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4

As Engrossed: H3/9/21

A Bill

SENATE BILL 289

5 By: Senators K. Hammer, Beckham, Bledsoe, Flipppo, T. Garner, Gilmore, Hester, Irvin, B. Johnson, M.
6 Johnson, Rapert, G. Stubblefield, D. Sullivan
7 By: Representatives B. Smith, Beck, Bentley, Breaux, Brown, Cloud, Gazaway, Ladyman, Lowery,
8 Lundstrum, McCollum, Payton, Penzo, Richmond, Rye, Speaks, Womack
9

For An Act To Be Entitled

11 AN ACT TO CREATE THE MEDICAL ETHICS AND DIVERSITY
12 ACT; AND FOR OTHER PURPOSES.
13
14

Subtitle

15 TO CREATE THE MEDICAL ETHICS AND
16 DIVERSITY ACT.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

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

Subchapter 5 – Medical Ethics and Diversity Act

17-80-501. Title.

27 This subchapter shall be known and may be cited as the "Medical Ethics
28 and Diversity Act".
29

17-80-502. Legislative findings and purpose.

(a) The General Assembly finds that:

32 (1) The right of conscience is a fundamental and unalienable
33 right;

34 (2) The right of conscience was central to the founding of the
35 United States, has been deeply rooted in the history and tradition of the
36 United States for centuries, and has been central to the practice of medicine



1 through the Hippocratic oath for millennia;

2 (3) Despite its importance, threats to the right of conscience
3 of medical practitioners, healthcare institutions, and healthcare payers have
4 become increasingly more common and severe in recent years;

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

10 (5) It is the public policy of this state to protect the right
11 of conscience of medical practitioners, healthcare institutions, and
12 healthcare payers.

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

17
18 17-80-503. Definitions.

19 As used in this subchapter:

20 (1)(A) "Conscience" means the religious, moral, or ethical
21 beliefs or principles of a medical practitioner, healthcare institution, or
22 healthcare payer.

23 (B) "Conscience" of an institutional entity or corporate
24 body may be determined by reference to existing or proposed documents,
25 including without limitation any published religious, moral, or ethical
26 guidelines or directives, mission statements, constitutions, bylaws, articles
27 of incorporation, policies, regulations, or other relevant documents;

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

35 (i) Termination;

36 (ii) Refusal of staff privileges;

- 1 (iii) Refusal of board certification;
2 (iv) Adverse administrative or disciplinary action;
3 (v) Demotion;
4 (vi) Loss of career specialty;
5 (vii) Reduction of wages, benefits, or privileges;
6 (viii) Refusal to award any grant, contract, or
7 other program;
8 (ix) Refusal to provide residency training
9 opportunities;
10 (x) Refusal to authorize the creation, expansion,
11 improvement, acquisition, affiliation, or merger of a healthcare institution;
12 (xi) Reassignment to a different shift or job title;
13 (xii) Addition or increase of administrative duties;
14 (xiii) Denial, deprivation, or disqualification of
15 licensure;
16 (xiv) Disqualification from or withholding of
17 financial aid or other financial assistance; and
18 (xv) Any other penalty or disciplinary retaliatory
19 action, whether executed or threatened.
20 (B) "Discrimination" does not include the negotiation or
21 purchase of insurance by a nongovernment entity;
22 (3) "Healthcare institution" means a public or private
23 organization, corporation, partnership, sole proprietorship, association,
24 agency, network, joint venture, or other entity involved in providing
25 healthcare services, including without limitation:
26 (A) A hospital;
27 (B) A clinic;
28 (C) A medical center;
29 (D) An ambulatory surgical center;
30 (E) A private physician's office;
31 (F) A pharmacy;
32 (G) A nursing home;
33 (H) A medical training facility;
34 (I) An individual, association, corporation, or other
35 entity attempting to establish a new healthcare institution or operating an
36 existing healthcare institution; and

1 (J) Any other institution or location where healthcare
2 services are provided to an individual;

3 (4) "Healthcare payer" means an employer, health plan, health
4 maintenance organization, insurance company, management services
5 organization, or any other entity that pays for or arranges for the payment
6 of any healthcare service provided to a patient, whether the payment is made
7 in whole or in part;

8 (5) "Healthcare service" means medical care provided to a
9 patient at any time over the entire course of treatment, including without
10 limitation:

11 (A) Initial examination;

12 (B) Patient referral;

13 (C) Counseling or psychological therapy;

14 (D) Therapy;

15 (E) Testing;

16 (F) Research;

17 (G) Diagnosis or prognosis;

18 (H) Instruction;

19 (I) Dispensing or administering, or both, of any drug,
20 medication, or device;

21 (J) Set up or performance of a surgery or other procedure;

22 (K) Recordkeeping and recordmaking procedures and notes
23 related to treatment; and

24 (L) Other care or services provided by a medical
25 practitioner or healthcare institution;

26 (6) "Medical practitioner" means an individual who is:

27 (A) A physician;

28 (B) A physician assistant;

29 (C) An advanced practice registered nurse or other nurse
30 practitioner;

31 (D) A pharmacist;

32 (E) A medical researcher or laboratory technician to the
33 extent that he or she is requested to actively and materially participate in
34 medical research or testing that violates his or her conscience;

35 (F) A counselor, social worker, psychologist, or other
36 mental health professional to the extent that he or she is requested to

1 actively and materially provide or participate in a type of counseling or
2 referral for a healthcare service that violates his or her conscience;

3 (G) A student of counseling, psychology, social work, or
4 other mental health studies to the extent that he or she is asked to actively
5 and materially participate in a type of counseling or referral for a
6 healthcare service that violates his or her conscience; or

7 (H) A nurse, pharmacy technician, surgical technician,
8 allied health professional, student, faculty member, contractor, or employee
9 who is requested to actively and materially participate in a surgery,
10 procedure, or medication administration or dispensing that violates his or
11 her conscience; and

12 (7) "Participate" means to provide, perform, assist with,
13 facilitate, refer for, counsel for, advise with regard to, admit for the
14 purposes of providing, or take part in any way in providing any healthcare
15 service or any form of healthcare service.

