
HEALTHCARE FREEDOM OF CONSCIENCE ACT

Model Legislation & Policy Guide
For the 2017 Legislative Year



*Accumulating Victories, Building Momentum,
Advancing a Culture of Life in America*

INTRODUCTION

Protecting freedom of conscience has been a paramount concern since the founding of the United States—at least in theory, though not always in practice. Over the 40 years since *Roe v. Wade*, it has become abundantly clear that Big Abortion’s agenda includes an assault on the conscience rights of pro-life Americans. The recent, aggressive push to legalize and expand assisted suicide also raises serious concerns for physicians and pharmacists with religious or moral objections to participating in a patient’s death.

State and federal laws are necessary to ensure that the freedom of conscience is truly a protected right and not an unenforced platitude.

Only two states—Illinois¹ and Mississippi—protect the rights of conscience of all healthcare providers, institutions, and payers (*e.g.*, health insurance providers and purchasers) who object to participating in any healthcare service because of religious, moral, or ethical objections. Although 45 other states have adopted conscience laws, these laws typically protect the right to object only to participating in abortion.

Moreover, many of the current state laws do not protect all healthcare providers. For example, pharmacists and pharmacies are often excluded from coverage in these statutes and, therefore, are lacking affirmative protection of their right to decline to provide abortion-inducing drugs. Non-religiously affiliated, pro-life professionals, institutions, and payers may have moral (though not religious) objections to participating in, facilitating, and funding life-ending drugs and devices, but are left unprotected.

In addition, some current conscience laws do not adequately protect healthcare providers against coercion even with regards to abortion. For example, at least two New York courts have dismissed claims brought by nurses because, although they belonged to the class the state’s statute intended to protect, New York’s conscience law does not have a private right of action allowing them to sue when forced to participate in abortions.

Problematically, there is a growing trend of coercion and discrimination against pro-life healthcare professionals, institutions, and payers. In fact, Big Abortion’s true agenda of coercion, not “choice,” is readily apparent. Recent examples include:

¹ An amendment to Illinois’ conscience law that was passed in 2016 would force to pro-life healthcare providers (including pregnancy care centers) to provide information on where to obtain services, such as abortion, to which they conscientiously object. The requirement is the subject of ongoing litigation.

- The U.S. Department of Health and Human Services (HHS) issued a mandate that all health insurance plans must include coverage for life-ending drugs and devices that are deceptively labeled by the Food and Drug Administration (FDA) as “contraception.” In *Burwell v. Hobby Lobby*, the U.S. Supreme Court upheld the rights guaranteed by the Religious Freedom Restoration Act (RFRA) for family-run businesses not to comply with the mandate. However, religious non-profits—such as the Little Sisters of the Poor—are still battling in court for protection against the Administration’s disingenuously labelled “accommodation” which requires their compliance with the objectionable mandate. Importantly, pro-life employers who are not religiously-affiliated lack clear statutory protections against the coercive HHS mandate.
- A nurse at Mt. Sinai hospital in New York, Cathy DeCarlo was forced to participate in a late-term abortion despite her conscientious objection.
- Nine nurses at Nassau University Medical Center in Long Island, New York were suspended for refusing to participate in abortions. Only after the nurses’ union intervened, did the hospital drop its disciplinary charges and apologize to the nurses.
- Vanderbilt University required applicants to its nursing program to take an abortion pledge. After a complaint was filed with HHS for a violation of federal law, Vanderbilt changed its policy.
- Through then-Governor Rod Blagojevich’s unilateral action, pharmacy owners in Illinois were told that they must dispense so-called “emergency contraceptives,” despite an existing state law purportedly protecting their freedom of conscience.
- An ambulance driver in Illinois being fired for refusing to take a woman to an abortion clinic.
- In 2004, New Mexico refused to approve a community-owned hospital lease because of the hospital’s policy not to perform elective abortions.
- The American College of Obstetricians and Gynecology (ACOG) and the American Board of Obstetrics and Gynecology (ABOG) engaged in efforts to make board certification or recertification dependent on compliance with ACOG’s position on referrals for abortion.

