
Healthcare Freedom of Conscience Act

Model Legislation & Policy Guide



*Advancing the Human Right to Life
in Culture, Law, and Policy*

INTRODUCTION

Protecting freedom of conscience has been a paramount concern since the founding of the United States. As Thomas Jefferson reflected, “[n]o provision in our Constitution ought to be dearer to man than that which protects the rights of conscience against the enterprises of the civil authority.”¹ However, during the years following *Roe v. Wade*, efforts to promote abortion rights have squarely conflicted with the conscience rights of pro-life Americans. This conflict has continued to grow, even after the Supreme Court overturned *Roe* in *Dobbs v. Jackson Women’s Health Organization*.

State and federal laws are necessary to ensure that the freedom of conscience is truly a protected right and not an unenforced platitude. Hospitals, doctors, nurses, and insurance plans should not be required to take part in abortion whether by performing the abortion, assisting in the procedure, or by paying for it. Furthermore, requiring healthcare providers to be involved in abortion could seriously reduce the availability and diversity of providers, especially as a large majority of OBGYNs and hospitals do not choose to provide abortion. A 2017 study demonstrated that 93% of all private-practice OBGYNs between 2013-2014 did not perform abortions.² A 2023 national survey conducted by a pro-abortion organization, Kaiser Family Foundation, found that only 18% of “office-based OBGYNs” provide “any type of abortion” post-*Dobbs*.³

Currently, only 8 states protect the healthcare conscience rights of all individuals in virtually all situations,⁴ whereas 38 states protect the conscience rights of certain healthcare professionals or healthcare institutions in limited circumstances. These laws typically protect only the right to object to participating in abortion.⁵ Five jurisdiction, D.C., Colorado,

¹ Letter from Thomas Jefferson to Richard Douglas (Feb. 4, 1809).

² *Most U.S. Obstetrician-Gynecologists in Private Practice Do Not Provide Abortions and Many Also Fail to Provide Referrals*, GUTTMACHER INST. (Nov. 27, 2017), <https://www.guttmacher.org/news-release/2017/most-us-obstetrician-gynecologists-private-practice-do-not-provide-abortions-and#>.

³ Brittni Frederiksen et al., *A National Survey of OBGYNs’ Experiences After Dobbs*, KFF (June 21, 2023), <https://www.kff.org/report-section/a-national-survey-of-obgyns-experiences-after-dobbs-report/>.

⁴ Ala. Code § 22-21B-4; Ark. Code §§ 17-80-504, 20-16-601; Fla. Stat. §§ 381.00321, 390.0111; Idaho Code §§ 18-611—18-612; 745 ILCS 70/1 et seq; Miss. Code §§ 41-107-5—41-107-9; Ohio Rev. Code §§ 4731.91, 4743.10; S.C. Code §§ 44-41-50, 44-139-10—44-139-90.

⁵ Alaska Stat. § 18.16.010(b); Ariz. Rev. Stat. § 36-2154; Cal. Health & Saf. Code § 123420; Conn. Agencies Regs. § 19-13-D54(f); Del. Code tit. 24 § 1791; Ga. Code § 16-12-142; Haw. Rev. Stat. § 453-16(e); Ind. Code §§ 16-34-1-4—16-34-1-6; Iowa Code §§ 146.1—146.2; Kan. Stat. §§ 65-443—65-447, 65-6737; Ky. Rev. Stat. § 311.800; La. Stat. tit. 40 § 1061.20; Me. Stat. tit. 22 §§ 1591, 1592; Md. Code, Health-Gen. § 20-214; Mass. Gen. Laws ch. 112 § 12I; Mich. Comp. Laws § 333.20182; Minn. Stat. § 145.42; Mo. Rev. Stat. §§ 188.105—188.110; Mont. Code § 50-20-111; Neb. Rev. Stat. §§ 28-338—28-341; Nev. Rev. Stat. §§ 449.191, 632.475; N.J. Stat. §§

New Hampshire, New Mexico, and Vermont, offer no explicit protections for individuals or entities that have conscientious objections to abortion. However, D.C., New Mexico, and Vermont allow physicians to object to participating in physician-assisted suicide, as well as California, Hawaii, and Oregon.⁶

Ultimately, many of the current state laws do not protect all healthcare providers. For example, pharmacist and pharmacies are often excluded from coverage in these statutes and, therefore, are lacking affirmative protection of their right to decline to provide abortion-inducing drugs. Further non-religiously affiliated, pro-life professionals, institutions, and payers may have moral (though not religious) objections to participating in, facilitating, and funding life-ending drugs and devices, but are left unprotected.

