

The Maryland Association of Nurse Anesthetists

HB 1388 – Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals

Before Senate Finance Committee

Position: Support

March 28, 2024

Madam Chair and members of the Senate Finance committee thank you for this opportunity to support HB 1388.

The Maryland Association of Nurse Anesthetists is a professional association with over 900 members who are practicing nurse anesthetists in Maryland.

A nurse anesthetist is permitted to administer anesthesia in collaboration with a physician, dentist, or anesthesiologist. If you undergo a procedure in Maryland, you are just as likely to receive anesthesia care from a nurse anesthetist as an anesthesiologist. Sometimes a nurse anesthetist works in an anesthesia team care model which includes an anesthesiologist but are and do deliver anesthesia without collaborating with an anesthesiologist.

MANA strongly supports HB 1388 and urges a favorable report.

Noncompete agreements have become a ubiquitous feature in many industries, intended to protect employers' interests and trade secrets. However, their presence in the healthcare sector raises significant ethical and practical concerns. Noncompete agreements for healthcare professionals, including physicians, nurses, and other essential providers, can have detrimental effects on patient care, workforce mobility, and the overall health system. Here's why prohibiting noncompete agreements for healthcare professionals is not just advisable but imperative.

1. **Patient Access and Care Continuity:** Noncompete agreements can restrict healthcare professionals from practicing within a certain geographic area or with certain patient populations after leaving their current employment. This limitation can severely impact patients' access to care, especially in underserved areas where healthcare providers may be scarce. Patients should have the freedom to choose their healthcare providers based on quality and accessibility, rather than being constrained by contractual obligations.

2. **Public Health Concerns:** Healthcare professionals play a crucial role in public health emergencies and pandemics. Prohibitive noncompete agreements can hinder the rapid deployment of healthcare workers to areas in need during crises. In situations where immediate access to care can mean the difference between life and death, any barrier to deploying skilled professionals must be removed.

3. **Workforce Mobility and Innovation:** Noncompete agreements can stifle professional growth and innovation within the healthcare industry. Restricting healthcare professionals from seeking better opportunities or starting their practices can lead to a stagnant workforce and impede the advancement of medical research and practices. Healthcare professionals should have the freedom to move between institutions, share knowledge, and contribute to the broader healthcare community's advancement.

4. **Quality of Care and Patient Trust:** Healthcare professionals are entrusted with their patients' well-being and must prioritize their patients' best interests above all else. Noncompete agreements that limit a professional's ability to continue caring for their patients can erode trust and compromise the quality of care. Patients should be able to maintain continuity with their trusted healthcare providers, fostering stronger patient-provider relationships and improving health outcomes.

5. **Legal and Ethical Considerations:** The enforcement of noncompete agreements in healthcare raises ethical questions about fairness and equity. Healthcare professionals, often bound by codes of ethics and duty to patients, may find themselves in ethical dilemmas when faced with restrictive employment contracts that impede their ability to provide care effectively. Moreover, the legality and enforceability of such agreements can vary widely across jurisdictions, leading to uncertainty and potential legal battles.

6. **Market Competition and Healthcare Costs:** Noncompete agreements can limit competition among healthcare providers, leading to monopolistic practices and inflated healthcare costs. When healthcare professionals are prevented from moving freely between employers, healthcare systems may face less pressure to offer competitive salaries, benefits, and working conditions. Ultimately, this can drive up healthcare costs for patients and insurers while reducing the overall quality of care.

In conclusion, the prohibition of noncompete agreements for healthcare professionals is essential to uphold patient access, workforce mobility, and the integrity of the

healthcare system. Policymakers, healthcare institutions, and professional organizations must work together to ensure that healthcare professionals are not unduly restricted by contractual obligations that compromise patient care and public health. By fostering a culture of professional mobility, collaboration, and patient-centered care, we can strengthen our healthcare system and improve outcomes for all.

