Insights, News & Events

NEW TEXAS BILL EXPANDS LIMITATIONS ON NON-COMPETES FOR HEALTHCARE EMPLOYERS: WHAT YOU CAN DO TO PREPARE

Insights
Jul 22, 2025

A new law in Texas will cause a seismic shift in the scope and enforceability of non-competes for healthcare professionals. SB1318, which takes effect on September 1, expands protections currently afforded only to physicians and extends some to other healthcare practitioners, including dentists, physician assistants, and nurses. This is on top of the longstanding requirement that non-competes contain "reasonable" limitations as to time, geographic area, and scope of activity that do not impose a greater restraint than is necessary to protect goodwill or other business interests. While the new law does not impact existing contracts, healthcare providers will need to ensure applicable contracts that are signed on or after September 1 comply with the updated requirements. Here's what you need to know and three steps you can take to prepare.

Key Compliance Points

The stated goal of the legislation is to establish guardrails for physician non-competes that protect patient access to care, reduce the legal ambiguity and burdens of litigation, safeguard the integrity and mobility of the healthcare workforce, and promote competition by restricting physician non-compete clauses with respect to the covenant's buyout. The effect is that healthcare providers will need to review and likely modify the non-competition covenants in any contracts signed by physicians, dentists, physician assistants, and nurses starting September 1.

Applies to Physicians, Dentists, Physician Assistants, and Nurses

Related People

Collin K. Brodrick
Partner

214.220.8332

Service Focus

Employee Defection and Trade Secrets

Industry Focus

Healthcare

- SB1318 applies to physicians in their capacity as medical practitioners. The protections specifically do not apply when they are "managing or directing medical services in an administrative capacity for a medical practice or other healthcare provider." This is in addition to the existing carveout for physicians' business ownership interests in licensed hospitals or licensed ambulatory surgical centers.
- It also applies to "healthcare practitioners," which includes:
  - Dentists licensed to practice by the State Board of Dental Examiners
  - Professional and vocational nurses, including registered nurses and advanced practice nurses (a/k/a "nurse practitioners") licensed under Texas Occupations Code Section 301
  - Physician assistants licensed under Texas Occupations Code Section 204

Imposes New Limitations on Non-Compete Covenants

For physicians and the other healthcare practitioners, non-compete covenants must:

- Expire no later than one year from the termination of the practitioner's contract or employment.
- Limit the geographical area subject to the covenant to no more than a 5-mile radius from the location where the healthcare practitioner primarily practiced before their termination.
- Provide for a buyout of the covenant in an amount that is not greater than the practitioner's "total annual salary and wages at the time of the termination."
- Contain terms and conditions that are clearly and conspicuously stated in writing.

For physicians only, a non-compete related to the practice of medicine is not enforceable if the physician's employment is terminated without "good cause." For purposes of the non-compete, "good cause" is defined as "a reasonable basis for discharging a physician from contract or employment that is directly related to the physician's conduct, including the

Related Offices

Dallas

Houston

physician's conduct on the job or otherwise, job performance, and contract or employment record."

Applies to All Non-Competes Entered Into On or After September 1

The new statute only applies to non-compete agreements signed or renewed on or after September 1. The law is not retroactive and non-competes signed or renewed before then will continue to be governed by the law in effect at the time the agreement was entered into or renewed.

Physicians May Need Two Sets of Non-Competes

Healthcare providers should review the non-compete covenants in applicable contracts and revise them accordingly. With these new limits, dentists, physician assistants, and nurses can have non-compete covenants that limit their ability to work for a competitor within a five-mile radius of their primary practice location for one year, but with the option to buy out the restriction for an amount equal to their total annual wages at the time of their termination.

Because different rules apply to physician non-compete covenants for medical practice and administrative work, physician contracts may require two sets of covenants to ensure maximum applicability. Any limit on a physician's ability to practice medicine for a competitor must comply with the same time and geographic requirements and contain a buyout. Limits on a physician's ability to manage or direct medical services in an administrative capacity, however, are not subject to these requirements and can, therefore, include a longer restrictive period and a wide geographic area and omit a buyout. For physicians who practice medicine and have administrative responsibilities, this may mean having two sets of non-compete covenants in their contracts. Note that any involuntary discharge must be for "good reason" for the non-compete to be enforceable regardless of the physician's role.

