

1 SENATE BILL 323

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Gregg Schmedes

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10 AN ACT

11 RELATING TO HEALTH CARE; ENACTING THE HEALTH CARE WORKERS  
12 PROTECTION ACT; PROVIDING PENALTIES.

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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
16 cited as the "Health Care Workers Protection Act".

17 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
18 Health Care Workers Protection Act:

19 A. "conscience" means the ethical, philosophical,  
20 moral or religious beliefs or principles held by a medical  
21 practitioner, health care institution or health care payer.

22 "Conscience" with respect to institutional entities or  
23 corporate bodies, as opposed to individual persons, is  
24 determined by reference to that entity or body's governing  
25 documents, including published religious, moral, ethical or

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1 philosophical guidelines or directives, mission statements,  
2 constitutions, articles of incorporation, bylaws, policies and  
3 regulations;

4 B. "disclosure" means a formal or informal  
5 communication or transmission, but does not include a  
6 communication or transmission concerning policy decisions that  
7 lawfully exercise discretionary authority unless the medical  
8 practitioner providing the disclosure or transmission  
9 reasonably believes that the disclosure or transmission  
10 evinces:

11 (1) a violation of a law, rule or regulation;

12 (2) a violation of a standard of care or other  
13 ethical guideline for the provision of a health care service;  
14 or

15 (3) gross mismanagement, a gross waste of  
16 funds, an abuse of authority or a substantial and specific  
17 danger to public health or safety;

18 C. "discrimination" means an adverse action taken  
19 against, or a threat of adverse action communicated to, a  
20 medical practitioner, health care institution or health care  
21 payer as a result of the medical practitioner's, health care  
22 institution's or health care payer's decision to decline to  
23 participate in a health care service on the basis of  
24 conscience. "Discrimination" includes:

25 (1) termination of employment;

- 1 (2) transfer from current position;  
2 (3) demotion from current position;  
3 (4) adverse administrative action;  
4 (5) reassignment to a different shift or job  
5 title;  
6 (6) increased administrative duties;  
7 (7) refusal of staff privileges;  
8 (8) refusal of board certification;  
9 (9) loss of career specialty;  
10 (10) reduction of wages, benefits or  
11 privileges;  
12 (11) refusal to award a grant, contract or  
13 other program;  
14 (12) refusal to provide residency training  
15 opportunities;  
16 (13) denial, deprivation or disqualification  
17 of licensure;  
18 (14) withholding or disqualifying from  
19 financial aid and other assistance;  
20 (15) impediments to creating any health care  
21 institution or payer or expanding or improving the health care  
22 institution or payer;  
23 (16) impediments to acquiring, associating  
24 with or merging with any other health care institution or  
25 payer;

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1 (17) the threat thereof with regard to any of  
2 the preceding; or

3 (18) any other penalty, disciplinary or  
4 retaliatory action, whether executed or threatened;

5 D. "health care institution" means a public or  
6 private hospital, clinic, medical center, physician  
7 organization, professional association, ambulatory surgical  
8 center, private physician's office, pharmacy, nursing home,  
9 medical school, nursing school, medical training facility or  
10 other entity or location in which health care services are  
11 performed on behalf of any person; "health care institution"  
12 includes organizations, corporations, partnerships,  
13 associations, agencies, networks, sole proprietorships, joint  
14 ventures or other entities that provide health care services;

15 E. "health care payer" means an employer, health  
16 plan, health maintenance organization, insurance company,  
17 management services organization or other entity that pays for,  
18 or arranges for the payment of, health care service provided to  
19 a patient, whether that payment is made in whole or in part;

20 F. "health care service" means medical care  
21 provided to a patient at any time over the entire course of  
22 treatment, including:

- 23 (1) initial examination;  
24 (2) testing;  
25 (3) diagnosis;

- 1 (4) referral;
- 2 (5) dispensing or administering a drug,
- 3 medication or device;
- 4 (6) psychological therapy or counseling;
- 5 (7) research;
- 6 (8) prognosis;
- 7 (9) therapy;
- 8 (10) record making procedures;
- 9 (11) notes related to treatment; and
- 10 (12) any care or necessary services performed
- 11 or provided by any medical practitioner, including allied
- 12 health professionals, paraprofessionals or employees of health
- 13 care institutions;

14 G. "medical practitioner" means a person or

15 individual who may be or is asked to participate in any way in

16 a health care service, including doctors, nurse practitioners,

17 physician's assistants, nurses, nurses' aides, allied health

18 professionals, medical assistants, hospital employees, clinic

19 employees, nursing home employees, pharmacists, pharmacy

20 technicians and employees, medical school faculty and students,

21 nursing school faculty and students, psychology and counseling

22 faculty and students, medical researchers, laboratory

23 technicians, counselors, social workers or other persons who

24 facilitate or participate in the provision of health care

25 services to a person;

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1 H. "participate" in a health care service means to  
2 provide, perform, assist with, facilitate, refer for, counsel  
3 for, advise with regard to, admit for the purposes of providing  
4 or take part in any way in providing health care service or any  
5 form of such service; and

6 I. "pay" or "payment" means to pay for, contract  
7 for, arrange for the payment of, reimburse or remunerate,  
8 whether in whole or in part.

