NEW TEXAS LAW SIGNIFICANTLY LIMITS RESTRICTIVE COVENANTS IN HEALTH CARE

Not unlike the laws in just about every other U.S. state, Chapter 15 of the Texas Business and Commerce Code has required that non-solicitation and non-compete agreements for all employees be limited to reasonable time, geographic and scope of activity parameters. However, on June 20, 2025, Texas Governor Greg Abbott signed into law Senate Bill No. 1318 ("SB 1318"), dramatically amending the state's restrictions on restrictive covenants for physicians and certain other health care practitioners. The changes are highlighted below:

PHYSICIAN RESTRICTIONS	
Current:	**New**:
Covenant must be ancillary to or part of an otherwise enforceable agreement at the time the agreement is made.	No change.
Covenant must contain limitations as to time, geographical area and scope of activity to be restrained that are reasonable and do not impose a greater restraint than is necessary to protect goodwill or other business interest.	Covenant must contain limitations as to time and scope of activity to be restrained that are reasonable and do not impose a greater restraint than is necessary to protect goodwill or other business interest; ***the geographic restriction is now limited to five miles or less from the location at which the physician primarily practiced prior to termination***.
Covenant may not deny the physician access to a list of the physician's patients whom the physician had seen or treated within one year of termination of the contract or employment.	No change.
Covenant must provide access to medical records of the physician's patients upon authorization of the patient.	No change.

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PHYSICIAN RESTRICTIONS	
Current:	**New**:
Covenant must provide that any access to a list of patients or to patients' medical records after termination of the contract or employment shall not require such list or records to be provided in a format different than that by which such records are maintained, except by mutual consent of the parties to the contract.	No change.
A buyout must be included and must be set at a reasonable price or by mutually agreed upon arbitration.	A buyout must be included ***in an amount not greater than the physician's total annual salary and wages at the time of termination of the contract or employment***.
Physician may not be prohibited from providing continuing care and treatment to a specific patient(s) during the course of an acute illness even after the contract or employment has been terminated.	No change.

Additional Conditions Not Addressed in Current Law

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• Covenant must expire no later than the one-year anniversary of the date the contract or employment has been terminated.
• All terms and conditions of the covenant must be written, clear and conspicuous.
• An otherwise enforceable covenant will be void and unenforceable against a physician who is involuntarily discharged from contract or employment without good cause. "Good cause" is defined in the statute as "a reasonable basis for discharge of a physician from contract or employment that is directly related to the physician's conduct, including the physician's conduct on the job or otherwise, job performance, and contract or employment record."

Although prior section 15.50(c), which excluded a physician's business ownership interest in a licensed hospital or licensed ambulatory surgical from the limitations, appears to have been removed, the provisions of Chapter 15.50 are limited to non-competes "related to the practice of medicine," and SB 1318 expressly provides that the limitations do not apply to physicians who are managing or directing medical services in an administrative capacity for a medical practice or other health care provider.

OTHER HEALTH CARE PRACTITIONERS:
Dentists, Physician Assistants, Registered Nurses, Licensed Vocational Nurses, Licensed Practical Nurses, Advanced Practice Registered Nurses

Current:	**New**:
Covenant must be ancillary to or part of an otherwise enforceable agreement at the time the agreement is made.	No change.
Covenant must contain limitations as to time, geographical area and scope of activity to be restrained that are reasonable and do not impose a greater restraint than is necessary to protect goodwill or other business interests.	Covenant must contain limitations as to time and scope of activity to be restrained that are reasonable and do not impose a greater restraint than is necessary to protect the goodwill or other business interest of the promise; ***the geographic area subject to the covenant is now limited to five miles or less from the primary location of practice prior to termination***.

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Additional Conditions Not Addressed in Current Law

- Buyout must be included and must be set in an amount not greater than the practitioner's total annual salary and wages at the time of termination.
- Covenant must expire no later than the one-year anniversary of the date the contract or employment has been terminated.
- All terms and conditions of the covenant must be written, clear and conspicuous.

Notice that the provisions for physicians and non-physicians are not identical: requirements that allow for continuing care and access to lists/records were not provided for non-physician practitioners; additionally, a non-physician practitioner's covenant is not void if employment/contract is involuntarily terminated without good cause.

These changes in the law apply only to a covenant entered into or renewed on or after September 1, 2025. However, a number of issues remain unclear. Will contract amendments be considered grandfathered for purposes of applicability or new agreements subject to SB 1318? Will auto-renewing provisions be considered "renewals" such that the agreement will then be subject to the new limitations? How is an employer required to calculate "salary and wages" for buyout purposes?

PRACTICAL TAKEAWAYS

- Review the terms of all non-solicitation or non-compete agreements with new employees or contractors in Texas to ensure compliance with State law.
- Before entering into a non-solicitation or non-compete agreement with any newly employed physician or other health care practitioner in Texas on or after September 1, 2025, ensure that the agreement complies with the new law.
- Consider if handbook provisions, policies and contractor guidelines applicable to Texas employees and/or contractors comply with the law.
- Keep in mind that the new requirements do not apply to administrative services, so structure the employment agreement of physicians with dual roles (e.g., physician who serves as a clinical provider and a medical director) carefully to ensure maximum protection.
- Consider revisions to "for cause" termination provisions within physician employment agreements, as well as the definitions within reduction-in-force policies/procedures applicable to physicians.
- Separation Agreement templates may need to be revised for physician and non-physician practitioners in Texas.
- Notice of no-cause separation is no longer the least consequential approach for physicians in Texas; mutual agreement separations should be carefully crafted.
- Leased worker and independent contractor agreements for Texas facilities executed for services on and after September 1, 2025, may need to be revised.
- Stay up to date on any pending legislative efforts and court decisions that may alter existing responsibilities or create future obligations for your workforce.

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