

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

# A Bill

HOUSE BILL 1628

5 By: Representative B. Smith  
6 By: Senators Rapert, Collins-Smith  
7

## For An Act To Be Entitled

9 AN ACT TO CREATE THE HEALTHCARE FREEDOM OF CONSCIENCE  
10 ACT; AND FOR OTHER PURPOSES.  
11

## Subtitle

12  
13 TO CREATE THE HEALTHCARE FREEDOM OF  
14 CONSCIENCE ACT.  
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
19

20 SECTION 1. Arkansas Code Title 17, Chapter 80, is amended to add an  
21 additional subchapter to read as follows:

22 Subchapter 4 – Healthcare Freedom of Conscience Act  
23

24 17-80-401. Title.

25 This subchapter shall be known and may be cited as the "Healthcare  
26 Freedom of Conscience Act".  
27

28 17-80-402. Legislative findings – Purpose.

29 (a) The General Assembly finds that:

30 (1) The public policy of the state is to respect and protect the  
31 fundamental right of conscience of individuals and entities who provide  
32 healthcare services; and

33 (2) Without comprehensive protection, healthcare rights of  
34 conscience may be violated in various ways, including without limitation  
35 harassment, demotion, salary reduction, transfer, termination, loss of  
36 staffing privileges, denial of aid or benefits, administrative penalty,



1 punishment, or sanction, and refusal to license or certify.

2 (b) The purpose of this subchapter is to:

3 (1) Protect as a basic civil right the right of healthcare  
 4 providers, healthcare institutions, and healthcare payers to decline to  
 5 counsel, advise, provide, perform, assist, or participate in providing or  
 6 performing healthcare services that may violate their consciences; and

7 (2) Prohibit all forms of discrimination, disqualification,  
 8 coercion, disability, or liability upon a healthcare provider, healthcare  
 9 institution, and healthcare payer that declines to provide or perform any  
 10 healthcare service that violates their consciences.

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 12 17-80-403. Definitions.

13 As used in this subchapter:

14 (1) "Conscience" means the religious, moral, or ethical  
 15 principles held by a healthcare provider, institution, or payer which may be  
 16 determined by reference to existing or proposed religious, moral, or ethical  
 17 guidelines, mission statements, constitutions, bylaws, articles of  
 18 incorporation, regulations, or other relevant documents;

19 (2) "Discriminate" means an adverse action taken in retaliation  
 20 as a result of the conscience of an individual or entity, including without  
 21 limitation:

22 (A) Termination;

23 (B) Transfer;

24 (C) Refusal of staff privileges;

25 (D) Denial, deprivation, or disqualification or licensure  
 26 or certification;

27 (E) Adverse administrative or disciplinary action;

28 (F) Demotion;

29 (G) Loss of career specialty;

30 (H) Reassignment to a different shift;

31 (I) Reduction of wages or benefits;

32 (J) Refusal to award any grant, contract, or other  
 33 program;

34 (K) Refusal to provide residency training opportunities;

35 (L) Refusal to authorize the creation, expansion,  
 36 improvement, acquisition, affiliation, or merger; or

1                   (M) Other penalty or disciplinary retaliatory action;

2                   (3) "Employer" means an individual or entity that pays for or  
 3 provides health benefits or health insurance coverage as a benefit to the  
 4 employees of the individual or entity;

5                   (4) "Healthcare institution" means a public or private  
 6 organization, corporation, partnership, sole proprietorship, association,  
 7 agency, network, joint venture, or other entity involved in providing  
 8 healthcare services, including without limitation:

9                   (A) A hospital;

10                  (B) A clinic;

11                  (C) A medical center;

12                  (D) An ambulatory surgical center;

13                  (E) A private physician's office;

14                  (F) A pharmacy;

15                  (G) A nursing home;

16                  (H) A medical school that is part of an institution of  
 17 higher education;

18                  (I) A nursing school;

19                  (J) A medical training facility;

20                  (K) A person, association, corporation, or other entity  
 21 attempting to establish a new healthcare institution or operating an existing  
 22 healthcare institution; or

23                  (L) Other institution or location where healthcare  
 24 services are provided to a person;

25                  (5) "Healthcare payer" means an entity or employer that  
 26 contracts, pays, or arranges for payment of a healthcare service or product,  
 27 including without limitation:

28                  (A) A health management organization;

29                  (B) A health plan;

30                  (C) An insurance company;

31                  (D) A management services organization;

32                  (E) A person, association, corporation, or other entity  
 33 that owns, operates, supervises, or manages a healthcare payer; or

