

# Pennsylvania Passes Law Limiting Use of Noncompetes for Health Care Practitioners

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On July 17, 2024, Governor Josh Shapiro approved Pennsylvania's first statute imposing limitations on the use of noncompetes in the state.

The Fair Contracting for Health Care Practitioners Act (the "Act") prohibits the enforcement of certain noncompete covenants entered into by health care practitioners and employers. Here are the key points of the Act:

- The Act's effective date is January 1, 2025.
- Subject to certain exceptions, a "noncompete covenant" entered into after January 1, 2025 is "deemed contrary to the public policy and is void and unenforceable by an employer."
- A "noncompete covenant" is defined as an "agreement that is entered into between an employer and a health care practitioner in this Commonwealth which has the effect of impeding the ability of the health care practitioner to continue treating patients or accepting new patients, either practicing independently or in the employment of a competing employer after the term of employment."
- Exception #1: An employer *may enforce* a noncompete covenant if the length of the noncompete covenant is no more than one year, provided that the health care practitioner was not dismissed by the employer.
- A "health care practitioner" includes a medical doctor, a doctor of osteopathy, a certified registered nurse anesthetist, a certified nurse practitioner, and a physician assistant (as those terms are defined under relevant Pennsylvania statutes).
- An "employer" is defined as a "person or group of persons that employ a health care practitioner at a health care facility or office."
- Exception #2: A noncompete covenant *can be enforced* as to a health care practitioner in the contexts of (a) the sale of the health care practitioner's ownership interest in, or all or substantially all of the assets of, the business entity; (b) a transaction resulting the sale, transfer or other disposition of the control of the business entity; or (c) the health care practitioner's receipt of an ownership interest in the business entity. *But note:* a preexisting noncompete covenant may be rendered void and unenforceable if a health care practitioner is not a party to the sale, transfer or other disposition.
- Exception #3: An employer *may enforce* contractual provisions that allow the employer to recover reasonable expenses from a health care practitioner, if the expenses are: (a) directly

attributable to the health care practitioner and accrued within the three years prior to separation, unless separation is caused by dismissal of the health care practitioner; (b) related to relocation, training and establishment of a patient base; or (c) amortized over a period of up to five years from the date of separation by the health care practitioner.

The Act also includes an important Patient Notification requirement. Within 90 days following the departure of a health care practitioner from an employer, the employer must notify the health care practitioner's patients seen within the past year of (a) the health care practitioner's departure; (b) how the patient, if desired, may transfer the patient's health records to the departed health care practitioner; and (c) that the patient, if desired, may be assigned to a new health care practitioner within the existing employer, to continue receiving care there.

A number of findings and declarations are stated in support of the Act, including the following. 75% of physicians are employed by hospitals, health care systems or corporate entities. Those entities and systems increasingly stretch over broad geographic regions. Most rural areas can be considered health care deserts. Continuity of patient care is a fundamental public policy goal. Pennsylvania cannot afford to continue losing health care practitioners to surrounding states and must do more to attract and retain them.

Finally, the Act mandates that by December 31, 2027, the Pennsylvania Health Care Cost Containment Council perform a study on the effects of the Act, and report its findings.

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