

# Protecting Medical Conscience Rights

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## KEY POINTS

Medical providers have the right to not perform procedures or give treatments which violate their religious or ethical convictions.

The Biden Administration undermined federal conscience protections, and future Democratic administrations will likely do the same.

While the Trump Administration will likely undo the damage Biden did, conservative state legislators across the nation have recognized the need to permanently protect medical providers in state law.

## Why are medical conscience rights necessary?

- Beginning in 2022, under HHS Secretary Xavier Becerra, the Biden Administration has undermined conscience rights for medical providers, eliminating the HHS' Conscience and Religious Freedom Division and ending enforcement of the Religious Freedom Restoration Act and First Amendment by HHS' Office of Civil Rights.<sup>1</sup>
- HHS also denies Title X funding to states that do not provide parents with abortion referrals. Currently, a lawsuit by the State of Tennessee challenging the Biden Administration's rule is on appeal before the Sixth Circuit.<sup>2</sup>
- While the incoming Trump Administration will likely restore these federal protections, a Democratic Administration leaves states unprotected without their own laws.
- Consequently, during the Biden Administration, states began to pass laws to protect conscience rights for medical providers.

- Kentucky’s medical providers are also in danger of conscience rights violations because of Gov. Beshear’s executive order banning so-called “conversion therapy” in September 2024. The order violated parental rights, the ones responsible for guiding their children on sexual ethics according to their faith tradition. It also chilled free speech and guidance by biblical counselors who are dedicated to supporting parents and the biblical sexual ethic.<sup>3</sup>
- 9 out of 10 medical professionals say “I would rather stop practicing medicine altogether than be forced to violate my conscience.”<sup>4</sup>
- And 36% of Christian medical students say they have experienced discrimination or pressure during medical school.<sup>5</sup>

## What have other states done?

### *Arkansas (2021)*<sup>6</sup>

- The Medical Ethics and Diversity Act allows healthcare providers, institutions, and insurers to refuse participation in procedures like abortion, assisted suicide, and gender-affirming care.
- Provides protections against discrimination or disciplinary actions for exercising conscience-based refusals.

### *South Carolina (2022)*<sup>7</sup>

- The Medical Ethics and Diversity Act protects healthcare practitioners, institutions, and payers from participating in services that violate their conscience.
- Creates a private right of action and shields individuals and entities from liability or discrimination for exercising their conscience rights.

## How have Kentucky legislators acted?

### *SB 83 (2021)*<sup>8</sup>

- Sponsors: Stephen Meredith, Robby Mills
- Prohibit discrimination against medical care providers who decline to perform procedures that violate their conscience.
- Grant providers the right not to participate in or pay for services that violate their conscience
- Exempt providers from liability for exercising these rights;
- Establish a civil cause of action for persons injured by violations of these provisions.

### *SB 239 (2024) “Healthcare Heroes Recruitment and Retention Act”*<sup>9</sup>

- Sponsors: Donald Douglas, Stephen Meredith, Lindsey Tichenor
- Prohibit discrimination against medical care providers who decline to perform procedures that violate their conscience.
- Grant providers the right not to participate in or pay for services that violate their conscience.
- Exempt providers from liability for exercising these rights.
- Prohibit the State Board of Medical Licensure from reprimanding medical practitioners and require the board to provide complaints it has received to medical practitioners.
- Establish a civil cause of action for persons injured by violations.

## Endnotes

<sup>1</sup> *National Review* (<https://www.nationalreview.com/bench-memos/the-biden-administrations-dubious-record-on-conscience-rights/>)

<sup>2</sup> *Michigan Advance* (<https://michiganadvance.com/2024/11/18/trump-administration-could-reverse-tit-x-abortion-referrals-rule/>)

<sup>3</sup> [https://governor.ky.gov/attachments/20240918\\_Executive-Order\\_2024-632\\_Relating-to-Protecting-Minors-from-Conversion-Therapy.pdf](https://governor.ky.gov/attachments/20240918_Executive-Order_2024-632_Relating-to-Protecting-Minors-from-Conversion-Therapy.pdf)

<sup>4</sup> *The Linacre Quarterly* (<https://pmc.ncbi.nlm.nih.gov/articles/PMC6026970/>)

<sup>5</sup> *Alliance Defending Freedom* (<https://storage.snappages.site/3P657G/assets/files/SC-MEDS-Act.pdf>)

<sup>6</sup> <https://arkleg.state.ar.us/Bills/Detail?id=SB289&ddBienniumSession=2021%2F2021R>

<sup>7</sup> [https://www.scstatehouse.gov/sess124\\_2021-2022/bills/4776.htm#:~:text=\(D\)%20As%20the%20right%20of,basis%20of%20conscience%2C%20whether%20such](https://www.scstatehouse.gov/sess124_2021-2022/bills/4776.htm#:~:text=(D)%20As%20the%20right%20of,basis%20of%20conscience%2C%20whether%20such)

<sup>8</sup> <https://apps.legislature.ky.gov/record/21rs/sb83.html>

<sup>9</sup> <https://apps.legislature.ky.gov/record/24rs/sb239.html>