

May 2019

Dear Health Law Section Members:

The Health Law Section (“HLS”) website was recently updated with March through April 2019 articles that primarily focused on Florida and Federal legislative and regulatory updates. In light of the conclusion of the 2019 Florida legislative session, the Editors thought HLS Members would benefit from obtaining an update as to a significant bill that was being considered in the legislature. This update was submitted to us by Kathleen Premo, Esq., and Lauren Farruggia, Esq., of Epstein Becker Green.

Thank you,

Jamie Gelfman, Esq., Nelson Mullins Broad and Cassel, HLS Editor in Chief

ANTITRUST UPDATE

Restrictive Covenant Provisions Remain Amidst Florida Antitrust Legislation Shakeup

In an interesting reversal, on May 3, 2019, the Florida Senate withdrew House Bill (“HB”) 1243 from consideration after its initial unanimous passage in the Florida House of Representatives on April 11, 2019. We [previously reported](#) in our March-April 2019 Health Law Update on HB 1243, which represented a bipartisan effort to slow provider consolidation throughout the state and sought to ensure that antitrust law is followed and enforced in hospital physician transactions. HB 1243 would have granted the Florida Office of Attorney General the power to scrutinize hospital and group practice health care transactions of all sizes pursuant to its written notification requirements; however, the Florida legislature appears to have abandoned this broader effort for now.

Florida is not, however, abandoning HB 1243 in its entirety. On April 29, 2019, the Florida House of Representatives and Senate both approved HB 843, which contains non-competition language identical to that found in HB 1243. HB 843’s Section 10 provides that, in counties where there is only one entity contracting with or employing a category of medical specialists, such entity’s restrictive covenants would be void and unenforceable until there is new market entry by a competitor entity for at least three years. The legislature found that such covenants “restrict patient access to physicians, increase costs, and are void and unenforceable under current law.”

The legislative analyses do not shed much light on HB 843’s restrictive covenant provision. HB 843 does not define “medical specialty,” so it is not clear what specialty categories the Florida legislature intends this provision to cover. One legislative analysis from April 4, 2019 discusses medical specialties generally, stating “[p]hysicians who practice a medical specialty have extensive education and training in a specific field of medicine, such as cardiology, endocrinology, orthopedics, or rheumatology. Due to their specialized skills, specialist providers are often consulted on or co-manage a patient’s chronic condition.” With this explanation in mind, it is possible that the Florida legislature contemplates restrictive covenants limited to physicians with training in singular, specific fields only, but this factor remains unclear.

These provisions will become effective on July 1, 2019 if the Florida Governor signs HB 843 into law. Should this happen, businesses should be prepared to carefully evaluate the competitive market to determine the impact on physician non-competes.

**Submitted by: Kathleen Premo, Esq., and Lauren Farruggia, Esq.,
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