

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 963

Introduced by Murman, 38; Aguilar, 35; Flood, 19; Geist, 25; Gragert, 40;
Halloran, 33; Sanders, 45; Slama, 1.

Read first time January 11, 2022

Committee: Health and Human Services

- 1 A BILL FOR AN ACT relating to health care; to adopt the Medical Ethics
- 2 and Diversity Act; and to provide severability.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 6 of this act shall be known and may be
2 cited as the Medical Ethics and Diversity Act.

3 Sec. 2. (1) The Legislature finds and declares that:

4 (a) The right of conscience is a fundamental and unalienable right.
5 It was central to the founding of the United States, has been deeply
6 rooted in our nation's history and tradition for centuries, and has been
7 central to the practice of medicine, through the Hippocratic Oath, for
8 millennia;

9 (b) Despite its preeminent importance, however, threats to the right
10 of conscience of medical practitioners, health care institutions, and
11 health care payers have become increasingly more common and severe in
12 recent years. The swift pace of scientific advancement and the expansion
13 of medical capabilities, along with the mistaken notion that medical
14 practitioners, health care institutions, and health care payers are mere
15 public utilities, promise only to make the current crisis worse, unless
16 something is done to restore conscience to its rightful place;

17 (c) It is the public policy of the State of Nebraska to protect the
18 right of conscience for medical practitioners, health care institutions,
19 and health care payers; and

20 (d) As the right of conscience is fundamental, no medical
21 practitioner, health care institution, or health care payer should be
22 compelled to participate in or pay for any medical procedure or prescribe
23 or pay for any medication to which such person or entity objects on the
24 basis of conscience, whether such conscience is informed by religious,
25 moral, or ethical beliefs or principles.

26 (2) It is the purpose of the Medical Ethics and Diversity Act to
27 protect medical practitioners, health care institutions, and health care
28 payers from discrimination, punishment, or retaliation as a result of any
29 instance of conscientious medical objection.

30 Sec. 3. For purposes of the Medical Ethics and Diversity Act:

31 (1) Conscience means the ethical, moral, or religious beliefs or

1 principles held by any medical practitioner, health care institution, or
2 health care payer. Conscience with respect to institutional entities or
3 corporate bodies, as opposed to individual persons, is determined by
4 reference to that entity's or body's governing documents, including, but
5 not limited to, any published religious, moral, or ethical guidelines or
6 directives, mission statements, constitutions, articles of incorporation,
7 bylaws, policies, or regulations;

8 (2) Disclose means to formally or informally communicate or transmit
9 information, but such term does not include a communication or
10 transmission concerning policy decisions that lawfully exercise
11 discretionary authority unless the medical practitioner providing the
12 disclosure reasonably believes that the disclosure evinces:

13 (a) Any violation of any law, rule, or regulation;

14 (b) Any violation of any ethical guidelines for the provision of any
15 health care service; or

16 (c) Gross mismanagement, a gross waste of funds, an abuse of
17 authority, or a substantial and specific danger to public health or
18 safety;

19 (3) Discriminate means to take adverse action against, or to
20 threaten the use of adverse action against, any medical practitioner,
21 health care institution, or health care payer as a result of such
22 person's or entity's decision to decline to participate in a health care
23 service on the basis of conscience. The term includes, but is not limited
24 to, termination of employment; transfer from current position; demotion
25 from current position; adverse administrative action; reassignment to a
26 different shift or job title; increased administrative duties; refusal of
27 staff privileges; refusal of board certification; loss of career
28 specialty; reduction of wages, benefits, or privileges; refusal to award
29 a grant, contract, or other program; refusal to provide residency
30 training opportunities; denial, deprivation, or disqualification of
31 licensure; withholding or disqualifying from financial aid and other

1 assistance; impediments to creating any health care institution or health
2 care payer or expanding or improving such health care institution or
3 health care payer; impediments to acquiring, associating with, or merging
4 with any other health care institution or health care payer; the threat
5 of any of the actions listed in this subdivision; or any other penalty,
6 disciplinary action, or retaliatory action, whether executed or
7 threatened. The term does not include the negotiation or purchase of
8 insurance by a nongovernmental entity;

9 (4) Health care institution means any organization, corporation,
10 partnership, association, agency, network, sole proprietorship, joint
11 venture, or any other entity that provides health care services. Health
12 care institutions may include, but are not limited to, any public or
13 private hospital, clinic, medical center, physician organization,
14 professional association, ambulatory surgical center, private physician's
15 office, pharmacy, nursing home, medical school, nursing school, medical
16 training facility, or other entity or location in which health care
17 services are performed;

18 (5) Health care payer means any employer, health plan, health
19 maintenance organization, insurance company, management services
20 organization, or other entity that pays for, or arranges for the payment
21 of, any health care service provided to any patient, whether that payment
22 is made in whole or in part;

23 (6) Health care service means medical research or medical care
24 provided to any patient at any time over the entire course of treatment.
25 The term includes, but is not limited to, testing; diagnosis; referral;
26 dispensing or administering any drug, medication, or device;
27 psychological therapy or counseling; research; prognosis; therapy; record
28 making procedures; notes related to treatment; set up or performance of a
29 surgery or procedure; or any other care or services performed or provided
30 by any medical practitioner including, but not limited to, physicians,
31 nurses, allied health professionals, paraprofessionals, or contractors or

1 employees of health care institutions;

