HEALTHCARE FREEDOM OF CONSCIENCE ACT

Model Legislation & Policy Guide
For the 2013 Legislative Year

AMERICANS UNITED FOR LIFE

Changing Law to Protect Human Life, State by State
INTRODUCTION

Over the last two decades, abortion advocates and their allies have launched a concerted campaign to force hospitals, healthcare institutions, health insurers, and individual healthcare providers to provide, refer, and pay for abortions. Their determined effort to eviscerate the concept of “conscience” and the freedom to follow one’s religious or moral beliefs from the medical profession has resulted in the following:

- Nearly all private health insurance plans will be required to provide full-coverage for the “full range of FDA approved contraceptives,” which includes abortion-inducing drugs and devices such as ella, according to guidelines issued by the Health Resources Services Administration (HRSA), a federal agency that was tasked with determining what constitutes “preventive services” under the Patient Protection and Affordable Care Act (PPACA). The Department of Health and Human Services (HHS) issued a regulation with an exceedingly narrow “religious employer” conscience exemption to its mandate. Under its definition, most religious schools, hospitals, and charitable organizations would not be protected. Moreover, non-religiously affiliated employers – whose pro-life consciences are nonetheless violated – are unquestionably subject to the 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.

- Catholic Charities of California and New York being forced by their respective state supreme courts to face the unenviable choice of offering healthcare coverage for contraceptives (even though the use of artificial contraception violates long-standing Catholic teachings) or, alternatively, offering no healthcare coverage to their employees.

- Two California physicians being sued by a lesbian couple because, based on their religious beliefs, the physicians refuse to artificially inseminate single women (regardless...
of their sexual preference or orientation). The California Supreme Court ruled that the physicians may not introduce their conscientious objection (to performing such procedures on any unmarried person) as a defense to liability (for illegal discrimination) in the case.

- Through the Governor’s unilateral action, pharmacy owners in Illinois being told that they must dispense so-called “emergency contraceptives,” despite an existing state law purportedly protecting their rights of conscience.

- An ambulance driver in Illinois being fired for refusing to take a woman to an abortion clinic.

- In 2004, New Mexico refusing to approve a community-owned hospital lease because of the hospital’s refusal to perform elective abortions.

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.

Moreover, in the past few years, abortion advocates and their allies have honed in on pharmacists. Their goal is to require pharmacists to dispense contraceptives, including “emergency contraceptives,” forcing them to choose between their livelihood and their moral, ethical, or religious beliefs. Although the U.S. Constitution protects the free exercise of religion, allowing one to follow what his or her conscience dictates, the abortion lobby is turning the debate into a referendum on alleged “refusals” to provide women with constitutionally-protected reproductive health services.

The abortion lobby and their allies recognize that if they can establish legal precedent to coerce someone to violate their conscience regarding contraceptives, they can then easily extend that legal precedent to coerce pharmacists to dispense RU-486 (the so-called “abortion pill”), to coerce medical students to participate in abortion training, and to coerce doctors to participate in surgical and medical abortions.

Often thought of as a contemporary problem, the issue of freedom of conscience was referenced and considered by our Founding Fathers. For example, Thomas Jefferson wrote, “No provision in our Constitution ought to be dearer to man than that which protects the rights of conscience against the enterprises of the civil authority.” But now, this founding principle is under increasing attack.
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) 741-4907 or Legislation@AUL.org.

**DENISE M. BURKE, ESQ.**

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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) 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.

3. 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.

4. 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.


(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.


(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.


[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 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 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].
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-six 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.
More detailed information about the need and justification for rights of conscience protections for healthcare providers can be found in AUL’s annual publication *Defending Life 2012: Building a Culture of Life, Deconstructing the Abortion Industry*.

*Defending Life 2012* is available online at AUL.org.

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

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