

Senate File 220 - Introduced

SENATE FILE 220
BY TAYLOR

A BILL FOR

1 An Act relating to protections for medical practitioners,
2 health care institutions, and health care payors including
3 those related to the exercise of conscience, whistleblower
4 activities, and free speech, and providing penalties.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. SHORT TITLE. This Act shall be known and may be
2 cited as the "Medical Ethics Defense Act".

3 Sec. 2. NEW SECTION. **135S.1 Definitions.**

4 As used in this chapter, unless the context otherwise
5 requires:

6 1. a. "Conscience" means the ethical, moral, or religious
7 beliefs or principles held by a medical practitioner, health care
8 institution, or health care payor.

9 b. With respect to persons who are institutions,
10 corporations, or other legal entities, "conscience" is determined
11 by reference to that entity's governing documents including but
12 not limited to published ethical, moral, or religious guidelines
13 or directives, mission statements, constitutions, articles of
14 incorporation, bylaws, policies, or regulations.

15 2. "Discrimination" means an adverse action, including but
16 not limited to any penalty, disciplinary, or retaliatory action
17 taken against, or a threat of adverse action communicated to,
18 a medical practitioner, health care institution, or health care
19 payor as a result of the refusal of the medical practitioner,
20 health care institution, or health care payor to participate in a
21 health care service on the basis of conscience. "Discrimination"
22 not does include the negotiation or purchase of insurance or a
23 health care service by a nongovernmental entity or individual,
24 the refusal to use or purchase insurance or a health care
25 service by a nongovernmental entity or individual, or a health
26 care institution's good-faith effort to accommodate a medical
27 practitioner's, health care institution's, or health care payor's
28 exercise of conscience.

29 3. "Health care institution" means an organization,
30 corporation, partnership, association, agency, network, sole
31 proprietorship, joint venture, or other entity that provides a
32 health care service.

33 4. "Health care payor" means an employer; a health plan; a
34 management services organization; any entity, including a health
35 service corporation, health maintenance organization, or any

1 similar corporation or organization, or an employer offering
2 self-insurance, that provides a health benefit plan; or any other
3 entity that pays for or arranges for payment, in whole or in
4 part, for a health care service.

5 5. "*Health care service*" means medical research and medical
6 care provided to a patient or client at any time during
7 the patient's or client's course of treatment, including but
8 not limited to testing; diagnosis; record making; referral;
9 prescribing, dispensing, or administering any drug, medication,
10 or device; therapy or counseling; and preparation or arrangement
11 for a surgical procedure.

12 6. "*Medical practitioner*" means a person who facilitates
13 or participates, or who is asked to facilitate or participate
14 in a health care service, including but not limited to a
15 health-related professional licensed by a board designated in
16 section 147.13, and any other person licensed, certified, or
17 otherwise authorized or permitted by the laws of this state
18 to administer a health care service in the ordinary course
19 of business or in the practice of a profession. "*Medical*
20 *practitioner*" includes any student enrolled in an educational
21 institution who is a prospective medical practitioner.

22 7. "*Participate in a health care service*" means to provide,
23 perform, assist with, facilitate, refer for, provide counseling
24 for, advise with regard to, admit for the purposes of providing,
25 or take part in a health care service in any way.

26 Sec. 3. NEW SECTION. **135S.2 Exercise of conscience for**
27 **health care institutions, health care payors, and medical**
28 **practitioners — exception.**

29 1. a. A medical practitioner, health care institution, or
30 health care payor has the right not to participate in or pay for
31 a health care service that violates the medical practitioner's,
32 health care institution's, or health care payor's conscience.
33 This paragraph shall not be construed to waive or modify a duty
34 a medical practitioner, health care institution, or health care
35 payor may have to participate in or pay for a health care service

1 that does not violate the medical practitioner's conscience.

2 b. A medical practitioner, health care institution, or health
3 care payor who refuses to participate in a health care service
4 under this section shall not be discriminated against for the
5 medical practitioner's, health care institution's, or health care
6 payor's exercise of conscience.