Given this lack of conscience protections, pro-life healthcare providers, institutions, and taxpayers still face coercive efforts by state governments and private institutions to perform abortions. There is a growing trend of discrimination against them. Recent examples include the following:

- In 2022 and 2021, CVS pharmacy fired two nurse practitioners, Robyn Strader, and Paige Casey, who both declined to prescribe contraceptives or abortion-inducing drugs because of their religious beliefs. Prior to their respective terminations, CVS revoked its previous policy allowing religious accommodations for employees. Robyn worked for CVS for 6 ½ years and Paige worked for CVS for 3 years. Both women were allowed a religious accommodation up until CVS suddenly changed its policy and terminated their employment because of their conscientious objections.⁷
- In 2021, New Mexico enacted a law that forced doctors who have conscientious objections to physician-assisted suicide to refer patients to other health care

2A:65A-1— 2A:65A-3; N.Y. Comp. Codes R. & Regs. tit. 10 § 405.9(10), *see also* N.Y. Civ. Rights Law § 79-I; N.C. Gen. Stat. § 90-21.81C; N.D. Cent. Code § 23-16-14 ; Okla. Stat. tit. 63 §§ 1-728a—1-728f, 1-741; Or. Rev. Stat. §§ 435.475, 435.485; 18 Pa. C.S. §§ 3202(d), 3213(d); R.I. Gen. Laws § 23-17-11; S.D. Codified Laws §§ 34-23A-12—34-23A-14; Tenn. Code §§ 39-15-204—39-15-205; Tex. Occ. Code §§ 103.002, 103.004; Utah Code § 76-7-306; Va. Code § 18.2-75 ; Wash. Rev. Code § 9.02.150; W. Va. Code § 16-2F-7; Wis. Stat. § 253.09; Wyo. Stat. §§ 35-6-105—t35-6-106.

⁶ Cal. Health & Saf. Code §§ 443.14—443.15; D.C. Code § 3-1205.14(a)(33) (allowing medical boards the discretion to discipline a healthcare provider who “[r]efuses on ethical, moral or religious grounds to provide services to a patient, customer, or client.”), *but see id.* § 7-661.10 (stating that no healthcare provider shall be made to participate in physician-assisted suicide); Haw. Rev. Stat. § 327L-19; N.M. Stat. §§ 24-7C-7; Or. Rev. Stat. § 127.885; Vt. Stat. tit. 18 §§ 5285, 86.

⁷ *See Strader v. CVS Health Corporation*, No. 4:23-cv-38 (N.D. Tex. filed Jan. 11, 2023); *Casey v. MinuteClinic Diagnostic of Virginia, LLC*, No. 1:22-cv-1127 (E.D. Va. filed Aug. 31, 2022).

professionals that would assist patients in ending their lives. The law also forced health care professionals to tell terminally ill patients that they should consider physician-assisted suicide as a “reasonable option” for end-of-life care. New Mexico doctor, Mark Lacy, filed a lawsuit challenging the law, which eventually led to the state legislature passing a law that allows physicians to decline participating in physician-assisted suicide.⁸

- In 2017, Vanderbilt University required applicants to its nursing program to take an abortion pledge. After a complaint was filed with the U.S. Department of Health and Human Services (HHS) for a violation of federal law, Vanderbilt changed this coercive policy.⁹
- In 2015, the Winnebago County Health Department refused to accommodate Sandra Mendoza, a pediatric nurse who declined to be cross-trained to facilitate abortions. She was prohibited from continuing to practice in accordance with her Catholic beliefs until a pro bono law firm stepped in.¹⁰
- In 2011, Fe Esperanza Racpan Vinoya and 11 fellow nurses at the University of Medicine and Dentistry of New Jersey faced a policy mandating that they assist with abortions. Their manager stated that if they resisted the policy, they would be fired or transferred out.¹¹
- In 2010, nine nurses at Nassau University Medical Center in Long Island, New York were suspended for refusing to participate in abortions. Only after the nurses’ union intervened, did the hospital drop its disciplinary charges and apologize to the nurses.¹²

⁸ *Lacy v. Torrez*, No. 1:22-cv-953 (D. N.M. filed Dec. 14, 2022) (case was dismissed after New Mexico amended the assisted suicide statute to expand conscience protections).

⁹ Stephanie Samuel, *University Changes Policy Requiring Students to Sign Abortion Pledge*, CHRISTIAN POST (Jan. 13, 2011), <https://www.christianpost.com/news/university-changes-policy-requiring-students-to-sign-abortion-pledge.html>).

