



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5006 (Substitute H-3 as passed by the House)
House Bill 5276 (Substitute H-2 as passed by the House)
House Bill 5277 (Substitute H-2 as passed by the House)
House Bill 5278 (Substitute H-2 as passed by the House)
Sponsor: Representative Randy Richardville (H.B. 5006)
Representative John Gleason (H.B. 5276)
Representative Scott Hummel (H.B. 5277 & 5278)

House Committee: Health Policy
Senate Committee: Health Policy

Date Completed: 9-22-04

CONTENT

House Bill 5006 (H-3) would create the "Conscientious Objector Policy Act", which would allow a health care provider to object as a matter of conscience to providing or participating in a health care service on ethical, moral, or religious grounds. The bill would establish the conditions under which a health care provider could assert his or her objection; prohibit an employer or medical school from penalizing a health care provider who asserted an objection; prohibit a health care provider from asserting an objection under certain circumstances; allow a civil action to be brought against a person who penalized a provider who asserted an objection; and prescribe a civil infraction penalty for violating the proposed Act.

House Bill 5276 (H-2) would create a new act to allow a health facility to assert a conscientious objection to providing or participating in a health care service; prohibit a health facility from asserting an objection under certain conditions; and specify that a health facility's objection could not be the basis for liability or eligibility discrimination in a grant, contract, or program.

House Bill 5277 (H-2) would amend the Nonprofit Health Care Corporation Reform Act to allow Blue Cross and Blue

Shield of Michigan (BCBSM) to assert a conscientious objection to providing a health care benefit.

House Bill 5278 (H-2) would amend the Insurance Code to allow a health maintenance organization (HMO) or a health insurer to assert a conscientious objection to providing a health care benefit.

The bills are described below in further detail.

House Bill 5006 (H-3)

Right to Object

Under the proposed Conscientious Objector Policy Act, a health care provider could object as a matter of conscience to providing or participating in a health care service on ethical, moral, or religious grounds.

The bill would define "health care provider" as a person licensed or registered under the Public Health Code, a student of a health facility, or another person who was employed by or under contract to a health facility and directly participated in the provision of a health care service. The term would not include a veterinarian or sanitarian.

"Health care service" would mean the provision or withdrawal of, or research or

experimentation involving, a medical diagnosis, treatment, procedure, diagnostic test, device, medication, drug, or other substance intended to affect an individual's physical or mental condition. The term would not include the provision of contraceptive medication.

"Health care facility" would mean a clinical laboratory, county medical care facility, freestanding surgical outpatient facility, home for the aged, hospital, nursing home, hospice, hospice residence, or any of these facilities located in a university, college, or other educational institution; a private physician's office; a medical clinic; or any of the following that provided health care services to an individual: a public or private institution, a teaching institution, a pharmacy, or a corporation, partnership, sole proprietorship, limited liability company, or other legal entity.

"Participate" would mean, at a minimum, to counsel, refer, perform, administer, prescribe, dispense, treat, withhold, withdraw, diagnose, test, evaluate, train, research, prepare, or provide medical advice or material or physical assistance in a health care service.

Notice to Employer

A health care provider would have to notify his or her employer in writing of a conscientious objection. The written notice would have to be given directly to the provider's supervisor and would have to include a statement explaining his or her conscientious objection and the health care service or services to which he or she objected specifically to providing or participating in. A health care provider could assert his or her conscientious objection under any of the following conditions:

- Upon being offered employment.
- At the time the health care provider adopted an ethical, moral, or religious belief system that conflicted with participation in a health care service.
- Within 24 hours after he or she was asked or had received notice that he or she was scheduled to participate in a health care service to which he or she conscientiously objected.

An employer would have to retain the health care provider's written objection for the duration of the provider's employment. The written objection would be valid for the duration of the provider's employment or until he or she rescinded the objection in writing. After receiving a written objection, an employer could not require the health care provider to provide or participate in the objectionable health care service, except as specified below.

If a health care provider asserted an objection less than 24 hours before the scheduled health care service, the employer would have to make a reasonable effort to exclude him or her from participating in the service, or find a replacement. If a replacement were not available and the provider could not be excluded, the employer could require the provider to provide or participate in the service.

Objector Protections

An employer could not refuse employment or staff privileges to a health care provider who exercised his or her right to assert an objection, unless participation in the objectionable health care service was indicated as a part of the normal course of duties in the posting of the availability of the position for employment or staff privileges.

A medical school or other institution for the education or training of a health care provider could not refuse admission to an individual or penalize him or her because he or she filed with the medical school or institution a written conscientious objection.

A health care provider's conscientious objection could not be the basis for civil liability to another person, criminal action, administrative or licensure action, or termination of employment or refusal of staff privileges at a health facility.

Exceptions to Objector Protections

The protections afforded to a health care provider under the proposed Act would not apply as follows:

- A provider could not assert an objection if a patient's condition, in an attending physician's or medical director's reasonable medical judgment, required immediate action and no other qualified

provider were available to provide that health care service.