Sadly, this represents only a small sampling of the mounting attacks on the freedom of healthcare professionals to provide medical care without violating their ethical or moral standards and/or their religious beliefs.

Protecting the freedom of conscience is common sense. Conscience-respecting legislation does not ban any procedure or prescription and does not mandate any particular belief or morality. Freedom of conscience simply provides American men and women the guarantees that this country was built upon: the right to be free from coercion. Protecting conscience helps ensure providers enter and remain in the healthcare profession, helping to meet the rising demand for quality health care.

To maintain and increase protection for healthcare freedom of conscience, AUL has drafted the *Healthcare Freedom of Conscience Act*, providing comprehensive protection for all healthcare providers. For more information and drafting assistance, please contact AUL's Legislative Coordinator at (202) 289-1478 or Legislation@AUL.org.

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Vice President of Legal Affairs
Americans United for Life

HEALTHCARE FREEDOM OF CONSCIENCE ACT

HOUSE/SENATE BILL No. _____

By Representatives/Senators _____

[Drafter's Note: Provisions in this model legislation may implicate the Patient Protection and Affordable Care Act (the federal healthcare law enacted in 2010) including, specifically, the "HHS mandate" which requires most insurance plans to cover certain life-ending drugs and devices. Please contact AUL for drafting assistance.]

Section 1. Title.

This Act may be known and cited as the "Healthcare Freedom of Conscience Act."

Section 2. Legislative Findings and Purposes.

- (a) The [*Legislature*] of the State of [*Insert name of State*] finds that:
- (1) It is the public policy of [*Insert name of State*] to respect and protect the fundamental right of conscience of all individuals who provide healthcare services.
 - (2) Without comprehensive protection, healthcare rights of conscience may be violated in various ways, such as harassment, demotion, salary reduction, transfer, termination, loss of staffing privileges, denial of aid or benefits, and refusal to license or refusal to certify.
- (b) Based on the findings in subsection (a), it is the purpose of this Act to:
- (1) Protect as a basic civil right the right of all healthcare providers, institutions, and payers to decline to counsel, advise, [*pay for,*] provide, perform, assist, or participate in providing or performing healthcare services that violate their consciences. Such healthcare services may include, but are not limited to, abortion, artificial birth control, artificial insemination, assisted reproduction, human embryonic stem-cell research, fetal experimentation, [*human cloning, physician-assisted suicide, euthanasia,*] and sterilization.

- (2) Prohibit all forms of discrimination, disqualification, coercion, disability, or liability upon such healthcare providers, institutions, and payers that decline to perform or provide any healthcare service that violates their consciences.

Section 3. Definitions.

As used in this Act only:

- (a) “**Conscience**” means the religious, moral, or ethical principles held by a healthcare provider, a healthcare institution, or a healthcare payer. For purposes of this Act, a healthcare institution or healthcare payer’s conscience shall be determined by reference to its existing or proposed religious, moral, or ethical guidelines; mission statement; constitution; bylaws; articles of incorporation; regulations; or other relevant documents.
- (b) “**Employer**” means any individual or entity that pays for or provides health benefits or health insurance coverage as a benefit to its employees, whether through a third-party, a health maintenance organization, a program of self-insurance, or some other means.
- (c) “**Healthcare institution**” means any public or private organization, corporation, partnership, sole proprietorship, association, agency, network, joint venture, or other entity that is involved in providing healthcare services, including but not limited to: hospitals, clinics, medical centers, ambulatory surgical centers, private physician’s offices, pharmacies, nursing homes, university medical schools, nursing schools, medical training facilities, or other institutions or locations wherein healthcare services are provided to any person.
- (d) “**Healthcare payer**” means any entity or employer that contracts for, pays for, or arranges for the payment of, in whole or in part, any healthcare service or product, including, but not limited to: health maintenance organizations, health plans, insurance companies, or management services organizations.
- (e) “**Healthcare provider**” means any individual who may be asked to participate in any way in a healthcare service, including, but not limited to, the following: a physician; physician’s assistant; nurse; nurses’ aide; medical assistant; hospital employee; clinic employee; nursing home employee; pharmacist; pharmacy employee; researcher; medical or nursing school faculty, student, or employee; counselor; social worker; or any professional, paraprofessional, or any other person who furnishes or assists in the furnishing of healthcare services.
- (f) “**Healthcare service**” means any phase of patient medical care, treatment, or procedure, including, but not limited to, the following: patient referral; counseling; therapy; testing;

