

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 2460

By: Moore

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5  
6 AS INTRODUCED

7 An Act relating to public health and safety; creating  
8 the Healthcare Freedom of Conscience Act;  
9 establishing legislative purpose; defining terms;  
10 providing certain right of healthcare provider;  
11 prohibiting liability of healthcare provider under  
12 certain circumstance; prohibiting discrimination  
13 against healthcare provider under certain  
14 circumstance; providing certain right of healthcare  
15 institution; prohibiting liability of healthcare  
16 institution under certain circumstance; prohibiting  
17 discrimination against healthcare institution under  
18 certain circumstance; prohibiting public official  
19 from denying benefit to healthcare institution based  
20 on certain circumstance; providing certain right of  
21 healthcare payer; prohibiting liability of healthcare  
22 payer under certain circumstance; prohibiting  
23 discrimination against healthcare payer under certain  
24 circumstance; prohibiting public official from  
denying benefit to healthcare payer based on certain  
circumstance; authorizing civil action; authorizing  
certain individuals and entities to commence civil  
action; providing for damages; providing for attorney  
fees; permitting court to award injunctive relief;  
providing for severability; providing for  
codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1-728g of Title 63, unless there  
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Healthcare  
5 Freedom of Conscience Act."

6 SECTION 2. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 1-728h of Title 63, unless there  
8 is created a duplication in numbering, reads as follows:

9 A. It is the public policy of the State of Oklahoma to respect  
10 and protect the fundamental right of conscience of all individuals  
11 who provide healthcare services.

12 B. Without comprehensive protection, healthcare rights of  
13 conscience may be violated in various ways, such as harassment,  
14 demotion, salary reduction, transfer, termination, loss of staffing  
15 privileges, denial of aid or benefits, and refusal to license or  
16 refusal to certify.

17 C. It is the purpose of the Healthcare Freedom of Conscience  
18 Act to protect as a basic civil right the right of all healthcare  
19 providers, institutions, and payers to decline to counsel, advise,  
20 pay for, provide, perform, assist, or participate in providing or  
21 performing healthcare services that violate their consciences. Such  
22 healthcare services may include, but are not limited to, abortion,  
23 artificial birth control, artificial insemination, assisted  
24 reproduction, human cloning, euthanasia, human embryonic stem-cell

1 research, fetal experimentation, physician-assisted suicide, and  
2 sterilization.

3 D. Accordingly, it is the purpose of the Healthcare Freedom of  
4 Conscience Act to prohibit all forms of discrimination,  
5 disqualification, coercion, disability, or liability upon such  
6 healthcare providers, institutions, and payers that decline to  
7 perform any healthcare service that violates their consciences.

8 SECTION 3. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 1-728i of Title 63, unless there  
10 is created a duplication in numbering, reads as follows:

11 A. "Healthcare service" means any phase of patient medical  
12 care, treatment, or procedure, including, but not limited to, the  
13 following: patient referral, counseling, therapy, testing,  
14 diagnosis or prognosis, research, instruction, prescribing,  
15 dispensing or administering any device, drug, or medication,  
16 surgery, or any other care or treatment rendered by healthcare  
17 providers or healthcare institutions.

18 B. "Healthcare provider" means any individual who may be asked  
19 to participate in any way in a healthcare service, including, but  
20 not limited to, the following: a physician, physician's assistant,  
21 nurse, nurses' aide, medical assistant, hospital employee, clinic  
22 employee, nursing home employee, pharmacist, pharmacy employee,  
23 researcher, medical or nursing school faculty, student or employee,  
24 counselor, social worker, or any professional, paraprofessional, or

1 any other person who furnishes, or assists in the furnishing of,  
2 healthcare services.

3 C. "Healthcare institution" means any public or private  
4 organization, corporation, partnership, sole proprietorship,  
5 association, agency, network, joint venture, or other entity that is  
6 involved in providing healthcare services, including but not limited  
7 to: hospitals, clinics, medical centers, ambulatory surgical  
8 centers, private physician's offices, pharmacies, nursing homes,  
9 university medical schools and nursing schools, medical training  
10 facilities, or other institutions or locations wherein healthcare  
11 services are provided to any person.

