

EXHIBIT D

INTERIM STUDY PROPOSAL 2017-039

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

HOUSE BILL 1628

By: Representative B. Smith
By: Senators Rapert, Collins-Smith

Filed with: House Committee on Public Health, Welfare, and Labor
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

AN ACT TO CREATE THE HEALTHCARE FREEDOM OF CONSCIENCE
ACT; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE HEALTHCARE FREEDOM OF
CONSCIENCE ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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

Subchapter 4 – Healthcare Freedom of Conscience Act

17-80-401. Title.

This subchapter shall be known and may be cited as the "Healthcare
Freedom of Conscience Act".

17-80-402. Legislative findings – Purpose.

(a) The General Assembly finds that:

(1) The public policy of the state is to respect and protect the
fundamental right of conscience of individuals and entities who provide
healthcare services; and

(2) Without comprehensive protection, healthcare rights of
conscience may be violated in various ways, including without limitation

1 harassment, demotion, salary reduction, transfer, termination, loss of
2 staffing privileges, denial of aid or benefits, administrative penalty,
3 punishment, or sanction, and refusal to license or certify.

4 (b) The purpose of this subchapter is to:

5 (1) Protect as a basic civil right the right of healthcare
6 providers, healthcare institutions, and healthcare payers to decline to
7 counsel, advise, provide, perform, assist, or participate in providing or
8 performing healthcare services that may violate their consciences; and

9 (2) Prohibit all forms of discrimination, disqualification,
10 coercion, disability, or liability upon a healthcare provider, healthcare
11 institution, and healthcare payer that declines to provide or perform any
12 healthcare service that violates their consciences.

13
14 17-80-403. Definitions.

15 As used in this subchapter:

16 (1) "Conscience" means the religious, moral, or ethical
17 principles held by a healthcare provider, institution, or payer which may be
18 determined by reference to existing or proposed religious, moral, or ethical
19 guidelines, mission statements, constitutions, bylaws, articles of
20 incorporation, regulations, or other relevant documents;

21 (2) "Discriminate" means an adverse action taken in retaliation
22 as a result of the conscience of an individual or entity, including without
23 limitation:

24 (A) Termination;

25 (B) Transfer;

26 (C) Refusal of staff privileges;

27 (D) Denial, deprivation, or disqualification or licensure

28 or certification;

29 (E) Adverse administrative or disciplinary action;

30 (F) Demotion;

31 (G) Loss of career specialty;

32 (H) Reassignment to a different shift;

33 (I) Reduction of wages or benefits;

34 (J) Refusal to award any grant, contract, or other

35 program;

36 (K) Refusal to provide residency training opportunities;

1 (L) Refusal to authorize the creation, expansion,
2 improvement, acquisition, affiliation, or merger; or

3 (M) Other penalty or disciplinary retaliatory action;

4 (3) "Employer" means an individual or entity that pays for or
5 provides health benefits or health insurance coverage as a benefit to the
6 employees of the individual or entity;

7 (4) "Healthcare institution" means a public or private
8 organization, corporation, partnership, sole proprietorship, association,
9 agency, network, joint venture, or other entity involved in providing
10 healthcare services, including without limitation:

11 (A) A hospital;

12 (B) A clinic;

13 (C) A medical center;

14 (D) An ambulatory surgical center;

15 (E) A private physician's office;

16 (F) A pharmacy;

17 (G) A nursing home;

18 (H) A medical school that is part of an institution of
19 higher education;

20 (I) A nursing school;

21 (J) A medical training facility;

22 (K) A person, association, corporation, or other entity
23 attempting to establish a new healthcare institution or operating an existing
24 healthcare institution; or

25 (L) Other institution or location where healthcare
26 services are provided to a person;

27 (5) "Healthcare payer" means an entity or employer that
28 contracts, pays, or arranges for payment of a healthcare service or product,
29 including without limitation:

30 (A) A health management organization;

31 (B) A health plan;

32 (C) An insurance company;

33 (D) A management services organization;

34 (E) A person, association, corporation, or other entity
35 that owns, operates, supervises, or manages a healthcare payer; or

1 (F) A person, association, corporation or other entity
2 attempting to establish a new healthcare payer or operating an existing
3 healthcare payer;

