

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1364 (Delegate Cox, *et al.*)
Health and Government Operations

Health Care Freedom of Conscience Act

This bill authorizes (1) a health care provider or health care practitioner to decline to participate in health care services that violate the “conscience” of the specified provider or practitioner and (2) a health care payor to decline to pay or arrange payment for a health care service or product that violates the conscience of the payor. A health care provider, health care practitioner, payor, or a person that owns, operates, supervises, or manages a payor is not liable (as specified) for exercising the above authority. A health care provider that is a health care facility is also not liable for exercising the above authority if a specified consent form is signed by a patient before admission to the facility. A unit of State or local government or a person may not “discriminate” as specified for exercising the above authority. A civil action for damages and/or injunctive relief may be brought against a person or a unit of State or local government for violating specified prohibitions. All mandated health insurance benefits under Title 15, Subtitle 8 of the Insurance Article are subject to the bill’s provisions.

Fiscal Summary

State Effect: Minimal increase in expenditures for the Judiciary from a newly established civil cause of action. Revenues are not materially affected.

Local Effect: Minimal increase in local expenditures for circuit courts from a newly established civil cause of action. Revenues are not materially affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The General Assembly finds that it is the public policy of the State to respect and protect the fundamental right of conscience of health care providers and health care practitioners and, without comprehensive protection, health care rights of conscience may be violated in various ways, including harassment, demotion, salary reduction, transfer, termination, loss of staffing privileges, denial of aid or benefits, and refusal to license or refusal to certify. Thus, it is the stated purpose of the bill to:

- protect as a basic civil right, the right of all health care providers, health care practitioners, and payors to decline to counsel, advise, pay for, provide, perform, assist, or participate in providing or performing health care services that violate their consciences, including abortion, artificial birth control, sterilization, artificial insemination, assisted reproduction, human embryonic stem cell research and fetal experimentation, human cloning, and physician-assisted suicide and euthanasia; and
- prohibit all forms of discrimination, disqualification, coercion, disability, or liability on health care providers, health care practitioners, and payors that decline to perform or provide a health care service that violates their consciences.

“Conscience” means religious, moral, or ethical principles held by a person and provided for in a person’s religious, moral, ethical guidelines, mission statement, constitution, bylaws, articles of incorporation, regulations, or other relevant documents.

“Discriminate” includes terminate, transfer, refusing staff privileges, refusing board certification, carrying out adverse administrative action, demoting, causing the loss of a career specialty, reassigning to a different shift, reducing wages, reducing benefits, refusing to award a grant or contract, refusing to provide training opportunities, issuing a penalty, or conducting any other disciplinary action.

A unit of State or local government or person may not discriminate against any of the following for exercising the bill’s authorization to decline to participate in or arrange payment for a health care service or product that violates their conscience: (1) a health care provider or health care practitioner; (2) a health care provider or a person attempting to establish a health care provider; or (3) a payor or person attempting to establish a payor.

In a civil action for damages and/or injunctive relief, it is not a defense to a claim that the violation was necessary to prevent an additional burden or expense on a health care provider. Upon a finding that the provisions in the bill were violated, the aggrieved party is entitled to recover (1) treble damages, including pain and suffering sustained by the individual, association, corporation, entity, or health care provider; (2) court costs; and (3) reasonable counsel fees. Recovery by an aggrieved party must not be less than \$5,000

for each violation in addition to court costs and reasonable attorney's fees and must be cumulative and not exclusive of other remedies afforded under State or federal law.

Current Law: The State may not interfere with a woman's decision to end a pregnancy before the fetus is viable, or at any time during a woman's pregnancy, if the procedure is necessary to protect the life or health of the woman, or if the fetus is affected by a genetic defect or serious deformity or abnormality. This is consistent with the U.S. Supreme Court's holding in *Roe v. Wade*, 410 U.S. 113 (1973). A viable fetus is one that has a reasonable likelihood of surviving outside of the womb. The Maryland Department of Health may adopt regulations consistent with established medical practice if they are necessary and the least intrusive method to protect the life and health of the woman.

If an abortion is provided, it must be performed by a licensed physician. A physician is not liable for civil damages or subject to a criminal penalty for a decision to perform an abortion made in good faith and in the physician's best medical judgment using accepted standards of medical practice.

Federal law protects health care provider conscience rights and prohibits recipients of certain federal funds from discriminating against health care providers who refuse to participate in certain services based on moral objections or religious beliefs. A health care provider may file a complaint if they believe they have experienced discrimination because they (1) objected to, participated in, or refused to participate in specific medical procedures, including abortion and sterilization, and related training and research activities; (2) were coerced into performing procedures that are against their religious or moral beliefs; or (3) refused to provide health care items or services for the purpose of causing, or assisting in causing, the death of an individual such as by assisted suicide or euthanasia.

Small Business Effect: Small business physicians who offer abortion, birth control, sterilization, artificial insemination, and assisted reproduction services may provide fewer services under the bill to the extent that an insurance provider declines to provide coverage for such services. Small business health care providers and health care practitioners gain additional protections against discrimination.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): U.S. Department of Health and Human Services; Maryland Association of County Health Officers; Maryland Commission on Civil Rights; Judiciary (Administrative Office of the Courts; Maryland Department of Health; Maryland Insurance Administration; Department of Legislative Services

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