LEGISLATURE OF THE STATE OF IDAHO
Sixty-eighth Legislature First Regular Session - 2025

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 59, As Amended in the Senate

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO THE MEDICAL ETHICS DEFENSE ACT; AMENDING TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 13, TITLE 54, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE FINDINGS AND PURPOSE, TO DEFINE TERMS, TO PROVIDE FOR THE RIGHT OF CONSCIENCE OF HEALTH CARE PROVIDERS, TO PROVIDE FOR WHISTLEBLOWER PROTECTION, TO PROVIDE FOR FREE SPEECH PROTECTION FOR HEALTH CARE PROVIDERS, TO PROVIDE FOR CIVIL REMEDIES, AND TO PROVIDE SEVERABILITY; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 13, Title 54, Idaho Code, and to read as follows:

CHAPTER 13
MEDICAL ETHICS DEFENSE ACT

54-1301. SHORT TITLE. This act shall be known and may be cited as the "Medical Ethics Defense Act."

54-1302. LEGISLATIVE FINDINGS AND PURPOSE. (1) The legislature finds that the right of conscience is a fundamental and inalienable right. It was central to the founding of the United States, has been deeply rooted in the nation's history and tradition for centuries, and has been central to the practice of medicine, through the Hippocratic oath, for millennia.

(2) Despite its preeminent importance, however, threats to the right of conscience of health care professionals, health care institutions, and health care payers have become increasingly common and severe in recent years. The swift pace of scientific advancement and the expansion of medical capabilities, along with the creation of new rights for patients to access certain procedures and the mistaken notion that health care professionals, health care institutions, and health care payers are mere public utilities, promise to make the current crisis worse, unless something is done to secure the right of conscience.

(3) With this purpose in mind, the legislature declares that it is the public policy of the state of Idaho to protect the right of conscience for health care professionals, health care institutions, and health care payers.

(4) As the right of conscience is fundamental, no health care professional, health care institution, or health care payer should be required to participate in or pay for any medical procedure, treatment, or service, or prescribe or pay for any medication, to which he objects on the basis of conscience, whether such conscience is informed by religious, moral, or ethical beliefs or principles.

(5) It is the purpose of this chapter to protect health care professionals, health care institutions, and health care payers from discrimination, punishment, and retaliation as a result of any instance of conscientious medical objection.

54-1303. DEFINITIONS. For the purpose of this chapter:

(1) "Conscience" means the ethical, moral, or religious beliefs or principles sincerely held by any health care provider. Conscience with respect to institutional entities or corporate bodies, as opposed to individual persons, is determined by reference to that entity's or body's governing documents, including but not limited to any published ethical, moral, or religious guidelines or directives, mission statements, constitutions, articles of incorporation, bylaws, policies, or regulations.

(2) "Discrimination" or "discriminated against" means any adverse action taken against, or any threat of adverse action communicated to, any health care provider as a result of exercising rights pursuant to sections 54-1304 and 54-1305, Idaho Code. Discrimination includes but is not limited to any penalty or disciplinary or retaliatory action, whether executed or threatened. Discrimination does not include the negotiation or purchase of, or the refusal to use or purchase, insurance or medical procedures, treatments, or services by an individual or nongovernmental entity, nor does it include good faith efforts to reasonably accommodate conscientious objections of a health care provider.

(3) "Essential functions" means the fundamental job duties of an employment position. A function can be essential if, among other things, the position exists specifically to perform that function, there are a limited number of other employees who could perform the function, or the function is specialized and the individual is hired based on his ability to perform the function. The term does not include the marginal functions of a position.

(4) "Health care institution" means any organization, corporation, partnership, association, agency, network, sole proprietorship, joint venture, or other entity that provides medical procedures, treatments, or services.

(5) "Health care payer" means any employer, health plan, health maintenance organization, insurance company, or management services organization or any other entity that pays for any medical procedure, treatment, or service provided to any patient or client, including to contract for, arrange for payment of, reimburse, or remunerate, whether payment is made in whole or in part.

