

1 AN ACT relating to health care provider employment contracts.

2 WHEREAS, the Centers for Medicare and Medicaid Services find that national  
3 health expenditures as a percentage of gross domestic product has reached 17.9% in  
4 2017; and

5 WHEREAS, one study estimated that health expenditures are expected to increase  
6 at an average annual rate of 5.8% between 2014 and 2024; and

7 WHEREAS, physician employment contracts that contain a covenant not to  
8 compete are a restraint of trade; and

9 WHEREAS, covenants not to compete in the healthcare field restrict competition,  
10 disrupt continuity of care and potentially deprive the public of medical services; and

11 WHEREAS, a 2018 joint report by the U.S. Department of Health and Human  
12 Services, U.S. Department of the Treasury, and U.S. Department of Labor stated that  
13 "[b]y suppressing competition, these clauses may inflate healthcare prices, elevating  
14 patient and federal spending on healthcare . . ."; and

15 WHEREAS, one study estimated that approximately 45% of physicians are bound  
16 by a covenant not to compete; and

17 WHEREAS, the physician-patient relationship is sacrosanct and entitled to unique  
18 protection, and this bill is deemed the "Follow My Health Care Provider Act";

19 NOW, THEREFORE,

20 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

21 ➔SECTION 1. A NEW SECTION OF KRS 311.530 TO 311.620 IS CREATED  
22 TO READ AS FOLLOWS:

23 ***(1) For the purposes of this section, "covenant not to compete" means any provision***  
24 ***of an employment contract or other agreement that creates or establishes a***  
25 ***professional relationship with a physician or advanced practice registered nurse***  
26 ***licensed under KRS Chapter 314 and restricts the ability of that person to***  
27 ***practice medicine in any geographic area of the state for any period of time after***

1 the termination or cessation of the partnership, employment, or other  
2 professional relationship. The term does not include restrictions on the  
3 solicitation of patient relationships within the current patients of the partnership  
4 or employer that entered into the covenant not to compete.

5 (2) It is the finding of the General Assembly that covenants not to compete are  
6 contrary to the public policy of the Commonwealth for the following reasons:

7 (a) The American Medical Association's Code of Medical Ethics discourages  
8 covenants not to compete and that same code finds that ethical medical  
9 practice thrives best under free market conditions when patients can freely  
10 choose among competing providers. The Code of Medical Ethics has been  
11 incorporated into the Kentucky Board of Medical Licensure's Medical  
12 Practice Act;

13 (b) Providers are increasingly seeking employment with health care systems  
14 instead of pursuing solo practice, necessitating more employment contracts;

15 (c) The Commonwealth is ranked thirty-sixth among U.S. states by the  
16 Association of American Medical Colleges in terms of active physicians per  
17 capita, and rural areas in particular face current and future physician  
18 shortages; and

19 (d) Labor mobility, free market principles, and patient choice all serve as  
20 potential cost containment factors in the health care field.

21 (3) Any contract or other agreement regarding a physician or advanced practice  
22 nurse practitioner containing a covenant not to compete shall be void and  
23 unenforceable with respect to that restriction as a matter of public policy of the  
24 Commonwealth. The remaining provisions of any contract or other agreement  
25 that includes a covenant not to compete shall remain in full force and effect.

26 (4) Notwithstanding subsection (3) of this section, the prohibition on physician  
27 covenants not to compete shall not apply when the covenant:

1        (a) Restricts a physician's competitive activities for a period of no more than  
2                    one (1) year and in a geographic region of no more than ten (10) miles from  
3                    the primary site where the physician practices; and

4        (b) 1. Is entered in connection with the purchase and sale of a physician  
5                    practice; or

6                    2. Is between an accredited medical school or osteopathic school located  
7                    in the Commonwealth and a physician who is a faculty member of  
8                    that school.

9        ➔Section 2. This Act may be cited as the "Follow My Health Care Provider Act."