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Connecticut Legislature Passes Bill Limiting Physician Non-Compete Agreements

The Connecticut legislature recently passed Public Act No. 16-95 (PA 16-95), which aims to increase competition among health care providers by, among other things, restricting physician non-compete agreements. Though passed by both houses of the legislature, PA 16-95 has not yet been signed into law by Governor Dannel P. Malloy. If signed by Governor Malloy, PA 16-95 will become effective on July 1, 2016.

PA 16-95 defines a covenant not to compete as a provision in an employment agreement or other agreement that establishes a professional relationship with a physician that restricts the physician's right to practice medicine in Connecticut after the agreement has been terminated. Under PA 16-95 a covenant not to compete that involves a physician will be valid and enforceable only if it is (1) necessary to protect a legitimate business interest; (2) reasonably limited in time, geographic scope, and practice restrictions; and (3) otherwise consistent with law and public policy. The party seeking to enforce the covenant not to compete has the burden of proving these elements.

A covenant not to compete entered into, amended, extended, or renewed on or after July 1, 2016, cannot restrict the physician's competitive activities for a period longer than one year within a geographic region not more than 15 miles from the primary site where the physician practices. If the physician's employment is terminated by the employer, the covenant not to compete is not enforceable unless the physician's employment is terminated for cause. A physician's primary practice site is the office, facility, or location where a majority of the revenue derived from the physician's services is generated. The parties may mutually agree to designate, as the primary practice site, any other office, facility, or location where the physician practices, as long as such location is identified in the covenant not to compete.

If the physician's employment agreement expires, the covenant not to compete is enforceable only if the employer makes a bona fide offer to renew the physician's employment on similar terms and the agreement is not renewed. The requirement to make a bona fide offer does not apply to agreements made in connection with, or anticipation of, a partnership or ownership agreement. Finally, after July 1, 2016, each covenant not to compete must be separately and individually signed by the physician.

PA 16-95 raises many questions, including how the bill will affect existing covenants not to compete, how parties reconcile the elements necessary to enforce non-compete agreements, and how the bill affects the existing common law applicable to enforcement of non-compete agreements. You may wish to contact your health care or employment legal counsel for advice on responding to PA 16-95.

If you have any questions, please contact a member of Robinson+Cole's [Health Law Group](#):

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