(6) "Health care professional" means any person who is authorized to participate in any way in any medical procedure, treatment, or service. This includes but is not limited to:

(a) Doctors;

(b) Nurses;

(c) Clinical nurse specialists;

(d) Nurse aides;

(e) Physician assistants;

(f) Medical assistants;

(g) Allied health professionals;

(h) Employees of a hospital, clinic, nursing home, or pharmacy;

(i) Pharmacists and pharmacy technicians;
(j) Faculty and students of a medical school, nursing school, or school of psychology or counseling;
(k) Medical researchers and laboratory technicians;
(l) Psychologists, psychiatrists, and counselors; and
(m) Social workers.
(7) "Health care provider" means a health care professional, health care institution, or health care payer.
(8) "Medical procedure, treatment, or service" means medical research or health care provided to any patient or client at any time over the course of treatment. This includes but is not limited to testing, diagnosis, record-making, referral, prescribing, dispensing, or administering any drug, medication, or device, therapy or counseling, and preparation or arrangement for a surgical procedure.
(9) "Participate" means to provide, perform, assist with, facilitate, refer for, counsel for, advise to pursue, admit for the purposes of providing, or take part in any way in providing any medical procedure, treatment, or service.

54-1304. RIGHT OF CONSCIENCE OF HEALTH CARE PROVIDERS. (1) Health care providers shall have the right of conscience and, pursuant to this right, shall not be required to participate in or pay for a medical procedure, treatment, or service that violates such health care provider's conscience.
(2) The exercise of the right of conscience is limited to conscience-based objections to a particular medical procedure, treatment, or service. This section may not be construed to waive or modify any duty a health care provider may have to provide or pay for medical procedures, treatments, or services that do not violate the provider's conscience.
(3) A health care professional shall communicate to the health care professional's employer a conscience-based objection when it occurs or as soon as reasonably possible to allow an employer to make necessary staffing adjustments without delaying the provision of health care services. Nothing in this chapter shall prevent an employer from requiring an employee to disclose the employee's conscience-based objections at the time of hiring, but such disclosure shall not limit the rights protected by this chapter.
(4) Conscience-based objections shall be provided in writing by an employee if requested by the employer.
(5) A health care payer shall not decline payment for a medical procedure, treatment, or service that it is contractually obligated to pay for under the terms of its contract with an insured party.
(6) No health care provider shall be discriminated against in any manner as a result of exercising the right of conscience pursuant to subsection (1) of this section.
(7) No health care provider shall be civilly, criminally, or administratively liable for exercising the right of conscience described in subsection (1) of this section, and no health care institution shall be civilly, criminally, or administratively liable for the exercise of the right of conscience described in subsection (1) of this section by a health care professional employed, contracted, or granted admitting privileges by the health care institution.

(8) Nothing in this chapter shall be construed to impede the right of a religious health care provider to make employment, staffing, contracting, administrative, and admitting privilege decisions consistent with such health care provider's religious beliefs if such health care provider holds itself out to the public as religious and has internal operating policies or procedures that implement its religious purpose or mission.

(9) To the extent that this chapter provides broader rights of conscience than that provided by section 18-611, Idaho Code, this chapter controls over section 18-611, Idaho Code. To the extent that this chapter is not enforceable with respect to any rights of conscience protected by section 18-611, Idaho Code, then section 18-611, Idaho Code, shall control.

(10) Nothing in this chapter shall affect the rights of conscience provided for in section 18-612, Idaho Code, to the extent that those rights are broader in scope than those provided for in this chapter.

(11) Nothing in this chapter shall be construed to override the requirement to provide emergency medical treatment to all patients as set forth in 42 U.S.C. 1395dd.

(12) The protections in this chapter shall not apply if an employee is unable to perform any essential function, the employer cannot transfer the employee to a suitable alternative position for which the employee is qualified, and the employer is otherwise unable to reasonably accommodate the employee without imposing an undue hardship on the employer.

(13) Nothing in this chapter shall be construed as providing a health care provider with civil immunity for the failure to comply with the applicable community standard of care as described in section 6-1012, Idaho Code.