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

7 (A) A physician;

8 (B) A physician's assistant;

9 (C) A nurse;

10 (D) A nurse's aide;

11 (E) A medical assistant;

12 (F) A healthcare institution employee;

13 (G) A pharmacist;

14 (H) A researcher;

15 (I) A student or faculty of a medical school or nursing
16 school;

17 (J) A counselor;

18 (K) A social worker; or

19 (L) Any professional, paraprofessional, or other
20 individual who furnishes or assists in the providing or performing of
21 healthcare services;

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

24 (A) Patient referral;

25 (B) Counseling;

26 (C) Therapy;

27 (D) Testing;

28 (E) Research;

29 (F) Instruction;

30 (G) Prescribing, dispensing, or administering of any drug,
31 medication, or device;

32 (H) Surgery; or

33 (I) Other care or treatment provided by a healthcare
34 provider or healthcare institution; and

35 (8) "Reasonably accommodate" or "reasonable accommodation" means
36 an arrangement to accommodate beliefs or practices consistent with Title VII

1 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., as existing on
2 January 1, 2017.

3
4 17-80-404. Freedom of conscience for healthcare providers.

5 (a) A healthcare provider:

6 (1) Has the right to not participate in a healthcare service
7 that violates his or her conscience; and

8 (2) Shall not be required to participate in a healthcare service
9 that violates his or her conscience.

10 (b) A healthcare provider shall not be civilly, criminally, or
11 administratively liable for declining to participate in a healthcare service
12 that violates his or her conscience.

13 (c) Except as provided in subsections (d) and (e) of this section, a
14 person, healthcare provider, health institution, public institution, private
15 institution, public official, or any board or agency that certifies
16 competency in medical specialties shall not discriminate against a healthcare
17 provider in any manner based upon his or her declining to participate in a
18 healthcare service that violates his or her conscience.

19 (d) Action taken by a health institution or employer of a healthcare
20 provider is not discrimination under this subchapter if the action is taken
21 as a reasonable accommodation to the conscience rights of a healthcare
22 provider.

23 (e) This section does not prohibit an employer or potential employer
24 of a healthcare provider from designating the participation in a healthcare
25 service as a fundamental requirement for a position by providing a written
26 certification that the healthcare service is directly related and essential
27 to a core purpose of the employer.

28 (f) This section applies only to individual healthcare services and
29 does not authorize a healthcare provider to refuse to provide healthcare
30 services to a patient based on the identity or status of the patient.

31
32 17-80-405. Freedom of conscience for healthcare institutions.

33 (a) Except as provided in subsection (d) of this section, a healthcare
34 institution:

35 (1) Has the right to not participate in a healthcare service
36 that violates the conscience of the healthcare institution;

1 (2) Shall not be required to participate in a healthcare service
2 that violates the conscience of the healthcare institution; and

3 (3) Shall not be civilly, criminally, or administratively liable
4 for declining to provide or participate in a healthcare service that violates
5 the conscience of the healthcare institution.

6 (b) A person, public institution, private institution, or public
7 official shall not discriminate against a healthcare institution in any
8 manner based upon declining to provide or participate in a healthcare service
9 that violates the conscience of the healthcare institution.

10 (c) A public official, agency, institution, or entity shall not deny
11 any form of aid, assistance, grant, or benefit in any manner to coerce,
12 disqualify, or discriminate against a healthcare institution in any manner
13 based upon declining to provide or participate in a healthcare service that
14 violates the conscience of the healthcare institution.

15 (d) Subsection (a) of this section applies only if the healthcare
16 institution:

17 (1) Promptly informs the patient or an individual authorized to
18 make healthcare decisions for the patient that the healthcare institution
19 will not provide the healthcare services for reasons of conscience; and

20 (2)(A) If a request for transfer is made by the patient or on
21 the behalf of the patient, makes all reasonable efforts to assist in a prompt
22 transfer of the patient and provides continuing care to the patient until a
23 transfer can be effected or until a determination has been made that a
24 transfer cannot be effected.

25 (B) If a transfer cannot be effected, the healthcare
26 institution shall not be compelled to provide or participate in a healthcare
27 service that violates the conscience of the healthcare institution.