¹⁰ Dave Andrusko, *Pro-life nurse awarded over \$374,000 when she was forced to resign for refusing to refer women to abortion services*, NAT’L RT. TO LIFE NEWS (Feb. 21, 2022), <https://www.nationalrighttolifenews.org/2022/02/pro-life-nurse-awarded-over-374000-when-she-was-forced-to-resign-for-refusing-to-refer-women-to-abortion-services/>.

¹¹ Seth Augenstein, *Nurses Say They Were Forced to Assist in Abortions*, NAT’L CATH. REP. (Nov. 15, 2011), <https://www.ncronline.org/news/politics/nurses-say-they-were-forced-assist-abortions>).

¹² *Hospital Apologizes to Nurses Over Abortion Decision*, ABC7 N.Y. (Apr. 28, 2010), <https://abc7ny.com/archive/7410863/>.

- In 2009, New York’s Mt. Sinai Hospital forced nurse Cathy DeCarlo to assist in a dismemberment abortion. She was made to observe the doctor remove the limbs of the child from the mother’s body, after which she had to pour saline on them. DeCarlo expressed her objection to the doctor and her nursing supervisor. Though there were other nurses at the hospital willing to participate in abortions, her supervisor insisted that she participate on pain of losing her job and nursing license.¹³
- In 2005, through then-Governor Rod Blagojevich’s unilateral action, pharmacy owners in Illinois were told that they must dispense so-called “emergency contraceptives,” despite an existing state law purportedly protecting their freedom of conscience.¹⁴

Sadly, this represents only a small sampling of the mounting attacks on the freedom of healthcare professionals to provide medical care without violating their ethical or moral standards and/or their religious beliefs.

Additionally, the recent, aggressive push to legalize and expand physician-assisted suicide also raises serious concerns for physicians and pharmacists with religious or moral objections to participating in a patient’s death. For example, in 2021, California passed a law that forced physicians to participate in the assisted suicide process, even if the physician had conscientious objections to prescribing the lethal drugs. The law required objecting physicians to still document a patient’s first of two legally required requests for the lethal assisted suicide drugs. As a result, California’s law forced objecting physicians to be a part of the assisted suicide process.¹⁵

Protecting the freedom of conscience is common sense. Conscience-respecting legislation does not ban any procedure or prescription and does not mandate any particular belief or morality. Freedom of conscience simply provides Americans with the guarantees that this country was built upon: the right to be free from coercion. Protecting conscience helps

¹³ *Hospital Forced Catholic Nurse to Participate in Abortion*, ALLIANCE DEFENDING FREEDOM (Aug. 1, 2023), <https://adflegal.org/article/hospital-forced-catholic-nurse-participate-abortion>.

¹⁴ Monica Davey & Pam Belluck, *Pharmacies Balk on After-Sex Pill and Widen Fight in Many States*, N.Y. TIMES (Apr. 19, 2005), <https://www.nytimes.com/2005/04/19/us/pharmacies-balk-on-aftersex-pill-and-widen-fight-in-many-states.html>.

¹⁵ A lawsuit was filed, challenging California’s law. *See Christian Medical & Dental Associations v. Bonta*, No. 5:22-cv-335 (C.D. Cal. filed Feb. 22, 2022). In 2023, the lawsuit was settled, with California agreeing not to enforce the criminal or civil penalties against physicians who object to participate in the state’s assisted suicide process.

ensure that healthcare providers enter and remain in their professions, helping to meet the rising demand for quality health care.

For more information or drafting assistance, please contact AUL at Legislation@AUL.org.

HEALTHCARE FREEDOM OF CONSCIENCE ACT

HOUSE/SENATE BILL No. _____

By Representatives/Senators _____

[Drafter's Note: *Provisions in this model legislation may implicate the Affordable Care Act (the federal healthcare law enacted in 2010) including, specifically, the "HHS Mandate" which requires most insurance plans to cover certain life-ending drugs and devices. Please contact AUL for drafting assistance.]*

Section 1. Title.

This Act may be known and cited as the "Healthcare Freedom of Conscience Act."

Section 2. Legislative Findings and Purposes.

