Introduced by Murman, 38; Aguilar, 35; Flood, 19; Geist, 25; Gragert, 40; Halloran, 33; Sanders, 45; Slama, 1.

Read first time January 11, 2022

Committee:

1 A BILL FOR AN ACT relating to health care; to adopt the Medical Ethics and Diversity Act; and to provide severability.

3 Be it enacted by the people of the State of Nebraska,
Section 1. Sections 1 to 6 of this act shall be known and may be cited as the Medical Ethics and Diversity Act.

Sec. 2. (1) The Legislature finds and declares that:

(a) The right of conscience is a fundamental and unalienable right. It was central to the founding of the United States, has been deeply rooted in our nation's history and tradition for centuries, and has been central to the practice of medicine, through the Hippocratic Oath, for millennia;

(b) Despite its preeminent importance, however, threats to the right of conscience of medical practitioners, health care institutions, and health care payers have become increasingly more common and severe in recent years. The swift pace of scientific advancement and the expansion of medical capabilities, along with the mistaken notion that medical practitioners, health care institutions, and health care payers are mere public utilities, promise only to make the current crisis worse, unless something is done to restore conscience to its rightful place;

(c) It is the public policy of the State of Nebraska to protect the right of conscience for medical practitioners, health care institutions, and health care payers; and

(d) As the right of conscience is fundamental, no medical practitioner, health care institution, or health care payer should be compelled to participate in or pay for any medical procedure or prescribe or pay for any medication to which such person or entity objects on the basis of conscience, whether such conscience is informed by religious, moral, or ethical beliefs or principles.

(2) It is the purpose of the Medical Ethics and Diversity Act to protect medical practitioners, health care institutions, and health care payers from discrimination, punishment, or retaliation as a result of any instance of conscientious medical objection.

Sec. 3. For purposes of the Medical Ethics and Diversity Act:

(1) Conscience means the ethical, moral, or religious beliefs or
principles held by any medical practitioner, health care institution, or health care payer. Conscience with respect to institutional entities or corporate bodies, as opposed to individual persons, is determined by reference to that entity's or body's governing documents, including, but not limited to, any published religious, moral, or ethical guidelines or directives, mission statements, constitutions, articles of incorporation, bylaws, policies, or regulations;

(2) Disclose means to formally or informally communicate or transmit information, but such term does not include a communication or transmission concerning policy decisions that lawfully exercise discretionary authority unless the medical practitioner providing the disclosure reasonably believes that the disclosure evinces:

(a) Any violation of any law, rule, or regulation;

(b) Any violation of any ethical guidelines for the provision of any health care service; or

(c) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(3) Discriminate means to take adverse action against, or to threaten the use of adverse action against, any medical practitioner, health care institution, or health care payer as a result of such person's or entity's decision to decline to participate in a health care service on the basis of conscience. The term includes, but is not limited to, termination of employment; transfer from current position; demotion from current position; adverse administrative action; reassignment to a different shift or job title; increased administrative duties; refusal of staff privileges; refusal of board certification; loss of career specialty; reduction of wages, benefits, or privileges; refusal to award a grant, contract, or other program; refusal to provide residency training opportunities; denial, deprivation, or disqualification of licensure; withholding or disqualifying from financial aid and other
assistance; impediments to creating any health care institution or health

care payer or expanding or improving such health care institution or
health care payer; impediments to acquiring, associating with, or merging
with any other health care institution or health care payer; the threat
of any of the actions listed in this subdivision; or any other penalty,
disciplinary action, or retaliatory action, whether executed or
threatened. The term does not include the negotiation or purchase of
insurance by a nongovernmental entity;

(4) Health care institution means any organization, corporation,
partnership, association, agency, network, sole proprietorship, joint
venture, or any other entity that provides health care services. Health
care institutions may include, but are not limited to, any public or
private hospital, clinic, medical center, physician organization,
professional association, ambulatory surgical center, private physician's
office, pharmacy, nursing home, medical school, nursing school, medical
training facility, or other entity or location in which health care
services are performed;

(5) Health care payer means any employer, health plan, health
maintenance organization, insurance company, management services
organization, or other entity that pays for, or arranges for the payment
of, any health care service provided to any patient, whether that payment
is made in whole or in part;

(6) Health care service means medical research or medical care
provided to any patient at any time over the entire course of treatment.
The term includes, but is not limited to, testing; diagnosis; referral;
dispensing or administering any drug, medication, or device;
psychological therapy or counseling; research; prognosis; therapy; record
making procedures; notes related to treatment; set up or performance of a
surgery or procedure; or any other care or services performed or provided
by any medical practitioner including, but not limited to, physicians,
nurses, allied health professionals, paraprofessionals, or contractors or
employees of health care institutions;

(7) Medical practitioner means any person or individual who may be
or is asked to participate in any way in any health care service. The
term includes, but is not limited to, doctors, nurse practitioners,
physician's assistants, nurses, nurses' aides, allied health
professionals, medical assistants, hospital employees, clinic employees,
nursing home employees, pharmacists, pharmacy technicians and employees,
medical school faculty and students, nursing school faculty and students,
psychology and counseling faculty and students, medical researchers,
laboratory technicians, psychologists, psychiatrists, counselors, mental
health professionals, social workers, or any other person who facilitates
or participates in the provision of health care services to any person;

(8) Participate in a health care service means to provide, perform,
assist with, facilitate, refer for, counsel for, advise with regard to,
admit for the purposes of providing, or take part in any way in
providing, any health care service or any form of such service; and

(9) Pay or payment means to pay for, contract for, arrange for the
payment of, whether in whole or in part, reimburse, or remunerate.

