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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 788 Session of  
2017

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INTRODUCED BY CHRISTIANA, MUSTIO, BARRAR, CALTAGIRONE, D. COSTA,  
COX, DeLUCA, DOWLING, FRANKEL, FREEMAN, MILLARD AND ORTITAY,  
MARCH 10, 2017

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REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, MARCH 10, 2017

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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.

17 (4) School debts for health care practitioners also

1 contribute to provider shortages.

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

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

10 (7) It is against public policy for health care  
11 practitioners to be prohibited from rendering care to  
12 patients due to a change in employment.

13 Section 3. Definitions.

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

17 "Covenant not to compete." An agreement between an employer  
18 and a health care practitioner that is designed to impede the  
19 ability of the health care practitioner to compete with the  
20 employer when a separating event occurs.

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

24 "Prior patient." An individual to which a health care  
25 practitioner rendered professional services in the health care  
26 practitioner's scope of practice for which compensation has been  
27 received by the health care practitioner, regardless of the  
28 source of the compensation, within three years of the separating  
29 event.

30 "Scope of practice." The authorized scope of practice of a

1 health care practitioner.

2 "Separating event." A health care practitioner's  
3 discontinuance of employment with a current employer on a  
4 voluntary basis.

5 Section 4. Prohibition.

6 (a) Covenant not to compete.--A covenant not to compete is  
7 deemed contrary to public policy and is void and unenforceable  
8 to the extent the covenant not to compete restricts:

9 (1) Movement of a health care practitioner to a new  
10 employer.

11 (2) A health care practitioner from practicing within a  
12 geographic area.

13 (b) Notification of prior patient.--Notification provided by  
14 a health care practitioner to a prior patient concerning a  
15 separating event is limited to the following information:

16 (1) Any change in scope of practice.

17 (2) The new contact information of the health care  
18 practitioner.

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

20 Section 5. Duty of employer.

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

27 Section 6. Activities outside scope of practice.

28 Section 4 does not apply to a covenant not to compete with  
29 respect to activities, products and services that are outside  
30 the scope of practice of the restricted health care practitioner

1 if:

2 (1) The restriction is reasonable in time, geographic  
3 area and scope of the prohibited activity, product or  
4 service.

5 (2) The health care practitioner receives reasonable  
6 notice of the scope of the restriction.

7 Section 7. Construction.

8 Nothing in this act shall be construed to:

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

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

13 (3) Allow a health care practitioner to contact or  
14 solicit individuals who are patients of the former employer  
15 but who are not prior patients of the health care  
16 practitioner.

17 (4) Create a separate right to the patient list of the  
18 employer.

19 Section 8. Effective date.

20 This act shall take effect in 30 days.