



Secular Maryland

secularmaryland@tutanota.com

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HB 1364 - OPPOSE

Health Care Freedom of Conscience Act

Dear Chair Pendergrass, Vice-Chair Pena-Melnyk, and Members of the Health and Government Operations in Committee,

This bill radically proposes that all health care providers be given a sweeping and unrestricted “comprehensive” and “fundamental” right of conscience to selectively refuse to provide any health care service of their choice to anyone on any criteria at anytime as long as that criteria is self asserted to involve a religious motivation. This bill fails to make several key distinctions. It fails to distinguish between freedom of conscience for individual employees and institutional level policies that are imposed on all employees thereby denying individual employee freedom of conscience. It fails to distinguish between government owned and operated institutions, publicly owned institutions, and privately owned institutions. It fails to distinguish between the right to live according to religious beliefs and the right to be employed in particular occupations whose practices at least partially conflict with those religious beliefs. This bill also fails to acknowledge, let alone even attempt to remediate, the negative impacts on health care consumers that would inevitably follow from granting health care practitioners this unlimited ability to refuse to provide health care.

It is relevant for upholding the quality of health care that health care institutions have the ability to fire, demote, and not hire people as health care providers who, for whatever reason, are unwilling or unable to perform the work that they are assigned under their employment contract. Health care providers should not be required to hire anyone who refuses to perform any of the duties that are assigned to their position. Such discrimination against people who are unwilling to perform the tasks assigned to their position is fully justified and proper. It is a mistake for government to prevent employers from employing only those people who consent to perform the work assigned to their position.

Maryland is one of the states with an overly broad health provider conscience refusal law. Both individual and institutional health care providers in Maryland can refuse to provide their customers with "artificial insemination, sterilization, or termination of pregnancy" [MD. CODE ANN., HEALTH-GEN. § 20-214]. There is no required public notification of the identity of the providers that refuse to provide those services. Federal law and most states do not have refusal clauses for artificial insemination. Maryland should reconsider granting that exemption. Although Maryland has few publicly controlled health care provider institutions, refusal conscience law should explicitly exclude publicly controlled institutions.

Furthermore, genuine freedom of conscience is not a one way street that applies selectively only to institutions opposed to a legal medical procedure. Accordingly, when institutions objecting to some medical procedures can mandate employee refusal to provide them on freedom of conscience grounds it follows that institutions that support those same medical procedures should be permitted under the same law to mandate employee agreement to provide them. We propose appending the following provision (e) to General Health §20–214:

(e) (1) A licensed hospital, hospital director, or hospital governing board may require that:

(i) Employees participate in the performance of legally permitted artificial insemination, sterilization, or termination of pregnancy within the hospital consistent with the standards of medical care.

Similar provisions are missing, and need to be added to this proposed bill, to actually implement the "freedom of conscience" for health care providing institutions that this bill self-asserts but does not actually deliver.

Furthermore, to better protect the ability of patients to obtain appropriate health care there is a need to enact a state law protecting patients' right to know when a health care provider does not provide certain care based on religious or philosophical beliefs. Such a law could require healthcare providers who refuse to follow standard medical guidelines and practices, thereby resulting in any health care options being omitted, to inform patients in writing of healthcare services that are not available to the patients through this particular provider. Additionally, such a law could require health care providers to inform health insurance companies of the specific health care options that are not provided. Health insurance companies would be required to make this information available to their enrollees and insured participants. Illinois and Washington, require health care providers who object to a procedure on religious

grounds to provide patients with their treatment options. Under the Washington State law health systems must post their policies on reproductive and end-of-life care on their websites “where it is readily accessible to the public, without requiring a login or other restriction.” Maryland should implement similar laws.

Respectfully,
Mathew Goldstein
3838 Early Glow Ln
Bowie, MD 20716