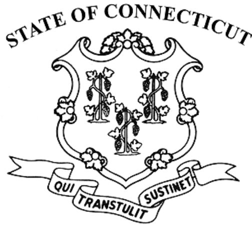

Senate

General Assembly **File No. 557**

February Session, 2016 Substitute Senate Bill No. 351

Senate, April 7, 2016

The Committee on Public Health reported through SEN. GERRATANA of the 6th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING MATTERS AFFECTING PHYSICIANS AND HOSPITALS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) (a) For purposes of this
2 section: (1) "Covenant not to compete" means any contract or
3 agreement that restricts the right of a physician to practice medicine in
4 any geographic area of the state for any period of time; (2) "physician"
5 means an individual licensed to practice medicine under chapter 370 of
6 the general statutes; and (3) "primary site where such physician
7 practices" means the office, facility or location where a majority of the
8 revenue derived from such physician's services is generated.

9 (b) Any covenant not to compete, to the extent it exceeds the
10 provisions of this section, is against public policy and shall be void and
11 unenforceable.

12 (c) (1) A covenant not to compete is valid and enforceable only if:
13 (A) The covenant not to compete is necessary to protect a legitimate

14 business interest; (B) the geographic, time and other provisions of the
15 covenant are necessary to protect such business interest; and (C) the
16 covenant not to compete is otherwise reasonable and not contrary to
17 public policy. In no event may a covenant not to compete restrict the
18 physician's competitive activities (i) for a period of more than one year,
19 or (ii) in a geographic region of more than fifteen miles from the
20 primary site where such physician practices.

21 (2) A covenant not to compete between a hospital, health system, as
22 defined in section 19a-508c of the general statutes, medical school or
23 medical foundation, organized pursuant to subdivision (1) of
24 subsection (a) of section 33-182bb of the general statutes, as amended
25 by this act, and a physician may restrict only the physician's right to
26 practice medicine with another hospital, a health system, as defined in
27 section 19a-508c of the general statutes, a medical school or a medical
28 foundation, organized pursuant to subdivision (1) of subsection (a) of
29 section 33-182bb of the general statutes, as amended by this act.

30 (d) The remaining provisions of any contract or agreement that
31 contains a covenant not to compete that is rendered void and
32 unenforceable, in whole or in part, under the provisions of this section
33 shall remain in full force and effect.

34 (e) Notwithstanding the provisions of this section, a covenant not to
35 compete shall be void if (1) the employment or contractual relationship
36 is terminated by the employer unless such termination is for good
37 cause, or (2) the contract or agreement expires.

38 (f) A covenant not to compete shall not be subject to injunctive relief
39 or specific enforcement in a court of law. Any party alleging violation
40 of a covenant not to compete may bring an action for damages. Such
41 action shall be subject to neutral binding arbitration by an arbitrator
42 appointed by the court. Damages shall be limited to actual damages
43 suffered. The party seeking enforcement of the covenant not to
44 compete shall have the burden of proving by clear and convincing
45 evidence: (1) That the covenant not to compete conforms to the
46 requirements of this section, (2) that the covenant not to compete has

47 been violated, and (3) the actual damages suffered. The costs of such
48 action shall be borne by the party bringing the action.

49 Sec. 2. Section 19a-486i of the 2016 supplement to the general
50 statutes is repealed and the following is substituted in lieu thereof
51 (*Effective October 1, 2016*):

52 (a) As used in this section:

53 (1) "Affiliation" means the formation of a relationship between two
54 or more entities that permits the entities to negotiate jointly with third
55 parties over rates for professional medical services;

56 (2) "Captive professional entity" means a partnership, professional
57 corporation, limited liability company or other entity formed to render
58 professional services in which a partner, a member, a shareholder or a
59 beneficial owner is a physician, directly or indirectly, employed by,
60 controlled by, subject to the direction of, or otherwise designated by
61 (A) a hospital, [or] (B) a hospital system, (C) a medical school, (D) a
62 medical foundation, organized pursuant to subdivision (1) of
63 subsection (a) of section 33-182bb, as amended by this act, or (E) any
64 entity that controls, is controlled by or is under common control with,
65 whether through ownership, governance, contract or otherwise,
66 another person, entity or organization described in subparagraphs (A)
67 to (D), inclusive, of this subdivision;

68 (3) "Hospital" has the same meaning as provided in section 19a-490;

69 (4) "Hospital system" means: (A) A parent corporation of one or
70 more hospitals and any entity affiliated with such parent corporation
71 through ownership, governance or membership, or (B) a hospital and
72 any entity affiliated with such hospital through ownership,
73 governance or membership;

74 (5) "Health care provider" has the same meaning as provided in
75 section 19a-17b;

76 (6) "Medical foundation" means a medical foundation formed under

77 chapter 594b;

