



**TESTIMONY OF
CONNECTICUT HOSPITAL ASSOCIATION
SUBMITTED TO THE
LABOR AND PUBLIC EMPLOYEES COMMITTEE
Tuesday, February 9, 2021**

HB 6379, An Act Concerning Workers' Rights

The Connecticut Hospital Association (CHA) appreciates this opportunity to submit testimony concerning **HB 6379, An Act Concerning Workers' Rights**. CHA urges the Committee to leave intact and unchanged the current Connecticut statute addressing covenants not to compete involving physicians.

Before commenting on this bill, it is important to acknowledge that, since early 2020, Connecticut's hospitals and health systems have been at the center of the global public health emergency, acting as the critical partner in the state's response to COVID-19. Hospitals expanded critical care capacity, stood up countless community COVID-19 testing locations, and are a critical component of the vaccine distribution plan. Through it all, hospitals and health systems have continued to provide high-quality care for everyone, regardless of ability to pay. This tireless commitment to the COVID-19 response confirms the value of strong hospitals in Connecticut's public health infrastructure and economy and reinforces the need for a strong partnership between the state and hospitals.

HB 6379 would amend the General Statutes "to prohibit employers from requiring certain employees from signing unfair covenants not to compete."

As drafted, the language of **HB 6379** does not provide sufficient clarity as to the restrictive covenants that are proposed to be prohibited, making it impossible to assess the impact of the proposed legislation. More specifically, the reference to "certain employees" does not indicate which employees or categories of employees will be covered by the prohibition. In addition, the reference to "unfair covenants not to compete" does not indicate how fairness is to be assessed in the context of the employer-employee relationship or whether what is proposed is a change to current law, which analyzes whether the covenant not to compete is reasonable in scope and duration in light of the employee's ability to earn a living, the legitimate business interests of the employer to be protected, and the overall circumstances.

With respect to healthcare providers, in 2016, the Connecticut General Assembly adopted Public Act 16-95, codified at Section 20-14p of the General Statutes, which establishes statutory limitations on covenants not to compete in physician contracts.

The statute defines a covenant not to compete as "any provision of an employment or other contract or agreement that creates or establishes a professional relationship with a physician and restricts the right of a physician to practice medicine in any geographic area of the state

for any period of time after the termination or cessation of such partnership, employment, or other professional relationship.”

The statute effectively limits covenants not to compete for physicians that are entered into, amended, extended, or renewed on or after July 1, 2016 to:

A period of not more than one year, and

A geographic scope of no more than fifteen miles from the primary site where such physician practices.

In addition, the statute includes provisions that:

- Require that each covenant not to compete entered into, amended, or renewed on or after July 1, 2016, be separately and individually signed by the physician.
- Provide that the remaining provisions of any contract or agreement that includes a covenant not to compete that is rendered void and unenforceable, in whole or in part, under the provisions of this section shall remain in full force and effect, including provisions that require the payment of damages resulting from any injury suffered by reason of termination of such contract or agreement.
- Require that if such a covenant is made, it will be enforceable only if the covenant was: (a) in anticipation of, or as part of, a partnership or ownership agreement and such contract or agreement expires and is not renewed, unless, prior to such expiration, the employer makes a bona fide offer to renew the contract on the same or similar terms and conditions; or (b) if the employment or contractual relationship is terminated by the employer for cause.

Connecticut General Statutes Section 20-14p represents an effort to balance the interests of the physician and the employer. It clearly constrains the duration, geographical scope, and application of covenants not to compete in physician employment contracts in the interests of maintaining access to care, continuity of care, and patient choice. It also recognizes the legitimate use of reasonable restrictions in certain circumstances, such as when a physician decides to leave a practice and open up their own practice in the same town.

Our existing statute allows an employer to use a non-compete clause (i) to discourage an employed physician from leaving to join a competing local healthcare provider, (ii) to protect the employer’s disproportionate investment in a physician’s training and development, and (iii) to mitigate the adverse financial impact on an employer’s existing practice, which may result from a physician leaving a practice group to join another local practice group.

The Connecticut General Assembly engaged in a long, arduous, and thorough examination of the use of covenants not to compete in physician contracts a few short years ago. The outcome was a statute that attempts to achieve a balance between the legitimate interests of both the employer and the physician.

We urge you to leave the current statute intact.

Thank you for your consideration of our position. For additional information, contact CHA Government Relations at (203) 294-7310.