

Committee: House Health and Human Services

Tuesday, February 15, 2022 7:45 AM

Roll Call

Present: Rep. Aylward, Rep. Davis, Rep. Healy, Rep. Phil Jensen, Rep. Keintz, Rep. Miskimins, Rep. Perry, Rep. Rehfeldt, Rep. St. John, Rep. Weis, Rep. Wiese, Rep. Deutsch, and Rep. Kevin Jensen

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Representative Kevin Jensen

MOTION: TO APPROVE THE MINUTES OF THURSDAY, FEBRUARY 10TH

Moved by: Phil Jensen
Second by: Rehfeldt
Action: Prevailed by voice vote

HB 1285 : create a critical care endorsement for emergency medical technician-paramedics.

Presented by: Representative Sydney Davis, District 17
Proponents: Margaret Hansen, Board of Medical and Osteopathic Examiners
Maynard Konechne, South Dakota Emergency Medical Services Association, Kimball
Shawn Fisher, Self, Sturgis
Brian Hambek, Self, Spearfish
Mitchell Rave, Sanford Health, Sioux Falls
Tim Rave, South Dakota Association of Healthcare Organizations, Sioux Falls

MOTION: AMEND HB 1285

1285A

On page 1, line 10, of the Introduced bill, after "as" delete the colon
On page 1, line 11, of the Introduced bill, after "as:" delete "(a) A "
On page 1, line 12, of the Introduced bill, after "Certification" delete "; or"
On page 1, line 13, of the Introduced bill, after "or" delete "(b) A critical care paramedic by the International Association of Flight and Critical Care Paramedics"

Moved by: Perry
Second by: Deutsch
Action: Prevailed by voice vote

MOTION: DO PASS HB 1285 AS AMENDED

Moved by: Deutsch
Second by: Rehfeldt
Action: Prevailed by Majority Members Elect (13-0-0-0)

Voting Yes: Aylward, Davis, Healy, Phil Jensen, Keintz, Miskimins, Perry, Rehfeldt, St. John, Weis, Wiese, Deutsch, and Kevin Jensen

HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED HB 1285 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.

HB 1283 : require the posting of laws regarding hospital and nursing facility visitation.

Presented by: Representative Phil Jensen, District 33
Proponents: Deb Baker, Self, Rapid City
Kevin Hunter, Self, Hermosa
Janet Jensen, Self, Rapid City

MOTION: AMEND HB 1283

1283A

On page 1, line 1, of the Introduced bill, delete "and " and insert ", "
On page 1, line 1, of the Introduced bill, after "facility" insert ", and assisted living center"
On page 1, line 7, of the Introduced bill, delete "or " and insert "and "
On page 1, line 7, of the Introduced bill, after "facilities" insert " and assisted living centers"
Moved by: Rehfeldt
Second by: Perry
Action: Prevailed by voice vote

MOTION: DO PASS HB 1283 AS AMENDED

Moved by: Deutsch
Second by: Aylward
Action: Prevailed by Majority Members Elect (13-0-0-0)

Voting Yes: Aylward, Davis, Healy, Phil Jensen, Keintz, Miskimins, Perry, Rehfeldt, St. John, Weis, Wiese, Deutsch, and Kevin Jensen

HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED HB 1283 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.

HB 1282 : allow inpatient psychiatric facility placement alternatives for certain patients.

Presented by: Representative Paul Miskimins, District 20
Proponents: Deb Fischer-Clemens, Avera Health, Sioux Falls
Thomas Otten, Self, Sioux Falls
Terrance Lee Dosch, South Dakota Council of Community Behavioral Health, Pierre

MOTION: DO PASS HB 1282

Moved by: Weis
Second by: Perry
Action: Prevailed by Majority Members Elect (13-0-0-0)

Voting Yes: Aylward, Davis, Healy, Phil Jensen, Keintz, Miskimins, Perry, Rehfeldt, St. John, Weis, Wiese, Deutsch, and Kevin Jensen

HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED HB 1282 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.

HB 1292 : regulate delta-8 tetrahydrocannabinol for those under the age of twenty-one.