research; instruction; prescribing, dispensing, or administering any device, drug, or medication; surgery; or any other care or treatment rendered by healthcare providers or healthcare institutions.

(g) “**Participate**” in a healthcare service means to counsel, advise, provide, perform, assist in, refer for, admit for purposes of providing, or participate in providing any healthcare service or any form of such service.

(h) “**Pay**” or “**payment**” means pay, contract for, or otherwise arrange for the payment of, in whole or in part.

Section 4. Freedom of Conscience of Healthcare Providers.

(a) ***Freedom of Conscience.*** A healthcare provider has the right not to participate, and no healthcare provider shall be required to participate, in a healthcare service that violates his or her conscience.

(b) ***Immunity from Liability.*** No healthcare provider shall be civilly, criminally, or administratively liable for declining to participate in a healthcare service that violates his or her conscience.

(c) ***Discrimination.*** It shall be unlawful for any person, healthcare provider, healthcare institution, public or private institution, public official, or any board which certifies competency in medical specialties to discriminate against any healthcare provider in any manner based on his or her declining to participate in a healthcare service that violates his or her conscience. For purposes of this Act, discrimination includes, but is not limited to, the following: termination; transfer; refusal of staff privileges; refusal of board certification; adverse administrative action; demotion; loss of career specialty; reassignment to a different shift; reduction of wages or benefits; refusal to award any grant, contract, or other program; refusal to provide residency training opportunities; or any other penalty or disciplinary retaliatory action.

Section 5. Freedom of Conscience of Healthcare Institutions.

(a) ***Freedom of Conscience.*** A healthcare institution has the right not to participate, and no healthcare institution shall be required to participate, in a healthcare service that violates its conscience.

(b) ***Immunity from Liability.*** A healthcare institution that declines to provide or participate in a healthcare service that violates its conscience shall not be civilly, criminally, or

administratively liable if the institution provides a consent form to be signed by a patient before admission to the institution stating that it reserves the right to decline to provide or participate in healthcare services that violate its conscience.

(c) ***Discrimination.*** It shall be unlawful for any person, public or private institution, or public official to discriminate against any healthcare institution or any person, association, corporation, or other entity attempting to establish a new healthcare institution or operating an existing healthcare institution, in any manner, including but not limited to the following: any denial, deprivation or disqualification with respect to licensure; any aid assistance, benefit, or privilege, including staff privileges; or any authorization, including authorization to create, expand, improve, acquire, or affiliate or merge with any healthcare institution because such healthcare institution or person, association, or corporation planning, proposing, or operating a healthcare institution declines to participate in a healthcare service which violates the healthcare institution's conscience.

(d) ***Denial of Aid or Benefit.*** It shall be unlawful for any public official, agency, institution, or entity to deny any form of aid, assistance, grants, or benefits or in any other manner to coerce, disqualify, or discriminate against any person, association, corporation, or other entity attempting to establish a new healthcare institution or operating an existing healthcare institution because the existing or proposed healthcare institution declines to participate in a healthcare service which violates the healthcare institution's conscience.

Section 6. Freedom of Conscience of Healthcare Payers.