- (a) The [Legislature] of the State of [Insert name of State] finds that:
- (1) It is the public policy of [Insert name of State] to respect and protect the fundamental right of conscience of healthcare providers.
 - (2) Pursuant to *Dobbs v. Jackson Women's Health Organization*, this State has an interest in preserving the integrity of the medical profession, which includes protecting the freedom of conscience of healthcare providers.
 - (2) Without comprehensive protection, healthcare rights of conscience may be violated in various ways, such as harassment, demotion, salary reduction, transfer, termination, loss of staffing privileges, denial of aid or benefits, and refusal to license or refusal to certify.
- (b) Based on the findings in subsection (a), it is the purpose of this Act to:
- (1) Protect as a basic civil right the right of all healthcare providers, institutions, and payers to decline to counsel, advise, [pay for,] provide, perform, assist, or participate in providing or performing healthcare services that violate their consciences. Such healthcare services may include, but are not limited to,

abortion, artificial birth control, sterilization, artificial insemination, assisted reproduction, human embryonic stem-cell research, [*and*] fetal experimentation, [*human cloning, physician-assisted suicide, and euthanasia,*].

- (2) Prohibit all forms of discrimination, disqualification, coercion, disability, or liability upon such healthcare providers, institutions, and payers that decline to perform or provide any healthcare service that violates their consciences.

Section 3. Definitions.

As used in this Act only:

(a) “**Conscience**” means the religious, moral, or ethical principles held by a healthcare provider, a healthcare institution, or a healthcare payer. For purposes of this Act, a healthcare institution or healthcare payer’s conscience shall be determined by reference to its existing or proposed religious, moral, or ethical guidelines; mission statement; constitution; bylaws; articles of incorporation; regulations; or other relevant documents.

(b) “**Employer**” means any individual or entity that pays for or provides health benefits or health insurance coverage as a benefit to its employees, whether through a third-party, a health maintenance organization, a program of self-insurance, or some other means.

(c) “**Healthcare institution**” means any public or private organization, corporation, partnership, sole proprietorship, association, agency, network, joint venture, or other entity that is involved in providing healthcare services, including but not limited to: hospitals, clinics, medical centers, ambulatory surgical centers, private physician’s offices, pharmacies, nursing homes, university medical schools, nursing schools, medical training facilities, or other institutions or locations wherein healthcare services are provided to any person.

(d) “**Healthcare payer**” means any entity or employer that contracts for, pays for, or arranges for the payment of, in whole or in part, any healthcare service or product including, but not limited to: health maintenance organizations, health plans, insurance companies, or management services organizations.

(e) “**Healthcare provider**” means any individual who may be asked to participate in any way in a healthcare service including, but not limited to, a physician; physician’s assistant; nurse; nurses’ aide; medical assistant; hospital employee; clinic employee;

nursing home employee; pharmacist; pharmacy employee; researcher; medical or nursing school faculty, student, or employee; counselor; social worker; or any professional, paraprofessional, or any other person who furnishes or assists in the furnishing of healthcare services.

(f) **“Healthcare service”** means any phase of patient medical care, treatment, or procedure, including, but not limited to, patient referral; counseling; therapy; testing; research; instruction; prescribing, dispensing, or administering any device, drug, or medication; surgery; or any other care or treatment rendered by healthcare providers or healthcare institutions.

(g) **“Participate”** in a healthcare service means to counsel, advise, provide, perform, assist in, refer for, admit for purposes of providing, or participate in providing any healthcare service or any form of such service.

(h) **“Pay”** or **“payment”** means pay, contract for, or otherwise arrange for the payment of, in whole or in part.

Section 4. Freedom of Conscience of Healthcare Providers.

(a) ***Freedom of Conscience.*** A healthcare provider has the right not to participate, and no healthcare provider shall be required to participate, in a healthcare service that violates his or her conscience.

(b) ***Immunity from Liability.*** No healthcare provider shall be civilly, criminally, or administratively liable for declining to participate in a healthcare service that violates his or her conscience.

(c) ***Discrimination.*** It shall be unlawful for any person, healthcare provider, healthcare institution, public or private institution, public official, or any board which certifies competency in medical specialties to discriminate against any healthcare provider in any manner based on his or her declining to participate in a healthcare service that violates his or her conscience. For purposes of this Act, discrimination includes, but is not limited to, termination; transfer; refusal of staff privileges; refusal of board certification; adverse administrative action; demotion; loss of career specialty; reassignment to a different shift; reduction of wages or benefits; refusal to award any grant, contract, or other program;

refusal to provide residency training opportunities; or any other penalty or disciplinary retaliatory action.

Section 5. Freedom of Conscience of Healthcare Institutions.

(a) ***Freedom of Conscience.*** A healthcare institution has the right not to participate, and no healthcare institution shall be required to participate, in a healthcare service that violates its conscience.