16
17 17-80-504. Right of conscience.

18 (a) A medical practitioner, healthcare institution, or healthcare
19 payer:

20 (1) Has the right not to participate in a healthcare service
21 that violates his, her, or its conscience;

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

24 (3) Is not civilly, criminally, or administratively liable for
25 declining to participate in a healthcare service that violates his, her, or
26 its conscience;

27 (4) Is not civilly, criminally, or administratively liable for
28 the exercise of conscience rights not to participate in a healthcare service
29 by a medical practitioner employed, contracted, or granted admitting
30 privileges by a healthcare institution; and

31 (5) Shall not be discriminated against in any manner based upon
32 his, her, or its declining to participate in a healthcare service that
33 violates his, her, or its conscience.

34 (b) Exercise of the right of conscience is limited to conscience-based
35 objections to a particular healthcare service.

36 (c) A medical practitioner, healthcare institution, or healthcare

1 payer that holds himself, herself, or itself out to the public as religious,
2 states in its governing documents that it has a religious purpose or mission,
3 and has internal operating policies or procedures that implement its
4 religious beliefs has the right to make employment, staffing, contracting,
5 and admitting privilege decisions consistent with his, her, or its religious
6 beliefs.

7 (d) The right of conscience described in subsection (a) of this
8 section does not include the right to deny emergency medical care as required
9 under 42 U.S.C. § 1395dd, as existing on January 1, 2021, or any other
10 federal law governing emergency medical treatment, as existing on January 1,
11 2021.

12 (e)(1) When a medical practitioner declines to participate in a
13 healthcare service for reasons of conscience, the medical practitioner shall
14 alert the employing healthcare institution at the earliest reasonable time
15 and comply with any applicable protocol developed under this section.

16 (2)(A) A healthcare institution may develop a protocol for
17 situations in which a medical practitioner declines to participate in a
18 healthcare service.

19 (B) The protocol shall provide for prompt patient access
20 to medical records to facilitate transfer, if needed.

21 (3) This section does not require a healthcare institution or
22 medical practitioner to perform a healthcare service, counsel, or refer a
23 patient regarding a healthcare service that is contrary to the conscience of
24 the medical practitioner or healthcare institution.

25 (f)(1) This section does not prohibit an employer or contracting
26 healthcare institution from disclosing the specific healthcare services that
27 an applicant would be required to participate in if he or she is hired for
28 the position or contract.

29 (2) Upon being informed of the specific healthcare services
30 required of the position or contract, the applicant shall disclose whether
31 he, she, or it has a conscience objection to any of those required duties.

32 (3) However, a medical practitioner or healthcare institution
33 shall be able to decline to participate in a healthcare service that violates
34 his, her, or its conscience if the employer or contracting healthcare
35 institution, after employment, adds healthcare services to a medical
36 practitioner's or healthcare institution's duties that would require the

1 medical practitioner or healthcare institution to provide services that
2 violate his, her, or its conscience.

3 (g)(1) A healthcare payer shall file its conscience policies annually
4 with the State Insurance Department by including a comprehensive list by
5 billing code of any and all products, services, and procedures that the
6 healthcare payer shall not pay or make payment for reasons of conscience.

7 (2) The annual filing described in subdivision (g)(1) of this
8 section shall:

9 (A) Be provided annually to each beneficiary of the
10 healthcare payer and on the website of the healthcare payer; and

11 (B) Not be required for any year in which the healthcare
12 payer will not exercise its conscience rights under this subchapter.

13 (h) A healthcare payer shall not use a conscience objection to refuse
14 or reduce payments to a healthcare provider, healthcare institution, or
15 beneficiary for any product, service, or procedure that is not included in
16 the annual filing required under subdivision (g)(1) of this section.

17 (i) A healthcare payer shall not compel by undue influence, fraud, or
18 duress a healthcare provider, healthcare institution, or beneficiary to
19 accept a contract or contract amendment that violates the conscience of the
20 healthcare provider, healthcare institution, or beneficiary.

21 (j) The department may issue rules and take any other action necessary
22 or appropriate to enforce subdivisions (g)-(i) of this section.

23
24 17-80-505. Civil remedies.

25 (a)(1) A civil action for damages or injunctive relief, or both, may
26 be brought by a medical practitioner, healthcare institution, or healthcare
27 payer for a violation of this subchapter.

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

32 (b)(1)(A) Upon a finding of a violation of this subchapter, the
33 aggrieved party shall be entitled to recover three (3) times the amount of
34 any damages incurred, including without limitation damages related to:

35 (i) The cost of the civil action; and

36 (ii) Reasonable attorney's fees.

