

HOUSE BILL No. 4741

May 5, 2005, Introduced by Reps. Palmer, Gosselin, Casperson, Emmons, Robertson, Shaffer, Brandenburg, Walker, Steil, Jones, Drolet, Caswell, Hildenbrand, Pavlov, Proos, Moolenaar, Stahl, Vander Veen, Newell, Garfield, Hoogendyk, Rocca, Pastor, Palsrok and Van Regenmorter and referred to the Committee on Health Policy.

A bill to provide standards for personnel policies to protect and accommodate the right of conscience of health care providers who conscientiously object to providing or participating in certain health care services under certain circumstances; to provide for protection from certain liability; and to provide for penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "conscientious objector accommodation act".

3 Sec. 3. As used in this act:

4 (a) "Health care provider" means a person licensed or
5 registered under article 15 of the public health code, 1978 PA 368,
6 MCL 333.16101 to 333.18838, a student of a health facility, or

1 another person who is employed by or under contract to a health
2 facility and directly participates in the provision of a health
3 care service. Health care provider does not include a sanitarian or
4 a veterinarian.

5 (b) "Health care service" means the provision or withdrawal
6 of, or research or experimentation involving, a medical diagnosis,
7 treatment, procedure, diagnostic test, device, medication, drug, or
8 other substance intended to affect the physical or mental condition
9 of an individual.

10 (c) "Health facility" means any of the following:

11 (i) A clinical laboratory.

12 (ii) A county medical care facility.

13 (iii) A freestanding surgical outpatient facility.

14 (iv) A home for the aged.

15 (v) A hospital.

16 (vi) A nursing home.

17 (vii) A hospice.

18 (viii) A hospice residence.

19 (ix) A facility or agency listed in subparagraphs (i) to (vi)
20 located in a university, college, or other educational institution.

21 (x) A private physician's office.

22 (xi) A medical clinic.

23 (xii) A public or private institution that provides health care
24 services to an individual.

25 (xiii) A teaching institution that provides health care services
26 to an individual.

27 (xiv) A pharmacy that provides health care services to an

1 individual.

2 (xv) A corporation, partnership, sole proprietorship, limited
3 liability company, or other legal entity that provides health care
4 services to an individual.

5 (d) "Medical director" means that term as defined in section
6 20906 of the public health code, 1978 PA 368, MCL 333.20906.

7 (e) "Participate" or "participating" means, at a minimum, to
8 counsel, refer, perform, administer, prescribe, dispense, treat,
9 withhold, withdraw, diagnose, test, evaluate, train, research,
10 prepare, or provide medical advice or material or physical
11 assistance in a health care service.

12 (f) "Person" means a person as defined in section 1106 of the
13 public health code, 1978 PA 368, MCL 333.1106, or a governmental
14 entity.

15 (g) "Public health emergency" means a condition or situation
16 that presents an immediate threat to the public health, safety, or
17 welfare and requires immediate action to preserve the public
18 health, safety, or welfare.

19 (h) "Refer" means to make a recommendation or give information
20 to a patient regarding a specific health care provider or health
21 facility that provides health care services.

22 (i) "Regular or substantial portion" means that 10% or more of
23 the health care provider's daily or weekly hours of duty consist of
24 providing or participating in that health care service.

25 Sec. 5. (1) A health care provider may object as a matter of
26 conscience to providing or participating in a health care service
27 on ethical, moral, or religious grounds.

1 (2) A health care provider shall notify his or her employer in
2 writing of a conscientious objection described in subsection (1).
3 The written notice shall be given directly to his or her supervisor
4 and shall include a statement explaining his or her conscientious
5 objection and the health care service or services to which he or
6 she specifically objects to providing or participating in under
7 this act.

8 (3) A health care provider may assert his or her conscientious
9 objection under any of the following conditions:

10 (a) Upon being offered employment.

11 (b) At the time the health care provider adopts an ethical,
12 moral, or religious belief system that conflicts with participation
13 in a health care service.

14 (c) Within 24 hours after he or she is asked or has received
15 notice that he or she is scheduled to participate in a health care
16 service to which he or she conscientiously objects.

