HB609

80016-1

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RFD: Health

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SYNOPSIS: Under current law, health care authorities are vested with the authority to make and to alter appropriate rules and regulations for the conduct of any health care facility and properties owned or operated by it.

This bill would give health care providers, health care institutions, and health care payers the following: The authority to refuse to perform or to participate in health care services that violate their conscience; immunity from civil, criminal, or administrative liability for refusing to provide or participate in a health care service that violates their conscience; immunity from discrimination or disciplinary action including termination, transfer, refusal of staff privileges, shift reassignment, or wage or benefits reduction for declining to participate in a health care service that violates their conscience. Further, the bill would provide for civil actions, damages, remedies, and injunctive relief for violation.

A BILL

TO BE ENTITLED

AN ACT

Relating to health care, allows health care providers, institutions, and payers to decline to perform any health care service that violates their conscience and provide remedies for persons who exercise that right and suffer damages as a result.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act may be known and cited as the "Health Care Rights of Conscience Act."

Section 2. The Legislature hereby finds and declares:

(a) It is the public policy of the State of Alabama to respect and protect the fundamental right of conscience of all individuals who provide health care services.

(b) Without comprehensive protection, health care rights of conscience may be violated in various ways, such as harassment, demotion, salary reduction, transfer, termination, loss of staffing privileges, denial of aid or benefits, and refusal to license, or refusal to certify.

(c) It is the purpose of this act to protect as a basic civil right the right of all health care providers, institutions and payers to decline to counsel, advise, pay for, provide, perform, assist, or participate in providing or

performing health care services that violate their consciences. Such health care services may include, but are not limited to, abortion, artificial birth control, artificial insemination, assisted reproduction, human cloning, euthanasia, human embryonic stem cell research, fetal experimentation, physician-assisted suicide, and sterilization.

(d) Accordingly, it is the purpose of this act to prohibit all forms of discrimination, disqualification, coercion, disability, or liability upon such health care providers, institutions, and payers that decline to perform any health care service that violates their conscience.

Section 3. The following words and terms shall have the meanings ascribed to them in this section, unless otherwise required by their respective context:

(1) CONSCIENCE. The religious, moral, or ethical principles held by a health care provider, the health care institution, or health care payer. For purposes of this act, a health care institution or health care payer's conscience shall be determined by reference to its existing or proposed religious, moral, or ethical guidelines, mission statement, constitution, bylaws, articles of incorporation, regulations, or other relevant documents.

(2) EMPLOYER. Any individual or entity that pays for or provides health benefits or health insurance coverage as a benefit to its employees, whether through a third party, a

health maintenance organization, a program of self insurance, or some other means.

(3) HEALTH CARE INSTITUTION. Any public or private organization, corporation, partnership, sole proprietorship, association, agency, network, joint venture, or other entity that is involved in providing health care services, including, but not limited to: Hospitals, clinics, medical centers, ambulatory surgical centers, private physician's offices, pharmacies, nursing homes, university medical schools and nursing schools, medical training facilities, or other institutions or locations wherein health care services are provided to any person.

(4) HEALTH CARE PAYER. Any entity or employer that contracts for, pays for, or arranges for the payment of, in whole or in part, any health care service or product, including, but not limited to: Health maintenance organizations, health plans, insurance companies, or management services organizations.

(5) HEALTH CARE PROVIDER. Any individual who may be asked to participate in any way in a health care service, including, but not limited to: A physician, physician's assistant, nurse, nurse's aide, medical assistant, hospital employee, clinic employee, nursing home employee, pharmacist, pharmacy employee, researcher, medical or nursing school faculty, student, or employee, counselor, social worker, or any professional, paraprofessional, or any other person who

furnishes, or assists in the furnishing of, health care services.

(6) HEALTH CARE SERVICE. Any phase of patient medical care, treatment or procedure, including, but not limited to, the following: Patient referral, counseling, therapy, testing, diagnosis or prognosis, research, instruction, prescribing, dispensing or administering any device, drug, or medication, surgery, or any other care or treatment rendered by health care providers or health care institutions.

(7) PARTICIPATE. To counsel, advise, provide, perform, assist in, refer for, admit for purposes of providing, or participate in providing, any health care service or any form of such service.

(8) PAY or PAYMENT. To pay, contract for, or otherwise arrange for the payment of, in whole or in part.

Section 4. (a) A health care provider has the right not to participate, and no health care provider shall be required to participate, in a health care service that violates his or her conscience.