Respectfully submitted,

Michelle Duell, CRNA

MANA Chair of Government Relations Committee

THE FACTS ABOUT NON-COMPETES IN HEALTH CARE

C.J. CANIGLIA, DVM, DACVS-LA



STATES WITH COMPLETE OR NEAR COMPLETE BANS

A non-partisan issue

Alabama

California

Colorado

Louisiana

Minnesota

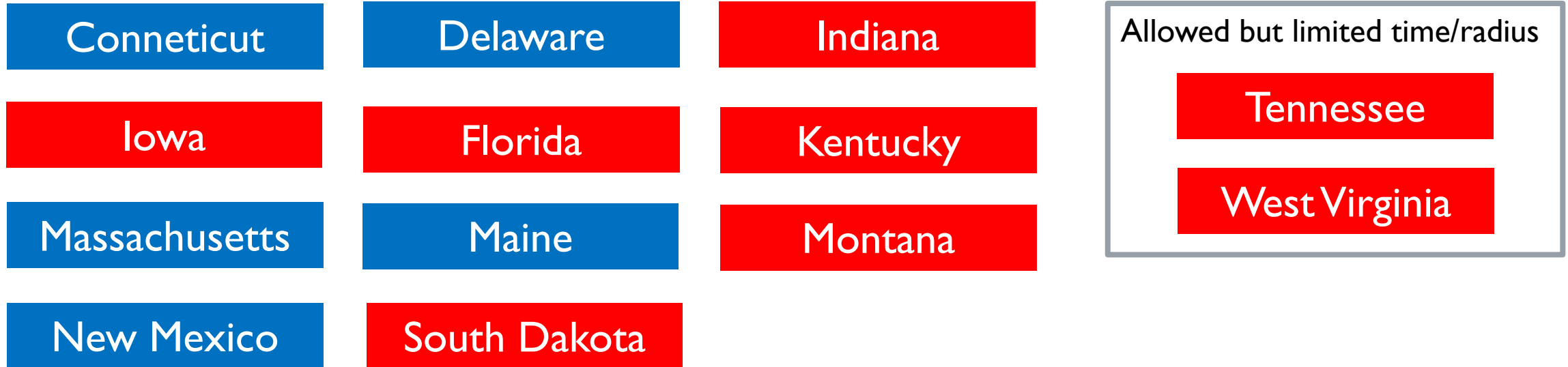
North Dakota

Oklahoma

Washington D.C.

STATES WITH BANS SPECIFIC TO HEALTH CARE

A non-partisan issue



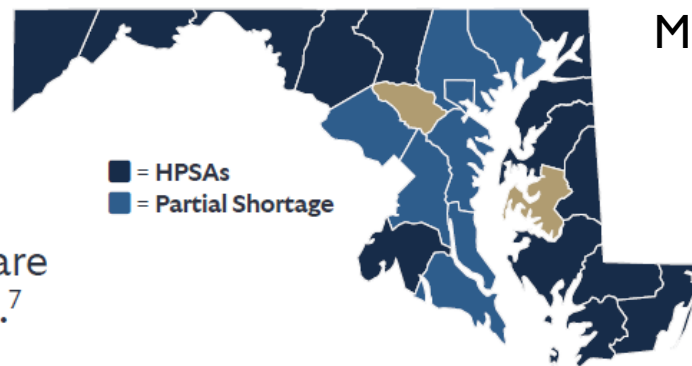
After non-competes were restricted, practices more likely to survive and grow larger relative to practices in states that continued enforcing health care non-competes¹

1. Balasubramanian, N., Sakakibara, M., and Starr, E. Association between Physician Noncompete Agreements and Healthcare Access. <https://ssrn.com/abstract=4630026>

