

## **BILL ANALYSIS**

C.S.H.B. 1424  
By: Oliverson  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been suggested that health care providers and others need additional protections to ensure that they are not forced to act in opposition of their conscience in the performance of health care service. While state law provides these protections in the case of abortion, health care providers may currently be held liable for their refusal to provide other health care services. C.S.H.B. 1424 seeks to enact the Texas Health Care Conscience Protection Act and expand conscience protections to allow a person to decline to participate in a health care service for reasons of conscience, except with respect to emergency care or life-sustaining treatment. The bill also provides liability protections for a person who exercises that right and establishes certain remedies for a person whose right of conscience was violated by an adverse action taken against the person based on a refusal to participate on the basis of conscience.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1424 amends the Health and Safety Code to enact the Texas Health Care Conscience Protection Act, which grants a person the right to decline to participate in a health care service for reasons of conscience. However, a person may not decline to participate in the provision of emergency care or, except in accordance with an advance directive, life-sustaining treatment. The bill establishes that a person's exercise of the person's right of conscience is limited to the right to refuse to participate in a specific health care service and prohibits a physician or health care provider from being held civilly or criminally liable because the physician or provider declines to participate in a health care service wholly or partly for reasons of conscience.

C.S.H.B. 1424 defines "conscience" as a sincerely held set of moral convictions arising from a belief in and relation to God, a religious faith or spiritual practice, or a moral philosophy or ethical position, without regard to whether the philosophy or position is related to a religious faith. The bill defines "health care service" as any phase of patient health care or treatment, including the following:

- examination, testing, diagnosis, referral, prognosis, dispensing or administering a drug or device, ancillary research, instruction, therapy, treatment, and preparing for or performing a surgery or procedure;
- family planning, counseling, and referrals, and any other advice in connection with the use or procurement of contraceptives, sterilization, or abortion; and

- record-making procedures, preparation of treatment notes, and any other care or treatment rendered by a health care facility, physician, or health care provider.

C.S.H.B. 1424 requires a health care facility, not later than December 1, 2021, to develop a written protocol for circumstances in which a person declines to participate in providing a health care service, other than emergency care or life-sustaining treatment, for reasons of conscience. The bill provides the following:

- the protocol must describe a patient's access to health care services and information to ensure the patient is not permanently or substantially prevented from obtaining the services;
- the protocol must also explain the process the facility will implement to facilitate in a timely manner the patient's access to the services; and
- a person who declines to participate in providing a health care service for reasons of conscience must notify the applicable health care facility of the declination and comply with the facility's developed protocol.

These provisions expressly do not permit a protocol to require a health care facility, physician, or health care provider to counsel a patient or refer the patient to another physician or facility regarding a health care service that is contrary to the physician's or provider's conscience.

C.S.H.B. 1424 provides that a person, including a public official or a medical school or other institution that conducts education or training programs for physicians or health care providers, violates the bill's provisions by taking an adverse action against another person because the other person declines to participate in a health care service for reasons of conscience. The bill sets out examples of adverse actions that would constitute a violation and subjects a state-licensed health care facility, physician, or health care provider to review and disciplinary action by the applicable licensing agency for a violation as if the facility, physician, or provider violated the applicable licensing law.

C.S.H.B. 1424 authorizes a person who is injured by a violation to file a complaint with the appropriate licensing agency. However, a physician or health care provider may not file a complaint unless the physician or provider complied with the health care facility's protocol. A person who is injured by a violation may bring a civil action against the violator to obtain injunctive relief, damages incurred, or both.

C.S.H.B. 1424 sets out certain legislative findings regarding the need to protect the conscience of all health care providers and the right of each health care provider to hold the provider's own belief about whether certain health care services are morally acceptable. The bill also includes definitions of "emergency care," "health care facility," "health care provider," and "physician." The bill provides that its provisions may not be construed to supersede provisions of the Advance Directives Act governing the provision, withholding, or withdrawing of life-sustaining treatment or apply to emergency care, life-sustaining treatment, or cardiopulmonary resuscitation.

### **EFFECTIVE DATE**

September 1, 2021.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1424 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The original and substitute both expand the rights of conscience with respect to medical procedures. However, whereas the original expanded the existing right of an applicable health care provider to object to participation in an abortion procedure to also allow the provider to

refuse to participate in any other medical procedure that violates the provider's ethical, moral, or religious beliefs, the substitute does not. Instead, the substitute enacts the Texas Health Care Conscience Protection Act, which grants any person, not only health care providers, the right to decline to participate in a health care service for a reason of conscience, which the substitute defines in a manner that is substantially similar to the reasons for which refusal was permitted in the original.

Whereas the original provided an absolute right to object to participate in any medical procedure on the grounds of conscience, the substitute prohibits a person from declining to participate in the provision of emergency care or, except as provided by an advance directive, life-sustaining treatment.

The substitute provides for the civil and criminal immunity of physicians and health care providers who decline to participate in a health care service wholly or partly for reasons of conscience, whereas the original did not.

The original prohibited discrimination against a provider who refuses to directly or indirectly perform or participate in a medical procedure for reasons of conscience. The substitute, similarly, provides that a person violates the bill's provisions by taking an adverse action against another person because the other person declines to participate in a health care service for reasons of conscience. The substitute provides a list of specific actions that constitute a violation, whereas the original did not provide examples.

The substitute includes provisions not in the original requiring a health care facility to develop a written protocol for circumstances in which a person declines to participate in the provision of a health care service. Additionally, the substitute includes a procedural provision establishing a deadline for the adoption of such protocols.

The substitute includes a provision not in the original subjecting a state-licensed health care facility, physician, or health care provider to review and disciplinary action by the applicable licensing agency for a violation as if the facility, physician, or provider violated the applicable licensing law.

The original, because it amended existing statutory provisions, provided for certain remedies within that statutory framework for a person whose rights of conscience were violated. Those remedies were an injunction, affirmative relief, and any other relief necessary to ensure compliance. The substitute also provides certain remedies but they are, as follows:

- a complaint with a state licensing agency for potential disciplinary action; and
- an action for injunctive relief, damages, or both.

The substitute includes certain legislative findings absent from the original and includes definitions of conscience, emergency care, health care facility, health care provider, health care service, and physician.

The substitute changes the original's effective date from on passage, if it receives the necessary vote, or September 1, 2021, to September 1, 2021.