34                  (F) A person, association, corporation or other entity  
 35 attempting to establish a new healthcare payer or operating an existing  
 36 healthcare payer;

1           (6) "Healthcare provider" means an individual who may be asked  
 2 to participate in any way in a healthcare service, including without  
 3 limitation:

- 4                   (A) A physician;
- 5                   (B) A physician's assistant;
- 6                   (C) A nurse;
- 7                   (D) A nurse's aide;
- 8                   (E) A medical assistant;
- 9                   (F) A healthcare institution employee;
- 10                  (G) A pharmacist;
- 11                  (H) A researcher;
- 12                  (I) A student or faculty of a medical school or nursing  
 13 school;
- 14                  (J) A counselor;
- 15                  (K) A social worker; or
- 16                  (L) Any professional, paraprofessional, or other  
 17 individual who furnishes or assists in the providing or performing of  
 18 healthcare services;

19           (7) "Healthcare service" means a phase of patient medical care,  
 20 treatment, or procedure, including without limitation:

- 21                   (A) Patient referral;
- 22                   (B) Counseling;
- 23                   (C) Therapy;
- 24                   (D) Testing;
- 25                   (E) Research;
- 26                   (F) Instruction;
- 27                   (G) Prescribing, dispensing, or administering of any drug,  
 28 medication, or device;
- 29                   (H) Surgery; or
- 30                   (I) Other care or treatment provided by a healthcare  
 31 provider or healthcare institution; and

32           (8) "Reasonably accommodate" or "reasonable accommodation" means  
 33 an arrangement to accommodate beliefs or practices consistent with Title VII  
 34 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., as existing on  
 35 January 1, 2017.

1 17-80-404. Freedom of conscience for healthcare providers.

2 (a) A healthcare provider:

3 (1) Has the right to not participate in a healthcare service  
4 that violates his or her conscience; and

5 (2) Shall not be required to participate in a healthcare service  
6 that violates his or her conscience.

7 (b) A healthcare provider shall not be civilly, criminally, or  
8 administratively liable for declining to participate in a healthcare service  
9 that violates his or her conscience.

10 (c) Except as provided in subsections (d) and (e) of this section, a  
11 person, healthcare provider, health institution, public institution, private  
12 institution, public official, or any board or agency that certifies  
13 competency in medical specialties shall not discriminate against a healthcare  
14 provider in any manner based upon his or her declining to participate in a  
15 healthcare service that violates his or her conscience.

16 (d) Action taken by a health institution or employer of a healthcare  
17 provider is not discrimination under this subchapter if the action is taken  
18 as a reasonable accommodation to the conscience rights of a healthcare  
19 provider.

20 (e) This section does not prohibit an employer or potential employer  
21 of a healthcare provider from designating the participation in a healthcare  
22 service as a fundamental requirement for a position by providing a written  
23 certification that the healthcare service is directly related and essential  
24 to a core purpose of the employer.

25 (f) This section applies only to individual healthcare services and  
26 does not authorize a healthcare provider to refuse to provide healthcare  
27 services to a patient based on the identity or status of the patient.

28  
29 17-80-405. Freedom of conscience for healthcare institutions.

30 (a) Except as provided in subsection (d) of this section, a healthcare  
31 institution:

32 (1) Has the right to not participate in a healthcare service  
33 that violates the conscience of the healthcare institution;

34 (2) Shall not be required to participate in a healthcare service  
35 that violates the conscience of the healthcare institution; and

36 (3) Shall not be civilly, criminally, or administratively liable

1 for declining to provide or participate in a healthcare service that violates  
2 the conscience of the healthcare institution.

3 (b) A person, public institution, private institution, or public  
4 official shall not discriminate against a healthcare institution in any  
5 manner based upon declining to provide or participate in a healthcare service  
6 that violates the conscience of the healthcare institution.

7 (c) A public official, agency, institution, or entity shall not deny  
8 any form of aid, assistance, grant, or benefit in any manner to coerce,  
9 disqualify, or discriminate against a healthcare institution in any manner  
10 based upon declining to provide or participate in a healthcare service that  
11 violates the conscience of the healthcare institution.

12 (d) Subsection (a) of this section applies only if the healthcare  
13 institution:

14 (1) Promptly informs the patient or an individual authorized to  
15 make healthcare decisions for the patient that the healthcare institution  
16 will not provide the healthcare services for reasons of conscience; and

17 (2)(A) If a request for transfer is made by the patient or on  
18 the behalf of the patient, makes all reasonable efforts to assist in a prompt  
19 transfer of the patient and provides continuing care to the patient until a  
20 transfer can be effected or until a determination has been made that a  
21 transfer cannot be effected.