Sec. 4. (1) A medical practitioner, health care institution, or
health care payer has the right not to participate in or pay for any
health care service which violates such person's or entity's conscience.
The exercise of the right of conscience is limited to conscience-based
objections to a particular health care service. This section shall not be
construed to waive or modify any duty a medical practitioner, health care
institution, or health care payer may have to provide other medical
services that do not violate such person's or entity's conscience.

(2) No medical practitioner, health care institution, or health care
payer shall be civilly, criminally, or administratively liable for
exercising such person's or entity's right of conscience not to
participate in or pay for a health care service. No health care
institution shall be civilly, criminally, or administratively liable for
the exercise of conscience rights not to participate in a health care
service by a medical practitioner employed, contracted, or granted
admitting privileges by the health care institution.

(3) No medical practitioner, health care institution, or health care
payer shall be discriminated against in any manner as a result of such
person's or entity's decision to decline to participate in or pay for a
health care service on the basis of conscience.

(4) Notwithstanding any other provision of the Medical Ethics and
Diversity Act to the contrary, a religious medical practitioner, health
care institution, or health care payer that holds itself out to the
public as religious, states in its governing documents that it has a
religious purpose or mission, and has internal operating policies or
procedures that implement its religious beliefs, shall have the right to
make employment, staffing, contracting, and admitting privilege decisions
consistent with its religious beliefs.

(5) A medical practitioner may not be scheduled for or assigned to
directly or indirectly perform, facilitate, or participate in an abortion
unless the practitioner first affirmatively consents in writing to
perform, facilitate, or participate in the abortion.

(6) Nothing in the Medical Ethics and Diversity Act shall be
construed to override the requirement to provide emergency medical
treatment to all patients set forth in 42 U.S.C. 1395dd or any other
federal law governing emergency medical treatments.

Sec. 5. (1) No medical practitioner shall be discriminated against
in any manner because the medical practitioner:

(a) Provided, caused to be provided, or is about to provide or cause
to be provided to such practitioner's employer, the Attorney General, the
Nebraska Department of Health and Human Services, any other state agency
charged with protecting health care rights of conscience, the Office for
Civil Rights of the United States Department of Health and Human
Services, or any other federal agency charged with protecting health care
rights of conscience information relating to any violation of, or any act
or omission the medical practitioner reasonably believes to be a
violation of, any provision of the Medical Ethics and Diversity Act;

(b) Testified or is about to testify in a proceeding concerning such
violation; or

(c) Assisted or participated, or is about to assist or participate,
in such a proceeding.

(2) Unless the disclosure is specifically prohibited by law, no
medical practitioner shall be discriminated against in any manner because
the medical practitioner disclosed any information that the medical
practitioner reasonably believes evinces:

(a) Any violation of any law, rule, or regulation;

(b) Any violation of any ethical guidelines for the provision of any
health care service; or

(c) Gross mismanagement, a gross waste of funds, an abuse of
authority, or a substantial and specific danger to public health or
safety.

Sec. 6. (1) A civil action for damages or injunctive relief, or
both, may be brought by any medical practitioner, health care
institution, or health care payer for any violation of the Medical Ethics
and Diversity Act. Any additional burden or expense on another medical
practitioner, health care institution, or health care payer arising from
the exercise of the right of conscience shall not be a defense to any
violation of the act. However, no civil action may be brought against an
individual who declines to use or purchase health care services from a
specific medical practitioner, health care institution, or health care
payer for exercising the rights granted in subsection (1) of section 4 of
this act.

(2) Any party aggrieved by any violation of the act may commence a
civil action and shall be entitled, upon the finding of a violation, to
recover the party's actual damages sustained, but in no case shall
recovery be less than five thousand dollars, along with the costs of the
action and reasonable attorney's fees. Such damages shall be cumulative
and in no way limited by any other remedies which may be available under
any other federal, state, or municipal law. A court considering such
civil action may also award injunctive relief, which may include, but is
not limited to, reinstatement of a medical practitioner to the
practitioner's previous position, reinstatement of board certification,
and relicensure of a health care institution or health care payer.

Sec. 7. If any section in this act or any part of any section is
declared invalid or unconstitutional, the declaration shall not affect
the validity or constitutionality of the remaining portions.