

By Senator Baxley

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1 A bill to be entitled
2 An act relating to the Medical Ethics and Diversity
3 Act; creating ch. 762, F.S., entitled "Right of
4 Conscience"; creating s. 762.101, F.S.; providing a
5 short title; creating s. 762.102, F.S.; defining
6 terms; creating s. 762.103, F.S.; providing
7 legislative findings and intent; creating s. 762.104,
8 F.S.; establishing the right of health care
9 practitioners, health care institutions, and health
10 care payors to refuse to participate in or pay for
11 health care services they find objectionable to their
12 conscience; providing such entities immunity from
13 liability for exercising their right of conscience;
14 providing health care institutions immunity from
15 liability if a health care practitioner employed by,
16 under contract with, or granted admitting privileges
17 by the health care institution exercises his or her
18 right of conscience; prohibiting discrimination
19 against health care practitioners, institutions, or
20 payors for refusing to participate in or pay for
21 health care services they find objectionable to their
22 conscience; authorizing certain health care
23 practitioners, institutions, and payors to make
24 decisions about employment, staffing, contracting, and
25 admitting privileges consistent with their religious
26 beliefs under certain circumstances; providing
27 construction; creating s. 762.105, F.S.; prohibiting
28 discrimination against health care practitioners for
29 reporting violations to certain entities or for

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30 testifying, assisting, or participating in related
31 proceedings; prohibiting discrimination against a
32 health care practitioner for disclosing certain
33 information under certain circumstances, with an
34 exception; creating s. 762.106, F.S.; providing a
35 cause of action for health care practitioners,
36 institutions, and payers to seek damages or injunctive
37 relief for certain violations; authorizing aggrieved
38 parties to commence a civil action for violations of
39 this act; providing for damages and attorney fees;
40 authorizing courts to provide certain injunctive
41 relief; creating s. 762.107, F.S.; providing
42 severability; providing an effective date.

43
44 Be It Enacted by the Legislature of the State of Florida:

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46 Section 1. Chapter 762, Florida Statutes, consisting of
47 sections 762.101-762.107, Florida Statutes, entitled "Right of
48 Conscience," is created.

49 Section 2. Section 762.101, Florida Statutes, is created to
50 read:

51 762.101 Short title.—This chapter may be cited as the
52 "Medical Ethics and Diversity Act."

53 Section 3. Section 762.102, Florida Statutes, is created to
54 read:

55 762.102 Definitions.—As used in this chapter, the term:

56 (1) "Conscience" means the personal religious, moral,
57 ethical, or philosophical beliefs or principles of a health care
58 practitioner, health care institution, or health care payor.

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59 With respect to health care institutions and health care payors,
60 the term is defined by the entity's governing documents,
61 including, but not limited to, any published religious, moral,
62 ethical, or philosophical guidelines or directives, mission
63 statements, constitutions, articles of incorporation, bylaws,
64 policies, or regulations.

65 (2) "Disclosure" means a formal or informal communication
66 or transmission but does not include a communication or
67 transmission concerning policy decisions that lawfully exercise
68 discretionary authority, unless the health care practitioner
69 providing the disclosure or transmission reasonably believes the
70 disclosure or transmission demonstrates any of the following:

71 (a) A violation of any state or federal law or rule.

72 (b) A violation of any standard of care or other ethical
73 guidelines related to the provision of a health care service.

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

77 (3) "Discrimination" means any adverse action taken
78 against, or any threat of adverse action communicated to, a
79 health care practitioner, institution, or payor as a result of
80 his, her, or its decision to decline to participate in a health
81 care service on the basis of conscience. The term includes, but
82 is not limited to, termination of employment; transfer from a
83 current position; demotion from a current position; adverse
84 administrative action; reassignment to a different shift or job
85 title; increased administrative duties; refusal of staff
86 privileges; refusal of board certification; loss of career
87 specialty; reduction of wages, benefits, or privileges; refusal

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88 to award a grant, contract, or other program; refusal to provide
89 residency training opportunities; denial, deprivation, or
90 disqualification of licensure; withholding or disqualifying from
91 financial aid and other assistance; impediments to creating any
92 health care institution or payor or expanding or improving said
93 health care institution or payor; impediments to acquiring,
94 associating with, or merging with any other health care
95 institution or payor; the threat thereof with regard to any of
96 the preceding; or any other penalty, disciplinary, or
97 retaliatory action, whether executed or threatened.

98 (4) "Health care institution" means any public or private
99 hospital, clinic, medical center, physician organization,
100 professional association, ambulatory surgical center, private
101 physician's office, pharmacy, nursing home, medical school,
102 nursing school, medical training facility, or any other entity
103 or location in which health care services are provided. The term
104 includes, but is not limited to, organizations, corporations,
105 partnerships, associations, agencies, networks, sole
106 proprietorships, joint ventures, or any other entity that
107 provides health care services.

108 (5) "Health care payor" means any employer, health plan,
109 health maintenance organization, insurance company, management
110 services organization, or any other entity that pays for or
111 arranges for the payment of any health care service provided to
112 a patient, whether that payment is made in whole or in part.

113 (6) "Health care practitioner" has the same meaning as
114 provided in s. 456.001.

115 (7) "Health care service" means any medical care provided
116 to a patient at any point during the entire course of treatment.

