

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 681 Session of 2021

INTRODUCED BY ECKER, BROOKS, BERNSTINE, ROWE, MERSKI, NEILSON, RYAN, WHEELAND, CIRESI, SAYLOR, MOUL, GLEIM, ZIMMERMAN, FREEMAN, FRANKEL, KEEFER, GILLEN, ORTITAY AND LEWIS DELROSSO, FEBRUARY 26, 2021

AS REPORTED FROM COMMITTEE ON HEALTH, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 7, 2021

AN ACT

1 Prohibiting enforcement of covenants not to compete in health
2 care practitioner employment agreements.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Health Care
7 Practitioner Noncompete Agreement Act.

8 Section 2. Declaration of policy.

9 The General Assembly finds and declares as follows:

10 (1) Research studies have found that health care
11 practitioner shortages have reached alarming proportions in
12 the United States and, in particular, this Commonwealth.

13 (2) Pennsylvania is experiencing a health care
14 practitioner shortage for a litany of reasons.

15 (3) An increasingly aging population is creating a
16 greater need for health care practitioners.

1 (4) School debts for health care practitioners also
2 contribute to provider shortages.

3 (5) Continuity of care for patients is a fundamental
4 goal for health care practitioners and public health
5 officials alike.

6 (6) A covenant not to compete in employment agreements
7 ~~prohibits and prevents~~ CAN PROHIBIT AND PREVENT health care <--
8 practitioners from rendering care to patients after the
9 health care practitioner leaves employment, even if the
10 agreements are for a limited period of time or geographic
11 scope.

12 ~~(7) It is against public policy for health care~~ <--
13 ~~practitioners to be prohibited from rendering care to~~
14 ~~patients due to a change in employment.~~

15 (7) IT IS IN THE PUBLIC INTEREST TO LIMIT THE USE OF <--
16 RESTRICTIVE COVENANTS IN HEALTH CARE.

17 Section 3. Definitions.

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

21 "Covenant not to compete." An agreement between an employer
22 and a health care practitioner that is designed to impede the
23 ability of the health care practitioner to compete with the
24 employer when a separating event occurs.

25 "Health care practitioner." As defined in section 103 of the
26 act of July 19, 1979 (P.L.130, No.48), known as the Health Care
27 Facilities Act.

28 "PRIMARY HEALTH CARE FACILITY OR OFFICE." THE OFFICE, <--
29 FACILITY OR LOCATION WHERE A MAJORITY OF THE REVENUE DERIVED
30 FROM A HEALTH CARE PRACTITIONER'S SERVICES ARE GENERATED.

1 "Prior patient." An individual to which a health care
2 practitioner rendered professional services in the health care
3 practitioner's scope of practice for which compensation has been
4 received by the health care practitioner, regardless of the
5 source of the compensation, within three years of the separating
6 event.

7 ~~"Scope of practice." The authorized scope of practice of a~~ <--
8 ~~health care practitioner.~~ THE ACTIVITIES OR PROFESSIONAL <--
9 SERVICES A HEALTH CARE PRACTITIONER MAY PROVIDE TO A PATIENT
10 BASED ON THE LICENSE THE HEALTH CARE PRACTITIONER HOLDS.

11 "Separating event." A health care practitioner's
12 discontinuance of employment with a current employer on a
13 voluntary basis.

14 Section 4. Prohibition.

15 ~~(a) Covenant not to compete. A covenant not to compete is~~ <--
16 ~~deemed contrary to public policy and is void and unenforceable~~
17 ~~to the extent the covenant not to compete restricts:~~

18 ~~(1) Movement of a health care practitioner to a new~~
19 ~~employer.~~

20 ~~(2) A health care practitioner from practicing within a~~
21 ~~geographic area.~~

22 (A) GENERAL RULE.--A COVENANT NOT TO COMPETE IS DEEMED <--
23 CONTRARY TO PUBLIC POLICY AND IS VOID AND UNENFORCEABLE TO THE
24 EXTENT THE COVENANT NOT TO COMPETE RESTRICTS THE RIGHT OF A
25 HEALTH CARE PRACTITIONER TO PRACTICE IN ANY GEOGRAPHIC AREA FOR
26 ANY PERIOD OF TIME AFTER A SEPARATING EVENT.

27 (B) EXCEPTION.--AN EMPLOYER MAY ENFORCE A COVENANT NOT TO
28 COMPETE IF ALL OF THE FOLLOWING APPLY:

29 (1) THE HEALTH CARE PRACTITIONER'S PRIMARY HEALTH CARE
30 FACILITY OR OFFICE IS LOCATED IN A COUNTY OF THE SIXTH,

1 SEVENTH OR EIGHTH CLASS.

2 (2) THE GEOGRAPHIC RESTRICTION IS LESS THAN A 45-MILE
3 RADIUS FROM THE PRIMARY HEALTH CARE FACILITY OR OFFICE OF THE
4 HEALTH CARE PRACTITIONER.

5 (3) THE LENGTH OF THE COVENANT NOT TO COMPETE IS NO MORE
6 THAN TWO YEARS.

7 (4) THE RESTRICTION APPLIES ONLY TO THE PRIMARY HEALTH
8 CARE FACILITY OR OFFICE OF THE HEALTH CARE PRACTITIONER.

