

1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019  
4

# A Bill

HOUSE BILL 1289

5 By: Representative B. Smith  
6

## For An Act To Be Entitled

8 AN ACT TO CREATE THE MEDICAL CONSCIENCE PROTECTION  
9 ACT; AND FOR OTHER PURPOSES.  
10

### Subtitle

11 TO CREATE THE MEDICAL CONSCIENCE  
12 PROTECTION ACT.  
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16  
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
18

19 SECTION 1. Arkansas Code Title 17, Chapter 80, is amended to add an  
20 additional subchapter to read as follows:

21 Subchapter 5 – Medical Conscience Protection Act  
22

23 17-80-501. Title.

24 This subchapter shall be known and may be cited as the "Medical  
25 Conscience Protection Act".  
26

27 17-80-502. Legislative findings and purpose.

28 (a) The General Assembly finds that:

29 (1) The right of conscience is a fundamental and unalienable  
30 right;

31 (2) The right of conscience was central to the founding of the  
32 United States, has been deeply rooted in the history and tradition of the  
33 United States for centuries, and has been central to the practice of medicine  
34 through the Hippocratic Oath for millennia;

35 (3) Despite its importance, threats to the right of conscience  
36 of healthcare practitioners, healthcare institutions, and healthcare payers



1 have become increasingly more common and severe in recent years;

2 (4) The swift pace of scientific advancement and the expansion  
 3 of medical capabilities, along with the notion that healthcare practitioners,  
 4 healthcare institutions, and healthcare payers are mere public utilities,  
 5 promise only to exacerbate the current crisis unless something is done to  
 6 restore the importance of the right of conscience; and

7 (5) It is the public policy of this state to protect the right  
 8 of conscience of healthcare practitioners, healthcare institutions, and  
 9 healthcare payers.

10 (b) It is the purpose of this subchapter to protect all healthcare  
 11 practitioners, healthcare institutions, and healthcare payers from  
 12 discrimination, punishment, or retaliation as a result of any instance of  
 13 conscientious medical objection.

14  
 15 17-80-503. Definitions.

16 As used in this subchapter:

17 (1)(A) "Conscience" means the religious, moral, ethical, or  
 18 philosophical beliefs or principles held by a healthcare practitioner,  
 19 healthcare institution, or healthcare payer.

20 (B) "Conscience" of a healthcare institution may be  
 21 determined by reference to existing or proposed documents, including without  
 22 limitation any published religious, moral, or ethical guidelines, mission  
 23 statements, constitutions, bylaws, articles of incorporation, regulations, or  
 24 other relevant documents;

25 (2) "Discriminate" means to take an adverse action against, or  
 26 communicate a threat of adverse action to, any healthcare practitioner,  
 27 healthcare institution, or healthcare payer as a result of a decision by a  
 28 healthcare practitioner, healthcare institution, or healthcare payer to  
 29 decline to participate in a healthcare service on the basis of the conscience  
 30 of the healthcare practitioner, healthcare institution, or healthcare payer,  
 31 including without limitation:

32 (A) Termination;

33 (B) Transfer;

34 (C) Refusal of staff privileges;

35 (D) Refusal of board certification;

36 (E) Adverse administrative or disciplinary action;

- 1                   (F) Demotion;
- 2                   (G) Loss of career specialty;
- 3                   (H) Reassignment to a different shift or job title;
- 4                   (I) Reduction of wages, benefits, or privileges;
- 5                   (J) Refusal to award any grant, contract, or other
- 6 program;
- 7                   (K) Refusal to provide residency training opportunities;
- 8                   (L) Refusal to authorize the creation, expansion,
- 9 improvement, acquisition, affiliation, or merger of a healthcare institution
- 10 or a healthcare payer; and
- 11                   (M) Other penalty or disciplinary retaliatory action;
- 12                   (3) "Employer" means an individual or entity that pays for or
- 13 provides health benefits or health insurance coverage as a benefit to the
- 14 employees of the individual or entity;
- 15                   (4) "Healthcare institution" means a public or private
- 16 organization, corporation, partnership, sole proprietorship, association,
- 17 agency, network, joint venture, or other entity involved in providing
- 18 healthcare services, including without limitation:
- 19                   (A) A hospital;
- 20                   (B) A clinic;
- 21                   (C) A medical center;
- 22                   (D) An ambulatory surgical center;
- 23                   (E) A private physician's office;
- 24                   (F) A pharmacy;
- 25                   (G) A nursing home;
- 26                   (H) A medical training facility;
- 27                   (I) An individual, association, corporation, or other
- 28 entity attempting to establish a new healthcare institution or operating an
- 29 existing healthcare institution; and
- 30                   (J) Any other institution or location where healthcare
- 31 services are provided to an individual;
- 32                   (5) "Healthcare payer" means an entity or individual that
- 33 contracts, pays, or arranges for payment, in whole or in part, for a
- 34 healthcare service or product, including without limitation:
- 35                   (A) A health management organization;
- 36                   (B) A health plan;

1                   (C) An insurance company;  
 2                   (D) A management services organization; and  
 3                   (E) An individual, association, corporation, or other  
 4 entity attempting to establish a new healthcare payer or operating an  
 5 existing healthcare payer;

