

JAN 23 2009

A BILL FOR AN ACT

RELATING TO HEALTHCARE.

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:

12 (1) Protect the right of all healthcare providers,
13 institutions, and payers to decline to counsel,
14 advise, pay for, provide, perform, assist, or
15 participate in providing or performing medical
16 services that violate their consciences. Such medical
17 services may include abortion, artificial birth



1 control, artificial insemination, assisted
 2 reproduction, human cloning, euthanasia, human
 3 embryonic stem-cell research, fetal experimentation,
 4 physician-assisted suicide, and sterilization; and
 5 (2) Prohibit all forms of discrimination,
 6 disqualification, coercion, disability, or liability
 7 upon healthcare providers, institutions, and payers
 8 that decline to perform any medical service which
 9 violates their conscience.

10 SECTION 3. The Hawaii Revised Statutes is amended by
 11 adding a new chapter to be appropriately designated and to read
 12 as follows:

13 **"CHAPTER**

14 **HEALTHCARE PROVIDERS RIGHTS OF CONSCIENCE ACT**

15 **§ -1 Definitions.** For the purposes of this chapter, the
 16 following terms shall be defined as follows:

17 "Conscience" means the religious, moral, or ethical
 18 principles held by a healthcare provider, the healthcare
 19 institution, or healthcare payer. A healthcare provider, a
 20 healthcare institution, or healthcare payer's conscience shall
 21 be determined by reference to its existing or proposed
 22 religious, moral, or ethical guidelines, mission statement,



1 constitution, bylaws, articles of incorporation, regulations, or
2 other relevant documents.

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

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

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



1 "Healthcare provider" means any individual who may be asked
2 to participate in any way in a medical service, including but
3 not limited to a physician, physician's assistant, nurse,
4 nurses' aide, medical assistant, hospital employee, clinic
5 employee, nursing home employee, pharmacist, pharmacy employee,
6 researcher, medical or nursing school faculty, student or
7 employee, counselor, social worker, or any professional,
8 paraprofessional, or any other person who furnishes, or assists
9 in the furnishing of, medical services.

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

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

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



1 **§ -2 Rights of conscience of healthcare providers.** (a)

2 A healthcare provider has the right not to participate, and no
3 healthcare provider shall be required to participate, in a
4 medical service that violates the healthcare provider's
5 conscience.

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

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



1 opportunities, or any other penalty, disciplinary, or
2 retaliatory action.

3 **§ -3 Rights of conscience of healthcare institutions.**

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

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

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



1 create, expand, improve, acquire, or affiliate or merge with any
2 healthcare institution, because the healthcare institution, or
3 person, association, or corporation planning, proposing, or
4 operating the healthcare institution, declines to participate in
5 a medical service that violates the healthcare institution's
6 conscience.

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

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

21 (b) No healthcare payer and no person, association,
22 corporation, or other entity that owns, operates, supervises, or



1 manages a healthcare payer shall be civilly or criminally liable
2 by reason of the healthcare payer's declining to pay for or
3 arrange for the payment of any medical service that violates its
4 conscience.

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

20 (d) It shall be unlawful for any public official, agency,
21 institution, or entity to deny any form of aid, assistance,
22 grants, or benefits, or in any other manner to coerce,



1 disqualify, or discriminate against any healthcare payer, or any
2 person, association, corporation, or other entity attempting to
3 establish a new healthcare payer or operating an existing
4 healthcare payer because the existing or proposed healthcare
5 payer declines to pay for, or arrange for the payment of, any
6 medical service that is contrary to its conscience.

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

14 (b) Any individual, association, corporation, entity, or
15 healthcare institution injured by any public or private
16 individual, association, agency, entity, or corporation by
17 reason of any conduct prohibited by this chapter may commence a
18 civil action. Upon the court's finding that a violation of this
19 chapter has occurred, the aggrieved party shall be entitled to
20 recover triple the actual damages, including pain and suffering,
21 sustained by the individual, association, corporation, entity,
22 or healthcare institution, the costs of the action, and



1 reasonable attorney's fees; but in no case shall recovery be
2 less than \$5,000 for each violation in addition to the costs of
3 the action and reasonable attorney's fees. These damage
4 remedies shall be cumulative and not exclusive of other remedies
5 afforded under any other state or federal law.

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

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

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

16

INTRODUCED BY: 



Report Title:

Healthcare Providers; Rights of Conscience

Description:

Establishes rights 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.

