

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1633 Session of
2023

INTRODUCED BY FRANKEL, VENKAT, HILL-EVANS, MADDEN, DELLOSO,
PISCIOTTANO, SANCHEZ, KEEFER, FIEDLER, CIRESI, KRAJEWSKI,
FREEMAN, SHUSTERMAN, MALAGARI, N. NELSON, KHAN, INNAMORATO,
D. WILLIAMS, WEBSTER, HOWARD, O'MARA, BOROWSKI, SAMUELSON,
T. DAVIS AND KOSIEROWSKI, AUGUST 29, 2023

SENATOR BROOKS, HEALTH AND HUMAN SERVICES, IN SENATE, AS
AMENDED, JULY 3, 2024

AN ACT

1 Prohibiting the enforcement of certain noncompete covenants
2 entered into by health care practitioners and employers AND <--
3 PROVIDING FOR A STUDY BY THE HEALTH CARE COST CONTAINMENT
4 COUNCIL.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Fair
9 Contracting for Health Care Practitioners Act.

10 Section 2. Legislative intent.

11 The General Assembly finds and declares as follows:

12 (1) Patient access to health care in this Commonwealth
13 often depends on geography, transportation and availability
14 of practitioners.

15 (2) Seventy-five percent of physicians are employed by
16 hospitals, health care systems or corporate entities.

1 (3) Consolidated hospital systems increasingly stretch
2 over broad geographic regions, meaning that a hospital
3 network's noncompete clause can prevent health care
4 practitioners from practicing in large areas of this
5 Commonwealth, well beyond their initial employment location.

6 (4) Noncompete covenants in health care inhibit
7 competition that benefits employees and patients and can
8 deter needed health care practitioners from wanting to
9 practice in Pennsylvania.

10 (5) Providers constrained by noncompete covenants have
11 less freedom of practice for fear of losing employment and
12 being unable to work in their profession.

13 (6) Most rural areas of Pennsylvania can be considered
14 health care deserts in which patients must travel two or
15 three hours for their basic health care needs.

16 (7) Continuity of care is a fundamental public policy
17 goal that can help patients achieve their health care goals
18 and build trust with their health care practitioners.

19 (8) This Commonwealth cannot afford to continue losing
20 health care practitioners to surrounding states and must do
21 more to attract and retain them.

22 Section 3. Definitions.

23 The following words and phrases when used in this act shall
24 have the meanings given to them in this section unless the
25 context clearly indicates otherwise:

26 "Employer." A person or group of persons that employ a
27 health care practitioner at a health care facility or office.

28 ~~"Health care practitioner." As defined in section 103 of the <--~~
29 ~~act of July 19, 1979 (P.L.130, No.48), known as the Health Care~~
30 ~~Facilities Act. The term includes a licensed practical nurse.~~

1 "HEALTH CARE PRACTITIONER." THE FOLLOWING: <--

2 (1) A MEDICAL DOCTOR AS DEFINED IN SECTION 2 OF THE ACT
3 OF DECEMBER 20, 1985 (P.L.457, NO.112), KNOWN AS THE MEDICAL
4 PRACTICE ACT OF 1985.

5 (2) A DOCTOR OF OSTEOPATHY UNDER THE ACT OF OCTOBER 5,
6 1978 (P.L.1109, NO.261), KNOWN AS THE OSTEOPATHIC MEDICAL
7 PRACTICE ACT, OR THE MEDICAL PRACTICE ACT OF 1985.

8 (3) A CERTIFIED REGISTERED NURSE ANESTHETIST AS DEFINED
9 IN SECTION 2(16) OF THE ACT OF MAY 22, 1951 (P.L.317, NO.69),
10 KNOWN AS THE PROFESSIONAL NURSING LAW.

11 (4) A CERTIFIED REGISTERED NURSE PRACTITIONER AS DEFINED
12 IN SECTION 2(12) OF THE PROFESSIONAL NURSING LAW.

13 (5) A PHYSICIAN ASSISTANT AS DEFINED IN SECTION 2 OF
14 THE OSTEOPATHIC MEDICAL PRACTICE ACT.

15 "Noncompete covenant." An agreement that is entered into
16 between an employer and a health care practitioner in this
17 Commonwealth ~~and is designed to impede~~ WHICH HAS THE EFFECT OF <--
18 IMPEDING the ability of the health care practitioner to ~~practice~~ <--
19 CONTINUE TREATING PATIENTS OR ACCEPTING NEW PATIENTS, EITHER <--
20 PRACTICING independently or in the employment of a competing
21 employer after the term of employment.