[Drafter's Note: This provision specifically implicates the Patient Protection and Affordable Care Act, the federal healthcare law enacted in 2010. Please contact AUL for drafting assistance when seeking to protect any category of healthcare payer.]

(a) ***Freedom of Conscience.*** A healthcare payer has the right to decline to pay, and no healthcare payer shall be required to pay for or arrange for the payment of any healthcare service or product that violates its conscience.

(b) ***Immunity from Liability.*** No healthcare payer and no person, association, corporation, or other entity that owns, operates, supervises, or manages a healthcare payer shall be civilly or criminally liable by reason of the healthcare payer's declining to pay for or arrange for the payment of any healthcare service that violates its conscience.

(c) ***Discrimination.*** It shall be unlawful for any person, public or private institution, or public official to discriminate against any healthcare payer or any person, association,

corporation, or other entity attempting to establish a new healthcare payer or operating an existing healthcare payer, in any manner, including but not limited to the following: any denial, deprivation, or disqualification with respect to licensure, aid, assistance, benefit, privilege, or authorization including but not limited to any authorization to create, expand, improve, acquire, or affiliate or merge with any healthcare payer, because a healthcare payer or a person, association, corporation, or other entity planning, proposing, or operating a healthcare payer declines to pay for or arrange for the payment of any healthcare service that violates its conscience.

(d) ***Denial of Aid or Benefits.*** It shall be unlawful for any public official, agency, institution, or entity to deny any form of aid, assistance, grants, or benefits or in any other manner to coerce, disqualify, or discriminate against any healthcare payer or any person, association, corporation, or other entity attempting to establish a new healthcare payer or operating an existing healthcare payer because the existing or proposed healthcare payer declines to pay for or arrange for the payment of any healthcare service that violates its conscience.

Section 7. Civil Remedies.

(a) ***Civil Action.*** A civil action for damages or injunctive relief, or both, may be brought for the violation of any provision of this Act. It shall not be a defense to any claim arising out of the violation of this Act that such violation was necessary to prevent additional burden or expense on any other healthcare provider, healthcare institution, individual, or patient.

(b) ***Damage Remedies.*** Any individual, association, corporation, entity, or healthcare institution injured by any public or private individual, association, agency, entity, or corporation by reason of any conduct prohibited by this Act may commence a civil action. Upon finding a violation of this Act, the aggrieved party shall be entitled to recover threefold the actual damages including pain and suffering sustained by such individual, association, corporation, entity, or healthcare institution, the costs of the action, and reasonable attorney's fees; but in no case shall recovery be less than five thousand dollars (\$5,000) for each violation, in addition to costs of the action and reasonable attorney's fees. These damage remedies shall be cumulative and not exclusive of other remedies afforded under any other state or federal law.

(c) ***Injunctive Remedies.*** The court in such civil action may award injunctive relief including, but not limited to, ordering reinstatement of a healthcare provider to his or her prior job position.

