
A BILL FOR AN ACT

RELATING TO THE RIGHT OF CONSCIENCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. **Title.** This Act may be cited as the
2 "Healthcare Providers Rights of Conscience Act of 2008."
3 SECTION 2. **Legislative findings and purposes.** The
4 legislature finds that it is the public policy of Hawaii to
5 respect and protect the fundamental right of conscience of all
6 individuals who provide healthcare services. Without
7 comprehensive protection, healthcare rights of conscience may be
8 violated in various ways, such as harassment, demotion, salary
9 reduction, transfer, termination, loss of staffing privileges,
10 denial of aid or benefits, and refusal of license, or refusal to
11 certify. It is the purpose of this Act to protect as a basic
12 civil right the right of all healthcare providers, institutions
13 and payers to decline counsel, advise, pay for, provide,
14 perform, assist, or participate in providing or performing
15 healthcare services that violate their consciences. Such
16 healthcare services may include, but are not limited to,
17 abortion, artificial birth control, artificial insemination,
18 assisted reproduction, human cloning, euthanasia, human



1 embryonic stem-cell research, fetal experimentation, physician-
2 assisted suicide, and sterilization.

3 Accordingly, it is the purpose of this Act to prohibit all
4 forms of discrimination, disqualification, coercion, disability,
5 or liability upon such healthcare providers, institutions and
6 payers that decline to perform any health care service that
7 violates their conscience.

8 SECTION 3. **Definitions.** As used in this Act:

9 "Conscience" means the religious, moral or ethical
10 principles held by a healthcare provider, the healthcare
11 institution or healthcare payer. For purposes of this Act, a
12 health care institution or healthcare payer's conscience shall
13 be determined by reference to its existing or proposed
14 religious, moral or ethical guidelines, mission statement,
15 constitution, bylaws, articles of incorporation, regulations, or
16 other relevant documents.

17 "Employer" means any person, business, partnership,
18 association, corporation, including the State or any of its
19 political subdivisions, a trust, or nonprofit entity that pays
20 for or provides health benefits or health insurance coverage as
21 a benefit to its employees, whether through a third party, a



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

3 "Healthcare institutions" means an institution, facility or
4 agency licensed, certified or otherwise authorized or permitted
5 by law to provide health care in the ordinary course of
6 business, including but not limited to: hospitals, clinics,
7 medical centers, ambulatory surgical centers, private
8 physician's offices, pharmacies, nursing homes, university
9 medical schools and nursing schools, medical training
10 facilities, or other institutions or locations wherein
11 healthcare services are provided to any person.

12 "Healthcare payer" means any entity or employer that
13 contracts for, pays for, arranges for the payment of, in whole
14 or in part, any healthcare service or product, including, but
15 not limited to health maintenance organizations, health plans,
16 insurance companies, or management services organizations.

17 "Healthcare provider" means an institution, facility or
18 agency licensed, certified, or otherwise authorized or permitted
19 by law to provide health care in the ordinary course of
20 business, including, but not limited to: a physician,
21 physician's assistant, nurse, nurses' aide, medical assistant,
22 hospital employee, clinic employee, nursing home employee,



1 pharmacist, pharmacy employee, researcher, medical or nursing
2 school faculty, student or employee, counselor, social worker,
3 or any professional, paraprofessional, or any other person who
4 furnishes, or assists in the furnishing or, healthcare services.

5 "Health care service" means any program, private or public,
6 other than federal facilities or services, whether organized for
7 profit or not, used, operated, or designed to provide medical
8 diagnosis, treatment, nursing, rehabilitative, or preventative
9 care to any person or persons, including, but not limited to,
10 the following: patient referral, counseling, therapy, testing,
11 diagnosis or prognosis, research, instruction, prescribing,
12 dispensing or administering any device, drug, or medication,
13 surgery, or any other care or treatment rendered by healthcare
14 providers or healthcare institutions.

15 "Participate" in a healthcare service means to counsel,
16 advise, provide, perform, assist in, refer for, admit for
17 purposes of providing, or participate in providing, any
18 healthcare service or any form of such service.

19 "Pay" or "payment" means pay, contract for, or otherwise
20 arrange for the payment of, in whole or part.

21 **SECTION 4. Rights of conscience of health care providers.**

22 (a) A healthcare provider has the right to participate, and no



1 healthcare provider shall be required to participate in a
2 healthcare service that violates his or her conscience.

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

6 (c) It shall be unlawful for any person, healthcare
7 provider, healthcare institution, public or private institution,
8 public official, or any board which certifies competency in
9 medical specialties to discriminate against any healthcare
10 provider in any manner based on his or her declining participate
11 in a healthcare service that violates his or her conscience.