THE PHYSICIAN SHORTAGE IN MARYLAND

14 of Maryland's 24 counties are health professional shortage areas (HPSAs).⁶

- ▶ 8 of the 24 are partial HPSAs meaning **22/24 counties are affected.**
- ▶ **Low-income citizens** are disproportionately affected by these shortages.
- ▶ HPSA designations indicate areas where there are **3,500 or more patients for every one provider.**⁷



MD Compared to other States

35% worse
for **family**
medicine/general
practice



Maryland is projected
to be **short 1,052**
doctors by 2030.³

- ▶ **35.8% of physicians** in Maryland are current within retirement range.⁴
- ▶ The aging workforce is most prevalent in the **capital region and among surgical specialties.**⁵

1. Goldman, Devorah. "The Forgotten Physician." National Affairs, 2019. <https://nationalaffairs.com/publications/detail/the-forgotten-physician>.
2. Zhang, Xiaoming, Daniel W. Lin, Hugh Pforsich, and Vernon W. Lin. "Physician Workforce in the United States of America: Forecasting Nationwide Shortages." Human Resources for Health, February 6, 2020. <https://doi.org/10.1186/s12960-020-0448-3>.
3. The Robert Graham Center. "Maryland: Projecting Primary Care Physician Workforce." Policy Studies in Family Medicine and Primary Care. Accessed January 25, 2024. <https://www.graham-center.org/content/dam/rgc/documents/maps-data-tools/state-collections/workforce-projections/Maryland.pdf>.
4. AAMC. "Maryland Physician Workforce Profile." Association of American Medical Colleges, 2021. <https://www.aamc.org/media/58211/download>.
5. Barish, M.D., Chair Robert, and Secretary John Colmers. "Maryland Physician Workforce Study." MedChi, The Maryland State Medical Society, 2007. <https://www.medchi.org/Portals/18/files/Law%20&%20Advocacy/Initiatives%20Page/Workforce%20Study%20Executive%20Summary.pdf?ver=2009-09-02-040000-000>.
6. "Map of Health Professional Shortage Areas: Primary Care, by County, 2023 - Rural Health Information Hub," n.d. <https://www.ruralhealthinfo.org/charts/5?state=MD>.
7. KFF. "Primary Care Health Professional Shortage Areas (HPSAs) | KFF," November 1, 2023. <https://www.kff.org/other/state-indicator/primary-care-health-professional-shortage-areas-hpsas/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Practitioners%20Needed%20to%20Remove%20HPSA%20Designation%22,%22sort%22:%22desc%22%7D>.

THE NURSE SHORTAGE IN MARYLAND

WORKFORCE CRISIS

Maryland hospitals face the most critical staffing shortage in recent history. MHA's Executive Committee launched the Task Force on Maryland's Future Health Workforce in Fall 2021 to propose a strategy to build a sustainable health care workforce. **The Task Force agreed to focus initial recommendations on nurses and nurse extenders.** However, members recognized growing the pipeline of allied health professionals and other health care workers must be addressed in the near term.

Maryland Health Care Workforce Crisis **By the Numbers**



86,555

active licensed registered nurses in MD ¹



1 in every 4 hospital nursing positions is vacant ²



Growing Shortfall of Nurses:¹

- 13,800 additional RNs needed by 2035
- 9,200 additional LPNs needed by 2035



62% of surveyed Maryland Board of Nursing licensees and certificate holders thought about leaving nursing recently ³
- Feeling overworked, burned out, unappreciated was #1 reason for nearly **40%** of respondents

2022 Maryland's Health Care Workforce Report
Maryland Hospital Association

JULY 2023



Maryland Nursing Programs
\$6 Million from the State to
Help Address Nursing Shortage



Eliminating non-
competes helps with
shortage with zero
financial cost to the
State

