House
Legislative
Analysis
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HEALTH CARE CONSCIENCE CLAUSE ACT

House Bill 5158
Sponsor: Rep. Stephen Ehardt
Committee: Health Policy

Complete to 10-12-01

A SUMMARY OF HOUSE BILL 5158 AS INTRODUCED 10-9-01

House Bill 5158 would create a new act, known as the "Health Care Conscience Clause Act," to allow health care providers and health facilities to object to participating in a health care service as a matter of conscience, on ethical, moral, or religious grounds.

Health care providers. The bill would enumerate four circumstances in which a health care provider (or "provider") would be prohibited from asserting an objection to a health care service (or "service"). First, a provider could not object if he or she had had five or more disciplinary actions taken against him or her by a health facility within a consecutive five year period and at least three of those actions were related to the service to which the objection applied. To count as a disciplinary action, the action would have to have resulted in a change of employment status or adversely affected the provider's clinical privileges for a period of more than 15 days. Second, a provider could not object if he or she was the subject of three or more complaints issued by the Department of Consumer and Industry Services within a five year period, at least two of which were related to the health service to which the objection applied. Third, a provider could not object if the objection was based on the patient's or a group of patients' race, religion, color, national origin, sex, age, disability, disease or other medical condition, marital status, economic status, or sexual preference. Fourth, a provider could not object if the objection was based on a disagreement with the clinical judgment of another provider regarding the medical appropriateness of a service for a specific patient if the patient had consented to the provision of the service.

If a health care provider was not employed on the effective date of the act and had such an objection, the provider would have to submit a written statement of his or her objection upon being offered employment. A provider who was employed on the act's effective date would have to submit a written statement as soon as practicable after learning that he or she could be asked to participate in a service to which the objection applied. If the provider considered it necessary to submit an objection at another time, he or she could do so. The employer would have to retain the provider's written objections for the duration of the provider's employment or until rescinded by the provider. A provider who had not submitted such objections could still do so within 24 hours of being notified that he or she was scheduled to participate in a health care service to which he or she objected; if the provider failed to do so, the employer would still be required to make a reasonable effort to exclude the provider from participating in the service or to find a replacement for the provider.

In general, a health care provider employer could not use a provider's objection to participating in a service as the basis of an involuntary change in terms or conditions of

employment or other disciplinary action. However, excepting an employer with five or fewer employees, if a health care provider employee submitted an objection to participating in a service, and if five percent or more of the provider's daily or weekly duties consisted of participating in that service, the employer could terminate the employee's employment after giving at least six months notice. Otherwise, a provider's objection to participating in a service could not be the basis for civil liability to another person, criminal action, or administrative or licensure action. It could also not be the basis for a refusal of staff privileges, except as provided below.

The bill's provisions concerning a provider's right to object to a service would not relieve the provider from a duty to inform a patient of the patient's condition, prognosis, and risks of receiving health care services for the condition, if the duty existed in another statute or law. However, the bill also would not impose a duty on a provider to counsel, recommend, or refer a service to which the provider had formally objected.

Health facilities. A health facility could not assert an objection if the objection was based on a patient's or a group of patients' race, religion, color, national origin, sex, age, disability, disease or other medical condition, marital status, economic status, or sexual preference. Moreover, a facility could not object on the basis of a disagreement with a provider employed by, under contract to, or granted privileges by the facility regarding the medical appropriateness of a service for a specific patient, if the patient had consented to the provision of the service.

A health facility would have to provide notice of an objection to providing a service, through written public notice or personally in writing, at the time an individual sought to obtain the service from the facility. The facility's objection could not be the basis for a civil, criminal, or administrative liability. Nor could it be the basis for eligibility discrimination against the facility in a grant, contract, or program, where providing the service was not expressly required as a condition of eligibility for the grant, contract, or program.

In general, a person (including a governmental agency) could not refuse employment or staff privileges to a provider or impose on a provider an involuntary change in terms of conditions of employment or other disciplinary action if the provider asserted or had asserted an objection to participating in a service. However, this general prohibition would not apply if participation in that service had been indicated as a part of the normal course of duties in the posting of the availability of the position for employment or staff privileges. Further, it would not affect an employer's right to terminate an employee after giving six months' notice, as described above.

A medical school or other institution for the educating or training of a provider could not refuse admission to an individual or penalize that individual because he or she has filed a written objection with the medical school or institution.

Except as otherwise provided in the act, a civil action for damages or reinstatement of employment could be brought against a person, including a governmental agency, health facility, or other employer, for penalizing or discriminating against a provider because he or she had filed an objection to a service. Specifically, a person could not penalize or discriminate in hiring, promotion, transfer, a term or condition of employment, licensing, or granting of staff privileges

or appointments. Civil damages could be awarded equal to three times the amount of proven damages and attorney fees. A civil action could include a petition for injunctive relief.

Violations. A person who violated the act would be responsible for a state civil infraction and could be ordered to pay a civil fine of not more than $1,000 for each day the violation continued or a civil fine of not more than $1,000 for each occurrence.

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■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.