

March 21, 2024

The Honorable Dan Frankel  
Chair, House Health Committee  
The Pennsylvania House of Representatives  
P.O. Box 202023  
Harrisburg, PA 17120-2023

The Honorable Kathy L. Rapp  
Minority Chair, House Health Committee  
The Pennsylvania House of Representatives  
P.O. Box 202065  
Harrisburg, PA 17120-2065

Dear Chairman Frankel, Chairwoman Rapp, and Members of the House Health Committee:

On behalf of more than 230 members statewide, The Hospital and Healthsystem Association of Pennsylvania (HAP) writes to strongly oppose House Bill 1633 PN 1960, which proposes banning new, and nullifying upon license renewal any existing, restrictive covenants (“non-compete agreements”) between health care practitioners and the primary health care facilities and offices that employ them. The measure also requires those who employ health care practitioners to notify patients when a practitioner leaves employment, where they will render future services, and how to continue as their patient.

We appreciate the patient-focused intent of this legislation—to assure continuity of care—and are also deeply committed to that concept. As proposed, however, the non-compete prohibition and nullification provisions are not appropriate, and the notification obligation is not workable.

A non-compete agreement is an essential element of consideration for a sophisticated and highly compensated professional as they assess an offer for potential employment. Courts already review non-compete agreements for reasonableness and skeptically construe language that restricts the rights of employees. A non-compete agreement also may, for example, be deemed by the courts to be unenforceable if found to be unduly restrictive or an impediment to patients’ access to care.

As a practical matter, restrictive covenants are most typically used in health care settings with the highest level of providers, such as physicians. Such providers are in extremely high demand; if they do not choose to sign a restrictive covenant, they need not do so.

In addition to cash compensation and signing bonuses, hospitals and health systems make significant investments to recruit, establish, and retain staff doctors by obtaining liability coverage, securing a wide array of credentials, and facilitating extensive training activities. Health care employers also frequently cover moving expenses and/or pay student loan debt, for example. Hospitals and health systems often cover physicians’ salaries even before they start seeing patients or are approved for reimbursement by public and private payors.

Pennsylvania is already struggling with a shortage of providers in the health care workforce, particularly in rural areas, and this legislation may exacerbate the problem. It takes considerable time and resources to find, hire, train, and establish a doctor in patient practice.

Agreements that are evaluated by both parties and signed before accepting an offer of employment protect the investments made to attract these highly skilled individuals and, in turn, provide reliability, as well as protect access to care for patients and communities they serve. Eliminating non-compete agreements may

unintentionally create an environment in which providers can hop between health systems at any interval for any reason, triggering 'bidding wars' for practitioners, increasing health care costs, and decreasing access to care.

House Bill 1633's nullification of covenants entered into or amended prior to the effective date of the legislation upon renewal of the provider's license, registration, or certification may, arguably, be challenged as inappropriate government interference in private contracts.

Like the non-compete prohibitions, the notification provisions do not reflect the complexity of the health care space.

Just as with any employer, people leave their positions for a myriad of personal and professional reasons. Some providers who leave employment do not share their future plans or contact information with their previous employers. Even when they do, some choose to leave their previous fields of practice or move out of the state. Even if remaining in practice locally, it may not be suitable for practitioners to treat past patients for any number of reasons, not the least of which may be participation in the patient's insurance network.

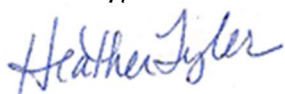
It is also important to think about the patient who would be notified. It may be extremely confusing to receive notices related to a provider that they have not seen in years, had seen only a handful of times, had seen for specialty care that is no longer relevant, had terminated a relationship with, or dozens of other possible real-world scenarios.

Finally—and I believe we would all agree—by far the most important consideration: There are any number of scenarios in which unsolicited and unexpected contact from a health care provider has the potential to cause patient harm. As you know, there are complex requirements safeguarding health information. *This is for good reason.* Imagine one scenario, for example, in which a notification is sent to a home address that contains a specific provider name or specialty that the patient needs to keep confidential.

We urge you to vote against House Bill 1633, in part, because of the very real possibility of triggering unintended negative consequences without achieving the intended positive outcomes of the proposal.

The hospital community stands ready to work with you and your legislative colleagues to increase the number of well-trained professionals to provide high-quality care to every Pennsylvanian in every community across the state. If you have any questions, comments, or concerns, please contact me at [HTyler@HAPonline.org](mailto:HTyler@HAPonline.org) or (717) 433-1997.

Sincerely,



Heather Tyler  
Vice President, State Legislative Advocacy