- A provider could not assert an objection in the event of a public health emergency.
- A provider could not assert an objection based on the classification of a patient or group of patients protected under the Elliott-Larsen Civil Rights Act, or based on a disease or other medical condition.

("Public health emergency" would mean a condition or situation that presented an immediate threat to the public health, safety, or welfare and required immediate action to preserve the public health, safety, or welfare.

The Elliott-Larsen Civil Rights Act prohibits discriminatory practices, policies, and customs based upon religion, race, color, national origin, age, sex, height, weight, familial status, and marital status.)

Subject to a collective bargaining agreement, if a health care provider asserted an objection to a health care service that at the time of the objection constituted a regular or substantial portion of the provider's current and defined position, the employer could give the provider at least 60 days' notice of the termination of his or her employment. For this purpose, "regular or substantial portion" would mean that at least 10% of the provider's daily or weekly hours of duty consisted of providing or participating in that health care service.

The bill specifies that it would not relieve a health care provider from a duty that existed under another statute or other law pertaining to current standards of acceptable health care practice and procedure to inform a patient of his or her condition, prognosis, and risks of receiving health care services for the condition.

Penalties & Damages

A civil action for damages or reinstatement of employment, or both, could be brought against a person, including a governmental agency, health facility, or other employer, for penalizing or discriminating against a health care provider, including penalizing or discriminating in hiring, promotion, transfer, a term or condition of employment, licensing, or granting of staff privileges or

appointments, because the provider asserted an objection to participating in a health care service. Civil damages could be awarded equal to the amount of proven damages and attorney fees. A civil action could include a petition for injunctive relief against a person alleged to have penalized or discriminated against a health care provider.

A person who violated the proposed Act would be responsible for a State civil infraction and could be ordered to pay a maximum fine of \$1,000 for each day the violation continued, or for each occurrence.

House Bill 5276 (H-2)

The bill would allow a health facility to withdraw or withhold from providing a health care service, or refuse to provide or participate in a health care service, on ethical, moral, or religious grounds as reflected in its organizational documents, charter, or bylaws, or an adopted mission statement.

A health facility could not assert an objection under any of the following circumstances:

- The objection was to a health care service the facility routinely provided or participated in and was based on a disagreement with a member of a health profession employed by, under contract to, or granted privileges by the facility regarding the medical appropriateness of a health care service for a specific patient, if the patient had consented to the provision of the service.
- In the event of a public health emergency.
- In the event of an emergency in which a patient's condition, in the reasonable medical judgment of an attending physician or medical director, required immediate action to avert serious injury, harm, impairment, or death, or was such that a delay would create a serious risk of substantial and irreversible impairment of a major bodily function to the patient.

The bill specifies that it would not relieve a health care facility from a duty existing under another statute or law pertaining to medical standards of acceptable health care practice and procedures.

A health facility's objection to providing or participating in a health care service could not be a basis for civil, criminal, or administrative liability; or eligibility discrimination against the facility in a grant, contract, or program, unless providing or participating in the health care service was the exclusive purpose for the grant, contract, or program.

House Bill 5277 (H-2)

The bill would allow BCBSM to refuse to offer or provide a health care benefit on ethical, moral, or religious grounds as reflected in its articles or incorporation or bylaws or an adopted mission statement. If a health care benefit were covered specifically under the certificate, BCBSM could not refuse to offer or provide the benefit. The refusal of BCBSM to offer or provide a benefit could not be a basis for civil, criminal, or administrative liability; or eligibility discrimination against BCBSM in providing a certificate unless offering or providing the benefit was required expressly.

House Bill 5278 (H-2)

The bill would allow an HMO and a health insurer to refuse to offer or provide a health care benefit on ethical, moral, or religious grounds as reflected in its articles of incorporation or bylaws, or an adopted mission statement. An HMO or a health insurer could not refuse to offer or provide a benefit if the benefit specifically were covered under the contract, policy, or certificate. An HMO's or a health insurer's refusal to offer or provide a health care benefit could not be the basis for civil, criminal, or administrative liability; or eligibility discrimination against the HMO or insurer in providing a contract, policy, or certificate, unless offering or providing the benefit was required expressly.

Proposed MCL 550.1409a (H.B. 5277)
Proposed MCL 500.3406r (H.B. 5278)

Legislative Analyst: Julie Koval

FISCAL IMPACT

House Bill 5006 (H-3)

To the extent that the bill would alter the number of related court cases by defining

the circumstances under which someone could be held civilly or criminally liable in situations of conscientious objection, it would have an indeterminate fiscal impact on the judiciary. By creating a new State civil infraction with fines of up to \$1,000 per day or per violation, the bill also would potentially increase civil fine revenue, which is constitutionally dedicated to public libraries.

House Bills 5276 (H-2), 5277 (H-2) & 5278 (H-2)

The fiscal impact of these bills would be indeterminate. One could argue that if a Medicaid client were denied a form of treatment or procedure, either the cost of that treatment or procedure would be saved, or the denial or delay of that treatment or procedure could lead to greater costs down the road.

Fiscal Analyst: Steve Angelotti
Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.