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HOUSE BILL NO. 8

Offered January 10, 2024

Prefiled December 1, 2023

A BILL to amend the Code of Virginia by adding in Title 32.1 a chapter numbered 21, consisting of sections numbered 32.1-376 through 32.1-380, relating to the Medical Ethics Defense Act established.

Patron—Ware

Referred to Committee on Health and Human Services

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 32.1 a chapter numbered 21, consisting of sections numbered 32.1-376 through 32.1-380, as follows:

CHAPTER 21.

MEDICAL ETHICS DEFENSE ACT.

§ 32.1-376. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Conscience" means the ethical, 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's or body's governing documents, including any published ethical, moral, or religious guidelines or directives, mission statements, constitutions, articles of incorporation, bylaws, policies, or regulations.

"Disclosure" means a formal or informal communication or transmission but does not include a communication or transmission concerning policy decisions that lawfully exercise discretionary authority, unless the medical practitioner providing the communication or transmission reasonably believes that the communication or transmission evinces:

- 1. Any violation of any law, rule, or regulation;
- 2. Any violation of any ethical guidelines for the provision of any medical procedure or service; or
- 3. Gross mismanagement, a gross waste of funds, an abuse of authority, practices or methods of treatment that may put patient health at risk, or a substantial and specific danger to public health or safety.

"Discrimination" means 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 such medical practitioner's, health care institution's, or health care payer's decision to decline to participate in a medical procedure or service on the basis of conscience. "Discrimination" includes termination of employment; transfer from current position; demotion from current position; adverse administrative action; reassignment to a different shift or job title; 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 of any of the preceding actions with regard to any of the preceding; or any other penalty, disciplinary, or retaliatory action, whether executed or threatened.

"Health care institution" means any organization, corporation, partnership, association, agency, network, sole proprietorship, joint venture, or other entity that provides medical procedures or services. "Health care institution" includes 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 other entity or location in which medical procedures or services are performed.

"Health care payer" means any employer, health plan, health maintenance organization, insurance company, management services organization, or other entity that pays for, or arranges for the payment of, any medical procedure or service provided to any patient, whether that payment is made in whole or in part.

"Medical practitioner" means any person who may be or is asked to participate in any way in any medical procedure or service. "Medical practitioner" includes doctors, nurse practitioners, physician's assistants, nurses, nurse aides, allied health professionals, medical assistants, hospital employees, clinic employees, nursing home employees, pharmacists, pharmacy technicians and employees, medical school

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59 faculty and students, nursing school faculty and students, psychology and counseling faculty and  
 60 students, medical researchers, laboratory technicians, psychologists, psychiatrists, counselors, mental  
 61 health professionals, social workers, or any other person who facilitates or participates in the provision  
 62 of a medical procedure or service.

63 "Medical procedure or service" means medical care provided to any patient at any time over the  
 64 entire course of treatment, or medical research. "Medical procedure or service" includes testing,  
 65 diagnosis, referral, dispensing or administering any drug, medication, or device, psychological therapy  
 66 or counseling, research, prognosis, therapy, record making procedures, notes related to treatment, set up  
 67 or performance of a surgery or procedure, or any other care or services performed or provided by any  
 68 medical practitioner including physicians, nurses, allied health professionals, paraprofessionals,  
 69 contractors, or employees of health care institutions.

70 "Participate" means to provide, perform, assist with, facilitate, refer for, counsel for, advise with  
 71 regard to, admit for the purposes of providing, or take part in any way in providing any medical  
 72 procedure or service, or any form of such service.

73 "Pay" or "payment" means to pay for, contract for, arrange for the payment of, whether in whole or  
 74 in part, reimburse, or remunerate.

75 **§ 32.1-377. Rights of conscience of medical practitioners, health care institutions, and health care**  
 76 **payers.**

77 A. A medical practitioner, health care institution, or health care payer has the right not to  
 78 participate in or pay for any medical procedure or service that violates such medical practitioner's,  
 79 health care institution's, or health care payer's conscience.

80 B. The exercise of the right of conscience is limited to conscience-based objections to a particular  
 81 medical procedure or service. This section may not be construed to waive or modify any duty a medical  
 82 practitioner, health care institution, or health care payer may have to provide other medical procedures  
 83 or services that do not violate such medical practitioner's, health care institution's, or health care  
 84 payer's conscience. Additionally, a health care payer may not decline to pay for a medical procedure or  
 85 service it is contractually obligated to pay for under the terms of its contract with an insured party.

86 C. No medical practitioner, health care institution, or health care payer shall be civilly, criminally,  
 87 or administratively liable for exercising such medical practitioner's, health care institution's, or health  
 88 care payer's right of conscience not to participate in or pay for a medical procedure or service. No  
 89 health care institution shall be civilly, criminally, or administratively liable for exercising the right of  
 90 conscience not to participate in a medical procedure or service by a medical practitioner employed,  
 91 contracted, or granted admitting privileges by the health care institution.

92 D. No medical practitioner, health care institution, or health care payer shall face discrimination in  
 93 any manner as a result of such medical practitioner's, health care institution's, or health care payer's  
 94 decision to decline to participate in or pay for a medical procedure or service on the basis of  
 95 conscience.