6                   (6) "Healthcare practitioner" means an individual who may be  
 7 asked to participate in any way in a healthcare service, including without  
 8 limitation:

- 9                   (A) A physician;
- 10                  (B) A physician's assistant;
- 11                  (C) A nurse;
- 12                  (D) A nurse's aide;
- 13                  (E) A medical assistant;
- 14                  (F) A healthcare institution employee;
- 15                  (G) A pharmacist;
- 16                  (H) A pharmacy employee;
- 17                  (I) A researcher;
- 18                  (J) A student, employee, or faculty member of a medical  
 19 school or nursing school;
- 20                  (K) A counselor;
- 21                  (L) A social worker; and
- 22                  (M) Any professional, paraprofessional, or other  
 23 individual who furnishes or assists in the providing or performing of  
 24 healthcare services;

25                  (7) "Healthcare service" means a phase of patient medical care,  
 26 treatment, or procedure, including without limitation:

- 27                  (A) Patient referral;
- 28                  (B) Counseling;
- 29                  (C) Therapy;
- 30                  (D) Testing;
- 31                  (E) Research;
- 32                  (F) Diagnosis or prognosis;
- 33                  (G) Instruction;
- 34                  (H) Prescribing, dispensing, or administering of any drug,  
 35 medication, or device;
- 36                  (I) Surgery; and

1 (J) Other care or treatment provided by a healthcare  
 2 provider or healthcare institution;

3 (8) "Participate" means to provide, perform, assist with,  
 4 facilitate, refer for, counsel for, advise with regard to, admit for the  
 5 purposes of providing, or take part in any way in providing any healthcare  
 6 service or any form of healthcare service; and

7 (9) "Pay" means to pay for, contract for, arrange for the  
 8 payment of, in whole or in part, reimburse, or remunerate.

9  
 10 17-80-504. Right of conscience.

11 (a) A healthcare practitioner, healthcare institution, or a healthcare  
 12 payer:

13 (1) Has the right to not participate in or pay for a healthcare  
 14 service that violates his, her, or its conscience;

15 (2) Is not required to participate in a healthcare service that  
 16 violates his, her, or its conscience; and

17 (3) Is not civilly, criminally, or administratively liable for  
 18 declining to participate in a healthcare service that violates his, her, or  
 19 its conscience.

20 (b) An individual, healthcare practitioner, health institution, public  
 21 institution, private institution, public official, or any board or agency  
 22 that certifies competency in a medical specialty shall not discriminate  
 23 against a healthcare practitioner, healthcare institution, or healthcare  
 24 payer in any manner based upon his, her, or its declining to participate in  
 25 or pay for a healthcare service that violates his, her, or its conscience.

26 (c) The right of conscience described in subsection (a) of this  
 27 section does not include the right to deny emergency medical care.

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 29 17-80-505. Notice requirements.

30 (a)(1) A healthcare institution or employer shall prominently post a  
 31 notice, not less than eight and one-half inches by eleven inches (8.5" x 11")  
 32 in size, entitled "Right of Conscience for Healthcare Practitioners,  
 33 Students, and Employees" in a location where other notices are normally  
 34 posted or, if notices are not normally posted, in a location in which  
 35 personnel are likely to see the notice.

36 (2) The purpose of the notice described in subdivision (a)(1) of

1 this section is to fully inform personnel of their right of conscience with  
2 respect to the delivery of healthcare services.

3 (b) A healthcare institution or employer shall ensure that each member  
4 of personnel, student, or employee is informed of his or her right of  
5 conscience with respect to the delivery of healthcare services upon the start  
6 of employment or service.

7 (c) An individual or entity that violates this section is subject to a  
8 civil fine not to exceed ten thousand dollars (\$10,000) per incident.

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10 17-80-506. Civil remedies.

11 (a)(1) A civil action for damages or injunctive relief, or both, may  
12 be brought by a healthcare practitioner, healthcare institution, or  
13 healthcare payer for a violation of this subchapter.

14 (2) A claim that the violation of this subchapter was necessary  
15 to prevent additional burden or expense on another healthcare practitioner,  
16 healthcare institution, healthcare payer, or individual, including without  
17 limitation a patient, is not an affirmative defense.

18 (b)(1)(A) Upon a finding of a violation of this subchapter, the  
19 aggrieved party shall be entitled to recover treble damages, including  
20 without limitation damages related to:

21 (i) Pain and suffering sustained by the individual,  
22 association, corporation, healthcare institution, or other entity;

23 (ii) The cost of the civil action; and

24 (iii) Reasonable attorney's fees.

25 (B) However, the total amount of damages shall not be less  
26 than five thousand dollars (\$5,000) for each violation in addition to the  
27 costs of the civil action and reasonable attorney's fees.

28 (2) Damages shall be cumulative and are not exclusive of other  
29 remedies that may be afforded under state or federal law.

30 (c) A court may award injunctive relief, including without limitation  
31 ordering the reinstatement of a healthcare practitioner to his or her prior  
32 employment position or board certification or relicensure of a healthcare  
33 institution or healthcare payer.

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