(b) No health care provider shall be civilly, criminally, or administratively liable for declining to participate in a health care service that violates his or her conscience.

(c) It shall be unlawful for any person, health care provider, health care institution, public or private institution, public official, or any board which certifies

competency in medical specialties to discriminate against any health care provider in any manner based on his or her declining to participate in a health care service that violates his or her conscience. For purposes of this act, discrimination includes, but is not limited to: Termination, transfer, refusal of staff privileges, refusal of board certification, adverse administrative action, demotion, loss of career specialty, reassignment to a different shift, reduction of wages or benefits, refusal to award any grant, contract, or other program, refusal to provide residency training opportunities, or any other penalty disciplinary or retaliatory action.

Section 5. (a) A health care institution has the right not to participate, and no health care institution shall be required to participate, in a health care service that violates its conscience.

(b) A health care institution that declines to provide or participate in a health care service that violates its conscience shall not be civilly, criminally, or administratively liable if the institution provides a consent form to be signed by a patient before admission to the institution stating that it reserves the right to decline to provide or participate in health care services that violate its conscience.

(c) It shall be unlawful for any person, public or private institution, or public official to discriminate against any health care institution, or any person,

association, corporation, or other entity attempting to establish a new health care institution or operating an existing health care institution, in any manner, including, but not limited to, any denial, deprivation or disqualification with respect to licensure; any aid assistance, benefit, or privilege, including staff privileges; or any authorization, including authorization to create, expand, improve, acquire, or affiliate or merge with any health care institution, because such health care institution, or person, association, or corporation planning, proposing, or operating a health care institution, declines to participate in a health care service which violates the health care institution's conscience.

(d) It shall be unlawful for any public official, agency, institution, or entity to deny any form of aid, assistance, grants, or benefits, or in any other manner to coerce, disqualify, or discriminate against any person, association, corporation, or other entity attempting to establish a new health care institution or operating an existing health care institution because the existing or proposed health care institution declines to participate in a health care service contrary to the health care institution's conscience.

Section 6. (a) A health care payer has the right to decline to pay, and no health care payer shall be required to pay for or arrange for the payment of, any health care service or product that violates its conscience.

(b) No health care payer and no person, association, corporation, or other entity that owns, operates, supervises, or manages a health care payer shall be civilly or criminally liable by reason of the health care payer's declining to pay for or arrange for the payment of any health care service that violates its conscience.

(c) It shall be unlawful for any person, public or private institution, or public official to discriminate against any health care payer, or any person, association, corporation, or other entity: (i) attempting to establish a new health care payer or (ii) operating an existing health care payer, in any manner, including, but not limited to, any denial, deprivation, or disqualification with respect to licensure, aid, assistance, benefit, privilege, or authorization, including, but not limited to, any authorization to create, expand, improve, acquire, or affiliate or merge with, any health care payer, because a health care payer, or a person, association, corporation, or other entity planning, proposing, or operating a health care payer declines to pay for or arrange for the payment of any health care service that violates its conscience.

(d) It shall be unlawful for any public official, agency, institution, or entity to deny any form of aid, assistance, grants, or benefits, or in any other manner to coerce, disqualify, or discriminate against any health care payer, or any person, association, corporation, or other entity attempting to establish a new health care payer or

operating an existing health care payer because the existing or proposed health care payer declines to pay for, or arrange for the payment of, any health care service that is contrary to its conscience.

Section 7. (a) A civil action for damages or injunctive relief, or both, may be brought for the violation of any provision of this act. It shall not be a defense to any claim arising out of the violation of this act that such violation was necessary to prevent additional burden or expense on any other health care provider, health care institution, individual, or patient.

(b) Any individual, association, corporation, entity, or health care institution injured by any public or private individual, association, agency, entity, or corporation by reason of any conduct prohibited by this act may commence a civil action. Upon finding a violation of this act, the aggrieved party shall be entitled to recover three times the actual damages, including pain and suffering, sustained by such individual, association, corporation, entity, or health care institution, the costs of the action, and reasonable attorney's fees; but in no case shall recovery be less than five thousand dollars ($5,000) for each violation in addition to costs of the action and reasonable attorney's fees. These damage remedies shall be cumulative, and not exclusive of other remedies afforded under any other state or federal law.

(c) The court in such civil action may award injunctive relief, including, but not limited to, ordering reinstatement of a health care provider to his or her prior job position.

Section 8. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.