

Oppose HB 1080 – The New Hampshire Health Care Denial Act

HB1080 would allow any health care provider – broadly definedⁱ – to refuse to provide abortion, sterilization, or contraception services. HB1080 would also prohibit “any person, health care provider, health care institution, public or private institution, public official, national licensing board which licenses health care providers, or national certifying board which certifies competency” to take any action against a health care provider for failing to provide these health care services. Public and private health care institutions are also required to post a notice and inform their health care providers of the provider’s right to refuse to provide abortion, sterilization, or contraception services. Finally, HB1080 would create a new civil action to allow a health care provider to sue for damages “any person, health care provider, health care institution, public or private institution, public official, medical licensing board which licenses health care providers, or medical certifying board with competency in medical specialties” for a violation of this law.

Provides extreme religious exemptions under the guise of “conscience.” Health care providers could refuse to schedule appointments and procedures or process insurance paperwork for anything connected with abortion, sterilization, or artificial contraception. Providers could not lose their license or be disciplined by professional licensing boards or their employer, no matter how bad their conduct, so long as they claimed to be motivated by their “conscience.” And it would shield providers from civil, criminal, or administrative liability from any harm to patients that results from any refusal of care – no matter how egregious the harm. Lawmakers must not give people who harm others blanket immunity from the law.

Major medical associations oppose blanket license to discriminate provisions. This bill allows healthcare providers to refuse even to discuss a patient’s diagnosis or to refer the patient to someone who will treat them. The broad exemptions would allow people and institutions to engage in behavior that harms others with total impunity, which directly conflicts with the professional duty of health care providers. That’s why medical professional organizations, including the American Medical Association,ⁱⁱ the American College of Physicians,ⁱⁱⁱ the American Nurses Association,^{iv} and the American Academy of Physician Associates^v all require a balancing the needs of patients and medical professionals.

Limits access to reproductive health care in New Hampshire, regardless of the employer’s wishes. This license to discriminate will be felt more severely in rural areas where patients have a limited choice of medical providers. This legislation would also create extraordinary staffing challenges during a global pandemic because employers would have to accommodate any refusals of care and could not take any steps to adjust work obligations or assignments in response to a refusal to do the basic duties of an employee’s job. Individuals who are dismissed for ignoring the essential functions of their job could use this legislation to challenge their dismissal. Since moral beliefs are subjective, employers will be unable to legally distinguish those with genuinely held belief from those using bad policy to avoid having to work. Finally, this legislation could expose healthcare institutions to liability under federal laws prohibiting discrimination in healthcare and public accommodations because their staff would be allowed to discriminate in the provision of care.

New Hampshire and federal law already provide strong protections for religious exercise. For example, New Hampshire’s Law Against Discrimination requires employers to accommodate the religious exercise of their employees “unless based upon a bona fide occupational qualification.”^{vi} Federal law also requires employers to accommodate the religious exercise of their employees unless it

would cause an “undue hardship on the conduct of the employer’s business.”^{vii} These reasonable standards appropriately balance the needs of health care institutions to run their operation and provide quality care, with the religious beliefs and practices of a diverse workforce. This legislation is unnecessary.

Oppose HB 1080 - Do not grant health care providers a “license to discriminate.”

ⁱ "Health care provider" means any individual who, as part of his or her employment, may be asked to participate in any way in an abortion or sterilization or the prescription or provision of artificial contraception including, but not limited to: a physician, physician's assistant, nurse, nurse's aide, medical assistant, hospital or clinic employee, pharmacist, pharmacy employee, medical school student, medical school employee, or any professional, paraprofessional, or any other person who furnishes, or assist in the furnishing of an abortion, sterilization, or artificial contraception.

ⁱⁱ American Medical Association, *Principals of Medical Ethics*, available at <https://www.ama-assn.org/about/publications-newsletters/ama-principles-medical-ethics> (“A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care.”).

ⁱⁱⁱ American College of Physicians, *Ethics Manual*, available at <https://www.acpjournals.org/doi/10.7326/m18-2160> (“The ethical duty to disclose relevant information about human reproduction to the patient may conflict with the physician's personal moral standards on abortion, sterilization, contraception, or other reproductive services. A physician who objects to these services is not obligated to recommend, perform, or prescribe them. However, the physician has a duty to inform the patient about care options and alternatives or refer the patient for such information, so that the patient's rights are not constrained. Physicians unable to provide such information should transfer care as long as the health of the patient is not compromised.”).

^{iv} American Nurses Association, *Code of Ethics for Nurses*, available at <https://www.nursingworld.org/coe-view-only> (“Nurses must examine the conflicts arising between their own personal and professional values, the values and interests of others who are also responsible for patient care and health care decisions, and perhaps even the values and interests of the patients themselves. Nurses address such conflicts in ways that ensure patient safety and that promote the patient’s best interests while preserving the professional integrity of the nurse and supporting interprofessional collaboration.”).

^v American Academy of Physician Associates, *Guidelines for Ethical Conduct for the PA Profession*, available at <https://www.aapa.org/download/56983/>. (“Patients have a right to access the full range of reproductive healthcare services, including fertility treatments, contraception, sterilization, and abortion. PAs have an ethical obligation to provide balanced and unbiased clinical information about reproductive healthcare. When the PA's personal values conflict with providing full disclosure or providing certain services such as sterilization or abortion, the PA need not become involved in that aspect of the patient's care. By referring the patient to a qualified provider who is willing to discuss and facilitate all treatment options, the PA fulfills their ethical obligation to ensure the patient's access to all legal options.”).

^{vi} RSA 354-A:7 (It shall be an unlawful discriminatory practice: I. For an employer, because of the age, sex, gender identity, race, color, marital status, physical or mental disability, religious creed, or national origin of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment, unless based upon a bona fide occupational qualification.”).

^{vii} 42 U.S. Code § 2000e (“The term “religion” includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.”).