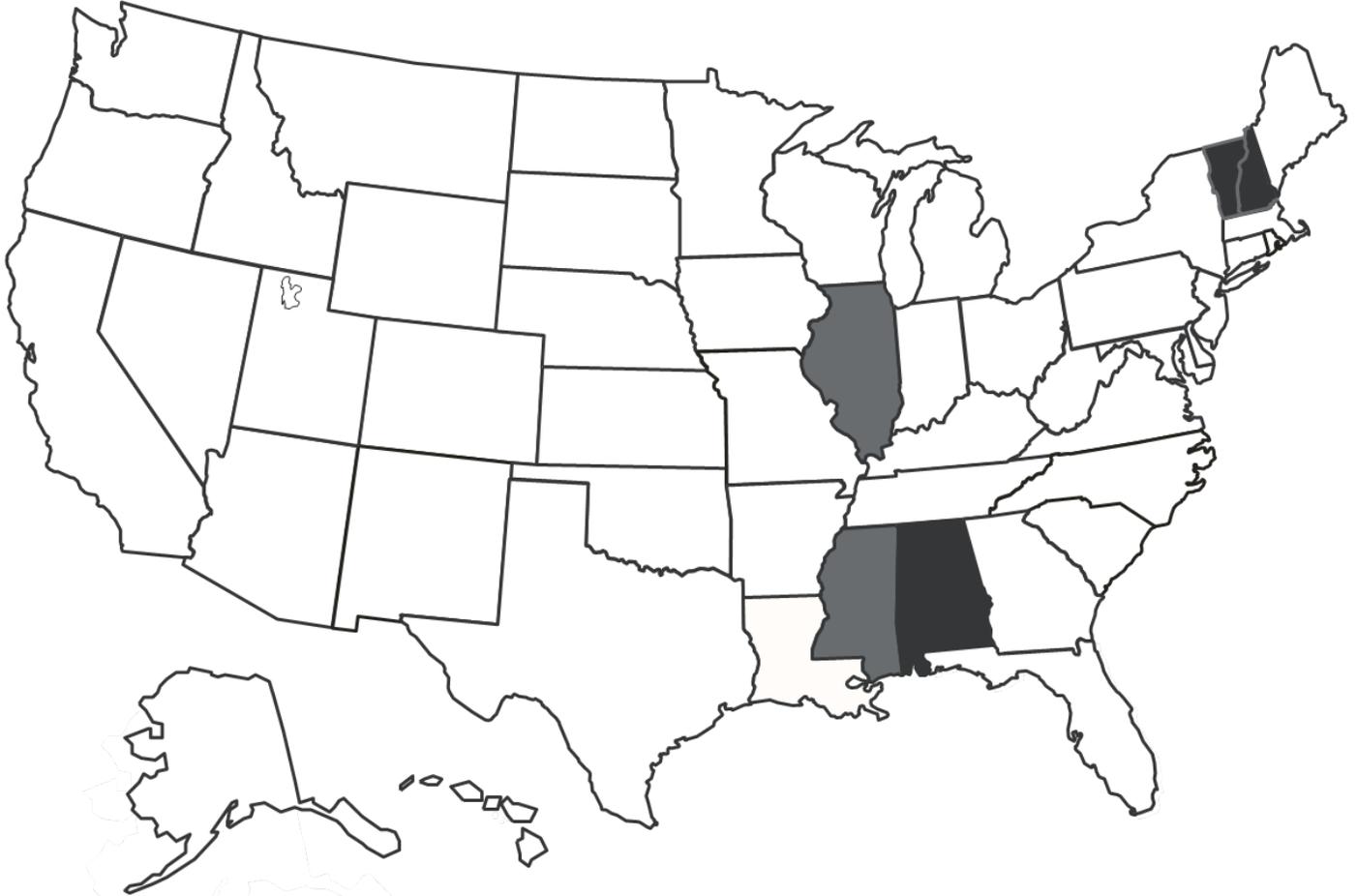
Section 8. Severability.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

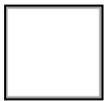
Section 9. Effective Date.

This Act takes effect on [*Insert date*].

STATE OF THE STATES: WHERE ARE WE NOW? FREEDOM OF CONSCIENCE



Two states protect the freedom of conscience all healthcare providers, whether individuals, institutions, or payers (public or private), who conscientiously object to participating in any healthcare procedure or service: IL and MS.



Forty-five states protect the freedom of conscience of only certain healthcare professionals and/or institutions from participating in specific procedures (usually abortion only): AK, AZ, AR, CA, CO, CT, DE, FL, GA, HI, ID, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WI, WV, and WY.



Three states provide no protection for the freedom of conscience of healthcare providers, institutions, or payers: AL, NH, and VT.

AUL's annual publication *Defending Life* is available online at AUL.org.

For further information regarding this or other AUL policy guides, please contact:

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