KRIEG DEVAULT

Insights

FTC Sends Warning Letters to Health Care Employers in Latest Noncompete Development

October 10, 2025

By: Thomas M. Abrams and Stephanie T. Eckerle

The Federal Trade Commission ("FTC") sent letters on September 10 prompting many large health care employers and staffing firms to review their noncompete agreements ("noncompetes") for compliance with Section 5 of the FTC Act, 15 U.S.C. § 45, which empowers the FTC to investigate and prevent unfair methods of competition. Five days prior, in a Press Release on September 5th, the FTC announced its intent to dismiss appeals and abandon further efforts to enforce a rule drafted by the FTC under President Biden that sought to ban most noncompetes throughout the country ("the Noncompete Clause Final Rule"), as described in a previous alert found here. The letters sent five days later on September 10 reminded the health care industry that regardless of the Noncompete Clause Final Rule being set aside, "[t]he FTC is focusing resources on enforcing Section 5 of the FTC Act against unlawful noncompetes, particularly in the healthcare sector."

The version of the letter published by the FTC expressed concern that noncompetes used by many health care employers unreasonably limit options for "vital roles like physicians, nurses, and other medical professionals." Factors identified by the letter and which health care employers are encouraged to review include:

- Whether alternative, less restrictive contract terms can achieve the same procompetitive purposes as a noncompete.
- Whether and to what extent a noncompete limits patients' ability to choose a health care provider, especially in rural areas.
- Whether the duration and/or geographic scope of a noncompete is appropriate under the circumstances.
- Whether a noncompete is appropriate at all, considering the individual's role.

Recipients are not accused of any specific wrongdoing, but rather the FTC uses the letters as one means to clarify its position on health care noncompetes and alert health care employers that these agreements will be scrutinized federally.

A Press Release on September 10 announced the letters with additional context and statements from FTC officials, including to clarify that the FTC's withdrawal on September 5th from litigation concerning the vacated Noncompete Clause Final Rule should not be confused as a withdrawal from case-by-case scrutiny of noncompetes in the health care industry. The FTC's abandonment of the Noncompete Clause Final Rule and the letters sent to health care employers days later indicate the FTC is dialing back its rulemaking activity to increase its focus on case-by-case enforcement. This was further highlighted by the Press Release's reference to a public Request for Information Regarding Employer Noncompete Agreements issued by the FTC on

September 4, 2025, to solicit identities and descriptions of employers that currently use noncompetes in their workforce.

The FTC under President Trump's second administration is rapidly outlining its approach to noncompete enforcement through the public inquiry launched on September 4th, the withdrawal from litigation supporting the Noncompete Clause Final Rule on September 5th, and the letters sent to health care employers on September 10th. As the FTC increasingly moves from planning to enforcement, employers and staffing firms—especially in the health care industry—should address risk sooner rather than later by reviewing and updating noncompetes as necessary to align with current FTC enforcement priorities.

In addition to aligning with current FTC enforcement priorities, healthcare providers in Indiana should also review the most recent laws passed that govern restrictive covenants entered into by and between physicians and hospital-related entities. Effective July 1, 2025, new statutes prohibit noncompetes between a physician and a hospital, a parent company of a hospital, an affiliated manager of a hospital, or a hospital system. (Ind. Code § 25-22.5-5.5-2.3). "Hospital system" is broadly defined to include "(1) a parent corporation of at least one hospital and any entity affiliated with the parent corporation through ownership, governance, or membership; or (2) a hospital and any entity affiliated with the hospital through ownership, governance, or membership." (Ind. Code § 25-22.5-5.5-1.2). A separate statute that prohibits any type of employer from entering into a noncompete with a primary care physician (family medicine, general pediatric medicine, or internal medicine) remains in force and applies to noncompetes executed on or after July 1, 2023. (Ind. Code § 25-22.5-5.5-2.5).

For specific assistance regarding noncompete risk, please contact Stephanie Eckerle, Thomas Abrams, or any member of the Krieg DeVault team.

Disclaimer: The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.