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117 The term includes, but is not limited to, initial examination;
118 testing; diagnosis; referral; prescribing, dispensing, or
119 administering any drug, medication, or device; making and
120 retaining treatment notes and other patient records;
121 preparations for a surgery or procedure; psychological therapy
122 or counseling; research; prognosis; therapy; and any other care
123 or necessary services performed or provided by a health care
124 practitioner or employees of a health care institution.

125 (8) "Participate in," with respect to a health care
126 service, means to provide, perform, assist with, facilitate,
127 refer for, prescribe, counsel on, advise with regard to, admit
128 for the purpose of providing, or take part in any other way in
129 providing the health care service or any form of such service.

130 (9) "Pay for," with respect to a health care service, means
131 to provide reimbursement for, contract for, or arrange for the
132 payment of, in whole or in part, the health care service.

133 Section 4. Section 762.103, Florida Statutes, is created to
134 read:

135 762.103 Legislative findings and intent.—The Legislature
136 finds that every competent adult has the fundamental and
137 inalienable right of conscience, including the right of a health
138 care practitioner, institution, or payor to refuse to
139 participate in or pay for a health care service that is
140 objectionable to his or her conscience. It is the intent of the
141 Legislature to protect health care practitioners, institutions,
142 and payors from discrimination, punishment, or retaliation for
143 exercising their right of conscience.

144 Section 5. Section 762.104, Florida Statutes, is created to
145 read:

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146 762.104 Right of conscience.—

147 (1) A health care practitioner, institution, or payor has
148 the right not to participate in or pay for any health care
149 service that is objectionable to his, her, or its conscience.

150 (2) A health care practitioner, institution, or payor may
151 not be held civilly, criminally, or administratively liable for
152 exercising the right of conscience not to participate in or pay
153 for a health care service. A health care institution may not be
154 held civilly, criminally, or administratively liable for any
155 claim related to a health care practitioner employed by, under
156 contract with, or granted admitting privileges by the health
157 care institution solely on the basis that the health care
158 practitioner exercised his or her right of conscience.

159 (3) A person or entity may not discriminate against a
160 health care practitioner, institution, or payor for refusing to
161 participate in or pay for a health care service on the basis of
162 conscience.

163 (4) Notwithstanding any other law to the contrary, health
164 care practitioners, institutions, or payors that hold themselves
165 out to the public as religious, that state in their governing
166 documents that they have a religious purpose or mission, and
167 that have internal operating policies or procedures that
168 implement their religious beliefs have the right to make
169 employment, staffing, contracting, and admitting privilege
170 decisions consistent with their religious beliefs.

171 (5) This section may not be construed to waive or modify
172 the duty to provide emergency medical treatment to all patients
173 as required by s. 395.1041 or 42 U.S.C. s. 1395dd.

174 Section 6. Section 762.105, Florida Statutes, is created to

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175 read:

176 762.105 Whistleblower protection.-177 (1) A person or an entity may not discriminate against a
178 health care practitioner in any manner solely because he or she:179 (a) Provided, caused to be provided, or is about to provide
180 or cause to be provided information relating to a violation of,
181 or an act or omission the health care practitioner reasonably
182 believes to be a violation of, any provision of this chapter to
183 his or her employer, the Attorney General, the United States
184 Department of Health and Human Services, the Office of Civil
185 Rights, or any other federal agency charged with protecting
186 health care rights of conscience;187 (b) Testified or is about to testify in a proceeding
188 concerning such violation; or189 (c) Assisted or participated, or is about to assist or
190 participate, in such a proceeding.191 (2) Unless the disclosure is prohibited by law, a person or
192 an entity may not discriminate against a health care
193 practitioner in any manner because the health care practitioner
194 disclosed information that he or she reasonably believes
195 demonstrates any of the following:196 (a) A violation of any state or federal law or rule.197 (b) A violation of any standard of care or other ethical
198 guidelines related to the provision of a health care service.199 (c) Gross mismanagement, a gross waste of funds, an abuse
200 of authority, or a substantial and specific danger to public
201 health or safety.202 Section 7. Section 762.106, Florida Statutes, is created to
203 read:

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204 762.106 Civil remedies.—

205 (1) A health care practitioner, institution, or payor may
206 bring a civil action for damages or injunctive relief for a
207 violation of this chapter. A person or an entity may not use as
208 a defense in such actions the fact that the exercise of the
209 right of conscience by a health care practitioner, institution,
210 or payor caused an additional burden or expense on another
211 health care practitioner, institution, or payor.

212 (2) Any party aggrieved by a violation of this chapter may
213 commence a civil action and, upon a finding of a violation, is
214 entitled to recover three times the actual damages sustained,
215 along with the costs of the action and reasonable attorney fees.
216 Such damages shall be cumulative and in no way limited by any
217 other remedies available under any other federal, state, or
218 local law. A court considering such civil action may also award
219 injunctive relief, which may include, but is not limited to,
220 reinstatement of a health care practitioner to his or her
221 previous position, reinstatement of board certification, or
222 reinstatement of licensure.

223 Section 8. Section 762.107, Florida Statutes, is created to
224 read:

225 762.107 Severability.—If any provision of this chapter or
226 its application is held invalid with respect to any person or
227 circumstance, the invalidity does not affect other provisions or
228 applications of the chapter which can be given effect without
229 the invalid provision or application, and to this end the
230 provisions of this chapter are severable.

231 Section 9. This act shall take effect July 1, 2021.