12 D. "Healthcare payer" means any entity or employer that  
13 contracts for, pays for, or arranges for the payment of, in whole or  
14 in part, any healthcare service or product, including, but not  
15 limited to: health maintenance organizations, health plans,  
16 insurance companies, or management services organizations.

17 E. "Employer" means any individual or entity that pays for or  
18 provides health benefits or health insurance coverage as a benefit  
19 to its employees, whether through a third party, a health  
20 maintenance organization, a program of self-insurance, or some other  
21 means.

22 F. "Participate" in a healthcare service means to counsel,  
23 advise, provide, perform, assist in, refer for, admit for purposes  
24

1 of providing, or participate in providing any healthcare service or  
2 any form of such service.

3 G. "Pay" or "payment" means pay, contract for, or otherwise  
4 arrange for the payment of, in whole or in part.

5 H. "Conscience" means the religious, moral or ethical  
6 principles held by a healthcare provider, the healthcare  
7 institution, or healthcare payer. For purposes of this act, a  
8 healthcare institution or healthcare payer's conscience shall be  
9 determined by reference to its existing or proposed religious,  
10 moral, or ethical guidelines, mission statement, constitution,  
11 bylaws, articles of incorporation, regulations, or other relevant  
12 documents.

13 SECTION 4. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 1-728j of Title 63, unless there  
15 is created a duplication in numbering, reads as follows:

16 A. A healthcare provider has the right not to participate, and  
17 no healthcare provider shall be required to participate, in a  
18 healthcare service that violates his or her conscience.

19 B. No healthcare provider shall be civilly, criminally, or  
20 administratively liable for declining to participate in a healthcare  
21 service that violates his or her conscience.

22 C. It shall be unlawful for any person, healthcare provider,  
23 healthcare institution, public or private institution, public  
24 official, or any board which certifies competency in medical

1 specialties to discriminate against any healthcare provider in any  
2 manner based on his or her declining to participate in a healthcare  
3 service that violates his or her conscience. For purposes of the  
4 Healthcare Freedom of Conscience Act, discrimination includes, but  
5 is not limited to, the following: termination, transfer, refusal of  
6 staff privileges, refusal of board certification, adverse  
7 administrative action, demotion, loss of career specialty,  
8 reassignment to a different shift, reduction of wages or benefits,  
9 refusal to award any grant, contract, or other program, refusal to  
10 provide residency training opportunities, or any other penalty,  
11 disciplinary, or retaliatory action.

12 SECTION 5. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 1-728k of Title 63, unless there  
14 is created a duplication in numbering, reads as follows:

15 A. A healthcare institution has the right not to participate,  
16 and no healthcare institution shall be required to participate, in a  
17 healthcare service that violates its conscience.

18 B. A healthcare institution that declines to provide or  
19 participate in a healthcare service that violates its conscience  
20 shall not be civilly, criminally, or administratively liable if the  
21 institution provides a consent form to be signed by a patient before  
22 admission to the institution stating that it reserves the right to  
23 decline to provide or participate in healthcare services that  
24 violate its conscience.

1 C. It shall be unlawful for any person, public or private  
2 institution, or public official to discriminate against any  
3 healthcare institution, or any person, association, corporation, or  
4 other entity attempting to establish a new healthcare institution or  
5 operating an existing healthcare institution, in any manner,  
6 including but not limited to the following: any denial, deprivation  
7 or disqualification with respect to licensure; any aid assistance,  
8 benefit, or privilege, including staff privileges; or any  
9 authorization, including authorization to create, expand, improve,  
10 acquire, or affiliate or merge with any healthcare institution,  
11 because such healthcare institution, or person, association, or  
12 corporation planning, proposing, or operating a healthcare  
13 institution declines to participate in a healthcare service which  
14 violates the healthcare institution's conscience.

15 D. It shall be unlawful for any public official, agency,  
16 institution, or entity to deny any form of aid, assistance, grants,  
17 or benefits, or in any other manner to coerce, disqualify, or  
18 discriminate against any person, association, corporation, or other  
19 entity attempting to establish a new healthcare institution or  
20 operating an existing healthcare institution because the existing or  
21 proposed healthcare institution declines to participate in a  
22 healthcare service contrary to the healthcare institution's  
23 conscience.

