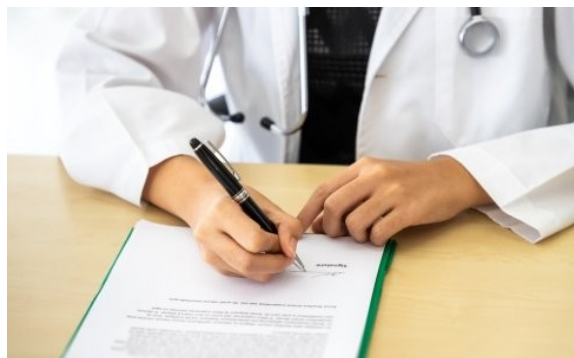


Pennsylvania Limits Non-Compete Agreements for Health Care Practitioners

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In July 2024, Pennsylvania Governor Josh Shapiro signed House Bill (HB) 1633, the Fair Contracting for Health Care Practitioners Act (the "Act"), into law. In summary, the Act: (1) limits the enforceability of non-competes against certain health care practitioners; and (2) imposes a notice obligation on employers of those practitioners. The Act became effective on January 1, 2025. The purpose of this article is to revisit this important legislative development in its first year of existence, given its potential to significantly impact the health care landscape.

Here is a breakdown of the Act changes, including who it covers, its application in case law, and its potential impact on physician and other clinical professional employment contracts across the Commonwealth.

Limits on Non-Competes

The Act renders unenforceable non-compete covenants with a duration longer than one year for certain health care practitioners, subject to the following caveats:

- The Act only applies to "health care practitioners," which the Act defines to include "medical doctors," "doctors of osteopathy," "certified registered nurse anesthetists," "certified registered nurse practitioners," and "physician assistants," as those terms are defined in other Pennsylvania statutes.
- The Act only applies to "non-compete covenants," defined as agreements between an employer and a health care practitioner that "has the effect of impeding the ability of the health care practitioner to continue treating patients or accepting patients." Notably, the Act does not apply to other post-employment restrictive covenants, such as confidentiality provisions and employee non-solicitation clauses.
- The Act does not prohibit employers from enforcing non-competes with a duration of one year or less, provided that the employer did not terminate the health care practitioner's employment without cause. This means that employers cannot enforce a non-compete against health care practitioners who are terminated without cause, regardless of the duration of the covenant.
- The Act is silent as to whether Pennsylvania courts may reform overbroad non-competes. Presumably, that decision is still within the discretion of the court.
- The Act does not apply to non-competes entered into in connection with the sale of a business or grant of equity, provided the health care practitioner was a party to the transaction.
- The Act becomes effective on January 1, 2025. Importantly, it does not apply retroactively. That means that non-compete agreements entered into with health care practitioners prior to the effective date will remain enforceable, subject to existing requirements under Pennsylvania law.

Notification Requirement

The Act also imposes a patient notice requirement on employers of health care practitioners. Within 90 days of a health care practitioner's termination of employment, employers must notify the separated practitioner's patients: (1) of the practitioner's departure; (2) if the patient chooses to receive care from the departed health care practitioner or another health care practitioner, how the patient may transfer their health records to that provider; and (3) that the patient may be reassigned to another practitioner in the employ of the employer if the patient wants to continue treatment with the employer. Importantly, this notification obligation applies regardless of whether the separated practitioner is subject to a non-compete. In addition, an employer is required to provide these notifications within 90 days of the health care practitioner's departure. However, the notification requirement applies only where the health care practitioner had an ongoing outpatient relationship with the patient for two or more years.

Existing Case Law & Precedents

Pre-Act Foundation: *WellSpan Health v. Bayliss* (2005)

Under Pennsylvania common law, courts evaluating physician non-competes traditionally balance public interest—particularly patient access to care. In *WellSpan Health v. Bayliss*, the Commonwealth Court emphasized that ensuring patients can continue treatment is paramount when deciding whether to enforce restrictive covenants law. While predating the Act, this ruling sets the tone: Pennsylvania courts lean toward protecting continuity of care when non-competes might limit it.

Post-Act Litigation: *Thakkar v. AHN* (2025)

Shortly after the Act took effect, gastroenterologist Dr. Thakkar challenged Allegheny Health Network (AHN) in the Allegheny County Court of Common Pleas. After AHN declined to renew his contract, Dr. Thakkar stated that the existing non-compete prevented him from practicing in the same region, which disrupted patient care. Although the trial court sided with AHN, Thakkar has appealed to the Pennsylvania Superior Court. His argument underscores the Act's protections: non-competes imposed post-January 1, 2025, should be void if the practitioner is dismissed.

Open Issues Under the Act

The Act does not define many terms and is such a hodgepodge of concepts and requirements that it could be a health care employer's nightmare.

Some unanswered questions include:

- Are reasonable non-compete covenants enforceable where the health care practitioner receives a tiny “ownership interest”?
- Are non-compete covenants effective for more than one year enforceable where an employment agreement is not renewed?
- Will a patient non-solicitation provision be included within the scope of the Act?
- Is the patient notice requirement triggered regardless of the reason for the end of the employment relationship? Does the death or retirement of a health care practitioner trigger a potential notice requirement?
- Is the patient notice requirement necessary where the health care practitioner is employed for only 23 months (i.e. two years)?
- How is patient notice accomplished? Is a website posting sufficient?
- Is there any penalty for noncompliance?

The Act reflects a trend in states across the U.S. focused on promoting physician mobility and improving patient access to care, while raising important compliance considerations for hospitals, health systems, medical practices, and their legal teams.

For physicians and other clinical professional employers, the Act presents both compliance challenges and the need for directional shifts. Employment contracts will need to be revised, and retention strategies will need to pivot from focusing on legal restrictions to emphasizing purposeful engagement, such as competitive compensation, workplace culture, or career growth opportunities.