THE VETERINARY SHORTAGE IN MARYLAND

Approx. 1.9 million dogs/cats

Approx. 269 million chickens

3,295 licensed veterinarians in MD with estimated only 2,900 practicing

Approx. 21,000 pigs

Approx. 100,000 horses

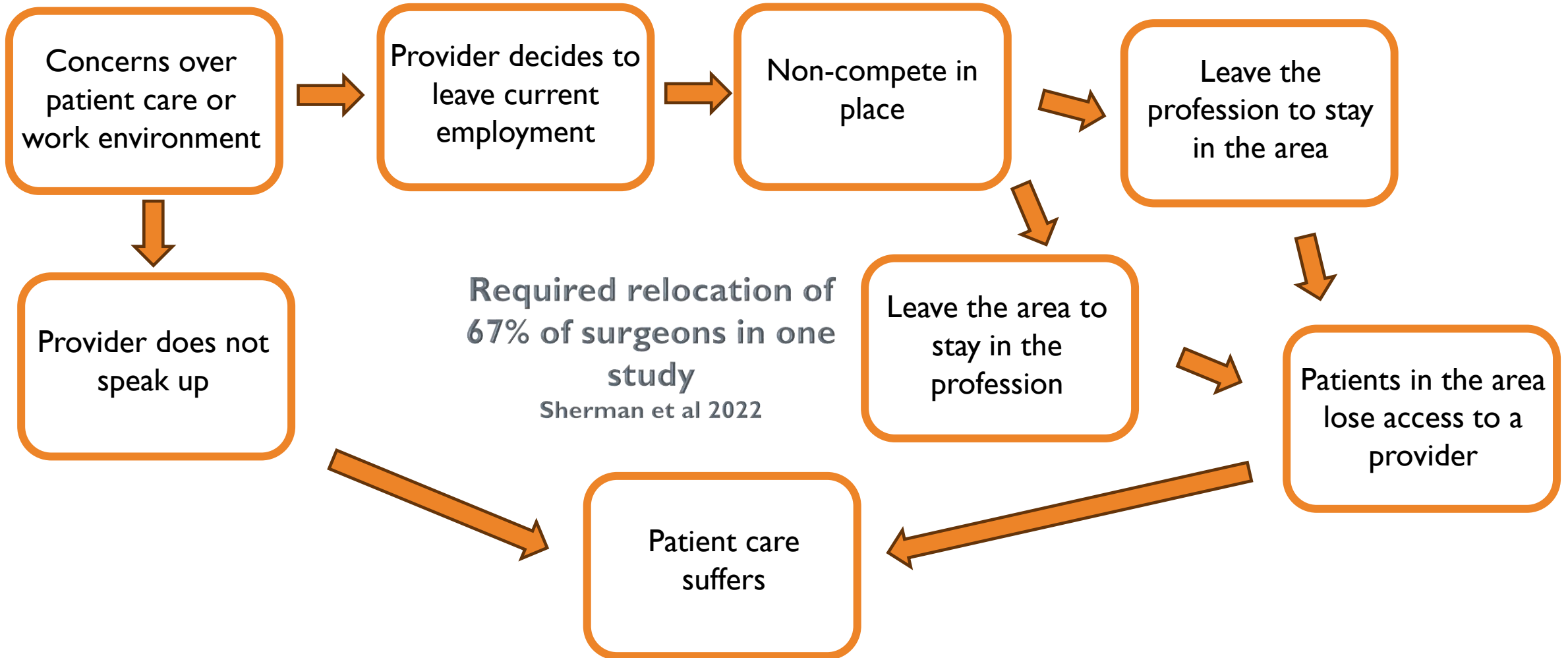
Approx. 243,000 cows

Only around 74 horse vets

AVMA Pet Ownership and Demographics Sourcebook
USDA/NASS 2022 State Agricultural Overview for MD
US Census 2023

Only 4 boarded large animal surgeons
Only 1 boarded large animal internist

HOW NON-COMPETES EXACERBATE SHORTAGES



MARYLAND HOSPITAL ASSOCIATION RECOMMENDATIONS

RECOMMENDATIONS FOR POLICYMAKERS

MHA recommends policymakers to pass legislation that promotes retention of health care workers

