

1 SENATE BILL 323

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO HEALTH CARE; ENACTING THE HEALTH CARE WORKERS
12 PROTECTION ACT; PROVIDING PENALTIES.

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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
16 cited as the "Health Care Workers Protection Act".

17 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
18 Health Care Workers Protection Act:

19 A. "conscience" means the ethical, philosophical,
20 moral or religious beliefs or principles held by a medical
21 practitioner, health care institution or health care payer.

22 "Conscience" with respect to institutional entities or
23 corporate bodies, as opposed to individual persons, is
24 determined by reference to that entity or body's governing
25 documents, including published religious, moral, ethical or

1 philosophical guidelines or directives, mission statements,
2 constitutions, articles of incorporation, bylaws, policies and
3 regulations;

4 B. "disclosure" means a formal or informal
5 communication or transmission, but does not include a
6 communication or transmission concerning policy decisions that
7 lawfully exercise discretionary authority unless the medical
8 practitioner providing the disclosure or transmission
9 reasonably believes that the disclosure or transmission
10 evinces:

11 (1) a violation of a law, rule or regulation;

12 (2) a violation of a standard of care or other
13 ethical guideline for the provision of a health care service;
14 or

15 (3) gross mismanagement, a gross waste of
16 funds, an abuse of authority or a substantial and specific
17 danger to public health or safety;

18 C. "discrimination" means an adverse action taken
19 against, or a threat of adverse action communicated to, a
20 medical practitioner, health care institution or health care
21 payer as a result of the medical practitioner's, health care
22 institution's or health care payer's decision to decline to
23 participate in a health care service on the basis of
24 conscience. "Discrimination" includes:

25 (1) termination of employment;

- 1 (2) transfer from current position;
- 2 (3) demotion from current position;
- 3 (4) adverse administrative action;
- 4 (5) reassignment to a different shift or job
- 5 title;
- 6 (6) increased administrative duties;
- 7 (7) refusal of staff privileges;
- 8 (8) refusal of board certification;
- 9 (9) loss of career specialty;
- 10 (10) reduction of wages, benefits or
- 11 privileges;
- 12 (11) refusal to award a grant, contract or
- 13 other program;
- 14 (12) refusal to provide residency training
- 15 opportunities;
- 16 (13) denial, deprivation or disqualification
- 17 of licensure;
- 18 (14) withholding or disqualifying from
- 19 financial aid and other assistance;
- 20 (15) impediments to creating any health care
- 21 institution or payer or expanding or improving the health care
- 22 institution or payer;
- 23 (16) impediments to acquiring, associating
- 24 with or merging with any other health care institution or
- 25 payer;

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1 (17) the threat thereof with regard to any of
2 the preceding; or

3 (18) any other penalty, disciplinary or
4 retaliatory action, whether executed or threatened;

5 D. "health care institution" means a public or
6 private hospital, clinic, medical center, physician
7 organization, professional association, ambulatory surgical
8 center, private physician's office, pharmacy, nursing home,
9 medical school, nursing school, medical training facility or
10 other entity or location in which health care services are
11 performed on behalf of any person; "health care institution"
12 includes organizations, corporations, partnerships,
13 associations, agencies, networks, sole proprietorships, joint
14 ventures or other entities that provide health care services;

15 E. "health care payer" means an employer, health
16 plan, health maintenance organization, insurance company,
17 management services organization or other entity that pays for,
18 or arranges for the payment of, health care service provided to
19 a patient, whether that payment is made in whole or in part;

20 F. "health care service" means medical care
21 provided to a patient at any time over the entire course of
22 treatment, including:

- 23 (1) initial examination;
- 24 (2) testing;
- 25 (3) diagnosis;

- 1 (4) referral;
- 2 (5) dispensing or administering a drug,
- 3 medication or device;
- 4 (6) psychological therapy or counseling;
- 5 (7) research;
- 6 (8) prognosis;
- 7 (9) therapy;
- 8 (10) record making procedures;
- 9 (11) notes related to treatment; and
- 10 (12) any care or necessary services performed
- 11 or provided by any medical practitioner, including allied
- 12 health professionals, paraprofessionals or employees of health
- 13 care institutions;

14 G. "medical practitioner" means a person or
15 individual who may be or is asked to participate in any way in
16 a health care service, including doctors, nurse practitioners,
17 physician's assistants, nurses, nurses' aides, allied health
18 professionals, medical assistants, hospital employees, clinic
19 employees, nursing home employees, pharmacists, pharmacy
20 technicians and employees, medical school faculty and students,
21 nursing school faculty and students, psychology and counseling
22 faculty and students, medical researchers, laboratory
23 technicians, counselors, social workers or other persons who
24 facilitate or participate in the provision of health care
25 services to a person;

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1 H. "participate" in a health care service means to
2 provide, perform, assist with, facilitate, refer for, counsel
3 for, advise with regard to, admit for the purposes of providing
4 or take part in any way in providing health care service or any
5 form of such service; and

6 I. "pay" or "payment" means to pay for, contract
7 for, arrange for the payment of, reimburse or remunerate,
8 whether in whole or in part.