12 For purpose of this Act, discrimination includes, but is not
13 limited to: termination, transfer, refusal of staff privileges,
14 refusal of board certification adverse administrative action,
15 demotion, loss of career specialty, reassignment to a different
16 shift, reduction of wages or benefit refusal to award or grant,
17 contract, or other program, refusal to provide residency
18 training opportunities, or any other penalty, disciplinary or
19 retaliatory action.

20 SECTION 5. **Rights of conscience of health care**

21 **institutions.** (a) A healthcare institution has the right not
22 to participate, and no healthcare institution shall be required



1 to participate, in a healthcare service that violates its
2 conscience.

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

10 (c) It shall be unlawful for any person, public or private
11 institution, or public official to discriminate against any
12 healthcare institution, or any person, association, corporation,
13 or other entity attempting to establish a new healthcare
14 institution or operating an existing healthcare institution, in
15 any manner, including but not limited to any denial, deprivation
16 or disqualification with respect to licensure; any aid
17 assistance, benefit or privilege, including staff privileges; or
18 any authorization, including authorization to create, expand,
19 improve, acquire, or affiliate or merge with any healthcare
20 institution, because such healthcare institution, or person,
21 association, or corporation planning, proposing, or operating a
22 healthcare institution, declines to participate in a healthcare



1 service which violates the healthcare institution's conscience.

2 (d) It shall be unlawful for any public official, agency,
3 institution, or entity to deny any form of aid, assistance,
4 grants, or benefits, or in any other manner to coerce,
5 disqualify, or discriminate against any person, association,
6 corporation, or other entity attempting to establish a new
7 healthcare institution because the existing or proposed
8 healthcare institution declines to participate in a healthcare
9 service contrary to the healthcare institution's conscience.

10 SECTION 6. **Rights of conscience of healthcare payers.** (a)

11 A healthcare payer has the right to decline to pay, and no
12 healthcare payer shall be required to pay for or arrange for the
13 payment of any healthcare service or product that violates its
14 conscience.

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

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



1 healthcare payer, or any person, association, corporation, or
2 other entity (i) attempting to establish a new healthcare payer
3 or (ii) operating an existing healthcare payer, in any manner,
4 including but not limited to, any denial, deprivation, or
5 disqualification with respect to licensure, aid, assistance,
6 benefit, privilege, or authorization, including, but not limited
7 to any authorization to create, expand, improve, acquire, or
8 affiliate or merge with, any healthcare payer, because a
9 healthcare payer, or a person, association, corporation, or
10 other entity planning, proposing, or operating a healthcare
11 payer of any healthcare service that violates its conscience.

12 (d) It shall be unlawful for any public official, agency,
13 institution, or entity to deny any form of aid, assistance,
14 grants, or benefits, or in any other manner to coerce,
15 disqualify, or discriminate against any healthcare payer, or any
16 person, association, corporation, or other entity attempting to
17 establish a new healthcare payer or operating an existing
18 healthcare payer because the existing or proposed healthcare
19 payer declines to pay for, or arrange for the payment of, any
20 healthcare service that is contrary to its conscience.

21 SECTION 7. **Civil remedies.** (a) A civil action for
22 damages or injunctive relief, or both, may be brought for the



1 violation of any provision of this Act. It shall be not be a
2 defense to any claim arising out of the prevent additional
3 burden or expense on any other healthcare provider, healthcare
4 institution, individual, or patient.

5 (b) Any individual, association, corporation, entity, or
6 healthcare institution injured by any public or private
7 individual , association, agency, entity, or corporation by
8 reason of any conduct prohibited by this Act may commence a
9 civil action. Upon finding a violation of this Act, the
10 aggrieved party shall be entitled to recover threefold the
11 actual damages, including pain and suffering, sustained by such
12 individual, association, corporation, entity, or healthcare
13 institution, the costs if the action, and reasonable attorney's
14 fees; but in no case shall recovery be less than \$5,000 for each
15 violation in addition to costs of the action and reasonable
16 attorney's fees. These damages remedies shall be cumulative and
17 not exclusive of other remedies afford under any other state or
18 federal law.

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



1 SECTION 8. If any provision of this Act, or the
 2 application thereof to any person or circumstance is held
 3 invalid, the invalidity does not affect other provisions or
 4 applications of the Act, which can be given effect without the
 5 invalid provision or application, and to this end the provisions
 6 of this Act are severable.

7 SECTION 9. This Act shall take effect on January 1, 2009.
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INTRODUCED BY:

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JAN 18 2008



Report Title:

Health

Description:

Allows health care providers a right of conscience