A health care worker without a non-compete can change hospitals without fear of being forced out of state = healthcare worker retained

Non-competes are an economic driver causing health care workers to leave the profession

MHA opposition to HB 1388 does not match their recommendations

Retain the Health Care Workforce

1. Address social and economic drivers that cause health care workers to leave the profession, including the cost and availability of child and elder care
2. Establish a statewide workplace violence prevention consortium to provide training and support and recommend policy changes

HOW NON-COMPETES JEOPARDIZE PATIENT CARE

Anne Arundel Medical Center / Anne Arundel Physician Group example

- Hospital cut support staff, shut down oncology lab, and overall toxic work environment
 - Oncologists spoke up to improve patient care
 - Oncologists were terminated and non-competes enforced
 - Cancer patients were left with no continuity of care

Restricting access to doctors who leave due to concerns over patient care harms the public by subjecting them to substandard care

HOW NON-COMPETES JEOPARDIZE PATIENT CARE

Non-competes disrupt continuity of care

- Patients readmitted to the **same hospital** and managed by a **different surgeon** had **>2x risk of mortality** within a year than patients managed at the **same hospital** by the **same surgeon**¹
- Patients with diabetes who see **different doctors** have a **higher mortality rate of 12%** compared to those who see the **same doctor** at **4%**²
- **82%** of studies assessed demonstrate that continuity of care by the **same provider reduces mortality rate**³
- Pet owners more likely to **trust treatment recommendations**, receive personalized care, and **better patient outcomes** when they have an established relationship with their veterinarian⁴

Continuity of care with the same provider, not the business, saves lives

1. Justiniano CF, Xu Z, Becerra AZ, Aquina CT, Boodry CI, Swanger A, Temple LK, Fleming FJ. Long-term Deleterious Impact of Surgeon Care Fragmentation After Colorectal Surgery on Survival: Continuity of Care Continues to Count. *Dis Colon Rectum*. 2017 Nov;60(11):1147-1154

2. Pan CC, Kung PT, Chiu LT, et al. Patients with diabetes in pay-for performance programs have better physician continuity of care and survival. *Am J Manag Care* 2017;23:e57–e66.

3. Pereira Gray, D., Sidaway-Lee, K., White, E., Thorne, A., and Evans, P. Continuity of care with doctors – a matter of life and death? A systematic review of continuity of care and mortality. *BMJ*. 2018 (8).

4. US Pet Market Outlook Report 2021-2022 Report

HOW NON-COMPETES VIOLATE THE PUBLIC INTEREST

Columbus Medical Services LLC v. Thomas 2010

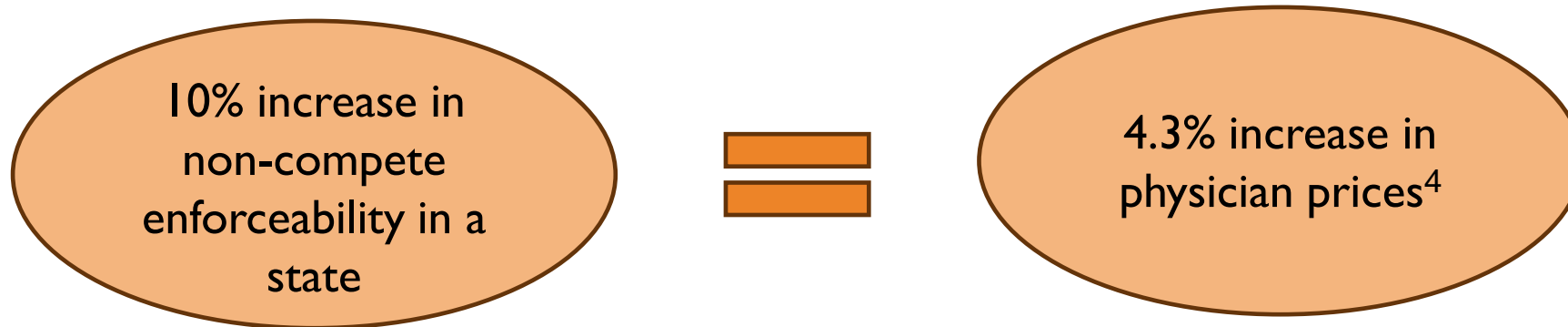
- Tennessee Supreme Court upheld the Court of Appeals ruling non-competes against the therapists **violated the public interest by disrupting the continuity of care.**
 - “The services provided by medical professionals such as physicians go well beyond merely providing goods or services.”