7 2. A health care payor shall not decline to pay for a
8 health care service due to a medical practitioner's, health care
9 institution's, or health care payor's refusal to participate in a
10 health care service under this section if the health care payor
11 is contractually obligated to pay for the health care service.

12 3. This section shall not be construed to relieve a health
13 care institution of the requirement to provide emergency medical
14 services to individuals as required under 42 U.S.C. §1395dd.

15 4. Notwithstanding any other provision of this chapter to
16 the contrary, a medical practitioner, health care institution,
17 or health care payor that holds itself out to the public
18 as religion-based, states in the entity's governing documents
19 that the entity has a religious purpose or mission, and that
20 has internal operating policies or procedures that implement
21 the entity's religious beliefs, shall have the right to
22 make employment, staffing, contracting, and admitting privilege
23 decisions consistent with the entity's religious beliefs.

24 Sec. 4. NEW SECTION. **135S.3 Exercise of conscience —**
25 **immunity.**

26 1. A medical practitioner, health care institution, or health
27 care payor shall not be civilly, criminally, or administratively
28 liable for the medical practitioner's, health care institution's,
29 or health care payor's exercise of conscience.

30 2. A health care institution shall not be civilly,
31 criminally, or administratively liable for the exercise of
32 conscience by a medical practitioner employed, contracted, or
33 granted admitting privileges by the health care institution.

34 Sec. 5. NEW SECTION. **135S.4 Whistleblower protections.**

35 1. A medical practitioner, health care institution, or health

1 care payor shall not be discriminated against because the medical
2 practitioner, health care institution, or health care payor does
3 any of the following:

4 a. Provides, causes to be provided, or intends to provide
5 or cause to be provided information relating to a suspected
6 violation of this chapter to the medical practitioner's, health
7 care institution's, or health care payor's employer, the attorney
8 general, any state agency charged with protecting health care
9 rights of conscience, the United States department of health and
10 human services, the United States commission on civil rights,
11 or any other federal agency charged with protecting health care
12 rights of conscience.

13 b. Testifies or intends to testify in a proceeding concerning
14 a violation of this chapter.

15 c. Assists or participates, or intends to assist or
16 participate, in a proceeding under this chapter.

17 2. It shall be unlawful to discriminate against a medical
18 practitioner, health care institution, or health care payor
19 because the medical practitioner, health care institution,
20 or health care payor discloses information that the medical
21 practitioner, health care institution, or health care payor
22 reasonably believes evidences any of the following:

23 a. A violation of any law or rule.

24 b. A violation of any standard of care or ethical guidelines
25 for the provision of any health care service.

26 c. Gross mismanagement, a gross waste of funds, an abuse of
27 authority, practices or methods of treatment that may put patient
28 or client health at risk, or a substantial and specific danger to
29 public health or safety.

30 3. This section shall not be construed to exempt a person
31 from the requirements of the federal Health Insurance Portability
32 and Accountability Act of 1996, Pub. L. No. 104-191, including
33 amendments thereto and regulations promulgated thereunder, or any
34 other applicable confidentiality and patient or client privacy
35 requirements.

1 Sec. 6. NEW SECTION. **135S.5 Free speech protections —**
2 **notification of complaints — penalty.**

3 1. The department of health and human services, a licensing
4 board designated under chapter 147, or any other state
5 licensing or certifying entity of a medical practitioner shall
6 not reprimand, sanction, or revoke or threaten to revoke a
7 license or certification of a medical practitioner, health care
8 institution, or health care payor who is licensed or certified
9 by the department, licensing board, or other licensing or
10 certifying entity, for engaging in speech, expressive activity,
11 or association protected under the first amendment to the
12 Constitution of the United States, unless the department,
13 licensing board, or other licensing or certifying entity
14 demonstrates by clear and convincing evidence that the medical
15 practitioner's, health care institution's, or health care payor's
16 speech, expressive activity, or association was the direct cause
17 of physical harm to a person with whom the medical practitioner,
18 health care institution, or health care payor had a medical
19 practitioner-patient or medical practitioner-client relationship
20 within the three years immediately preceding the incident of
21 physical harm.