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1 SECTION 6. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1-7281 of Title 63, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. A healthcare payer has the right to decline to pay, and no  
5 healthcare payer shall be required to pay for or arrange for the  
6 payment of any healthcare service or product that violates its  
7 conscience.

8 B. No healthcare payer and no person, association, corporation,  
9 or other entity that owns, operates, supervises, or manages a  
10 healthcare payer shall be civilly or criminally liable by reason of  
11 the healthcare payer's declining to pay for or arrange for the  
12 payment of any healthcare service that violates its conscience.

13 C. It shall be unlawful for any person, public or private  
14 institution, or public official to discriminate against any  
15 healthcare payer, or any person, association, corporation, or other  
16 entity:

- 17 1. Attempting to establish a new healthcare payer; or
- 18 2. Operating an existing healthcare payer,  
19 in any manner, including but not limited to the following: any  
20 denial, deprivation, or disqualification with respect to licensure,  
21 aid, assistance, benefit, privilege, or authorization, including but  
22 not limited to any authorization to create, expand, improve,  
23 acquire, or affiliate or merge with any healthcare payer, because a  
24 healthcare payer, or a person, association, corporation, or other

1 entity planning, proposing, or operating a healthcare payer declines  
2 to pay for or arrange for the payment of any healthcare service that  
3 violates its conscience.

4 D. It shall be unlawful for any public official, agency,  
5 institution, or entity to deny any form of aid, assistance, grants,  
6 or benefits, or in any other manner to coerce, disqualify, or  
7 discriminate against any healthcare payer, or any person,  
8 association, corporation, or other entity attempting to establish a  
9 new healthcare payer or operating an existing healthcare payer  
10 because the existing or proposed healthcare payer declines to pay  
11 for or arrange for the payment of any healthcare service that is  
12 contrary to its conscience.

13 SECTION 7. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 1-728m of Title 63, unless there  
15 is created a duplication in numbering, reads as follows:

16 A. A civil action for damages or injunctive relief, or both,  
17 may be brought for the violation of any provision of the Healthcare  
18 Freedom of Conscience Act. It shall not be a defense to any claim  
19 arising out of the violation of the Healthcare Freedom of Conscience  
20 Act that such violation was necessary to prevent additional burden  
21 or expense on any other healthcare provider, healthcare institution,  
22 individual, or patient.

23 B. Any individual, association, corporation, entity, or  
24 healthcare institution injured by any public or private individual,

1 association, agency, entity, or corporation by reason of any conduct  
2 prohibited by the Healthcare Freedom of Conscience Act may commence  
3 a civil action. Upon finding a violation of the Healthcare Freedom  
4 of Conscience Act, the aggrieved party shall be entitled to recover  
5 threefold the actual damages, including pain and suffering,  
6 sustained by such individual, association, corporation, entity, or  
7 healthcare institution, the costs of the action, and reasonable  
8 attorney fees; but in no case shall recovery be less than Five  
9 Thousand Dollars (\$5,000.00) for each violation in addition to costs  
10 of the action and reasonable attorney fees. These damage remedies  
11 shall be cumulative, and not exclusive of other remedies afforded  
12 under any other state or federal law.

13 C. The court in such civil action may award injunctive relief,  
14 including, but not limited to, ordering reinstatement of a  
15 healthcare provider to his or her prior job position.

16 SECTION 8. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 1-728n of Title 63, unless there  
18 is created a duplication in numbering, reads as follows:

19 Any provision of the Healthcare Freedom of Conscience Act held  
20 to be invalid or unenforceable by its terms, or as applied to any  
21 person or circumstance, shall be construed so as to give it the  
22 maximum effect permitted by law, unless such holding shall be one of  
23 utter invalidity or unenforceability, in which event such provision  
24 shall be deemed severable herefrom and shall not affect the

1 remainder hereof or the application of such provision to other  
2 persons not similarly situated or to other, dissimilar  
3 circumstances.

4 SECTION 9. This act shall become effective November 1, 2012.

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