2022 South Dakota Legislature

House Bill 1242

AMENDMENT 1242A FOR THE INTRODUCED BILL

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

An Act to allow medical practice on the basis of conscience.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

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.

AMENDMENT