TEXAS MEDICAL ASSOCIATION

Physicians Caring for Texans

Senate Business and Commerce Committee
Texas Medical Association Testimony by Tilden Childs III, MD,
Regarding Noncompete Agreements
Oct. 1, 2024

Good afternoon, my name is Dr. Tilden Childs, and I am a radiologist from Fort Worth and former chair of the Texas Medical Association's (TMA's) Council on Legislation. On behalf of myself and TMA's nearly 58,000 physician and medical student members, I want to thank Chair Schwertner and the members of the Senate Business and Commerce Committee for the opportunity to testify on this important noncompete charge.

TMA has a large and diverse membership that includes physicians who are employers and owners in physician practices, as well as physicians who are employees of practices, hospitals, and other organizations.

We believe it is important that Texas law on noncompete agreements related to the practice of medicine strike a reasonable balance between the employer's interests and the interests of the employee and the public. We seek to protect a physician's ability to practice medicine (and promote patient continuity of care) while respecting an employer's ability to reasonably protect its legitimate business interests.

In the practice of medicine, noncompete agreements have special public policy concerns, as their use can impact continuity of care, access to needed medical services, and patient choice of a physician.

The Texas Legislature previously recognized some of the public policy considerations by enacting additional requirements applicable only to physician noncompete agreements. Those physician-specific provisions have been in Texas law since 1999 (with the law last having been amended in 2009).

However, as noncompete use has become more common, more work is needed in this area. According to American Medical Association data, noncompete agreements now affect between 37% and 45% of physicians.

Last session, Senator Schwertner made significant strides toward finding the needed balance in physician and health care practitioner noncompetes with Senate Bill 1534. The bill passed through the Senate and the House Committee on Public Health.

I testified in support of the bill and TMA also requested some amendments. For example, we asked that the bill be amended to provide that a noncompete is not enforceable against a

physician who has been terminated without cause. This is important, because if, for instance, an employer eliminated a physician's position as part of downsizing or restructuring efforts, we do not believe that physician should be restricted from practicing medicine elsewhere.

After the legislative session, TMA's policymaking body adopted new policy that underscores the importance of continued legislative advocacy in this area, particularly with regard to the duration and geographic scope of noncompetes.

TMA's policy provides that legislation should be amended to state the duration of noncompete clauses may not exceed one year post-employment, and the geographic scope must be limited to the practice location where the physician worked – not all the practice's locations.

TMA's policy also calls for legislative changes that require clear exceptions for circumstances that involve the public interest, such as those in which physicians wish to serve in medically underserved areas or in cases where their specialty is in a critical shortage.

In the interest of transparency and fairness, TMA's policy also supports additional legislative requirements for noncompete agreements to be drafted clearly and conspicuously.

As this committee knows, noncompetes have traditionally been regulated by state legislatures. TMA strongly contends there is both the need and the authority for the Texas Legislature to impose these additional parameters regarding physician noncompetes.

It is unclear when, or even if, the Federal Trade Commission's (FTC's) final rule will go into effect. As this committee knows, it has been blocked by a federal judge in Texas in response to a lawsuit challenging the FTC's authority to promulgate the rules.

But even if the rule does go into effect, there are many physician noncompetes that it would not and ***could not*** impact, as the rule does not apply across the board. For example, the FTC rule does not apply to nonprofits.

There are many nonprofit entities in health care, and nonprofit hospitals largely fall outside the jurisdiction of the FTC. It has been reported that in 2022, 152 of Texas' 509 hospitals were nonprofit while 260 were for-profit and 97 were state/local government. This underscores the continued importance of the Texas Legislature's work to examine and improve noncompetes for physicians (and the patients they care for).

Once again, thank you, Chair Schwertner and committee members, for allowing me the opportunity to testify today.