

SENATE BILL No. 499

April 30, 2009, Introduced by Senators KAHN, PATTERSON, KUIPERS, VAN WOERKOM and BROWN and referred to the Committee on Health Policy.

A bill to provide standards for personnel policies to protect and accommodate the right of health care providers who object to providing or participating in certain health care services under certain circumstances; to provide for protection from certain liability; and to prescribe penalties and provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "employee accommodation act".

3 Sec. 3. As used in this act:

4 (a) "Health care provider" means a person licensed,
5 registered, or otherwise authorized to engage in a health
6 profession under article 15 of the public health code, 1978 PA 368,
7 MCL 333.16101 to 333.18838, a student of a health facility, or
8 another person who is employed by or under contract with a health
9 facility and directly participates in the provision of a health

1 care service. Health care provider does not include a sanitarian or
2 a veterinarian.

3 (b) "Health care service" means the provision or withdrawal
4 of, or research or experimentation involving, a medical diagnosis,
5 treatment, procedure, diagnostic test, device, medication, drug, or
6 other substance intended to affect the physical or mental condition
7 of an individual.

8 (c) "Health facility" means any of the following:

9 (i) A clinical laboratory.

10 (ii) A county medical care facility.

11 (iii) A freestanding surgical outpatient facility.

12 (iv) A home for the aged.

13 (v) A hospital.

14 (vi) A nursing home.

15 (vii) A hospice.

16 (viii) A hospice residence.

17 (ix) A facility or agency listed in subparagraphs (i) to (vi)
18 located in a university, college, or other educational institution.

19 (x) A private physician's office.

20 (xi) A medical clinic.

21 (xii) A public or private institution that provides health care
22 services to an individual.

23 (xiii) A teaching institution that provides health care services
24 to an individual.

25 (xiv) A pharmacy that provides health care services to an
26 individual.

27 (xv) A corporation, partnership, sole proprietorship, limited

1 liability company, or other legal entity that provides health care
2 services to an individual.

3 (d) "Medical director" means that term as defined in section
4 20906 of the public health code, 1978 PA 368, MCL 333.20906.

5 (e) "Participate" or "participating" means, at a minimum, to
6 counsel, refer, perform, administer, prescribe, dispense, treat,
7 withhold, withdraw, diagnose, test, evaluate, train, research,
8 prepare, or provide medical advice or material or physical
9 assistance in a health care service.

10 (f) "Person" means a person as defined in section 1106 of the
11 public health code, 1978 PA 368, MCL 333.1106, or a governmental
12 entity.

13 (g) "Public health emergency" means a condition or situation
14 that presents an immediate threat to the public health, safety, or
15 welfare and requires immediate action to preserve the public
16 health, safety, or welfare.

17 (h) "Reasonable accommodation" means assigned duties and work
18 schedule consistent with the health care provider's typical duties
19 and responsibilities.

20 (i) "Refer" means to make a recommendation or give information
21 to a patient regarding a specific health care provider or health
22 facility that provides health care services.

23 (j) "Regular or substantial portion" means that 10% or more of
24 the health care provider's daily or weekly hours of duty consist of
25 providing or participating in that health care service.

26 Sec. 5. (1) A health care provider may request reasonable
27 accommodation to avoid providing or participating in a health care

1 service to which the health care provider objects on ethical,
2 moral, or religious grounds.

3 (2) A health care provider shall request reasonable
4 accommodation described in subsection (1) in writing. The written
5 request shall be given directly to his or her supervisor and shall
6 include a statement explaining his or her objection and the health
7 care service or services to which he or she specifically objects to
8 providing or participating in under this act.

9 (3) A health care provider may request reasonable
10 accommodation under any of the following conditions:

11 (a) Upon being offered employment.

12 (b) At the time the health care provider adopts an ethical,
13 moral, or religious belief system that conflicts with participation
14 in a health care service.

15 (c) Within 24 hours after he or she is asked or has received
16 notice that he or she is scheduled to participate in a health care
17 service to which he or she objects.

18 Sec. 7. (1) An employer shall retain a health care provider's
19 written request filed under section 5 for the duration of the
20 health care provider's employment. The written request is valid for
21 the duration of the health care provider's employment or until
22 rescinded by the health care provider in writing.