This is separate and apart from an agreement regulating a physician's ability to compete with a hospital or ambulatory surgical center in which they have an ownership interest, which remains subject to the overarching requirement that restrictions on competition be "reasonable" as to time, geographic area, and scope of activity and not impose a

greater restraint than necessary for the business interest being protected.

Questions Left Unanswered

While SB1318 imposes new limitations it also raises questions about the language of the statute and what it means. Until courts weigh in on these new provisions, employers may have questions such as:

- **Do the restrictions apply to non-solicitation covenants?** Because the new statute applies to "covenants not to compete," which is the same wording used in the Covenants Not to Compete Act generally, and Texas courts have long held that non-solicitation provisions are covenants not to compete governed by the act, the new one-year time limit and buyout requirement almost certainly apply to employee non-solicitation covenants and customer/patient non-solicitation covenants. However, per prior court decisions, the mileage restriction likely does not apply to non-solicitation covenants, but instead can be substituted for verbiage defining the categories of employees and patients the provider cannot solicit. The statute does not in any way affect practitioners' confidentiality obligations, including under HIPAA, the Texas Uniform Trade Secrets Act (TUTSA), nondisclosure agreements, or other applicable state and federal laws.

- **What is the definition of "wages" as used in the buyout clause requirement?** The buyout amount must be capped at "total annual salary and wages at the time of termination," but does not offer any additional clarity. However, courts may look to other statutes for the definition. The definition of wages in the Texas Payday Law includes "all compensation" for (a) labor or services rendered by an employee, whether computed on a time, task, piece, commission, or other basis and (b) vacation pay, holiday pay, sick leave pay, parental leave pay, or severance pay owed to the employee under a written agreement with the employer or under a written policy of the employer. Under this definition, wages would likely include bonuses, draws, commissions, and other monetary incentives.

- **What does "annual" mean, according to this statute?** The statute leaves unanswered whether the buyout amount should be measured as the practitioner's total salary

wages during the 12 months immediately prior to termination, during the last completed calendar year, anticipated during the calendar year at the time of termination, or something else.

- **How does the geographic limit affect practitioners who work at multiple locations or remotely?** The stated geographic limit is five radial miles from the location at which the practitioner primarily practiced before the termination. For practitioners who work at multiple locations, it is likely five radial miles from the location where they spent the most time. For practitioners who work remotely, it could be five radial miles from their home or perhaps from the physical practice location to which they were assigned.

- **What does "clear and conspicuous" mean?** While the statute does not mandate specific typefaces, fonts, or sizes, to comply the non-compete covenant must, at the very least, stand out from other provisions in the contract. This may mean bold-faced type, all caps, and/or language emphasizing its importance.

3 Steps Employers Can Take to Prepare

1. Review and Update Existing Non-Compete Agreements

Ensure they comply with existing requirements prior to September 1, and implement revised covenants for all new contracts signed by physicians, dentists, physician assistants, and nurses starting on September 1.

2. Understand New Legal Obligations

Provide updates to applicable leaders on how to implement and apply the new requirements, especially the new "good cause" threshold for terminations.

3. Consult an Attorney

It's a good idea to obtain legal advice and guidance on how to draft, implement, and enforce non-compete covenants in light of these upcoming changes.

Conclusion

If you have questions, please contact the authors of this Insight, your Fisher Phillips attorney, any attorney in our Texas offices, or any attorney in our Employee Defection

and Trade Secrets Practice Group. Make sure you are subscribed to Fisher Phillips' Insight System to gather the most up-to-date information directly to your inbox. We constantly monitor new cases, legislation, and regulatory developments to keep you at the cutting edge of the law, so check out Blue Pencil Box for our daily updates on restrictive covenant law.