22 "Patient." An individual to whom a health care practitioner
23 rendered professional services in the health care practitioner's
24 scope of practice for which compensation has been received by
25 the health care practitioner, regardless of the source of the
26 compensation.

27 "Primary health care facility or office." The office,
28 facility or location where a majority of the revenue derived
29 from a health care practitioner's services ~~are~~ IS generated. <--

30 Section 4. Noncompete covenants.

1 ~~(a) Enforceability. Except as provided under subsection~~

2 ~~(b), the following shall apply:~~

3 ~~(1) A noncompete covenant entered into or amended on or~~
4 ~~after the effective date of this section is deemed contrary~~
5 ~~to public policy and is void and unenforceable by an~~
6 ~~employer.~~

7 ~~(2) A noncompete covenant entered into or amended prior~~
8 ~~to the effective date of this section is void and~~
9 ~~unenforceable upon the renewal of a health care~~
10 ~~practitioner's license, registration or certification within~~
11 ~~this Commonwealth.~~

12 ~~(b) Exception. An employer may enforce a noncompete~~
13 ~~covenant if all of the following apply:~~

14 ~~(1) The primary health care facility or office where the~~
15 ~~health care practitioner is employed is located in a county~~
16 ~~of the sixth, seventh or eighth class.~~

17 ~~(2) The geographic restriction is less than a 45 mile~~
18 ~~radius from the primary health care facility or office.~~

19 ~~(3) The length of the noncompete covenant is no more~~
20 ~~than two years.~~

21 ~~(c) Construction. Nothing in this section shall be~~
22 ~~construed to prohibit the enforcement of a contract provision~~
23 ~~that allows an employer to recover reasonable expenses from a~~
24 ~~health care practitioner, if the expenses are:~~

25 ~~(1) Directly attributable to the health care~~
26 ~~practitioner and accrued within the three years prior to~~
27 ~~separation, unless separation is caused by dismissal of the~~
28 ~~health care practitioner.~~

29 ~~(2) Related to relocation, training and establishment of~~
30 ~~a patient base.~~

1 ~~(3) Amortized over a period of up to five years from the~~
2 ~~date of separation by the health care practitioner.~~

3 (A) APPLICABILITY.--EXCEPT AS PROVIDED UNDER SUBSECTION (B), <--
4 A NONCOMPETE COVENANT ENTERED INTO AFTER THE EFFECTIVE DATE OF
5 THIS SUBSECTION IS DEEMED CONTRARY TO THE PUBLIC POLICY AND IS
6 VOID AND UNENFORCEABLE BY AN EMPLOYER.

7 (B) EXCEPTION.--AN EMPLOYER MAY ENFORCE A NONCOMPETE
8 COVENANT IF THE LENGTH OF THE NONCOMPETE COVENANT IS NO MORE
9 THAN ONE YEAR, PROVIDED THAT THE HEALTH CARE PRACTITIONER WAS
10 NOT DISMISSED BY THE EMPLOYER.

11 (C) CONSTRUCTION.--NOTHING IN THIS SECTION SHALL BE
12 CONSTRUED TO:

13 (1) PROHIBIT THE ENFORCEMENT OF A CONTRACT PROVISION
14 THAT ALLOWS AN EMPLOYER TO RECOVER REASONABLE EXPENSES FROM A
15 HEALTH CARE PRACTITIONER, IF THE EXPENSES ARE:

16 (I) DIRECTLY ATTRIBUTABLE TO THE HEALTH CARE
17 PRACTITIONER AND ACCRUED WITHIN THE THREE YEARS PRIOR TO
18 SEPARATION, UNLESS SEPARATION IS CAUSED BY DISMISSAL OF
19 THE HEALTH CARE PRACTITIONER.

20 (II) RELATED TO RELOCATION, TRAINING AND
21 ESTABLISHMENT OF A PATIENT BASE.

22 (III) AMORTIZED OVER A PERIOD OF UP TO FIVE YEARS
23 FROM THE DATE OF SEPARATION BY THE HEALTH CARE
24 PRACTITIONER.

