological advances have prompted calls for the inclusion of other procedures and services, as well as expansion of this protection to insurers and insurance purchasers. For instance, there have been a number of incidents across the nation in which pharmacy employees who hold religious views against emergency contraception or hormonal birth control methods in general have refused to fill such prescriptions. In some cases, they have been fired or faced other disciplinary action. In light of such situations, Michigan should strengthen its laws to ensure that no health care provider suffers negative consequences for refusing to violate his or her conscience in the workplace.

The need for this legislation is highlighted by a rule issued in 2012 by the Obama administration, requiring employers to cover contraceptives in employee health plans at no additional cost to workers. This rule put employers who do not approve of birth control due to their religious or moral principles in the difficult position of having to choose between complying with the law or following their faith and possibly incurring significant fines. While houses of worship

were exempted, the rule did apply to religiously affiliated entities with broader purposes, such as schools and hospitals, as well as to private business owners, who might have a moral objection to contraception. The rule was later revised to accommodate all religiously affiliated employers by requiring insurance companies to offer separate contraceptive policies directly to employees for free. Despite the revision, concerns remain among many religious entities, especially those that self-insure and cannot shift the cost to a third party. Also, private employers that are not affiliated with any particular faith still are subject to the requirement to provide contraceptive coverage, regardless of the owners' personal beliefs. A number of lawsuits have been filed with regard to the rule, and courts have issued mixed rulings. At this time, it is unclear how this matter finally will be resolved; ultimately, the U.S. Supreme Court might have to determine the outcome. In the meantime, in response to this government overreach, it would be prudent to enact expanded religious and conscience protections at the State level.

Michigan's prohibition against compulsory participation in abortion has existed for several decades with no significant impact on access to the service. By including all health services that some may find immoral or contrary to their faith, and extending this protection to health care payers and purchasers, the bill would strike the correct balance between respect for moral beliefs and patient needs. In addition, the expanded protections could improve the quality of the health care system by helping health facilities attract and retain skilled professionals, who currently might feel forced to choose their conscience over their career.

**Response:** Patients might not always be aware of a particular health care facility's moral code, or whether there were individuals on staff who would refuse to provide certain services, before they arrived at the facility expecting to receive care, especially under urgent circumstances. In an emergency, patients typically are transported to the closest facility, which might not share their beliefs or morals. The bill should require the conspicuous posting of notice if access to specific services would be restricted, so patients or prospective patients could save critical time and seek treatment elsewhere, if desired.

## **Opposing Argument**

While religious freedom is a constitutional right that should be recognized within the health care system, the bill's protections would be too broad and could result in discrimination against individual patients or groups of people, rather than specific services. For example, treatment could be obstructed or denied based on a patient's sex, sexual orientation, or gender identification, further marginalizing people who might already face barriers to quality health care. Although the bill would prohibit a facility or provider from asserting an objection "based on the patient", it is questionable whether this language would be adequate to prevent the denial of care based on a patient's personal traits or behavior. To ensure that the basis for an objection was limited to particular services and did not include the characteristics of an individual patient, the bill should prescribe explicitly the grounds on which an objection could be raised and the circumstances under which it could not.

Furthermore, while certain people could be disproportionately affected by the bill, virtually anyone could face barriers to any procedure, including one that is preventative or essential. Potentially, the bill could result in the delay or denial of access to any medical service that might be proscribed by an individual's moral code, including end-of-life measures, HIV/AIDS treatment and counseling, blood transfusions, vaccines, mammograms, cancer screenings, maternity care, testing and treatment for sexually transmitted infections, emergency contraception (even for victims of sexual assault or relationship violence), infertility treatments, hormone treatments, abortion, birth control, and treatments resulting from stem cell research. The conscience protections afforded by the bill would not be limited to institutions with an explicit religious affiliation or those that do not accept government funding, such as Medicare and Medicaid; under the bill, people could be denied a wide array of services at facilities supported with tax dollars.

In underserved areas where there might be only one health facility or provider, one person's objection to a particular service could effectively result in the denial of that service to an entire community or region. In places with only one emergency room, a

facility's conscientious objection could result in significant harm to a patient. The bill should prohibit a health facility from asserting an objection if there were no other comparable facility with a prescribed distance.

In addition, the bill could conflict with accreditation standards for programs at universities and other institutions for teaching and research, as well as the code of ethics for many health care workers. For example, professional standards dictate that the needs of a patient should take precedence over a physician's personal beliefs. A paramount principle of mental health professionals, such as counselors and psychologists, is that everyone deserves access to quality care unrestricted by personal bias. The bill would run counter to the established professional obligation of providers to respect human diversity and avoid discrimination on any basis. The bill also would conflict with the Public Health Code, which requires the appropriate regulatory body to impose administrative sanctions on an individual who commits an ethics violation. In the delivery of health care, the patient's well-being should always take precedence over the provider's or facility's beliefs. At the very least, a provider who wishes to refrain from providing a specific treatment should refer a patient who needs that treatment to another provider or otherwise coordinate the necessary care without unreasonable delay. The bill, however, would not require a provider or facility to do this. Ultimately, the bill would protect individuals and businesses in the health care industry from liability for failing to provide necessary services and abandoning their responsibility to care for patients.

