



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)
Sponsor: Senator John Moolenaar
Committee: Health Policy

Date Completed: 3-13-13

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.)

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

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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.