9 (C) NON-AFFILIATION.--NOTWITHSTANDING SUBSECTION (B) (1) AND
10 SUBJECT TO SUBSECTION (B) (2), (3) AND (4), AN EMPLOYER IN ANY
11 COUNTY OF THIS COMMONWEALTH MAY ENFORCE A COVENANT NOT TO
12 COMPETE IF THE EMPLOYER IS A PROVIDER-OWNED INDEPENDENT PRACTICE
13 NOT AFFILIATED WITH ANY HEALTH CARE SYSTEM, HEALTH CARE PROVIDER
14 OR HOSPITAL.

15 ~~(b)~~ (D) Notification of prior patient.--Notification <--
16 provided by a health care practitioner to a prior patient
17 concerning a separating event is limited to the following
18 information:

19 (1) Any change in scope of practice.

20 (2) The new contact information of the health care
21 practitioner.

22 (3) The new employer of the health care practitioner.

23 (E) CONSTRUCTION.-- <--

24 (1) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO
25 PROHIBIT THE ENFORCEMENT OF A PROVISION IN ANY CONTRACT OR
26 AGREEMENT WITH A HEALTH CARE PRACTITIONER THAT ALLOWS FOR THE
27 RECOVERY OF EXPENSES INCURRED BY AN EMPLOYER TO RECRUIT A
28 HEALTH CARE PRACTITIONER OR TO ESTABLISH THE HEALTH CARE
29 PRACTITIONER'S PATIENT BASE, IF ALL THE FOLLOWING APPLY:

30 (I) THE HEALTH CARE PRACTITIONER DID NOT DISCONTINUE

1 EMPLOYMENT WITH THE EMPLOYER FOR CAUSE.

2 (II) THE EXPENSES ARE REASONABLY ALLOCATED TO THE
3 HEALTH CARE PRACTITIONER AND ARE REASONABLY AMORTIZED
4 OVER A PERIOD OF TIME NOT TO EXCEED FIVE YEARS FROM THE
5 COMMENCEMENT OF THE RELATIONSHIP.

6 (2) AS USED IN THIS SUBSECTION, THE TERM "FOR CAUSE"
7 INCLUDES ANY OF THE FOLLOWING:

8 (I) A HEALTH CARE PRACTITIONER'S COMPENSATION OR
9 FRINGE BENEFITS ARE MATERIALLY REDUCED.

10 (II) A HEALTH CARE PRACTITIONER'S AUTHORITY,
11 RESPONSIBILITY AND DUTIES ARE MATERIALLY ALTERED TO THE
12 DETRIMENT OF THE HEALTH CARE PRACTITIONER.

13 (F) DAMAGES CLAUSES.--A CONTRACT OR AGREEMENT WITH A HEALTH
14 CARE PRACTITIONER MAY INCLUDE A LIQUIDATED DAMAGES CLAUSE FOR
15 THE EXPENSES INCURRED UNDER SUBSECTION (E) IF THE AMOUNT DOES
16 NOT EXCEED 50% OF THE HEALTH CARE PRACTITIONER'S ANNUAL
17 COMPENSATION, EXCLUDING FRINGE BENEFITS, IN THE FIRST YEAR OF
18 THE RELATIONSHIP AND IS NOT OTHERWISE UNREASONABLY EXCESSIVE.

19 Section 5. Duty of employer.

20 ~~Within a reasonable period of time after written notice of~~ <--
21 ~~the health care practitioner's intent to separate from the~~
22 ~~employer, the employer shall make available to the separating~~
23 ~~health care practitioner all contact information and existing~~
24 ~~electronic medical records of the prior patients of the health~~
25 ~~care practitioner.~~

26 WITHIN 60 DAYS AFTER A SEPARATING EVENT, AN EMPLOYER SHALL <--
27 PROVIDE NOTICE OF A HEALTH CARE PRACTITIONER'S DEPARTURE TO THE
28 HEALTH CARE PRACTITIONER'S PRIOR PATIENTS. THE NOTICE UNDER THIS
29 SECTION SHALL INCLUDE INFORMATION TO THE PRIOR PATIENTS
30 REGARDING HOW TO REQUEST THE TRANSFER OF THEIR MEDICAL RECORDS

1 TO THE DEPARTING HEALTH CARE PRACTITIONER.

2 Section 6. Activities outside scope of practice.

3 Section 4 does not apply to a covenant not to compete with
4 respect to activities, products and services that are outside
5 the scope of practice of the restricted health care
6 practitioner. ~~if:~~ <--

7 ~~(1) The restriction is reasonable in time, geographic~~
8 ~~area and scope of the prohibited activity, product or~~
9 ~~service.~~

10 ~~(2) The health care practitioner receives reasonable~~
11 ~~notice of the scope of the restriction.~~

12 Section 7. Construction.

13 Nothing in this act shall be construed to:

14 (1) Limit the period of time for which a party may agree
15 to maintain information as confidential or as a trade secret.

16 (2) Limit the geographic area within which the
17 information must be kept confidential or as a trade secret.

18 (3) Allow a health care practitioner to contact or
19 solicit individuals who are patients of the former employer
20 but who are not prior patients of the health care
21 practitioner.

22 (4) Create a separate right to the patient list of the
23 employer.

24 SECTION 8. APPLICABILITY. <--

25 THIS ACT SHALL APPLY TO AN AGREEMENT ENTERED INTO OR AMENDED
26 ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION AND UPON THE
27 RENEWAL OF A HEALTH CARE PRACTITIONER'S LICENSE, REGISTRATION OR
28 CERTIFICATION IN THIS COMMONWEALTH ON OR AFTER THE EFFECTIVE
29 DATE OF THIS SECTION.

30 Section ~~8~~ 9. Effective date. <--

1 This act shall take effect in 30 days.