Presented by: Representative Taylor Rehfeldt, District 14
Proponents: Michael Shoup, self, Pierre
Kittrick Jeffries, Dakota Cannabis Consulting, Rapid City
Deb Peters, Cannabis Chem Lab, Dell Rapids

MOTION: AMEND HB 1292

1292A

- On page 1, line 1, of the Introduced bill, after "tetrahydrocannabinol " insert "THC-O acetate hexahydrocannabinol "
- On page 1, line 7, of the Introduced bill, after "tetrahydrocannabinol " insert " THC-O acetate hexahydrocannabinol "
- On page 1, line 10, of the Introduced bill, after "tetrahydrocannabinol " insert "THC-O acetate hexahydrocannabinol "
- On page 1, line 13, of the Introduced bill, after "tetrahydrocannabinol " insert "THC-O acetate hexahydrocannabinol "
- On page 1, line 14, of the Introduced bill, after "tetrahydrocannabinol " insert "THC-O acetate hexahydrocannabinol "

Moved by: Healy
Second by: Perry
Action: Prevailed by voice vote

MOTION: DO PASS HB 1292 AS AMENDED

Moved by: Healy
Second by: Perry
Action: Prevailed by Majority Members Elect (13-0-0-0)

Voting Yes: Aylward, Davis, Healy, Phil Jensen, Keintz, Miskimins, Perry, Rehfeldt, St. John, Weis, Wiese, Deutsch, and Kevin Jensen

HB 1180 : permit designated visitors in nursing facilities.

MOTION: TO TABLE HB 1180

Moved by: Deutsch
Second by: Perry
Action: Prevailed by Majority Members Elect (13-0-0-0)

Voting Yes: Aylward, Davis, Healy, Phil Jensen, Keintz, Miskimins, Perry, Rehfeldt, St. John, Weis, Wiese, Deutsch, and Kevin Jensen

HB 1242 : allow medical practice on the basis of conscience.

Presented by: Representative Steven Haugaard, District 10

MOTION: AMEND HB 1242

1242A

On the Introduced bill, delete everything after the enacting clause and insert:

"

Section 1. That chapter 34-54 be amended with a NEW SECTION:

Terms in this Act mean:

- (1) "Conscience," the moral or religious beliefs or principles held by any medical practitioner, health care institution, or health care payer. Conscience with respect to institutional entities or corporate bodies, as opposed to individual persons, is determined by reference to that entity or body's governing documents, including any published religious, moral, ethical, or philosophical guidelines or directives, mission statements; constitutions; articles of incorporation; bylaws; policies; or regulations;
- (2) "Disclosure," a formal or informal communication or transmission. The term does not include a communication or transmission concerning policy decisions that lawfully exercise discretionary authority unless the medical practitioner providing the disclosure or transmission reasonably believes that the disclosure or transmission evinces:
 - (a) Any violation of any law, rule, or regulation;
 - (b) Any violation of any ethical guidelines for the provision of any health care service; or
 - (c) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;
- (3) "Discrimination," any adverse action taken against, or any threat of adverse action communicated to, any medical practitioner, health care institution, or health care payer as a result of his, her, or its decision to decline to participate in a health care service on the basis of conscience. The term includes termination of employment; transfer from current position; demotion from current position; adverse administrative action; reassignment to a different shift or job title; increased administrative duties; refusal of staff privileges; refusal of board certification; loss of career specialty; reduction of wages, benefits, or privileges; refusal to award a grant, contract, or other program; refusal to provide residency training opportunities; denial, deprivation, or disqualification of licensure; withholding or disqualifying from financial aid and other assistance; impediments to creating any health care institution or payer or expanding or improving said health care institution or payer; impediments to acquiring, associating with, or merging with any other health care institution or payer; the threat thereof with regard to any of the preceding; or any other penalty, disciplinary, or retaliatory action, whether executed or threatened. The term excludes the negotiation or purchase of insurance by a nongovernment entity;
- (4) "Health care service," medical care provided to any patient at any time over the entire course of treatment. The term includes initial examination; testing; diagnosis; referral; dispensing or administering, or both, any drug, medication, or device; psychological therapy or counseling; research; prognosis; therapy; record making procedures; notes related to treatment; set up or performance of a surgery or procedure; or any other care or services performed or

- provided by any medical practitioner including allied health professionals, paraprofessionals, or employees of health care institutions;
- (5) "Health care institution," any public or private hospital, clinic, medical center, physician organization, professional association, ambulatory surgical center, private physician's office, pharmacy, nursing home, medical school, nursing school, medical training facility, or any other entity or location in which health care services are performed on behalf of any person. The term includes organizations, corporations, partnerships, associations, agencies, networks, sole proprietorships, joint ventures, or any other entity that provides health care services;
- (6) "Health care payer," any employer, health plan, health maintenance organization, insurance company, management services organization, or any other entity that pays for, or arranges for the payment of, any health care service provided to any patient, whether that payment is made in whole or in part;
- (7) "Medical practitioner," any person who may be or is asked to participate in any way in any health care service. The term includes doctors, nurse practitioners, physician's assistants, nurses, nurses' aides, allied health professionals, medical assistants, hospital employees, clinic employees, nursing home employees, pharmacists, pharmacy technicians and employees, medical school faculty and students, nursing school faculty and students, psychology and counseling faculty and students, medical researchers, laboratory technicians, counselors, social workers, or any other person who facilitates or participates in the provision of health care services to any person;
- (8) "Participate in a health care service," to provide, perform, assist with, facilitate, refer for, counsel for, advise with regard to, admit for the purposes of providing, or take part in any way in providing, any health care service or any form of such service;
- (9) "Pay" or "payment," to pay for, contract for, arrange for the payment of, whether in whole or in part, reimburse, or remunerate.