28 (e) This section applies only to individual healthcare services and
29 does not authorize a healthcare provider to refuse to provide healthcare
30 services to a patient based on the identity or status of the patient.

31
32 17-80-406. Freedom of conscience for health payers.

33 (a) Except as provided in subsections (c) and (d) of this section, a
34 healthcare payer:

35 (1) Has the right to decline to pay for a healthcare service
36 that violates the conscience of the healthcare payer;

1 (2) Shall not be required to pay or arrange for payment of a
2 healthcare service that violates the conscience of the healthcare payer; and

3 (3) Shall not be civilly, criminally, or administratively liable
4 for declining to pay or arrange for payment of a healthcare service that
5 violates the conscience of the healthcare payer.

6 (b) A person, public institution, private institution, or public
7 official shall not discriminate against a healthcare payer in any manner
8 based upon declining to pay or arrange for payment of a healthcare service
9 that violates the conscience of the healthcare payer.

10 (c)(1) A healthcare payer shall file its conscience policies annually
11 with the State Insurance Department.

12 (2) The annual filing shall include:

13 (A) A comprehensive list by billing code of any and all
14 products, services, and procedures that the healthcare payer shall not make
15 payment for reasons of conscience; and

16 (B) Other relevant information that may be required by
17 rule of the department.

18 (3) A copy of the filing shall be provided annually to each
19 beneficiary of the healthcare payer and made available to the general public
20 by posting the information on the website of the healthcare payer.

21 (4) An annual filing shall not be required for any year in which
22 the healthcare payer will not exercise its conscience rights under this
23 subchapter.

24 (d) A healthcare payer shall not use a conscience objection to:

25 (1) Refuse to contract with a healthcare provider, healthcare
26 institution, or beneficiary; or

27 (2) Refuse or reduce payments:

28 (A) To a beneficiary, healthcare provider, or healthcare
29 institution for any product, services, or procedure that are not included in
30 the annual filing required in subsection (c) of this section; or

31 (B) For healthcare services to a patient based upon the
32 identity or status of the patient.

33 (e) A healthcare payer shall not compel by undue influence, fraud, or
34 duress a beneficiary, healthcare provider, or healthcare institution to
35 accept a contract or contract amendment that violates the conscience of the
36 beneficiary, healthcare provider, or healthcare institution.

1 (f) The department may issue rules and take other actions as necessary
2 or appropriate to enforce this section.

3
4 17-80-407. Appropriate services and life-sustaining treatment.

5 This subchapter does not condone, authorize, or approve withholding
6 appropriate provision of healthcare services or life-sustaining treatment to
7 patients.

8
9 17-80-408. Civil remedies.

10 (a)(1) A civil action for damages or injunctive relief, or both, may
11 be brought for a violation of this subchapter.

12 (2) A claim that the violation of this subchapter was necessary
13 to prevent additional burden or expense on any other healthcare provider,
14 healthcare institution, healthcare payer, individual, or patient shall not be
15 an affirmative defense.

16 (b)(1) Unless their sovereign immunity is protected under Arkansas
17 Constitution, Article 5, § 20, an individual, association, corporation,
18 entity, or healthcare institution injured by a public individual, private
19 individual, association, agency, entity, or corporation as a result of any
20 conduct prohibited by this subchapter may commence a civil action.

21 (2)(A) Upon a finding of a violation of this subchapter, the
22 aggrieved party shall be entitled to recover treble damages, including
23 without limitation damages related to:

24 (i) Pain and suffering sustained by the individual,
25 association, corporation, entity, or healthcare institution;

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

27 (iii) Reasonable attorney's fees.

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

31 (3) Damages shall be cumulative and are not exclusive of other
32 remedies that may be afforded under state or federal law.

33 (c) A court may award injunctive relief including without limitation
34 ordering the reinstatement of a healthcare provider to his or her prior
35 position.

36

1 17-80-409. Applicability.

2 This subchapter is supplemental to existing conscience protections
3 within the Arkansas Code and does not affect the existing conscience
4 protection laws within the state.

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6
7 Referred by the Arkansas House of Representatives

8 Prepared by: VJF

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