

1 HOUSE BILL 525

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO HEALTH CARE; ENACTING THE HEALTH CARE FREEDOM OF  
12 CONSCIENCE ACT; PROVIDING FOR CIVIL DAMAGES.

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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 Freedom of Conscience Act".

17 SECTION 2. [NEW MATERIAL] LEGISLATIVE FINDINGS--  
18 PURPOSE.--

19 A. The legislature finds that:

20 (1) the public policy of the state is to  
21 respect and protect the fundamental right of conscience of  
22 persons that provide health care services; and

23 (2) without comprehensive protection, health  
24 care rights of conscience may be violated in various ways,  
25 including without limitation harassment, demotion, salary

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1 reduction, transfer, termination, loss of staffing privileges,  
2 denial of aid or benefits, administrative penalty, punishment  
3 or sanction and refusal to license or certify.

4 B. The purpose of the Health Care Freedom of  
5 Conscience Act is to:

6 (1) protect as a basic civil right the right  
7 of health care providers, health care institutions and health  
8 care payers to decline to counsel, advise, provide, perform,  
9 assist or participate in providing or performing health care  
10 services that may violate the conscience of the health care  
11 provider, health care institution or health care payer; and

12 (2) prohibit all forms of discrimination,  
13 disqualification, coercion, disability or liability upon a  
14 health care provider, health care institution and health care  
15 payer that declines to provide or perform any health care  
16 service that violates the conscience of the health care  
17 provider, health care institution or health care payer.

18 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the  
19 Health Care Freedom of Conscience Act:

20 A. "conscience" means the religious, moral or  
21 ethical principles held by a health care provider, health care  
22 institution or health care payer that may be determined by  
23 reference to existing or proposed religious, moral or ethical  
24 guidelines, mission statements, constitutions, bylaws, articles  
25 of incorporation, regulations or other relevant documents;

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1           B. "discriminate" means an adverse action taken in  
2 retaliation as a result of the conscience of an individual or  
3 entity, including:

- 4                   (1) termination;
- 5                   (2) transfer;
- 6                   (3) refusal of staff privileges;
- 7                   (4) denial, deprivation or disqualification of  
8 licensure or certification;
- 9                   (5) adverse administrative or disciplinary  
10 action;
- 11                   (6) demotion;
- 12                   (7) loss of career specialty;
- 13                   (8) reassignment to a different shift;
- 14                   (9) reduction of wages or benefits;
- 15                   (10) refusal to award any grant, contract or  
16 other program;
- 17                   (11) refusal to provide residency training  
18 opportunities;
- 19                   (12) refusal to authorize the creation,  
20 expansion, improvement, acquisition, affiliation or merger; or  
21                   (13) other penalty or disciplinary retaliatory  
22 action;

23           C. "employer" means an individual or entity that  
24 pays for or provides health benefits or health insurance  
25 coverage as a benefit to the employees of the individual or

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1 entity;

2 D. "health care institution" means a public or  
3 private organization, corporation, partnership, sole  
4 proprietorship, association, agency, network, joint venture or  
5 other entity involved in providing health care services,  
6 including:

- 7 (1) a hospital;
- 8 (2) a clinic;
- 9 (3) a medical center;
- 10 (4) an ambulatory surgical center;
- 11 (5) a private physician's office;
- 12 (6) a pharmacy;
- 13 (7) a nursing home;
- 14 (8) a medical school that is part of an  
15 institution of higher education;
- 16 (9) a nursing school;
- 17 (10) a medical training facility;
- 18 (11) a person, association, corporation or  
19 other entity attempting to establish a new health care  
20 institution or operating an existing health care institution;  
21 or

22 (12) other institution or location where  
23 health care services are provided to a person;

24 E. "health care payer" means an entity or employer  
25 that contracts, pays or arranges for payment of a health care

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1 service or product, including without limitation:

- 2 (1) a health management organization;
- 3 (2) a health plan;
- 4 (3) an insurance company;
- 5 (4) a management services organization;
- 6 (5) a person, association, corporation or

7 other entity that owns, operates, supervises or manages a  
8 health care payer; or

- 9 (6) a person, association, corporation or
- 10 other entity attempting to establish a new health care payer or
- 11 operating an existing health care payer;

12 F. "health care provider" means an individual who  
13 may be asked to participate in any way in a health care  
14 service, including:

