AMERICA'S PHYSICIAN GROUPS

November 3, 2025

The Honorable Andrew Ferguson
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Submitted via https://www.regulations.gov/document/FTC-2025-0463-0001

Re: Request for Information Regarding Employer Non-Compete Agreements

Dear Chair Ferguson:

America's Physician Groups (APG) appreciates the opportunity to respond to the Federal Trade Commission's (FTC) Request for Information (RFI) on Employer Noncompete Agreements.

Below, APG will first provide (I) a brief description of our organization, followed by (II) a summary of the FTC's questions, (III) APG's comments, and (IV) our conclusion. Together they reflect the voice of APG's membership and the commitment to working with the commission to ensure that all Americans have consistently accessible, high-quality, equitable, person-centered health care.

I. About America's Physician Groups

APG is a national association representing approximately 340 physician groups that are committed to the transition to value, and that engage in the full spectrum of alternative payment models and capitated and delegated relationships with health plans in Medicare Advantage (MA). APG members collectively employ or contract with approximately 260,000 physicians (as well as many nurse practitioners, physician assistants, and other clinicians), and care for approximately 90 million patients, including an estimated 1 in 4 Americans and 1 in 3 MA enrollees.

Our motto, "Taking Responsibility for America's Health," underscores our members' preference for being in risk-based, accountable, and responsible relationships with all payers, rather than being paid by plans on a fee-for-service basis. Delegation of risk from all payers to providers creates the optimal incentives for our groups to provide integrated, coordinated care; make investments in innovations in care delivery; advance health equity; and manage our populations of patients in more constructive ways than if our members were merely compensated for the units of service that they provide.

II. Summary of the RFI

The RFI is designed to help the FTC "better understand the scope, prevalence, and effects of employer noncompete agreements, as well as to gather information to inform possible future enforcement actions." The FTC defines a noncompete agreement as a "contractual term between an employer and a worker that typically block the worker from a competing employer or starting a competing business after the end of the workers employment."

The RFI follows the Biden administration's proposal to institute blanket ban on non-competes, which APG cautioned against due to the negative consequences for value-based care models that require "substantial investments that must be made in guiding physicians in value-based care models in building their local practices." APG's comments noted that the Biden administration's proposal "seeks to ban the inclusion of non-compete agreements within employment contracts and rescind such agreements previously established within existing contracts. As a result, a new national framework would be established that would eliminate noncompete clauses across the board to make the workplace more competitive."[1] APG agreed that "there are many opportunities for abuse in noncompete clauses that excessively advantage employers at the expense of employees, and that these highly imbalanced arrangements should be avoided" but advised against a single federal standard due to the varying size and scope of markets nationwide.

APG appreciates the Trump administration's willingness to take a more targeted approach towards noncompete agreements that will balance the interests of employees and employers, especially in the health care market.

The policy questions in the RFI most germane to APG members are the following:

- **Wages and Mobility:** The FTC asked for stakeholder input on the extent to which "any noncompete agreements covering workers in the healthcare sector affected wages, labor mobility, or the availability, quality, or cost of healthcare services in particular."
- **Hiring Issues and Competition:** The FTC asked for stakeholder input asking about the extent to which (1) any noncompete agreements made it more difficult for providers of health care services to hire physicians, nurses, or other professionals; and (2) whether competition within any specific health care service in a geographic area has been substantially affected by noncompete agreements.

III. APG's Comments

A. Wages and Mobility

APG agrees that there are many opportunities for abuse in noncompete agreements that excessively advantage employers at the expense of employees, and that these highly imbalanced arrangements should be avoided. At the same time, multiple APG member groups currently use noncompete agreements in their contracts with physicians; these agreements take into consideration both the interests of these employees and the practices' own proprietary and infrastructural and business investment concerns. Here, we provide background as to why balancing these two sets of concerns is

[1] https://www.apg.org/press-release/apg-comment-letter-to-ftc-on-non-compete-clause-rule/

appropriate.

When an APG member organization is building its practice in a given geographic area, it may recruit a new physician and sign a multi-year employment contract predicated on helping that physician integrate into the medical team and expand the team's ability to care for patients. For the next three to five years, the organization may invest as much as $1 million in supporting the activities of this physician while he or she cares for patients; gains knowledge and expertise in operating within a value-based care context; and contributes to building the team's practice. For a given primary care physician to be successful within a group practice, for example, it may be necessary to build a practice of several thousand patients who will become the regular patients of this physician. As the practice builds, the parent APG organization also guides and trains the physician in conducting his or her practice in the context of value-based health care, which is different from the fee-for-service payment system in which much of the nation still operates.

Despite the growth in utilization of such approaches as telehealth, health care is still by and large delivered in an essentially local market. Some markets are highly concentrated and dominated by larger physician or hospital organizations; others are much less so. Competitive conditions within these different markets vary, including by physician specialty. Local conditions may well require some time-limited use of noncompete agreements so that health care employers that invest in further increasing the skills of their highly skilled physician workforce are not subject to great competitive disadvantage if and when those physicians suddenly leave and become employed or engaged elsewhere. These noncompete agreements discourage physicians from leaving a practice that has recruited, trained and invested in them, opening up a competing practice in a nearby location, and potentially taking their patients with them.