9 SECTION 3. [NEW MATERIAL] RIGHTS OF CONSCIENCE OF MEDICAL  
10 PRACTITIONERS, HEALTH CARE INSTITUTIONS AND HEALTH CARE  
11 PAYERS.--

12 A. A medical practitioner, health care institution  
13 or health care payer has the right not to participate in or pay  
14 for any health care service that violates the medical  
15 practitioner's, health care institution's or health care  
16 payer's conscience.

17 B. A medical practitioner, health care institution  
18 or health care payer shall not be civilly, criminally or  
19 administratively liable for exercising the medical  
20 practitioner's, health care institution's or health care  
21 payer's right of conscience with respect to a health care  
22 service; provided that a health care institution shall not be  
23 civilly, criminally or administratively liable for claims  
24 related to or arising out of the exercise of conscience rights  
25 protected by the Health Care Workers Protection Act by a

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1 medical practitioner employed, contracted or granted admitting  
2 privileges by the health care institution.

3 C. A medical practitioner, health care institution  
4 or health care payer shall not be discriminated against in any  
5 manner as a result of the medical practitioner's, health care  
6 institution's or health care payer's decision to decline to  
7 participate in or pay for a health care service on the basis of  
8 conscience.

9 D. Notwithstanding any other provision of the  
10 Health Care Workers Protection Act to the contrary, a religious  
11 medical practitioner, health care institution or health care  
12 payer that holds itself out to the public as religious, states  
13 in its governing documents that it has a religious purpose or  
14 mission and has internal operating policies or procedures that  
15 implement its religious beliefs shall have the right to make  
16 employment, staffing, contracting and admitting privilege  
17 decisions consistent with its religious beliefs.

18 E. Nothing in the Health Care Workers Protection  
19 Act shall be construed to override the requirement to provide  
20 emergency medical treatment to all patients set forth in  
21 Subsection dd of 42 U.S.C. 1395 or other federal law governing  
22 emergency medical treatments.

23 SECTION 4. [NEW MATERIAL] WHISTLEBLOWER PROTECTION.--

24 A. A medical practitioner shall not be  
25 discriminated against because the medical practitioner:

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1 (1) provided, caused to be provided or is  
2 about to provide or cause to be provided to the practitioner's  
3 employer, the attorney general, a state agency charged with  
4 protecting health care rights of conscience, the United States  
5 department of health and human services, the federal office of  
6 civil rights or other federal agency charged with protecting  
7 health care rights of conscience, information relating to a  
8 violation of, or any act or omission the medical practitioner  
9 reasonably believes to be a violation of, a provision of the  
10 Health Care Workers Protection Act;

11 (2) testified or is about to testify in a  
12 proceeding concerning a violation of the Health Care Workers  
13 Protection Act; or

14 (3) assisted or participated, or is about to  
15 assist or participate, in a proceeding concerning a violation  
16 of the Health Care Workers Protection Act.

17 B. Unless the disclosure is specifically prohibited  
18 by law, a medical practitioner shall not be discriminated  
19 against because the medical practitioner disclosed information  
20 the medical practitioner reasonably believes evinces:

21 (1) a violation of a law, rule or regulation;

22 (2) a violation of ethical guidelines for the  
23 provision of a health care service; or

24 (3) gross mismanagement, a gross waste of  
25 funds, an abuse of authority or a substantial and specific



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1 danger to public health or safety.

2 SECTION 5. [NEW MATERIAL] CIVIL REMEDIES.--

3 A. A civil action for damages or injunctive relief,  
4 or both, may be brought by a medical practitioner, health care  
5 institution or health care payer for a violation of a provision  
6 of the Health Care Workers Protection Act. An additional  
7 burden or expense on another medical practitioner, health care  
8 institution or health care payer arising from the exercise of  
9 the right of conscience shall not be a defense to a violation  
10 of that act. However, a civil action shall not be brought  
11 against an individual who declines to use or purchase health  
12 care services from a specific medical practitioner, health care  
13 institution or health care payer for exercising the rights  
14 provided for in Subsection A of Section 3 of the Health Care  
15 Workers Protection Act.

16 B. A party aggrieved by a violation of the Health  
17 Care Workers Protection Act may commence a civil action and  
18 shall be entitled, upon the finding of a violation, to recover  
19 threefold the actual damages sustained, but in no case shall  
20 recovery be less than one thousand dollars (\$1,000), along with  
21 the costs of the action and reasonable attorney fees. Such  
22 damages shall be cumulative and in no way limited by other  
23 remedies that may be available pursuant to other federal, state  
24 or municipal laws. A court considering such civil action may  
25 also award injunctive relief, which may include reinstatement

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1 of a medical practitioner to the practitioner's previous  
2 position, reinstatement of board certification and relicensure  
3 of a health care institution or health care payer.

4 SECTION 6. SEVERABILITY.--If any part or application of  
5 the Health Care Workers Protection Act is held invalid, the  
6 remainder or its application to other situations or persons  
7 shall not be affected.

8 SECTION 7. EFFECTIVE DATE.--The effective date of the  
9 provisions of this act is July 1, 2021.