17 Sec. 7. (1) An employer shall retain a health care provider's
18 written objection filed under section 5 for the duration of the
19 health care provider's employment. The written objection is valid
20 for the duration of the health care provider's employment or until
21 rescinded by the health care provider in writing.

22 (2) Within 7 days after receiving a written objection pursuant
23 to section 5, an employer shall develop an accommodation plan with
24 the health care provider to ensure that the health care provider
25 will not be scheduled or requested to participate in a health care
26 service to which he or she specifically objects.

27 (3) An employer shall not refuse employment or staff

1 privileges to a health care provider who has exercised his or her
2 right to assert an objection to providing or participating in a
3 health care service under section 5, unless participation in that
4 health care service is indicated as a regular or substantial
5 portion of the normal course of duties in the posting of the
6 availability of the position for employment or staff privileges.

7 (4) A medical school or other institution for the education or
8 training of a health care provider shall not refuse admission to an
9 individual or penalize that individual because the individual has
10 filed in writing with the medical school or other institution a
11 conscientious objection to participating in a health care service
12 under this act.

13 Sec. 9. (1) The protections afforded to a health care provider
14 under this act do not apply to a health care provider who has
15 asserted to his or her supervisor a written objection to providing
16 or participating in a certain health care service under any of the
17 following circumstances:

18 (a) A patient's condition, in the reasonable medical judgment
19 of an attending physician or medical director, requires immediate
20 action and no other qualified health care provider is available to
21 provide that health care service.

22 (b) In the event of a public health emergency.

23 (c) If a health care provider first asserts an objection
24 contemporaneously to a patient's requiring or requesting the
25 objectionable health care service and no other health care provider
26 is available to provide the health care service.

27 (d) If the objection is based on the status of the patient,

1 including, but not limited to, the patient's religion, race, color,
2 national origin, age, gender, height, weight, familial status,
3 marital status, participation in high-risk activities, past or
4 present medical disease or condition, sexual orientation,
5 employment status, insurance coverage, ability to pay, or method of
6 payment.

7 (2) This act does not relieve a health care provider from a
8 duty that exists under any other law pertaining to current
9 standards of acceptable health care practice and procedure to
10 inform a patient of the patient's condition, prognosis, risk of
11 receiving or forgoing relevant health care services for the
12 condition, including the availability of a health care service to
13 which the health care provider conscientiously objects.

14 (3) Subject to a collective bargaining agreement, if a health
15 care provider asserts an objection to a health care service that at
16 the time the objection is asserted constitutes a regular or
17 substantial portion of the health care provider's current and
18 defined position, the employer may give the health care provider
19 not less than 60 days' notice of the termination of his or her
20 employment.

21 Sec. 11. (1) Except as provided in section 9, a health care
22 provider's objection to providing or participating in a health care
23 service as described in section 5 shall not be the basis for 1 or
24 more of the following:

- 25 (a) Civil liability to another person.
26 (b) Criminal action.
27 (c) Administrative or licensure action.

1 (2) If a health care provider is required by his or her
2 employer to participate in a health care service more than 7 days
3 after the health care provider has asserted a written objection to
4 that health care service, the health care provider is immune from
5 civil liability in an action arising from his or her participation
6 in that health care service.

7 Sec. 13. (1) A civil action for damages or reinstatement of
8 employment, or both, may be brought against a person, including,
9 but not limited to, a governmental agency, health facility, or
10 other employer, for penalizing or discriminating against a health
11 care provider, including, but not limited to, penalizing or
12 discriminating in hiring, promotion, transfer, a term or condition
13 of employment, licensing, or granting of staff privileges or
14 appointments, solely because that health care provider has asserted
15 an objection to participating in a health care service under
16 section 5. Civil damages may be awarded equal to the amount of
17 proven damages and attorney fees. A civil action filed under this
18 subsection may include a petition for injunctive relief against a
19 person alleged to have penalized or discriminated against a health
20 care provider as described in this subsection.

21 (2) A person who violates this act is responsible for a state
22 civil infraction and may be ordered to pay a fine of not more than
23 \$1,000.00 for each day the violation continues or a fine of not
24 more than \$1,000.00 for each occurrence.