2 (7) Medical practitioner means any person or individual who may be
3 or is asked to participate in any way in any health care service. The
4 term includes, but is not limited to, doctors, nurse practitioners,
5 physician's assistants, nurses, nurses' aides, allied health
6 professionals, medical assistants, hospital employees, clinic employees,
7 nursing home employees, pharmacists, pharmacy technicians and employees,
8 medical school faculty and students, nursing school faculty and students,
9 psychology and counseling faculty and students, medical researchers,
10 laboratory technicians, psychologists, psychiatrists, counselors, mental
11 health professionals, social workers, or any other person who facilitates
12 or participates in the provision of health care services to any person;

13 (8) Participate in a health care service means to provide, perform,
14 assist with, facilitate, refer for, counsel for, advise with regard to,
15 admit for the purposes of providing, or take part in any way in
16 providing, any health care service or any form of such service; and

17 (9) Pay or payment means to pay for, contract for, arrange for the
18 payment of, whether in whole or in part, reimburse, or remunerate.

19 Sec. 4. (1) A medical practitioner, health care institution, or
20 health care payer has the right not to participate in or pay for any
21 health care service which violates such person's or entity's conscience.
22 The exercise of the right of conscience is limited to conscience-based
23 objections to a particular health care service. This section shall not be
24 construed to waive or modify any duty a medical practitioner, health care
25 institution, or health care payer may have to provide other medical
26 services that do not violate such person's or entity's conscience.

27 (2) No medical practitioner, health care institution, or health care
28 payer shall be civilly, criminally, or administratively liable for
29 exercising such person's or entity's right of conscience not to
30 participate in or pay for a health care service. No health care
31 institution shall be civilly, criminally, or administratively liable for

1 the exercise of conscience rights not to participate in a health care
2 service by a medical practitioner employed, contracted, or granted
3 admitting privileges by the health care institution.

4 (3) No medical practitioner, health care institution, or health care
5 payer shall be discriminated against in any manner as a result of such
6 person's or entity's decision to decline to participate in or pay for a
7 health care service on the basis of conscience.

8 (4) Notwithstanding any other provision of the Medical Ethics and
9 Diversity Act to the contrary, a religious medical practitioner, health
10 care institution, or health care payer that holds itself out to the
11 public as religious, states in its governing documents that it has a
12 religious purpose or mission, and has internal operating policies or
13 procedures that implement its religious beliefs, shall have the right to
14 make employment, staffing, contracting, and admitting privilege decisions
15 consistent with its religious beliefs.

16 (5) A medical practitioner may not be scheduled for or assigned to
17 directly or indirectly perform, facilitate, or participate in an abortion
18 unless the practitioner first affirmatively consents in writing to
19 perform, facilitate, or participate in the abortion.

20 (6) Nothing in the Medical Ethics and Diversity Act shall be
21 construed to override the requirement to provide emergency medical
22 treatment to all patients set forth in 42 U.S.C. 1395dd or any other
23 federal law governing emergency medical treatments.

24 Sec. 5. (1) No medical practitioner shall be discriminated against
25 in any manner because the medical practitioner:

26 (a) Provided, caused to be provided, or is about to provide or cause
27 to be provided to such practitioner's employer, the Attorney General, the
28 Nebraska Department of Health and Human Services, any other state agency
29 charged with protecting health care rights of conscience, the Office for
30 Civil Rights of the United States Department of Health and Human
31 Services, or any other federal agency charged with protecting health care

1 rights of conscience information relating to any violation of, or any act
2 or omission the medical practitioner reasonably believes to be a
3 violation of, any provision of the Medical Ethics and Diversity Act;

4 (b) Testified or is about to testify in a proceeding concerning such
5 violation; or

6 (c) Assisted or participated, or is about to assist or participate,
7 in such a proceeding.

8 (2) Unless the disclosure is specifically prohibited by law, no
9 medical practitioner shall be discriminated against in any manner because
10 the medical practitioner disclosed any information that the medical
11 practitioner reasonably believes evinces:

12 (a) Any violation of any law, rule, or regulation;

13 (b) Any violation of any ethical guidelines for the provision of any
14 health care service; or

15 (c) Gross mismanagement, a gross waste of funds, an abuse of
16 authority, or a substantial and specific danger to public health or
17 safety.

18 Sec. 6. (1) A civil action for damages or injunctive relief, or
19 both, may be brought by any medical practitioner, health care
20 institution, or health care payer for any violation of the Medical Ethics
21 and Diversity Act. Any additional burden or expense on another medical
22 practitioner, health care institution, or health care payer arising from
23 the exercise of the right of conscience shall not be a defense to any
24 violation of the act. However, no civil action may be brought against an
25 individual who declines to use or purchase health care services from a
26 specific medical practitioner, health care institution, or health care
27 payer for exercising the rights granted in subsection (1) of section 4 of
28 this act.

29 (2) Any party aggrieved by any violation of the act may commence a
30 civil action and shall be entitled, upon the finding of a violation, to
31 recover the party's actual damages sustained, but in no case shall

1 recovery be less than five thousand dollars, along with the costs of the
2 action and reasonable attorney's fees. Such damages shall be cumulative
3 and in no way limited by any other remedies which may be available under
4 any other federal, state, or municipal law. A court considering such
5 civil action may also award injunctive relief, which may include, but is
6 not limited to, reinstatement of a medical practitioner to the
7 practitioner's previous position, reinstatement of board certification,
8 and relicensure of a health care institution or health care payer.

9 Sec. 7. If any section in this act or any part of any section is
10 declared invalid or unconstitutional, the declaration shall not affect
11 the validity or constitutionality of the remaining portions.