96 E. Notwithstanding any other provision of this chapter to the contrary, a religious medical  
 97 practitioner, health care institution, or health care payer that is held out to the public as religious,  
 98 states in governing documents a religious purpose or mission, and has internal operating policies or  
 99 procedures that implement religious beliefs, shall have the right to make employment, staffing,  
 100 contracting, and admitting privilege decisions consistent with religious beliefs.

101 F. Nothing in this chapter shall be construed to override the requirement to provide emergency  
 102 medical treatment to all patients as set forth in 42 U.S.C. § 1395dd.

103 **§ 32.1-378. Whistleblower protection.**

104 A. No medical practitioner shall face discrimination in any manner because the medical practitioner:

105 1. Provided, caused to be provided, or is about to provide or cause to be provided to his employer,  
 106 the Attorney General, the Department of Health Professions, the U.S. Department of Health and Human  
 107 Services Office for Civil Rights, or any other federal agency charged with protecting health care rights  
 108 of conscience information relating to any violation of, or any act or omission the medical practitioner  
 109 reasonably believes to be a violation of, any provision of this chapter;

110 2. Testified or is about to testify in a proceeding concerning such violation; or

111 3. Assisted or participated, or is about to assist or participate, in such a proceeding.

112 B. Unless the disclosure is specifically prohibited by law, no medical practitioner shall face  
 113 discrimination in any manner because the medical practitioner disclosed any information that the  
 114 medical practitioner reasonably believes evinces:

115 1. Any violation of any law, rule, or regulation;

116 2. Any violation of any ethical guidelines for the provision of any medical procedure or service; or

117 3. Gross mismanagement, a gross waste of funds, an abuse of authority, practices or methods of  
 118 treatment that may put patient health at risk, or a substantial and specific danger to public health or  
 119 safety.

120 **§ 32.1-379. Free speech protection.**

121 A. No agency, department, or board of the Commonwealth, including the Department of Health  
 122 Professions, the Board of Medicine, or any other agency, department, or board regulating the practice  
 123 of a medical procedure or service in the Commonwealth, shall reprimand, sanction, or deny or revoke,  
 124 or threaten to revoke, a license, certification, or registration of a medical practitioner for engaging in  
 125 speech or expressive activity that is protected by the First Amendment to the United States Constitution,  
 126 unless such agency, department, or board demonstrates beyond a reasonable doubt that the medical  
 127 practitioner's speech was the direct cause of physical harm to a person with whom the medical  
 128 practitioner had a practitioner-patient relationship within the three years immediately preceding the  
 129 incident of physical harm.

130 B. No agency, department, or board of the Commonwealth, including the Department of Health  
 131 Professions, the Board of Medicine, or any other agency, department, or board regulating the practice  
 132 of a medical procedure or service in the Commonwealth, shall contract with, nor shall it recognize,  
 133 approve, or require an individual to obtain certifications or credentials issued or approved by, a  
 134 specialty board or other recognizing agency that revokes the certification of, or refuses to issue  
 135 certification to, an individual because the individual has engaged in speech or expressive activity that is  
 136 protected by the First Amendment to the United States Constitution, provided that such individual was  
 137 not providing medical advice or treatment to a specific patient.

138 C. No medical practitioner or student in training in the health professions in the Commonwealth  
 139 shall be reprimanded, sanctioned, or threatened with loss of job, loss of job advancement, loss of  
 140 student status, or any other form of discrimination for engaging in speech or expressive activity,  
 141 refusing speech that is compelled, or any other form of action that is protected by the First Amendment  
 142 to the United States Constitution.

143 D. Each agency of the Commonwealth, including the Department of Health Professions, the Board of  
 144 Medicine, or any other agency, department, or board regulating the practice of a medical procedure or  
 145 service in the Commonwealth, and any specialty board or other recognizing agency approved or  
 146 recognized by any agency of the Commonwealth, shall provide a medical practitioner with any  
 147 complaint it has received that may result in the revocation of the medical practitioner's license,  
 148 certification, or registration within 21 days after receipt of such complaint. Such agency of the  
 149 Commonwealth must pay the medical practitioner an administrative penalty of \$500 for each day such  
 150 complaint is not provided to the medical practitioner after the specified 21 days.

151 **§ 32.1-380. Civil remedies.**

152 A. A civil action for damages or injunctive relief, or both, may be brought by any medical  
 153 practitioner, health care institution, or health care payer for any violation of any provision of this  
 154 chapter. Any additional burden or expense on another medical practitioner, health care institution, or  
 155 health care payer arising from the exercise of the right of conscience shall not be a defense to any  
 156 violation of this chapter. However, no civil action may be brought against an individual who declines to  
 157 use or purchase any medical procedure or service from a specific medical practitioner, health care  
 158 institution, or health care payer for exercising the rights granted in § 32.1-379.

159 B. Any party aggrieved by any violation of this chapter may commence a civil action and shall be  
 160 entitled, upon the finding of a violation, to recover threefold such party's actual damages sustained,  
 161 along with the costs of the action and reasonable attorney fees. Such damages shall be cumulative and  
 162 in no way limited by any other remedies that may be available under any other federal, state, or local  
 163 law. A court considering such civil action may also award injunctive relief, which may include  
 164 reinstatement of a medical practitioner to his previous position, reinstatement of a medical practitioner's  
 165 board certification, and re-licensure of a health care institution or health care payer.