22 2. a. Within twenty-one days of receipt of a complaint
23 that alleges a violation of speech, expressive activity,
24 or association protected under subsection 1 that may result
25 in revocation of a medical practitioner's, health care
26 institution's, or health care payor's license, certification, or
27 registration, the department, licensing board, or other licensing
28 or certifying entity shall provide the medical practitioner,
29 health care institution, or health care payor with a copy of the
30 complaint.

31 b. If the department, licensing board, or other licensing
32 or certifying entity fails to provide a copy of the complaint
33 to the medical practitioner, health care institution, or health
34 care payor within twenty-one days of receipt, the department,
35 licensing board, or other certifying entity shall pay the medical

1 practitioner, health care institution, or health care payor an
2 administrative penalty of five hundred dollars for each day of
3 noncompliance.

4 3. The state shall not contract with, recognize, approve,
5 or require a medical practitioner, health care institution, or
6 health care payor to obtain a certification or credential issued
7 or approved by the department of health and human services,
8 a licensing board designated under chapter 147, or any other
9 licensing or certifying entity of a medical practitioner, health
10 care institution, or health care payor that revokes or refuses to
11 issue a certification or credential to the medical practitioner,
12 health care institution, or health care payor if the medical
13 practitioner, health care institution, or health care payor is in
14 compliance with this chapter and did not provide medical advice
15 or treatment to a patient or client.

16 Sec. 7. NEW SECTION. **135S.6 Unlawful interference —**
17 **relief.**

18 1. It is unlawful for a person to interfere or attempt to
19 interfere with the exercise of conscience not to participate in
20 a health care service, or in the whistleblower or free speech
21 rights and protections under this chapter, whether by duress,
22 coercion, or any other means.

23 2. A health care institution, health care payor, or medical
24 practitioner that alleges injury by unlawful interference by a
25 person under this chapter may bring a civil action in a court
26 of competent jurisdiction. If a court of competent jurisdiction
27 finds a person liable under this section, the court may order any
28 of the following:

29 a. Injunctive relief, when appropriate, including but not
30 limited to reinstatement of a medical practitioner to the
31 medical practitioner's previous position, or reinstatement
32 or reactivation of licensure or certification of a medical
33 practitioner, or reactivation or reinstatement of licensure of a
34 health care institution or a health care payor.

35 b. Monetary damages for injuries suffered.

1 c. Reasonable costs and attorney fees.

2 3. The rights, remedies, and prohibitions contained in this
3 chapter shall be in addition to and cumulative of any other
4 right, remedy, or prohibition accorded by common law or state
5 or federal law. This chapter shall not be construed to deny,
6 abrogate, or impair any such common law or statutory right,
7 remedy, or prohibition.

8 4. Any additional burden or expense to another medical
9 practitioner, health care institution, or health care payor
10 arising from the exercise of conscience pursuant to this chapter
11 shall not be a defense to a violation of this chapter.

12 5. A person shall not bring a civil action against a person
13 who declines to use or purchase a health care service from
14 a medical practitioner, health care institution, or health
15 care payor because of the medical practitioner's, health care
16 institution's, or health care payor's exercise of conscience
17 under this chapter.

18 Sec. 8. NEW SECTION. **135S.7 Severability.**

19 If any provision of this chapter or its application to any
20 person or circumstance is held invalid, the invalidity shall not
21 affect other provisions or applications of this chapter which can
22 be given effect without the invalid provision or application, and
23 to this end the provisions of this chapter are severable.

24 EXPLANATION

25 The inclusion of this explanation does not constitute agreement with
26 the explanation's substance by the members of the general assembly.

27 This bill relates to protections for medical practitioners
28 (practitioner), health care institutions (institution), and
29 health care payors (payor), involving exercise of conscience,
30 whistleblower activities, and free speech.

31 The bill provides definitions for "conscience",
32 "discrimination", "health care institution", "health care payor",
33 "health care services", "medical practitioner", and "participate
34 in a health care service".

