

JAN 22 2008

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. This Act may be cited as the Healthcare
2 Providers Rights of Conscience Act.

3 SECTION 2. The legislature finds that it is necessary to
4 respect and protect the fundamental right of conscience of all
5 individuals who provide medical services.

6 Without comprehensive protection, healthcare rights of
7 conscience may be violated in various ways, such as harassment,
8 demotion, salary reduction, transfer, termination, loss of
9 staffing privileges, denial of aid or benefits, and refusal to
10 license, or refusal to certify.

11 It is the purpose of this Act to protect the right of all
12 healthcare providers, institutions, and payers to decline to
13 counsel, advise, pay for, provide, perform, assist, or
14 participate in providing or performing medical services that
15 violate their consciences. Such medical services may include
16 abortion, artificial birth control, artificial insemination,
17 assisted reproduction, human cloning, euthanasia, human



1 "Employer" means any individual or entity that pays for or
2 provides health benefits or health insurance coverage as a
3 benefit to its employees, whether through a third party, a
4 health maintenance organization, a program of self insurance, or
5 some other means.

6 "Healthcare institution" means any public or private
7 organization, corporation, partnership, sole proprietorship,
8 association, agency, network, joint venture, or other entity
9 that is involved in providing medical services, including but
10 not limited to: hospitals, clinics, medical centers, ambulatory
11 surgical centers, private physician's offices, pharmacies,
12 nursing homes, university medical schools and nursing schools,
13 medical training facilities, or other institutions or locations
14 wherein medical services are provided to any person.

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

20 "Healthcare provider" means any individual who may be asked
21 to participate in any way in a medical service, including, but
22 not limited to: a physician, physician's assistant, nurse,



1 nurses' aide, medical assistant, hospital employee, clinic
2 employee, nursing home employee, pharmacist, pharmacy employee,
3 researcher, medical or nursing school faculty, student or
4 employee, counselor, social worker, or any professional,
5 paraprofessional, or any other person who furnishes, or assists
6 in the furnishing of, medical services.

7 "Medical service" means any phase of patient medical care,
8 treatment or procedure, including, but not limited to, the
9 following: patient referral, counseling, therapy, testing,
10 diagnosis or prognosis, research, instruction, prescribing,
11 dispensing or administering any device, drug, or medication,
12 surgery, or any other care or treatment rendered by healthcare
13 providers or healthcare institutions.

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

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

20 **§ -2 Rights of conscience of healthcare providers. (a)**

21 A healthcare provider has the right not to participate, and no
22 healthcare provider shall be required to participate, in a



1 medical service that violates the healthcare provider's
2 conscience.

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

7 (c) It shall be unlawful for any person, healthcare
8 provider, healthcare institution, public or private institution,
9 public official, or any board that certifies competency in
10 medical specialties to discriminate against any healthcare
11 provider in any manner based on the healthcare provider's
12 declining to participate in a medical service that violates the
13 healthcare provider's conscience. For purposes of this Act,
14 discrimination includes, but is not limited to: termination,
15 transfer, refusal of staff privileges, refusal of board
16 certification adverse administrative action, demotion, loss of
17 career specialty, reassignment to a different shift, reduction
18 of wages or benefit, refusal to award any grant, contract, or
19 other program, refusal to provide residency training
20 opportunities, or any other penalty, disciplinary, or
21 retaliatory action.



1 § -3 Rights of conscience of healthcare institutions.

2 (a) A healthcare institution has the right not to participate,
3 and no healthcare institution shall be required to participate,
4 in a medical service that violates its conscience.

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

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



1 person, association, or corporation planning, proposing, or
2 operating the healthcare institution, declines to participate in
3 a medical service that violates the healthcare institution's
4 conscience.

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

14 § -4 Rights of conscience of healthcare payers. (a) A
15 healthcare payer has the right to decline to pay for, and no
16 healthcare payer shall be required to pay for or arrange for the
17 payment of, any medical service or product that violates its
18 conscience.

19 (b) No healthcare payer and no person, association,
20 corporation, or other entity that owns, operates, supervises, or
21 manages a healthcare payer shall be civilly or criminally liable
22 by reason of the healthcare payer's declining to pay for or



1 arrange for the payment of any medical service that violates its
2 conscience.

3 (c) It shall be unlawful for any person, public or private
4 institution, or public official to discriminate against any
5 healthcare payer, or any person, association, corporation, or
6 other entity attempting to establish a new healthcare payer or
7 operating an existing healthcare payer, in any manner, including
8 but not limited to, any denial, deprivation, or disqualification
9 with respect to licensure, aid, assistance, benefit, privilege,
10 or authorization, because a healthcare payer, or a person,
11 association, corporation, or other entity planning, proposing,
12 or operating a healthcare payer declines to pay for or arrange
13 for the payment of any medical service that violates its
14 conscience. "Authorization", for purposes of this subsection
15 shall include, but not be limited to, any authorization to
16 create, expand, improve, acquire, or affiliate or merge with,
17 any healthcare payer.

18 (d) It shall be unlawful for any public official, agency,
19 institution, or entity to deny any form of aid, assistance,
20 grants, or benefits, or in any other manner to coerce,
21 disqualify, or discriminate against any healthcare payer, or any
22 person, association, corporation, or other entity attempting to



1 establish a new healthcare payer or operating an existing
2 healthcare payer because the existing or proposed healthcare
3 payer declines to pay for, or arrange for the payment of, any
4 medical service that is contrary to its conscience.

5 § -5 **Civil Remedies.** (a) A civil action for damages or
6 injunctive relief, or both, may be brought for the violation of
7 any provision of this chapter. It shall not be a defense to any
8 claim arising out of the violation of this chapter that such
9 violation was necessary to prevent additional burden or expense
10 on any other healthcare provider, healthcare institution,
11 individual, or patient.

12 (b) Any individual, association, corporation, entity, or
13 healthcare institution injured by any public or private
14 individual, association, agency, entity, or corporation by
15 reason of any conduct prohibited by this chapter may commence a
16 civil action. Upon finding a violation of this chapter, the
17 aggrieved party shall be entitled to recover triple the actual
18 damages, including pain and suffering, sustained by such
19 individual, association, corporation, entity, or healthcare
20 institution, the costs of the action, and reasonable attorney's
21 fees; but in no case shall recovery be less than \$5,000 for each
22 violation in addition to the costs of the action and reasonable



1 attorney's fees. These damage remedies shall be cumulative and
2 not exclusive of other remedies afforded under any other state
3 or federal law.

4 (c) The court, in a civil action, may award injunctive
5 relief, including, but not limited to, ordering reinstatement of
6 a healthcare provider to the healthcare provider's prior job
7 position."

8 SECTION 4. The provisions of this Act are declared to be
9 severable, and if any provision, word, phrase, or clause of this
10 Act or the application thereof to any person shall be held
11 invalid, such invalidity shall not affect the validity of the
12 remaining portions of this Act.

13 SECTION 5. This Act shall take effect upon its approval.

14

INTRODUCED BY:



Report Title:

Healthcare Providers; Right of Conscience

Description:

Establishes a right of conscience for healthcare providers, institutions, and payers who do not want to participate, provide, or pay for medical services that violate their conscience, including abortions, artificial birth control, artificial insemination, assisted reproduction, human cloning, euthanasia, human embryonic stem cell research, fetal experimentation, physician assisted suicide, and sterilization.