23 (2) Within 7 days after receiving a written request pursuant
24 to section 5, an employer shall develop a plan for reasonable
25 accommodation with the health care provider to ensure that the
26 health care provider will not be scheduled or requested to
27 participate in a health care service to which he or she

1 specifically objects.

2 (3) An employer shall not ask a prospective employee regarding
3 his or her objection or potential objection to a health care
4 service unless participation in that health care service is a
5 regular or substantial portion of the normal course of duties for
6 the position or staff privileges the prospective employee is
7 seeking.

8 (4) An employer shall not refuse employment or staff
9 privileges to a health care provider who is known by the employer
10 to have previously requested or is currently requesting reasonable
11 accommodation under section 5 unless participation in that health
12 care service is a regular or substantial portion of the normal
13 course of duties for that position or staff privileges.

14 (5) A medical school or other institution for the education or
15 training of a health care provider shall not refuse admission to an
16 individual or penalize that individual because the individual has
17 filed in writing with the medical school or other institution a
18 request for reasonable accommodation under section 5.

19 Sec. 9. (1) The protections afforded to a health care provider
20 under this act do not apply to a health care provider who has
21 submitted to his or her supervisor a written request regarding the
22 providing or participating in a certain health care service under
23 any of the following circumstances:

24 (a) A patient's condition, in the reasonable medical judgment
25 of an attending physician or medical director, requires immediate
26 action and no other qualified health care provider is available to
27 provide that health care service.

1 (b) In the event of a public health emergency.

2 (c) If a health care provider first submits a request
3 contemporaneously to a patient's requiring or requesting the
4 objectionable health care service and no other health care provider
5 is available to provide the health care service.

6 (d) If the request is based on the status of the patient,
7 including, but not limited to, the patient's religion, race, color,
8 national origin, age, gender, height, weight, familial status,
9 marital status, participation in high-risk activities, past or
10 present medical disease or condition, sexual orientation,
11 employment status, insurance coverage, ability to pay, or method of
12 payment.

13 (e) If the request is made orally in the presence of a patient
14 seeking a health care service to which the health care provider
15 objects.

16 (2) This act does not relieve a health care provider from a
17 duty that exists under any other law pertaining to current
18 standards of acceptable health care practice and procedure to
19 inform a patient of the patient's condition, prognosis, risk of
20 receiving or forgoing relevant health care services for the
21 condition, including the availability of a health care service to
22 which the health care provider objects.

23 (3) Subject to a collective bargaining agreement, if a health
24 care provider submits a request regarding a health care service
25 that at the time the request is submitted constitutes a regular or
26 substantial portion of the health care provider's current and
27 defined position, the employer may give the health care provider

1 not less than 60 days' notice of the termination of his or her
2 employment.

3 Sec. 11. (1) Except as provided in section 9, a health care
4 provider's objection to providing or participating in a health care
5 service as described in section 5 shall not be the basis for 1 or
6 more of the following:

7 (a) Civil liability to another person.

8 (b) Criminal action.

9 (c) Administrative or licensure action.

10 (2) If a health care provider is required by his or her
11 employer to participate in a health care service more than 7 days
12 after the health care provider has submitted a written request
13 regarding that health care service, the health care provider is
14 immune from civil liability in an action arising from his or her
15 participation in that health care service.

16 Sec. 13. (1) A civil action for damages or reinstatement of
17 employment, or both, may be brought against a person, including,
18 but not limited to, a governmental agency, health facility, or
19 other employer, for penalizing or discriminating against a health
20 care provider, including, but not limited to, penalizing or
21 discriminating in hiring, promotion, transfer, a term or condition
22 of employment, licensing, or granting of staff privileges or
23 appointments, solely because that health care provider has
24 submitted a request regarding participating in a health care
25 service under section 5. Civil damages may be awarded equal to the
26 amount of proven damages and attorney fees. A civil action filed
27 under this subsection may include a petition for injunctive relief

1 against a person alleged to have penalized or discriminated against
2 a health care provider as described in this subsection.

3 (2) A person who violates this act is responsible for a state
4 civil infraction and may be ordered to pay a fine of not more than
5 \$1,000.00 for each day the violation continues or a fine of not
6 more than \$1,000.00 for each occurrence.