Also, the bill might encourage health insurers and employers that provide coverage for workers to improve their bottom line by cutting benefits under the guise of morality. In this way, the bill would undermine the foundation of health insurance, which is based on the concepts of shared risk and shared security. The bill also would infringe on the doctor-patient relationship, take control away from patients, and allow employers and insurance companies to disregard evidence-based medicine and make decisions regarding individuals' health based on ideology.



In another matter, the bill's civil penalty provisions could result in litigation, which would divert valuable resources from patient care and increase costs throughout the health care system.

Overall, rather than promoting religious or moral freedom for all, the bill would elevate the beliefs of one provider, facility, purchaser, or payer over the beliefs and well-being of a patient.

**Response:** The bill would prohibit a facility from exercising an objection to the performance of a service on a particular patient if the provider believed the service was medically appropriate and the facility routinely allowed that service to be performed for other patients with similar medical conditions. This language, as well as the prohibition against patient-based discrimination, should alleviate concerns that a facility or provider could deny an individual care based on his or her personal traits or behavior.

Also, the bill's protections for providers would not apply in an emergency. In that case, the health worker would have to provide care regardless of his or her beliefs. Additionally, the bill would not affect individual providers' or facilities' duties to comply with Federal laws requiring emergency care to be provided under prescribed circumstances. (In particular, the Emergency Medical Treatment and Active Labor Act governs when and how a hospital may refuse to treat a patient or may transfer a patient to another hospital when he or she is in an unstable condition.) In a nonemergency situation, a provider who raised a conscientious objection to a procedure still would be required to inform the patient about his or her condition and options for treatment.

### **Opposing Argument**

The bill's requirements regarding accommodation of health providers could be overly burdensome to medical facilities. A variety of belief systems among workers could lead to a number of conscientious objections and make scheduling for adequate staff coverage extraordinarily difficult.

The bill is unnecessary because people who object to certain procedures can choose careers in which those services are not among their professional duties. Also,

general nondiscrimination laws require employers to make reasonable accommodation of workers' religious beliefs, and many health facilities already have implemented policies and procedures voluntarily to address moral disagreements in the manner that is most practical for them. These measures have been largely effective in protecting health employees in the case of an ethical conflict. Reportedly, it is rare that individuals are penalized for declining to provide care that they oppose. A statutory policy applicable to all institutions would not be capable of capturing the nuances of the myriad moral quandaries that might arise in a health care setting. The standard procedures prescribed by the bill would be superfluous and intrusive, and could be cumbersome and costly to implement.

**Response:** While every health facility should have protocols in place to address conscientious objections, not all of them do. The bill would not dictate a specific policy, but merely would require that each facility implement a policy and prescribe timelines for responding to an employee's objection. Each health care entity still would have the flexibility to craft a policy to best meet its needs and the needs of its workers.

### **Opposing Argument**

The bill contains a number of inconsistencies that could create confusion in implementation and enforcement. First, the bill provides that its protections would not apply to a health provider in an emergency situation; however, they would still apply to a facility. Under these circumstances, it is possible that a worker whose personal beliefs dictated that he or she should take certain action to help someone could be hindered by the employing facility. At other times, however, the bill would place the provider's moral code over the facility's. For example, the bill would recognize a health facility's right to operate according to specific moral beliefs, but would prohibit the facility from asking a potential employee about any objection he or she might raise, thus preventing the facility from screening out applicants who might act in opposition to its guiding principles.

In another matter, according to the bill's definition of "participate in a health care service", a provider could decline to instruct or advise a patient, or to refer the patient to another provider or institution to receive the

service. The bill also specifies, however, that it would not relieve a provider who raised a conscientious objection from his or her duty to inform a patient of his or her condition, prognosis, the risk of forgoing treatment, or the availability of the service in question. These provisions appear contradictory, and should be revised to eliminate any ambiguity as to a provider's responsibility to a patient.

Also, the prohibition against objections based on the patient would apply to facilities and providers, but not to payers and purchasers, which could enable an insurer or employer to decline coverage or payment for specific individuals. For example, coverage for prenatal care and labor and delivery could be denied to a person who became pregnant out of wedlock, or a person could be excluded from an insurance plan based on his or her sexual orientation. This inconsistency should be addressed to ensure that individuals were not denied health coverage based on their personal characteristics or behavior, if that coverage were available to others.

**Response:** The bill would authorize a facility to inquire about a prospective employee's beliefs regarding a service that was a regular or substantial portion of the normal course of duties for the position, and to refuse to hire someone who expressed an objection to that service.

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 fine established in the bill would benefit public libraries.

Fiscal Analyst: Josh Sefton

#### A1314\S136a

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.