- 15 (1) a physician;
- 16 (2) a physician assistant;
- 17 (3) a nurse;
- 18 (4) a nurse's aide;
- 19 (5) a medical assistant;
- 20 (6) a health care institution employee;
- 21 (7) a pharmacist;
- 22 (8) a researcher;
- 23 (9) a student or faculty of a medical school
- 24 or nursing school;
- 25 (10) a counselor;

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- 1 (11) a social worker; or  
2 (12) any professional, paraprofessional or  
3 other individual who furnishes or assists in the providing or  
4 performing of health care services;

5 G. "health care service" means a phase of patient  
6 medical care, treatment or procedure, including without  
7 limitation:

- 8 (1) patient referral;  
9 (2) counseling;  
10 (3) therapy;  
11 (4) testing;  
12 (5) research;  
13 (6) instruction;  
14 (7) prescribing, dispensing or administering  
15 of any drug, medication or device;  
16 (8) surgery; or  
17 (9) other care or treatment provided by a  
18 health care provider or health care institution; and

19 H. "office" means the office of superintendent of  
20 insurance.

21 SECTION 4. [NEW MATERIAL] HEALTH CARE PROVIDERS--FREEDOM  
22 OF CONSCIENCE.--

23 A. A health care provider:

- 24 (1) has the right to not participate in a  
25 health care service that violates the health care provider's

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1 conscience; and

2 (2) shall not be required to participate in a  
3 health care service that violates the health care provider's  
4 conscience.

5 B. A health care provider shall not be civilly,  
6 criminally or administratively liable for declining to  
7 participate in a health care service that violates the health  
8 care provider's conscience.

9 C. Except as provided in Subsections D and E of  
10 this section, a person shall not discriminate against a health  
11 care provider in any manner based upon the person declining to  
12 participate in a health care service that violates the health  
13 care provider's conscience.

14 D. Action taken by a health care institution or  
15 employer of a health care provider is not discrimination under  
16 the Health Care Freedom of Conscience Act if the action  
17 constitutes a reasonable accommodation to the conscience rights  
18 of the health care provider.

19 E. The provisions of this section shall not be  
20 construed to prohibit an employer or potential employer of a  
21 health care provider from designating the participation in a  
22 health care service as a fundamental requirement for a position  
23 by providing a written certification that the health care  
24 service is directly related and essential to a core purpose of  
25 the employer.

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1           F. The provisions of this section apply exclusively  
2 to individual health care services and shall not be construed  
3 to authorize a health care provider to refuse to provide health  
4 care services to a patient based on the identity or status of  
5 the patient.

6           SECTION 5. [NEW MATERIAL] HEALTH CARE INSTITUTIONS--  
7 FREEDOM OF CONSCIENCE.--

8           A. Except as provided in Subsection D of this  
9 section, a health care institution:

10                       (1) has the right to not participate in a  
11 health care service that violates the conscience of the health  
12 care institution; and

13                       (2) shall not be required to participate in a  
14 health care service that violates the conscience of the health  
15 care institution.

16           B. A person, public institution, private  
17 institution or public official shall not discriminate against a  
18 health care institution in any manner based upon declining to  
19 provide or participate in a health care service that violates  
20 the conscience of the health care institution.

21           C. A public official, agency, institution or entity  
22 shall not deny any form of aid, assistance, grant or benefit in  
23 any manner to coerce, disqualify or discriminate against a  
24 health care institution in any manner based upon the health  
25 care institution declining to provide or participate in a



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1 health care service that violates the conscience of the health  
2 care institution.

3 D. The provisions of Subsection A of this section  
4 apply only if a health care institution:

5 (1) promptly informs the patient or an  
6 individual authorized to make health care decisions for the  
7 patient that the health care institution will not provide the  
8 health care services for reasons of conscience;

9 (2) if a request for transfer is made by the  
10 patient or on behalf of the patient, makes all reasonable  
11 efforts to assist in a prompt transfer of the patient and  
12 provides continuing care to the patient until a transfer can be  
13 effected or until a determination has been made that a transfer  
14 cannot be effected; and

15 (3) if a transfer cannot be effected, the  
16 health care institution shall not be compelled to provide or  
17 participate in a health care service that violates the  
18 conscience of the health care institution.

19 E. The provisions of this section apply exclusively  
20 to individual health care services and do not authorize a  
21 health care provider to refuse to provide health care services  
22 to a patient based on the identity or status of the patient.

