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SFA**BILL ANALYSIS**

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Senate Bill 1228 (as introduced 4-16-02)
Sponsor: Senator Bill Schuette
Committee: Health Policy

Date Completed: 5-20-02

CONTENT

The bill would create a new act to allow a health facility to assert, as a matter of conscience, on an ethical, moral, or religious ground, an objection to providing or participating in a health care service; and to provide protection for the health facility from certain liability.

Under the bill, a "health facility" would be a health facility or agency as defined in Section 20106 of the Public Health Code. (Section 20106 defines health facility or agency as the following: an ambulance operation, aircraft transport operation, nontransport prehospital life support operation, or medical first response service; a clinical laboratory; a county medical care facility; a freestanding surgical outpatient facility; a health maintenance organization; a home for the aged; a hospital; a nursing home; a hospice; a hospice residence; or a facility or agency located in a university, college, or other educational institution.) The bill further provides that a "health facility" would be a private physician office, or a public or private institution, teaching institution, pharmacy, corporation, partnership, or sole proprietorship that provided a health care service to an individual. "Health care service" would mean the provision or withdrawal of, or research or experimentation involving, a medical treatment, procedure, device, medication, drug, or other substance intended to affect the physical or mental condition of an individual. "Participating" would mean, at a minimum, to counsel, refer, perform, administer, prescribe, dispense, treat, withhold, withdraw, diagnose, test, evaluate, train, research, prepare, or provide material or physical assistance in a health care service.

The bill would prohibit a health facility from asserting an objection if the objection were to a health care service that the health facility routinely provided or participated in and were based on a disagreement with a member of a health profession employed by, under contract to, or granted privileges by the health facility, regarding the medical appropriateness of the health care service for a specific patient, if the patient had consented to the service. A health facility also would be prohibited from asserting an objection that excluded an entire health profession. ("Health profession" would mean a vocation, calling, occupation, or employment performed by individuals acting pursuant to a health profession license or registration issued under the Public Health Code.)

A health facility would have to give notice of an objection to providing a health care service through written public notice, or personally in writing, at the time an individual sought to obtain that service from the health facility.

A health facility's objection to providing or participating in a health care service could not be a basis for civil, criminal, or administrative liability; or eligibility discrimination against the health facility in a grant, contract, or program, where providing or participating in the health care service was not expressly required as a condition of eligibility for the grant, contract, or

program.

Legislative Analyst: George Towne

FISCAL IMPACT

The bill appears to allow health facilities to “pick and choose” the health services they provide based on ethical, moral, or religious grounds. In addition, the bill contains no restrictions on what health facilities could claim as an “ethical, moral, or religious” objection. One can postulate a number of possible objections: refusing to perform surgery on members of a particular religion who refuse to allow blood transfusions, because without the transfusion the surgery could result in the death of the patient; refusal to accept a do-not-resuscitate order because to allow death without intervening could be seen as morally or ethically objectionable; or, under similar grounds, refusing to induce the abortion of a fetus even though that refusal could result in the death of the mother. All of this could have a variety of indirect consequences, including delaying patient care and jeopardizing Federal financial participation in the Medicaid program.

The impact on patient care could range from minor disruptions in the receipt of care to possible permanent harm or death to patients. For out-patient procedures, patients could be forced to “shop around” in order to find a facility willing to provide a particular service. In emergency situations, however, if a patient arrives at an emergency room in need of a life-saving, but “morally objectionable” procedure, the health facility could refuse to provide that procedure under the bill even though doing so could result in the patient’s death. The bill proposes no exceptions for the treatment of emergency or life-threatening situations and, as a result, would appear to conflict with the Federal Emergency Medical Treatment and Active Labor Act (EMTALA). This Act requires emergency departments to treat and stabilize any individual who comes to the hospital with an emergency medical condition, before transferring the patient to another facility.

As for Medicaid, the bill could jeopardize the Federal financial participation unless the State disenrolled any Medicaid facility that refused to provide less than all of the Medicaid-required services. Because providing all Medicaid-required services is expressly required as a condition of Federal financial participation in Medicaid, the bill would allow the State to use eligibility discrimination against any such health facilities for the Medicaid program. (Under Section 2(4)(b), a health facility’s objection to a health care service could not be used as a basis of eligibility discrimination against the facility in a grant, contract, or program, unless providing the service was expressly required as a condition of eligibility for the grant, contract, or program.)

Also, the bill proposes no mechanism for determining the validity of a health facility’s objection to providing a particular service. For example, it is not clear whether health facilities could claim that they were ethically, morally, or religiously opposed to providing services that are only minimally profitable because, if they provide the services, they may not be able to continue providing services to the broader community, which might be considered a higher moral imperative. Again, the issue will become one of trying to ascertain whether this type of behavior is inconsistent with Federal law or regulation, which could jeopardize Federal payments to this State.

Fiscal Analyst: Dana Patterson
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.