Section 2. That chapter 34-54 be amended with a NEW SECTION:

A medical practitioner, health care institution, or health care payer has the right not to participate in or pay for any health care service which violates his, her, or its conscience. No medical practitioner, health care institution, or health care payer shall be discriminated against in any manner as a result of his, her, or its decision to decline to participate in or pay for a health care service on the basis of conscience.

Section 3. That chapter 34-54 be amended with a NEW SECTION:

Nothing in this Act may be construed to override the requirement to provide emergency medical treatment to all patients set forth in 42 U.S.C. § 1395dd or any other federal law governing emergency medical treatments.

Section 4. That chapter 34-54 be amended with a NEW SECTION:

Notwithstanding this Act, a religious medical practitioner, health care institution, or health care payer that holds itself out to the public as religious, states in its governing documents that it has a religious purpose or mission, and has internal operating policies or procedures that implement its religious beliefs, shall have the right to make employment, staffing, contracting, and admitting privilege decisions consistent with its religious beliefs.

Section 5. That chapter 34-54 be amended with a NEW SECTION:

No medical practitioner, health care institution, or health care payer is civilly, criminally, or administratively liable for exercising his, her, or its right of conscience not to participate in or pay for a health care service. No health care institution is civilly, criminally, or administratively liable for the exercise of conscience rights not to participate in a health care service by a medical practitioner

employed, contracted, or granted admitting privileges by the health care institution.

Section 6. That chapter 34-54 be amended with a NEW SECTION:

No medical practitioner may be discriminated against in any manner because the medical practitioner:

- (1) Provided, caused to be provided, or is about to provide or cause to be provided to his or her employer, the attorney general, any state agency charged with protecting health care rights of conscience, the U.S. Department of Health and Human Services, Office of Civil Rights, or any other federal agency charged with protecting health care rights of conscience information relating to any violation of, or any act or omission the medical practitioner reasonably believes to be a violation of, any provision of this Act;
- (2) Testified or is about to testify in a proceeding concerning such violation; or
- (3) Assisted or participated, or is about to assist or participate, in such a proceeding.

Section 7. That chapter 34-54 be amended with a NEW SECTION:

Unless the disclosure is specifically prohibited by law, no medical practitioner may be discriminated against in any manner because the medical practitioner disclosed any information that the medical practitioner reasonably believes proves:

- (1) Any violation of any law, rule, or regulation;
- (2) Any violation of any ethical guidelines for the provision of any health care service; or
- (3) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Section 8. That chapter 34-54 be amended with a NEW SECTION:

A civil action for damages or injunctive relief, or both, may be brought by any medical practitioner, health care institution, or health care payer for any violation of any provision of this Act. Any additional burden or expense on another medical practitioner, health care institution, or health care payer arising from the exercise of the right of conscience is not a defense to any violation of this Act. However, no civil action may be brought against an individual who declines to use or purchase health care services from a specific medical practitioner, health care institution, or health care payer for exercising the rights granted in § 34-54-2.

Section 9. That chapter 34-54 be amended with a NEW SECTION:

Any party aggrieved by any violation of this Act may commence a civil action and shall be entitled, upon the finding of a violation, to recover threefold his, her, or its actual damages sustained, along with the costs of the action and reasonable attorney's fees. In no case may recovery be less than five thousand dollars. Such damages shall be cumulative and in no way limited by any other remedies which may be available under any other federal, state, or municipal law. A court considering such civil action may also award injunctive relief, which may include reinstatement of a medical practitioner to his or her previous position, reinstatement of board certification, and re-licensure of a health care institution or health care payer."

Moved by: Deutsch
Second by: Wiese
Action: Prevailed by voice vote

MOTION: DEFER HB 1242 UNTIL THURSDAY, FEBRUARY 17TH, 2022

Moved by: Rehfeldt
Second by: Deutsch
Action: Prevailed by voice vote

MOTION: ADJOURN

Moved by: Perry
Second by: Phil Jensen
Action: Prevailed by voice vote

Pam Kean, Committee Secretary

/s/ KEVIN D. JENSEN
Kevin D. Jensen, Chair