It is this potential for patients leaving a group practice when a single physician leaves that can be especially disruptive to continuity of care and risk the quality of patient outcomes. Value-based care is not a solo activity; it is a team-based approach with physicians acting as the anchor and conducted by multi-clinician teams that are focused on multiple aspects of patients' health. Caring for patients in this context requires robust data and information technology infrastructure, as well as a longitudinal care outlook to achieve high quality results and savings for patients and the health care system.

Integrating physicians into value-based care teams involves training them in using the team's proprietary information systems that underly effective care delivery. An APG member notes that it takes at least two to three years to fully train a physician to operate well within a value-based care model, and requires a $400,000 to $500,000 investment in building that physician's practice. Given, that a labor market that permits unlimited physician mobility will impact quality, patient access, and create patient confusion. An APG member noted that for risk-accepting organizations, physician departures lead to one-third of the patient population leaving the organization, one-third of the patient population facing service interruptions, and only one-third of the patient population enjoying uninterrupted continuity of care. This creates challenges maintaining the infrastructure and interoperability requirements needed to participate in ACOs and is incredibly disruptive to the quality of care that patients receive.

APG members employ and support instituting reasonable guardrails surrounding time and distance restrictions in noncompete agreements. For example, one APG member organization with practice locations in 21 states limits its noncompete agreements to a one-year time limitation covering a five (5) mile radius of their physicians' practices with an attached non-solicitation clause for any patients. Another APG member organization headquartered in Washington state with additional facilities in Oregon limits its noncompete agreements to one year with an approximate eight (8) mile geographic limitation.

Including these agreements in an employment contract protects the investments that these organizations have made in recruiting and maintaining these physicians, while also avoiding any arduous geographic or time restrictions that would hamper the ability of any departing physician from continuing to work indefinitely within the same city or region.

Conversely, APG members have reported that some noncompete agreements have banned physicians from working within a certain number of miles from *any* location of their previous employer, instead of geographic restrictions from locations where the provider worked. These expansive geographic restrictions can require physicians who worked in rural areas or under a large health care employer to move out of state to continue practicing medicine. In addition, APG members emphasize that a noncompete agreement's geographic restrictions have a different impact on providers in urban and rural areas. A physician in a major metropolitan area can easily find a new practice location within a 15-mile geographic radius while a physician in a sparsely populated rural area cannot. APG supports noncompete agreement guardrails that vary depending on the population density of the practice location, for example a limit of several blocks within a dense urban area like New York City, five to 10 miles in less dense urban areas and suburban locations, and 20 miles in more rural areas.

Given the current widespread disruption in the health care marketplace, APG members strongly emphasize that regulations permitting noncompete agreements must include exceptions that void the agreement upon the bona fide sale of a business. For example, a small, independent practice getting purchased and integrated into a larger practice, hospital system, or entity could cause existing noncompete agreements to have a much larger geographic scope than the physicians originally agreed to. Voiding noncompete agreements upon a business's sale is a reasonable way to protect physicians' career flexibility from broader healthcare marketplaces changes outside their control.

B. Hiring Issues and Compensation

APG members expressed concerns that previous FTC rules did not apply noncompete restrictions to nonprofit organizations. This creates an uneven competitive landscape where small- and medium-sized medical practices cannot use noncompete agreements to protect their human capital investments while large, integrated multistate not-for-profit health care systems can, incentivizing further consolidation that can increase the cost of health care. Reasonable and balanced noncompete agreements can help ensure that small, independent practices can hire and retain skilled physicians in the markets they serve.

APG members expressed a desire for any FTC regulation to achieve a balance that prevents the worst abuse of noncompete agreements while still permitting noncompete agreements that apply to the most highly skilled, educated, and costly health care labor resource, physicians. Training and integrating physicians in team-based practices within value-based care models requires a substantial investment, and reasonable noncompete agreements help these practices feel confident that their investment will be adequately protected. APG supports reasonable noncompete agreements with definitive expiration dates of up to three years. A balanced approach will help the Commission achieve its goals of protecting competition and employee rights by imposing reasonable time frames and geographic limitations on noncompete agreements while also avoiding undue impediment to health care businesses' ability to protect their patients' continuity of care and human capital investments should their physicians and other clinical team members seek employment elsewhere.

APG members emphasize that the ability to institute noncompete agreements for physicians

and other advanced practice providers is an important tool to encourage investment in high-need and underserved areas. It is difficult for organizations to justify investments in high-need areas if they do not have the necessary tools to protect them and mitigate financial risk.

APG members note that it is challenging for them to hire physicians and other health care professionals but attribute this difficulty to factors outside the use of noncompete agreements, such as the intense competition to recruit physicians and other clinicians amidst labor supply shortages.

IV. Conclusion

APG thanks the FTC for the commission's commitment to ensuring any restrictions on noncompete agreements strike a balance between making the health care workplace more competitive while recognizing the importance that value-based care providers place on ensuring continuity of care for the patients they serve by protecting the investments they make in their clinical teams. We look forward to working with the FTC as the RFI is refined and finalized.

Sincerely,

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