(b) ***Immunity from Liability.*** A healthcare institution that declines to provide or participate in a healthcare service that violates its conscience shall not be civilly, criminally, or administratively liable if the institution provides a consent form to be signed by a patient before admission to the institution stating that it reserves the right to decline to provide or participate in healthcare services that violate its conscience.

(c) ***Discrimination.*** It shall be unlawful for any person, public or private institution, or public official to discriminate against any healthcare institution or any person, association, corporation, or other entity attempting to establish a new healthcare institution or operating an existing healthcare institution, in any manner, including but not limited to, any denial, deprivation, or disqualification with respect to licensure; any aid, assistance, benefit, or privilege, including staff privileges; or any authorization, including authorization to create, expand, improve, acquire, affiliate, or merge with any healthcare institution because such healthcare institution or person, association, or corporation planning, proposing, or operating a healthcare institution declines to participate in a healthcare service which violates the healthcare institution's conscience.

(d) ***Denial of Aid or Benefit.*** It shall be unlawful for any public official, agency, institution, or entity to deny any form of aid, assistance, grants, or benefits or in any other manner to coerce, disqualify, or discriminate against any person, association, corporation, or other entity attempting to establish a new healthcare institution or operating an existing healthcare institution because the existing or proposed healthcare institution declines to participate in a healthcare service which violates the healthcare institution's conscience.

Section 6. Freedom of Conscience of Healthcare Payers.

[**Drafter's Note:** *This provision implicates the Affordable Care Act, the federal healthcare law enacted in 2010. Please contact AUL for drafting assistance when seeking to protect any category of healthcare payer.*]

(a) **Freedom of Conscience.** A healthcare payer has the right to decline to pay, and no healthcare payer shall be required to pay for or arrange payment for any healthcare service or healthcare product that violates its conscience.

(b) **Immunity from Liability.** No healthcare payer and no person, association, corporation, or other entity that owns, operates, supervises, or manages a healthcare payer shall be civilly or criminally liable by reason of the healthcare payer's declining to pay for or arrange payment for any healthcare service that violates its conscience.

(c) **Discrimination.** It shall be unlawful for any person, public or private institution, or public official to discriminate against any healthcare payer or any person, association, corporation, or other entity attempting to establish a new healthcare payer or operating an existing healthcare payer, in any manner, including but not limited to, any denial, deprivation, or disqualification with respect to licensure and any form of aid, assistance, benefit, privilege, or authorization including, but not limited to, any authorization to create, expand, improve, acquire, affiliate, or merge with any healthcare payer because a healthcare payer or a person, association, corporation, or other entity planning, proposing, or operating a healthcare payer declines to pay for or arrange payment for any healthcare service that violates its conscience.

(d) **Denial of Aid or Benefits.** It shall be unlawful for any public official, agency, institution, or entity to deny any form of aid, assistance, grants, or benefits or in any other manner to coerce, disqualify, or discriminate against any healthcare payer or any person, association, corporation, or other entity attempting to establish a new healthcare payer or operating an existing healthcare payer because the existing or proposed healthcare payer declines to pay for or arrange for the payment of any healthcare service that violates its conscience.

Section 7. Civil Remedies.

(a) **Civil Action.** A civil action for damages or injunctive relief, or both, may be brought for the violation of any provision of this Act. It shall not be a defense to any claim arising out of the violation of this Act that such violation was necessary to prevent additional burden or expense on any other healthcare provider, healthcare institution, individual, or patient.

(b) **Damage Remedies.** Any individual, association, corporation, entity, or healthcare institution injured by any public or private individual, association, agency, entity, or corporation by reason of any conduct prohibited by this Act may commence a civil action. Upon finding a violation of this Act, the aggrieved party shall be entitled to recover threefold the actual damages including pain and suffering sustained by such individual, association, corporation, entity, or healthcare institution, the costs of the action, and reasonable attorney's fees. In no case shall recovery be less than [*five thousand dollars (\$5,000) or other appropriate amount*] for each violation, in addition to costs of the action and reasonable attorney's fees. These damage remedies shall be cumulative and not exclusive of other remedies afforded under any other state or federal law.

(c) **Injunctive Remedies.** The court in such civil action may award injunctive relief including, but not limited to, ordering reinstatement of a healthcare provider to his or her prior job position.

Section 8. Severability.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

Section 9. Effective Date.

This Act takes effect on [*Insert date*].

For further information regarding this or other AUL policy guides, please contact:

AMERICANS UNITED FOR LIFE
1150 Connecticut Avenue NW, Suite 500
Washington, D.C. 20036
202.741.4917 | Legislation@aul.org

www.AUL.org

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