

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 810

Introduced by Murman, 38; Aguilar, 35; Albrecht, 17; Brewer, 43;
Clements, 2; DeKay, 40; Halloran, 33; Hardin, 48;
Holdcroft, 36; Ibach, 44; Kauth, 31; Lippincott, 34; Riepe,
12; von Gillern, 4.

Read first time January 18, 2023

Committee:

- 1 A BILL FOR AN ACT relating to health care; to adopt the Medical Ethics
- 2 and Diversity Act; and to provide severability.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 6 of this act shall be known and may be
2 cited as the Medical Ethics and Diversity Act.

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

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

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

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

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

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

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

31 (1) Conscience means the ethical, moral, or religious beliefs or

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

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

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

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

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

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

1 financial aid and other assistance; impediments to creating any health
2 care institution or health care payer or expanding or improving such
3 health care institution or health care payer; impediments to acquiring,
4 associating with, or merging with any other health care institution or
5 health care payer; the threat of any of the actions listed in this
6 subdivision; or any other penalty, disciplinary action, or retaliatory
7 action, whether executed or threatened. The term does not include the
8 negotiation or purchase of insurance by a nongovernmental entity;

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

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

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

1 employees of health care institutions;

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

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

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

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

27 (2) When a medical practitioner becomes aware of a potential
28 conflict of conscience, the medical practitioner shall notify the
29 practitioner's supervisor, if applicable, and shall be excused from
30 participating in the health care service that conflicts with the
31 practitioner's religious, moral, or ethical beliefs and convictions. Upon

1 patient request, the medical practitioner shall assist in the transfer of
2 the patient's care with regard to a particular health care service by
3 promptly releasing the patient's medical records to the patient. The
4 medical practitioner remains responsible for continuing to provide all
5 appropriate health care services, other than the health care service that
6 conflicts with the medical practitioner's beliefs or convictions.

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

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

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

27 (6) A medical practitioner may not be scheduled for or assigned to
28 directly or indirectly perform, facilitate, or participate in an
29 abortion, as defined in section 71-6901 unless the practitioner first
30 affirmatively consents in writing to perform, facilitate, or participate
31 in the abortion.

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

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

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

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

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

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

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

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

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

30 (3) A licensing, certifying, or recognizing board or entity, or the
31 Department of Health and Human Services, may not reprimand, sanction, or

1 revoke or threaten to revoke a license, certification, or registration of
2 a health care practitioner for engaging in speech or expressive activity
3 that is protected from government interference by the First Amendment,
4 unless the board, entity, or the Department of Health and Human Services,
5 as applicable, demonstrates beyond a reasonable doubt that the
6 practitioner's speech was the direct cause of physical harm to a person
7 with whom the health care practitioner had a practitioner-patient
8 relationship within the three years immediately preceding the incident of
9 physical harm.

10 (a) The licensing, certifying, or recognizing board or entity, or
11 the Department of Health and Human Services, as applicable, must provide
12 a medical practitioner with any complaints it has received which may
13 result in the revocation of the medical practitioner's license,
14 certification, or registration within fourteen days after receipt of the
15 complaint.

16 (b) The licensing, certifying, or recognizing board or entity, or
17 the Department of Health and Human Services, as applicable, must pay the
18 medical practitioner an administrative penalty of five hundred dollars
19 for each day the complaint is not provided to the medical practitioner
20 after the specified fourteen days.

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

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

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