35 The bill provides that a practitioner, institution, or

1 payor has the right not to participate in or pay for a
2 health care service (service) that violates the practitioner's,
3 institution's, or payor's conscience. A practitioner,
4 institution, or payor who refuses to participate in a service due
5 to exercise of conscience shall not be discriminated against for
6 refusing to participate.

7 The bill is not to be construed to relieve a practitioner,
8 institution, or payor of the requirement under federal law to
9 provide emergency medical services to certain individuals.

10 The bill provides that a practitioner, institution, or
11 payor that holds itself out to the public as religion-based,
12 as described in the bill, shall have the right to make
13 employment, staffing, contracting, and admitting privilege
14 decisions consistent with the entity's religious beliefs.

15 The bill provides that a practitioner, institution, or payor
16 shall not be civilly, criminally, or administratively liable
17 for the practitioner's, institution's, or payor's exercise of
18 conscience. An institution shall not be civilly, criminally,
19 or administratively liable for the exercise of conscience by
20 a practitioner employed, contracted, or granted admitting
21 privileges by the institution.

22 The bill provides whistleblower protections by providing
23 that a practitioner, institution, or payor shall not be
24 discriminated against because the practitioner, institution,
25 or payor takes certain actions, as described in the bill,
26 relating to a suspected violation of the bill. The bill
27 prohibits discrimination against a practitioner, institution, or
28 payor because the practitioner, institution, or payor discloses
29 information as described in the bill. The bill is not to be
30 construed to exempt a person from the requirements of the federal
31 Health Insurance Portability and Accountability Act.

32 The bill also provides that the department of health and human
33 services (HHS), a health professional licensing board, or any
34 other state licensing or certifying entity of a practitioner,
35 institution, or payor shall not reprimand, sanction, or revoke or

1 threaten to revoke a license or certification of a practitioner,
2 institution, or payor for engaging in speech, expressive activity
3 (activity), or association protected under the first amendment
4 unless HHS, the licensing board, or other licensing or certifying
5 entity demonstrates by clear and convincing evidence that
6 the speech, activity, or association was the direct cause
7 of physical harm to a person with whom the practitioner,
8 institution, or payor had a medical practitioner-patient or
9 medical practitioner-client relationship within the three years
10 immediately preceding the incident of physical harm. Within 21
11 days of receiving a complaint alleging a violation of speech,
12 activity, or association as described in the bill, HHS, a
13 licensing board, or other licensing or certifying entity shall
14 provide the practitioner, institution, or payor with a copy of
15 the complaint. If HHS, a licensing board, or other licensing or
16 certifying entity fails to provide the complaint within 21 days,
17 HHS, the licensing board, or other certifying entity shall pay
18 the practitioner, institution, or payor an administrative penalty
19 of \$500 for each day of noncompliance. If HHS, a licensing
20 board, or other licensing or certifying entity revokes or
21 refuses to issue a certification or credential to a practitioner,
22 institution, or payor who is in compliance with the bill and did
23 not provide medical advice or treatment to a patient or client,
24 the state shall not contract with, recognize, approve, or require
25 the certification or credential issued or approved by HHS, the
26 licensing board, or other licensing or certifying entity.

27 The bill provides that it is unlawful for a person to
28 interfere or attempt to interfere with the right not to
29 participate in or pay for a service, or with the whistleblower
30 or free speech rights and protections authorized under the
31 bill. An institution, payor, or practitioner injured by unlawful
32 interference under the bill is entitled to bring a civil
33 action that, if successful, may result in relief as detailed
34 in the bill. The bill shall not be construed to deny,
35 abrogate, or impair a common law or statutory right, remedy,

1 or prohibition. An additional burden or expense arising from
2 another practitioner's, institution's, or payor's exercise of
3 conscience is not a defense to a violation of the bill. The bill
4 prohibits a person from bringing a civil action against a person
5 who declines to use or purchase a service from a practitioner,
6 institution, or payor exercising their conscience.

7 The bill includes a severability clause.

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