Ellis v. McDaniels 1979

- Nevada Supreme Court established that loss of specialty medical care **endangered the public far in excess** of any perceived danger to the business interest
 - **Protecting the public interest** to retain access to these medical services is greater than the interest to protect the integrity of the contract

HOW NON-COMPETES INCREASE COST OF CARE

- Patients visiting the **same family physician** had **39% lower** total medical costs¹
- Cost of veterinary care has increased faster than inflation for the last 20 years despite veterinary compensation decreasing^{2,3}



Eliminating non-competes would reduce aggregate medical spending by \$25 billion per year nationally⁴

1. De Maeseneer JM, De Prins L, Gosset C, Heyerick J. Provider continuity in family medicine: does it make a difference for total health care costs? *Ann Fam Med*. 2003;1(3):144-148.

2. Quedraogo F, Dicks M. Are rising veterinary salaries driving up the cost of care? *DVM360*. 2018

3. Einav I. Is American pet health care (also) uniquely inefficient? *American Economic Review: Papers & Proceedings*. 2017;107:491-495. [[Google Scholar](#)]

4. Hausman, Naomi, and Kurt Lavetti. 2021. "Physician Practice Organization and Negotiated Prices: Evidence from State Law Changes." *American Economic Journal: Applied Economics*, 13 (2): 258-96.

HOW NON-COMPETES INCREASE COSTS FOR HOSPITALS

Holy Cross Hospital v. American Anesthesiology Services of Florida;
St. Joseph's Hospital Health Center v. American Anesthesiology of Syracuse

- Both active lawsuits where hospitals state non-competes drive high prices and compel the hospital to accept the business' terms or face patient care disruptions and delays
- Costs hospitals millions to buy out non-competes to avoid interruptions in patient care

Greater Baltimore Medical Center / North American Partners in Anesthesia

- Cost hospital millions to buy out non-competes to avoid interruptions in patient care

United States and North Carolina v. Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare System

- 2018 settlement reached to prevent Carolina Healthcare System from using non-competes they had in place that drove up costs for patients

MHA opposition to HB 1388 could have significant costs to MD hospitals to continue to buy out non-competes

HOW NON-COMPETES PERMIT FRAUD

- Pediatrix billed the government and thus taxpayers for critical care services when the infants were not critically ill
- Pediatrix controls the doctors it employs with non-competes and mandatory arbitration to resolve disputes¹
- With non-competes doctors faced retaliation if they spoke up
- **One brave doctor (Daniel Hall, M.D.) finally stood up to expose the fraud**
- The Office of the US Attorney for the District of Maryland led the case and Pediatrix ordered to pay settlement to the US government of **\$25 million**



1. Kinney, E. 2008. The corporate transformation of medical specialty care: the exemplary case of neonatology. *J Law Med Ethics*. 36 (4) 790-802.

