



The “Ban-Wagon” Has Arrived in Pennsylvania Banning Many Non-Competes for Health Care Practitioners

Client Advisories

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Governor Josh Shapiro has signed the “Fair Contracting for Health Care Practitioner’s Act” (“the Act”), Pennsylvania’s first statute imposing limitations on the use of non-competes in the Commonwealth. Pennsylvania joins the growing list of a dozen states which have enacted legislative bans or limitations on healthcare provider non-competition agreements in recent years.

The Act, which becomes effective January 1, 2025, represents the legislature’s response to the current trend of health system consolidation and direct health care practitioner employment, and is a seismic shift in the enforcement of non-compete covenants entered into between Pennsylvania employers and healthcare practitioners. 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 healthcare practitioner in this Commonwealth which has the effect of impeding the ability of the healthcare 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.” A “healthcare practitioner” is defined under statute and includes a medical doctor, a doctor of osteopathy, a certified registered nurse anesthetist and certified nurse practitioner, and a physician’s assistant.

The Act does provide several specific exceptions. First, an employer may enforce a noncompete covenant if the length of the noncompete covenant is no more than one year, provided that the healthcare practitioner was not dismissed by the employer. Second, a noncompete covenant can be enforced as to a healthcare practitioner in “(a) the sale of the healthcare practitioner’s ownership interest in, or all or substantially all of the assets of, the business entity; (b) a transaction resulting in the sale, transfer or other disposition of the control of the business

entity; or (c) the healthcare practitioner's receipt of an ownership interest in the business entity. However, a preexisting noncompete covenant may be rendered void and unenforceable if a healthcare practitioner is not a party to the sale, transfer or other disposition. Third, an employer may enforce contractual provisions that allow the employer to recover reasonable expenses from a healthcare practitioner, if the expenses are: (a) directly attributable to the healthcare practitioner and accrued within the three years prior to separation, unless separation is caused by dismissal of the healthcare 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 healthcare practitioner.

To ensure continuity of care between patients and providers, the Act requires employers to notify patients of a departing healthcare practitioner within 90 days following the departure of a healthcare practitioner from an employer. The employer must notify the healthcare practitioner's patients seen within the past year of (a) the healthcare practitioner's departure; (b) how the patient, if desired, may transfer the patient's health records to the departed healthcare practitioner; and (c) that the patient, if desired, may be assigned to a new healthcare practitioner within the existing employer, to continue receiving care there.

Archer's **Labor & Employment** Group will continue to monitor the impact of the Act when it takes effect in 2025 and thereafter, as the Act specifically 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. For any questions, please reach out to **Peter Frattarelli**, Chair of the **Labor & Employment** Group, at 856.354.3012 or pfrattarelli@archerlaw.com, **Thomas Muccifori**, Chair of the **Trade Secret Protection & Restrictive Covenants** Group, at 856.354.3056 or tmuccifori@archerlaw.com, or **Lisa Albright**, Partner in the **Healthcare** Group, at 609.580.3710 or lalbright@archerlaw.com.

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