“Medical Conscience” Bills Would Let Providers Refuse More Health Care

States are looking at going beyond abortion to deny care based on religious, moral beliefs.

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Legislation in at least eight states would expand the rights of doctors, nurses, hospitals and even insurance companies to refuse to provide or pay for care — from contraception and fertility services to medical marijuana and childhood vaccines — that conflicts with their religious or moral beliefs.

For years, most states have had so-called medical conscience laws that are mainly aimed at preventing providers or hospitals from having to participate in abortion. But conservative lawmakers in multiple states are pushing to expand such protections as cultural battles over health care have exploded in recent years.

Supporters say the measures protect providers from being sued, fired or demoted for following their deeply held beliefs. At least five states have passed expanded medical conscience laws in recent years.

“There’s no policy advantage in requiring people to participate in a practice that violates their beliefs,” said Bill Duncan, constitutional law and religious freedom fellow at the Sutherland Institute, a conservative think tank in Salt Lake City that supports a medical conscience bill in Utah.

“The right type of legislation is to allow for accommodation of those beliefs,” Duncan said.

But critics warn the measures are so broad that they would allow doctors, pharmacists, hospitals and insurers to say no to just about anything, undermining patients’ expectations of comprehensive, informed care.

This year, conservative lawmakers in at least eight other states (Kentucky, Missouri, New Hampshire, Oklahoma, Rhode Island, South Carolina, Utah and West Virginia) have introduced expanded medical conscience legislation. Many of these efforts are backed by national anti-abortion groups such as the Alliance Defending Freedom, a conservative Christian legal defense organization.

The debate crystallized in Tennessee, which already has an expanded medical conscience law, last

month. A local woman told Nashville television station WSMV that she was already hooked up to an IV at the Ascension St. Thomas Midtown hospital, prepped for a sterilization procedure, when hospital staff told her the surgery wouldn't move forward. The hospital's medical ethics board, she said, cited a "duty to protect her sacred fertility."

The hospital is part of Ascension, one of the nation's largest nonprofit Catholic health systems and follows a set of Catholic church directives that lists direct sterilization among procedures it describes as "intrinsically immoral."

It's unclear why the woman was admitted for the surgery in the first place. Similar cases of denied sterilization surgeries have been reported in Michigan and Wisconsin.

Ascension did not respond to Stateline's request for comment.

Last summer, a pregnant woman stood up at a town hall in northeast Tennessee and said her state's new law — which had gone into effect three months earlier — allowed her clinician to refuse her prenatal care after learning she and her partner were unmarried.

"That provider told me that thanks to that act, they were not comfortable treating me because I am an unwed mother and that goes against their Christian values," she said on a widely shared video from the town hall.

Physicians to pharmacists

Many conservative-led states already offer protections for providers who don't want to participate in abortions. But expanded protections are needed as more scenarios emerge that could infringe on someone's religious freedom or conscience, said Duncan, of the Sutherland Institute.

"There can be other situations that really haven't arisen because the legal issues are pretty new and people haven't been asked in the past to do those things," he said, citing services such as gender-affirming care. With broader state laws, "we can create a general template for figuring out how to approach that."

Duncan said Utah's bill makes a good-faith effort to balance the rights of providers and patients. For example, it would require providers to prominently post statements on their websites and in reception areas informing patients of the services they decline to offer. The notice would have to include a state website that lists providers who do offer those services.

But notification may not make much of a difference in rural communities with few health care providers, or for people whose insurance is only accepted at one area hospital or by a limited number of physicians.

Caitlyn Jasumback, immunization advocacy program manager with the Utah Public Health Association, warned that the Utah bill — which the legislature has passed and sent to the governor — could lower vaccination rates by allowing providers to decline to offer or even discuss certain vaccines with patients.

The broad scope of the bill means it touches every aspect of health care, Jasumback said.

“What folks may not consider is that while your physician could support vaccination or whatever service you’re accessing, other staff involved in that care may decline participation,” she said.

“The nurse could refuse to administer the vaccine. A pharmacist could refuse to dispense it. A staff member could decline to assist in the documentation.”

National groups such as the American Medical Association support providers acting in accordance with their conscience, but that liberty is not unlimited: Physicians are expected to provide emergency care, to honor patients’ informed decisions, and to not discriminate against individuals, according to AMA policy.

Before Idaho enacted its sweeping medical conscience law last March, Republican state Rep. Bruce Skaug, the House sponsor, listed the types of services that a provider could decline to offer, including physician-assisted death, dispensing marijuana or mind-altering drugs, gene editing, gender-affirming care such as surgery or puberty blockers, and “injection products.”

Mistie DelliCarpini-Tolman, Idaho state director for Planned Parenthood Alliance Advocates, told lawmakers that Idaho’s law also would allow a pharmacist to refuse to dispense antidepressants, an insurer to decline to cover birth control, or a physician to deny services to a gay couple or their children.

‘Not a free ticket’

Last month, Kentucky state Sen. Reginald Thomas, a Democrat, asked the Republican sponsor of Kentucky’s medical conscience bill whether it would allow a physician with “sincerely held” racist beliefs to deny care to a Black patient.

The bill stoked heated debate on the Kentucky Senate floor before passing the Senate without Democratic support. It’s currently in a House committee.

Thomas told lawmakers the bill “builds in biases that we have fought hard in this country to try to override” and “opens the door to law-protected discrimination.”

The bill’s sponsor, Republican state Sen. Donald Douglas, who is also a physician, and other supporters pointed out that it would only allow conscience-based objections to providing certain services, not to caring for particular patients.

And, like other medical conscience laws, it would not apply to emergency care, which physicians and hospitals are required by federal law to provide.

“It is not a free ticket for medical professionals to not treat patients,” Douglas told fellow lawmakers.

Douglas and other supporters also argue that offering protections against criminal and civil liability

would make their states more attractive places for providers to practice, helping to reduce shortages of doctors and nurses.

In Tennessee, Democratic state Sen. Aftyn Behn is trying to limit the scope of her state's law. Behn introduced a bill that would block health care providers and insurers in Tennessee, which has a strict abortion ban, from using the law to refuse to provide pregnancy-related services. The bill is supported by Planned Parenthood.

Behn said medical conscience laws might create a slippery slope toward the criminalization of certain kinds of health care. In recent years, hundreds of women have faced criminal charges for conduct associated with pregnancy and pregnancy loss.

"Right now this is all in the realm of professional subjectivity and responsibility," Behn said. "But as soon as it crosses the threshold where someone's arrested, for me that's a point of no return."

It's unclear how many providers, hospitals or insurers will take advantage of laws offering broader immunity for refusing care. Jasumback, of the Utah Public Health Association, believes such providers are "few and far between."

And yet, she said, they still create barriers to care. Even if a patient is able to find the same procedure with a different doctor or at a different hospital, that's still an extra burden: another appointment, an additional copayment, more time taken off work, arranging additional child care or transportation.

"It's not really about opposing conscious protections," she said. "It's really just opening up this idea of what's true informed consent, and wanting to make sure that patients are given all the information they need to make the most informed decision about their health and their kids' health."