54-1305. WHISTLEBLOWER PROTECTION. (1) No health care provider shall be discriminated against in any manner because the health care provider:

(a) Provided, caused to be provided, or is about to provide or cause to be provided information relating to any act or omission the health care provider reasonably believes to be a violation of any provision of this chapter to a health care professional's employer, the attorney general of Idaho, any state agency charged with protecting health care rights of conscience, the United States department of health and human services office of civil rights, or any other federal agency charged with protecting health care rights of conscience; or

(b) Testified, assisted, or participated, or is about to testify, assist, or participate in a proceeding concerning such violation.

(2) Unless the disclosure is specifically prohibited by law, no health care provider shall be discriminated against in any manner because the health care provider disclosed any information that the health care provider reasonably believes evinces:

(a) Any violation of any law, rule, or regulation;

(b) Any violation of any ethical guidelines for the provision of any medical procedure or service; or

(c) Gross mismanagement, a gross waste of funds, an abuse of authority, practices, or methods of treatment that may put patient health at risk, or a substantial and specific danger to public health or safety.

(3) Subsection (2) of this section shall not apply when the disclosure concerns the lawful exercise of discretionary decision-making authority

unless the health care provider reasonably believes that the disclosure evinces a violation or misconduct listed in subsection (2) of this section.

54-1306. FREE SPEECH PROTECTION FOR HEALTH CARE PROVIDERS. (1) The department of health and welfare, the state board of medicine, or any other department or board regulating the practice of a medical procedure, treatment, or service in the state may not reprimand or sanction a health care provider or deny or revoke or threaten to deny or revoke a license, certification, or registration of a health care provider for engaging in speech, expression, or association that is protected from government interference by the first amendment to the United States constitution, unless the department or board demonstrates by clear and convincing evidence that the health care provider's speech, expression, or association was the direct cause of physical harm to a person with whom the health care provider had a practitioner-patient relationship within the three (3) years immediately preceding the incident of physical harm.

(2) The department of health and welfare, the state board of medicine, or any other department or board regulating the practice of a medical procedure, treatment, or service in the state shall not contract with, nor shall it recognize, approve, or require an individual to obtain certifications or credentials issued or approved by, a specialty board or other recognizing agency that revokes the certification of, or refuses to issue certification to, an individual because the individual has engaged in speech, expression, or association that is protected from government interference by the first amendment to the United States constitution, provided such individual was not providing medical advice or treatment to a specific patient.

(3) The department of health and welfare, the state board of medicine, or any other department or board regulating the practice of a medical procedure, treatment, or service in the state shall provide a health care provider with any complaints it has received that are based on speech, expression, or association that is protected from government interference by the first amendment to the United States constitution and may result in the revocation of the health care provider's license, certification, or registration, within twenty-one (21) days after receipt of the complaint. The department or board shall pay the health care provider an administrative penalty of five hundred dollars ($500) for each day the complaint is not provided to the health care provider after the specified twenty-one (21) days.

54-1307. CIVIL REMEDIES. (1) A cause of action for damages or injunctive relief, or both, may be brought by any health care provider for any violation of any provision of this chapter. Any additional burden or expense on another health care professional, health care institution, or health care payer arising from the exercise of the right of conscience shall not be a defense to any violation of this chapter. However, no cause of action may be brought against an individual who declines to use or purchase a medical procedure or services from a specific health care professional, health care institution, or health care payer for exercising the rights granted in sections 54-1304(1), 54-1305, and 54-1306, Idaho Code.

(2) Any party aggrieved by any violation of this chapter may commence a civil action and shall be entitled, upon the finding of a violation, to:

(a) Injunctive relief, when appropriate, including but not limited to reinstatement of a health care professional's previous position, reinstatement of board certification, and relicensure of a health care institution or health care payer;

(b) Actual damages for injuries suffered; and

(c) Reasonable costs and attorney's fees.

(3) Such damages shall be cumulative and in no way limited by any other remedies that may be available under any other federal, state, or municipal law.

54-1308. SEVERABILITY. The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.