22 (B) If a transfer cannot be effected, the healthcare  
23 institution shall not be compelled to provide or participate in a healthcare  
24 service that violates the conscience of the healthcare institution.

25 (e) This section applies only to individual healthcare services and  
26 does not authorize a healthcare provider to refuse to provide healthcare  
27 services to a patient based on the identity or status of the patient.

28  
29 17-80-406. Freedom of conscience for health payers.

30 (a) Except as provided in subsections (c) and (d) of this section, a  
31 healthcare payer:

32 (1) Has the right to decline to pay for a healthcare service  
33 that violates the conscience of the healthcare payer;

34 (2) Shall not be required to pay or arrange for payment of a  
35 healthcare service that violates the conscience of the healthcare payer; and

36 (3) Shall not be civilly, criminally, or administratively liable

1 for declining to pay or arrange for payment of a healthcare service that  
2 violates the conscience of the healthcare payer.

3 (b) A person, public institution, private institution, or public  
4 official shall not discriminate against a healthcare payer in any manner  
5 based upon declining to pay or arrange for payment of a healthcare service  
6 that violates the conscience of the healthcare payer.

7 (c)(1) A healthcare payer shall file its conscience policies annually  
8 with the State Insurance Department.

9 (2) The annual filing shall include:

10 (A) A comprehensive list by billing code of any and all  
11 products, services, and procedures that the healthcare payer shall not make  
12 payment for reasons of conscience; and

13 (B) Other relevant information that may be required by  
14 rule of the department.

15 (3) A copy of the filing shall be provided annually to each  
16 beneficiary of the healthcare payer and made available to the general public  
17 by posting the information on the website of the healthcare payer.

18 (4) An annual filing shall not be required for any year in which  
19 the healthcare payer will not exercise its conscience rights under this  
20 subchapter.

21 (d) A healthcare payer shall not use a conscience objection to:

22 (1) Refuse to contract with a healthcare provider, healthcare  
23 institution, or beneficiary; or

24 (2) Refuse or reduce payments:

25 (A) To a beneficiary, healthcare provider, or healthcare  
26 institution for any product, services, or procedure that are not included in  
27 the annual filing required in subsection (c) of this section; or

28 (B) For healthcare services to a patient based upon the  
29 identity or status of the patient.

30 (e) A healthcare payer shall not compel by undue influence, fraud, or  
31 duress a beneficiary, healthcare provider, or healthcare institution to  
32 accept a contract or contract amendment that violates the conscience of the  
33 beneficiary, healthcare provider, or healthcare institution.

34 (f) The department may issue rules and take other actions as necessary  
35 or appropriate to enforce this section.

36

1 17-80-407. Appropriate services and life-sustaining treatment.

2 This subchapter does not condone, authorize, or approve withholding  
3 appropriate provision of healthcare services or life-sustaining treatment to  
4 patients.

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6 17-80-408. Civil remedies.

7 (a)(1) A civil action for damages or injunctive relief, or both, may  
8 be brought for a violation of this subchapter.

9 (2) A claim that the violation of this subchapter was necessary  
10 to prevent additional burden or expense on any other healthcare provider,  
11 healthcare institution, healthcare payer, individual, or patient shall not be  
12 an affirmative defense.

13 (b)(1) Unless their sovereign immunity is protected under Arkansas  
14 Constitution, Article 5, § 20, an individual, association, corporation,  
15 entity, or healthcare institution injured by a public individual, private  
16 individual, association, agency, entity, or corporation as a result of any  
17 conduct prohibited by this subchapter may commence a civil action.

18 (2)(A) Upon a finding of a violation of this subchapter, the  
19 aggrieved party shall be entitled to recover treble damages, including  
20 without limitation damages related to:

21 (i) Pain and suffering sustained by the individual,  
22 association, corporation, entity, or healthcare institution;

23 (ii) The cost of the civil action; and

24 (iii) Reasonable attorney's fees.

25 (B) However, the total amount of damages shall not be less  
26 than five thousand dollars (\$5,000) for each violation in addition to the  
27 costs of the civil action and reasonable attorney's fees.

28 (3) Damages shall be cumulative and are not exclusive of other  
29 remedies that may be afforded under state or federal law.

30 (c) A court may award injunctive relief including without limitation  
31 ordering the reinstatement of a healthcare provider to his or her prior  
32 position.

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34 17-80-409. Applicability.

35 This subchapter is supplemental to existing conscience protections  
36 within the Arkansas Code and does not affect the existing conscience



1 protection laws within the state.

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