

AUL Model Legislation

HEALTHCARE FREEDOM OF CONSCIENCE ACT

HOUSE/SENATE BILL NO. _____
 By Representatives/Senators _____

Section 1. Title.

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

Section 2. Legislative Findings and Purposes.

- (a) 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.
- (b) 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.
- (c) It is the purpose of this Act to 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 cloning, euthanasia, human embryonic stem-cell research, fetal experimentation, physician-assisted suicide, and sterilization.
- (d) Accordingly, it is the purpose of this Act to prohibit all forms of discrimination, disqualification, coercion, disability, or liability upon such healthcare providers, institutions, and payers that decline to perform any healthcare service that violates their consciences.

Section 3. Definitions.

- (a) “**Healthcare service**” means any phase of patient medical care, treatment, or procedure, including, but not limited to, the following: patient referral, counseling, therapy, testing, diagnosis or prognosis, 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.



(b) “**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.

(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 and 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) “**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.

(f) “**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.

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

(h) “**Conscience**” means the religious, moral or ethical principles held by a healthcare provider, the healthcare institution, or 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.

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, disciplinary, or 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 contrary to the healthcare institution's conscience.

Section 6. Freedom of Conscience of Healthcare Payers.

[Drafter's Note: *This provision 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 (i) attempting to establish a new healthcare payer or (ii) 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 is contrary to 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 \$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 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 here from 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]*.