23 SECTION 6. [NEW MATERIAL] HEALTH CARE PAYERS--FREEDOM OF  
24 CONSCIENCE.--

25 A. Except as provided in Subsections C and D of

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1 this section, a health care payer:

2 (1) has the right to decline to pay for a  
3 health care service that violates the conscience of the health  
4 care payer; and

5 (2) shall not be required to pay or arrange  
6 for payment of a health care service that violates the  
7 conscience of the health care payer.

8 B. A person, public institution, private  
9 institution or public official shall not discriminate against a  
10 health care payer in any manner based upon declining to pay or  
11 arrange for payment of a health care service that violates the  
12 conscience of the health care payer.

13 C. A health care payer shall file its conscience  
14 policies annually with the office as follows:

15 (1) the annual filing shall include:

16 (a) a comprehensive list by billing code  
17 of any and all products, services and procedures that the  
18 health care payer shall not make payment for reasons of  
19 conscience; and

20 (b) other relevant information that may  
21 be required by rule of the office;

22 (2) a copy of the filing shall be provided  
23 annually to each beneficiary of the health care payer and made  
24 available to the general public by posting the information on  
25 the website of the health care payer; and

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1 (3) an annual filing shall not be required for  
2 any year in which the health care payer will not exercise its  
3 conscience rights under the Health Care Freedom of Conscience  
4 Act.

5 D. A health care payer shall not use a conscience  
6 objection to:

7 (1) refuse to contract with a health care  
8 provider, health care institution or beneficiary; or

9 (2) refuse or reduce payments:

10 (a) to a beneficiary, health care  
11 provider or health care institution for any product, service or  
12 procedure that is not included in the annual filing required in  
13 Subsection C of this section; or

14 (b) for health care services to a  
15 patient based upon the identity or status of the patient.

16 E. A health care payer shall not compel by undue  
17 influence, fraud or duress a beneficiary, health care provider  
18 or health care institution to accept a contract or contract  
19 amendment that violates the conscience of the beneficiary,  
20 health care provider or health care institution.

21 F. The office may issue rules and take other  
22 actions as necessary or appropriate to enforce this section.

23 SECTION 7. [NEW MATERIAL] APPROPRIATE SERVICES--  
24 LIFE-SUSTAINING TREATMENT.--The provisions of the Health Care  
25 Freedom of Conscience Act shall not be construed to authorize,

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1 condone or approve withholding appropriate provision of health  
2 care services or life-sustaining treatment to patients.

3 SECTION 8. [NEW MATERIAL] CIVIL REMEDIES.--

4 A. A civil action for damages or injunctive relief,  
5 or both, may be brought for a violation of the Health Care  
6 Freedom of Conscience Act.

7 B. A claim that the violation of the Health Care  
8 Freedom of Conscience Act was necessary to prevent additional  
9 burden or expense on any other health care provider, health  
10 care institution, health care payer, individual or patient  
11 shall not be an affirmative defense to a violation of the  
12 Health Care Freedom of Conscience Act.

13 C. Unless protected by the state's or tribal  
14 sovereign immunity, an individual, association, corporation,  
15 entity or health care institution injured by a public  
16 individual, private individual, association, agency, entity or  
17 corporation as a result of any conduct prohibited by the Health  
18 Care Freedom of Conscience Act may commence a civil action.

19 D. Upon a finding of a violation of the Health Care  
20 Freedom of Conscience Act, an aggrieved party shall be entitled  
21 to recover treble damages, including damages related to:

22 (1) pain and suffering sustained by the  
23 individual, association, corporation, entity or health care  
24 institution;

25 (2) the cost of the civil action; and

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(3) reasonable attorney fees.

E. In addition to the costs of the civil action and reasonable attorney fees, the total amount of damages shall not be less than five thousand dollars (\$5,000) for each violation of the Health Care Freedom of Conscience Act.

F. Damages shall be cumulative and are not exclusive of other remedies that may be afforded under state or federal law.

G. A court may award injunctive relief, including ordering the reinstatement of a health care provider to the health care provider's prior position.

**SECTION 9. [NEW MATERIAL] APPLICABILITY.**--The Health Care Freedom of Conscience Act is supplemental to existing conscience protections and does not affect the existing conscience protection laws within the state.