25 (2) (I) EXCEPT AS PROVIDED UNDER SUBPARAGRAPH (II),
26 VOID OR RENDER A NONCOMPETE COVENANT ENTERED INTO WITH A
27 HEALTH CARE PRACTITIONER WITH AN INTEREST IN A BUSINESS
28 ENTITY UNENFORCEABLE AS A DIRECT RESULT OF:

29 (A) THE SALE OF AN OWNERSHIP INTEREST OR ALL OR
30 SUBSTANTIALLY ALL OF THE ASSETS OF THE BUSINESS

1 ENTITY;

2 (B) A TRANSACTION RESULTING IN THE SALE,
3 TRANSFER OR OTHER DISPOSITION OF THE CONTROL OF THE
4 BUSINESS ENTITY, INCLUDING BY MERGER OR
5 CONSOLIDATION. FOR PURPOSES OF THIS CLAUSE, THE TERM
6 "CONTROL" SHALL MEAN THE POSSESSION, DIRECTLY OR
7 INDIRECTLY, OF THE POWER TO DIRECT THE MANAGEMENT AND
8 POLICIES OF A BUSINESS ENTITY, WHETHER THROUGH THE
9 OWNERSHIP OF VOTING SECURITIES, BY CONTRACT OR
10 OTHERWISE; OR

11 (C) THE HEALTH CARE PRACTITIONER'S RECEIPT, BY
12 PURCHASE, GRANT, AWARD, ISSUANCE OR OTHERWISE, OF AN
13 OWNERSHIP INTEREST IN THE BUSINESS ENTITY.

14 (II) A PREEXISTING NONCOMPETE COVENANT MAY BE
15 RENDERED VOID AND UNENFORCEABLE IF A HEALTH CARE
16 PRACTITIONER IS NOT A PARTY TO THE SALE, TRANSFER OR
17 OTHER DISPOSITION UNDER SUBPARAGRAPH (I).

18 Section 5. Notification.

19 (a) Patient notification.--Following the departure of a
20 health care practitioner from an employer, the employer shall
21 notify the health care practitioner's patients seen within the
22 past year of the following:

23 ~~(1) Where the health care practitioner will be rendering <--~~
24 ~~services in the future, if known.~~

25 ~~(2) How the patient may:~~

26 ~~(i) continue as a patient of the health care~~
27 ~~practitioner; or~~

28 ~~(ii) be assigned a new health care practitioner~~
29 ~~within the existing employer.~~

30 (1) THE HEALTH CARE PRACTITIONER'S DEPARTURE. <--

1 (2) IF THE PATIENT CHOOSES TO RECEIVE CARE FROM THE
2 DEPARTED HEALTH CARE PRACTITIONER OR ANOTHER HEALTH CARE
3 PRACTITIONER, HOW THE PATIENT MAY TRANSFER THE PATIENT'S
4 HEALTH RECORDS TO A HEALTH CARE PRACTITIONER OTHER THAN WITH
5 THE EMPLOYER.

6 (3) THAT THE PATIENT MAY BE ASSIGNED TO A NEW HEALTH
7 CARE PRACTITIONER WITHIN THE EXISTING EMPLOYER IF THE PATIENT
8 CHOOSES TO CONTINUE RECEIVING CARE FROM THE EMPLOYER.

9 (b) Time period.--The employer shall provide the notice
10 within 90 days of the health care practitioner's departure.

11 (c) Applicability.--The notification requirement shall apply
12 to a ~~physician, certified registered nurse practitioner or~~ <--
13 ~~physician assistant~~ HEALTH CARE PRACTITIONER with an ongoing <--
14 outpatient relationship with the patient.

15 ~~Section 6. Effective date.~~ <--

16 ~~This act shall take effect as follows:~~

17 ~~(1) Section 5 shall take effect in 30 days.~~

18 ~~(2) The remainder of this act shall take effect~~
19 ~~immediately.~~

20 SECTION 6. STUDY BY HEALTH CARE COST CONTAINMENT COUNCIL. <--

21 WITHIN THREE YEARS OF THE EFFECTIVE DATE OF THIS SECTION, THE
22 HEALTH CARE COST CONTAINMENT COUNCIL, AS AUTHORIZED UNDER 35
23 PA.C.S. § 3309 (RELATING TO SPECIAL STUDIES AND REPORTS), SHALL
24 PERFORM A STUDY ON THE EFFECTS OF THIS ACT AND SHALL REPORT ITS
25 FINDINGS TO THE CHAIRPERSON AND MINORITY CHAIRPERSON OF THE
26 HEALTH AND HUMAN SERVICES COMMITTEE OF THE SENATE AND THE
27 CHAIRPERSON AND MINORITY CHAIRPERSON OF THE HEALTH COMMITTEE OF
28 THE HOUSE OF REPRESENTATIVES.

29 SECTION 7. EFFECTIVE DATE.

30 THIS ACT SHALL TAKE EFFECT JANUARY 1, 2025.