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Insights

New Law Further Restricts Indiana Physician Noncompetes

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The Indiana General Assembly recently passed Senate Enrolled Act ("SEA") 7[1], which further narrows the use of noncompete agreements with respect to all employed physicians, but especially primary care physicians. The new law will take effect on July 1, 2023, after Governor Eric Holcomb's expected signature this week.

Physician Non-Competition Agreements (SEA 7):

Current law, codified at Indiana Code 25-22.5-5.5, requires any noncompete agreement entered into on or after July 1, 2020 to state expressly that the employer:

- will provide the physician with copies of any departure notices provided to patients;
- will provide new contact information to certain patients who request it;
- will provide the physician access to medical records in proper format for those specified patients; and
- will allow the physician to buy a release from the noncompete at a "reasonable price."

The *new* law, SEA 7, flatly prohibits noncompete agreements with primary care physicians (defined as those practicing family medicine, general pediatric medicine, or internal medicine) after July 1, 2023. Those signed before July 1, 2023 would remain enforceable. Under the new law, employers must negotiate "in good faith" to determine the price for the physician to buy a release, and either party can force mediation if they cannot agree. The mediation notice must be served within 35 days after the physician asks to buy the release, and the mediation must occur within 45 days after that mediation notice, with the cost of the mediator split equally.

As to all physician noncompete agreements --- even those signed before July 1, 2023 ---- none will be enforced after July 1, 2023 if:

- The employer terminates the physician's employment without cause;
- The physician terminates the physician's employment for cause; or
- If a physician's employment contract has expired and the "parties have completed their obligations under the agreement."

Originally, lawmakers sought to ban physician non-competition agreements outright, but the as-passed version of the law was significantly weakened throughout the legislative process, drawing criticism from physician

advocates.

The new law does not define “cause” for termination. Neither the current law nor the new law defines “noncompete agreements,” which are generally understood to be agreements that limit the physician’s ability to practice medicine within a certain geographic area and for a certain period of time, or both. The lack of certain defined terms may give rise to future disputes regarding interpretation of the statute.

Employers and physicians should review their approaches to noncompete agreements in light of the new law and to ensure that future agreements comply with its requirements. Employers who wish to enforce physician noncompete agreements should carefully consider whether the agreements meet the statutory requirements, and physicians who are subject to such agreements may want to seek legal counsel to determine their rights and options.

If you have any questions or concerns regarding SEA 7, please do not hesitate to contact **Scott S. Morrison**, **Nancy J. Townsend**, **Christopher J. Kulik**, or your other Krieg DeVault contact.

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.

[1] SEA 7 (2023), available at: https://iga.in.gov/legislative/2023/bills/senate/7#document-d16bf4c0