

S 46 -- Redline

Introduced to 12/11/2024 -- Healthcare contracts

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Document has been reformatted to meet World Wide Web specifications.) A bill TO AMEND
THE SOUTH CAROLINA CODE OF LAWS BY ADDING CHAPTER TO TITLE 41 SO AS TO PROVIDE CERTAIN CONTRACT
PROVISIONS THAT INTERFERE WITH THE PHYSICIAN-PATIENT RELATIONSHIP OR ALLOW FOR THE CORPORATE PRACTICE OF
MEDICINE ARE DECLARED TO BE AGAINST PUBLIC POLICY OF THIS STATE, TO PROVIDE CERTAIN CONTRAVENING
CONTRACT PROVISIONS ARE UNENFORCEABLE, TO SPECIFY CERTAIN RELATED CONTRACT PROVISIONS WHICH ARE
ENFORCEABLE, AND TO PROVIDE REMEDIES FOR VIOLATIONS, AMONG OTHER THINGS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 41 of the S.C.

Code is amended by adding:

CHAPTER 9 Healthcare Contracts Section 41-9-110. It is hereby declared that contract provisions
which interfere with a physician-patient relationship or allow for the corporate practice of medicine are
against the public policy of this State.

Section 41-9-120. (A) A physician licensed to practice medicine pursuant to the provisions of Title 40,
Chapter 47 has a direct, personal, and individual duty and responsibility to his patients, regardless of
his form of practice or employment and any contract or agreement that creates or establishes the terms
of a partnership, employment, or any other form of professional relationship that restricts or
interferes with the physician's ability to treat patients or impermissibly delegates to or allows a
corporate entity to fulfill or direct this duty are void and unenforceable with respect to said

restriction;

provided, however, that nothing herein may be construed to render void or unenforceable the remaining provisions of any such contract or agreement.

(B) Impermissible, unenforceable, and void restrictions under subsection (A) include, but are not limited to the following:

(1) any restriction on the ability of a physician to practice medicine in any geographic area for any period of time after the termination of such partnership, employment, or professional relationship;

(2) any restriction on the ability of a physician to continue to provide treatment, advise, or consult with any current patient after the termination of such partnership, employment, or professional relationship;

(3) any restriction on the right of a physician to establish or seek to establish a physician-patient relationship with any patient upon his departure from the partnership, employer, or other entity;

(4) any restriction that in any manner, directly or indirectly, supplants, diminishes, directs, or regulates the independent judgment of the physician concerning the practice of medicine or the diagnosis and treatment of any patient;

(5) any restriction or provision that either directly or indirectly allows a partnership, hospital, health system, or any other corporate entity, except as provided in Section 33-19-101, et.

seq., to practice medicine in violation of Section 40-47-200;

and (6) any restriction on the obligation of a physician as determined by the Board of Medical Examiners, including the withholding of information, to notify patients of his departure from such partnership, employment, or professional relationship, at least thirty days before his departure including how the patient can obtain his medical record and whether or not the physician will still be practicing in the State, and how to seek continued treatment from the physician, if the patient chooses.

The partnership, employer, or other professional entity may specify in the written contract or agreement that it will undertake this notification on behalf of the physician at least thirty days before his departure, if possible, but no later than thirty days after his departure if the Board of Medical Examiners requires.

Such notification to the patient by the entity must be in writing and mailed or e-mailed to the address of record for each patient, must make clear that the choice of a physician belongs to the patient, and must include how the patient can obtain his medical record and how to seek continued treatment from the departing physician, must state whether or not the departing physician will still be practicing in the State, and must be provided to the entity within thirty days of departure.

The Board of Medical Examiners must promulgate a regulation that clearly outlines the circumstances in which this notification is required and develop and publish the minimum requirements that will satisfy this notification requirement by the entity.

Further, no partnership, employer, or other entity may withhold this information from a patient if the patient inquires before the notification is sent and the entity has been informed by the departing physician of his new practice location.

(C) Notwithstanding the provisions of this section, the prohibition on physician covenants do not apply in connection with the purchase and sale of an independent physician practice, provided the restrictive covenant and/or noncompete covenant is for a period of a time of no more than five years.

Section 41-9-130. (A) Nothing in this chapter may be construed to prevent a partnership, employer, or other entity from requiring a departing physician who has worked for the partnership, employer, or other entity for less than three years to repay all or a portion of the actual costs of the following if the specific items and actual value of each item the partnership, employer, or other entity may seek in repayment are outlined and agreed to within the written agreement at the time of signing:

(1) relocation expenses;

(2) signing bonus;

or (3) other remuneration to induce the physician to relocate or establish a healthcare practice in a specified geographic area, or recruiting, education or training expenses.

(B) Nothing in this chapter may be construed to prevent a partnership, employer, or other entity from protecting other recognizable business interests such as:

(1) trade secrets as defined in Section 39-8-20(5);

and (2) confidential information such as compensation, management and marketing plans, pricing, business strategies, software, code, forms that may not otherwise qualify as trade secrets but are treated as confidential by the entity, business models and data, manuals, and financial and investment information;

and commercial relationships with specific vendors.

Section 41-9-140. A person whose rights are adversely affected by a restriction that is prohibited by this chapter may apply to a court having general equity jurisdiction for appropriate relief.

The court may grant and issue a restraining and other appropriate order including an injunction

restraining and enjoining the performance, continuance, maintenance, or commission of any such agreement or contract provision and may determine and award, as justice may require, actual damages, costs, and attorneys' fees sustained or incurred by a party to the action.

The provisions of this section are cumulative and are in addition to all other remedies provided by law. Section 41-9-150. The requirements of this chapter apply to contracts or renewals of contracts entered into on or after the effective date of this chapter.

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. This act takes effect upon approval by the Governor.

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