HOW NON-COMPETES DETER TALENT

Prohibiting non-competes for human and veterinary health professionals will attract talented professionals to Maryland

- **71% of surgeons** in one study stated a non-compete would deter them from accepting a job offer¹
- National veterinary corporations are actively using “no non-compete” as a recruiting tool (Rarebreed Veterinary Partners, Suveto, Destination Pet, Noah’s Animal Hospitals)
- Non-competes stifle innovation by **reducing new patents** by 16-19%, decreased break through inventions, **decreased productivity** by 30%^{2,3}

1. Sherman WF, Patel AH, Ross BJ, Lee OC, Williams CS, Savoie FH. The Impact of a NonCompete Clause on Patient Care and Orthopaedic Surgeons in the State of Louisiana: Afraid of a Little Competition? *Orthopedic Reviews*. 2022;14(4).
2. Johnson, Matthew, Michael Lipsitz, and Alison Pei (2023), “The Enforceability of Noncompete Agreements and Innovation: Evidence from State Law Changes.” NBER Working Paper 31487.
3. Mueller, Clemens (2022) “How Reduced Labor Mobility Can Lead to Inefficient Reallocation of Human Capital.” https://conference.iza.org/conference_files/LaborMarkets_2022/mueller_c32517.pdf.

HOW NON-COMPETES CAUSE THIRD PARTY HARM

Banning non competes based on third-party harm has a long-standing tradition in the United States among lawyers

Non competes are prohibited in the practice of law based on Rule 5.6 of the American Bar Association because:

“An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer.”

Harm to consumers comes from:

1. Higher prices
2. Lower quality
2. Reduced output

Despite not having non-competes the legal profession is **thriving**

55% increase
in wages of
lawyers over past
20 years



5% increase
in number of
lawyers over past
10 years

\$248 billion
industry in 2012 to
\$331 billion in 2024

<https://www.statista.com/forecasts/409737/offices-of-lawyers-revenue-in-the-us>

American Bar Association Profile of the Legal Profession Report 2023

MORE HARM CAUSED BY NON-COMPETES

Small businesses are negatively impacted by non-competes

- 35% of small business owners prevented from hiring an employee due to a non-compete¹
- 59% of small business owners approve of the FTC proposed rule to ban non-competes¹

➔ **Negative economic impact of a non-compete ripples to other small businesses in the industry**

Veterinary suicide rate averages **4x** the general population^{2,3}

- Work-related stress is a major cause of depression for veterinarians²

➔ **Non-competes prevent veterinarians from changing their working environment**

1. <https://smallbusinessmajority.org/sites/default/files/research-reports/2023-non-compete-poll-report.pdf>

2. Tomasi SE, Fechter-Leggett ED, Edwards NT, Reddish AD, Crosby AE, Nett RJ. Suicide among veterinarians in the United States from 1979 through 2015. *J Am Vet Med Assoc.* 2019 Jan 1;254(1):104-112.

3. Suicide Rates by Industry and Occupation — National Vital Statistics System, United States, CDC Report 2021

WHAT HB 1388 / SB 1182 ACCOMPLISHES

This bill **allows**:

1. Confidentiality Agreements
2. Non-solicitation Clauses
3. Return of Service Agreements



So hospitals and practice owners can protect their investment

This bill **prohibits**:

1. Non-compete Agreements



So patients can protect their right to choose their health care

So providers can stay in the local community

So cost of health care will decrease and quality of care will increase

WHY LEGISLATION IS NEEDED

Left solely to the courts to decide case precedent, many health care workers will never challenge their non-competes and this case precedent is slow to bring about change

“For every covenant that finds its way to court, there are thousands which exercise an **in terrorem** effect on employees who respect their contractual obligations and on competitors who fear legal complications if they employ a covenantor, or who are anxious to maintain gentlemanly relations with their competitors. Thus, the mobility of untold numbers of employees is restricted by the intimidation of restrictions whose severity no court would sanction.” Blake 1960 *Harvard Law Review*

Do we want doctors and vets to feel terrorized in professions that already strain providers mental health?

Does this in terrorem effect really lead to the best quality patient care?



PLEASE SUPPORT HB 1388 / SB 1182
PATIENTS AND PROVIDERS OVER PROFITS
THANK YOU