9 SECTION 3. [NEW MATERIAL] RIGHTS OF CONSCIENCE OF MEDICAL
10 PRACTITIONERS, HEALTH CARE INSTITUTIONS AND HEALTH CARE
11 PAYERS.--

12 A. A medical practitioner, health care institution
13 or health care payer has the right not to participate in or pay
14 for any health care service that violates the medical
15 practitioner's, health care institution's or health care
16 payer's conscience.

17 B. A medical practitioner, health care institution
18 or health care payer shall not be civilly, criminally or
19 administratively liable for exercising the medical
20 practitioner's, health care institution's or health care
21 payer's right of conscience with respect to a health care
22 service; provided that a health care institution shall not be
23 civilly, criminally or administratively liable for claims
24 related to or arising out of the exercise of conscience rights
25 protected by the Health Care Workers Protection Act by a

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1 medical practitioner employed, contracted or granted admitting
2 privileges by the health care institution.

3 C. A medical practitioner, health care institution
4 or health care payer shall not be discriminated against in any
5 manner as a result of the medical practitioner's, health care
6 institution's or health care payer's decision to decline to
7 participate in or pay for a health care service on the basis of
8 conscience.

9 D. Notwithstanding any other provision of the
10 Health Care Workers Protection Act to the contrary, a religious
11 medical practitioner, health care institution or health care
12 payer that holds itself out to the public as religious, states
13 in its governing documents that it has a religious purpose or
14 mission and has internal operating policies or procedures that
15 implement its religious beliefs shall have the right to make
16 employment, staffing, contracting and admitting privilege
17 decisions consistent with its religious beliefs.

18 E. Nothing in the Health Care Workers Protection
19 Act shall be construed to override the requirement to provide
20 emergency medical treatment to all patients set forth in
21 Subsection dd of 42 U.S.C. 1395 or other federal law governing
22 emergency medical treatments.

23 SECTION 4. [NEW MATERIAL] WHISTLEBLOWER PROTECTION.--

24 A. A medical practitioner shall not be
25 discriminated against because the medical practitioner:

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1 (1) provided, caused to be provided or is
2 about to provide or cause to be provided to the practitioner's
3 employer, the attorney general, a state agency charged with
4 protecting health care rights of conscience, the United States
5 department of health and human services, the federal office of
6 civil rights or other federal agency charged with protecting
7 health care rights of conscience, information relating to a
8 violation of, or any act or omission the medical practitioner
9 reasonably believes to be a violation of, a provision of the
10 Health Care Workers Protection Act;

11 (2) testified or is about to testify in a
12 proceeding concerning a violation of the Health Care Workers
13 Protection Act; or

14 (3) assisted or participated, or is about to
15 assist or participate, in a proceeding concerning a violation
16 of the Health Care Workers Protection Act.

17 B. Unless the disclosure is specifically prohibited
18 by law, a medical practitioner shall not be discriminated
19 against because the medical practitioner disclosed information
20 the medical practitioner reasonably believes evinces:

21 (1) a violation of a law, rule or regulation;

22 (2) a violation of ethical guidelines for the
23 provision of a health care service; or

24 (3) gross mismanagement, a gross waste of
25 funds, an abuse of authority or a substantial and specific

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1 danger to public health or safety.

2 SECTION 5. [NEW MATERIAL] CIVIL REMEDIES.--

3 A. A civil action for damages or injunctive relief,
4 or both, may be brought by a medical practitioner, health care
5 institution or health care payer for a violation of a provision
6 of the Health Care Workers Protection Act. An additional
7 burden or expense on another medical practitioner, health care
8 institution or health care payer arising from the exercise of
9 the right of conscience shall not be a defense to a violation
10 of that act. However, a civil action shall not be brought
11 against an individual who declines to use or purchase health
12 care services from a specific medical practitioner, health care
13 institution or health care payer for exercising the rights
14 provided for in Subsection A of Section 3 of the Health Care
15 Workers Protection Act.

16 B. A party aggrieved by a violation of the Health
17 Care Workers Protection Act may commence a civil action and
18 shall be entitled, upon the finding of a violation, to recover
19 threefold the actual damages sustained, but in no case shall
20 recovery be less than one thousand dollars (\$1,000), along with
21 the costs of the action and reasonable attorney fees. Such
22 damages shall be cumulative and in no way limited by other
23 remedies that may be available pursuant to other federal, state
24 or municipal laws. A court considering such civil action may
25 also award injunctive relief, which may include reinstatement

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1 of a medical practitioner to the practitioner's previous
2 position, reinstatement of board certification and relicensure
3 of a health care institution or health care payer.

4 SECTION 6. SEVERABILITY.--If any part or application of
5 the Health Care Workers Protection Act is held invalid, the
6 remainder or its application to other situations or persons
7 shall not be affected.

8 SECTION 7. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2021.