78 (7) "Physician" has the same meaning as provided in section 20-13a;

79 (8) "Person" has the same meaning as provided in section 35-25;

80 (9) "Professional corporation" has the same meaning as provided in
81 section 33-182a;

82 (10) "Group practice" means two or more physicians, legally
83 organized in a partnership, professional corporation, limited liability
84 company formed to render professional services, medical foundation,
85 not-for-profit corporation, faculty practice plan or other similar entity
86 (A) in which each physician who is a member of the group provides
87 substantially the full range of services that the physician routinely
88 provides, including, but not limited to, medical care, consultation,
89 diagnosis or treatment, through the joint use of shared office space,
90 facilities, equipment or personnel; (B) for which substantially all of the
91 services of the physicians who are members of the group are provided
92 through the group and are billed in the name of the group practice and
93 amounts so received are treated as receipts of the group; or (C) in
94 which the overhead expenses of, and the income from, the group are
95 distributed in accordance with methods previously determined by
96 members of the group. An entity that otherwise meets the definition of
97 group practice under this section shall be considered a group practice
98 although its shareholders, partners or owners of the group practice
99 include single-physician professional corporations, limited liability
100 companies formed to render professional services or other entities in
101 which beneficial owners are individual physicians; and

102 (11) "Primary service area" means the smallest number of zip codes
103 from which the group practice draws at least seventy-five per cent of
104 its patients.

105 (b) At the same time that any person conducting business in this
106 state that files merger, acquisition or any other information regarding
107 market concentration with the Federal Trade Commission or the

108 United States Department of Justice, in compliance with the Hart-
109 Scott-Rodino Antitrust Improvements Act, 15 USC 18a, where a
110 hospital, hospital system or other health care provider is a party to the
111 merger or acquisition that is the subject of such information, such
112 person shall provide written notification to the Attorney General of
113 such filing and, upon the request of the Attorney General, provide a
114 copy of such merger, acquisition or other information.

115 (c) Not less than thirty days prior to the effective date of any
116 transaction that results in a material change to the business or
117 corporate structure of a group practice, the parties to the transaction
118 shall submit written notice to the Attorney General of such material
119 change. For purposes of this subsection, a material change to the
120 business or corporate structure of a group practice includes: (1) The
121 merger, consolidation or other affiliation of a group practice with (A)
122 another group practice that results in a group practice comprised of
123 eight or more physicians, or (B) a hospital, hospital system, captive
124 professional entity, medical foundation or other entity organized or
125 controlled by such hospital or hospital system; (2) the acquisition of all
126 or substantially all of (A) the properties and assets of a group practice,
127 or (B) the capital stock, membership interests or other equity interests
128 of a group practice by (i) another group practice that results in a group
129 practice comprised of eight or more physicians, or (ii) a hospital,
130 hospital system, captive professional entity, medical foundation or
131 other entity organized or controlled by such hospital or hospital
132 system; (3) the employment of all or substantially all of the physicians
133 of a group practice by (A) another group practice that results in a
134 group practice comprised of eight or more physicians, or (B) a hospital,
135 hospital system, captive professional entity, medical foundation or
136 other entity organized by, controlled by or otherwise affiliated with
137 such hospital or hospital system; and (4) the acquisition of one or more
138 insolvent group practices by (A) another group practice that results in
139 a group practice comprised of eight or more physicians, or (B) a
140 hospital, hospital system, captive professional entity, medical
141 foundation or other entity organized by, controlled by or otherwise
142 affiliated with such hospital or hospital system.

143 (d) (1) The written notice required under subsection (c) of this
144 section shall identify each party to the transaction and describe the
145 material change as of the date of such notice to the business or
146 corporate structure of the group practice, including: (A) A description
147 of the nature of the proposed relationship among the parties to the
148 proposed transaction; (B) the names and specialties of each physician
149 that is a member of the group practice that is the subject of the
150 proposed transaction and who will practice medicine with the
151 resulting group practice, hospital, hospital system, captive professional
152 entity, medical foundation or other entity organized by, controlled by,
153 or otherwise affiliated with such hospital or hospital system following
154 the effective date of the transaction; (C) the names of the business
155 entities that are to provide services following the effective date of the
156 transaction; (D) the address for each location where such services are
157 to be provided; (E) a description of the services to be provided at each
158 such location; and (F) the primary service area to be served by each
159 such location.

160 (2) Not later than thirty days after the effective date of any
161 transaction described in subsection (c) of this section, the parties to the
162 transaction shall submit written notice to the Commissioner of Public
163 Health. Such written notice shall include, but need not be limited to,
164 the same information described in subdivision (1) of this subsection.
165 The commissioner shall post a link to such notice on the Department of
166 Public Health's Internet web site.

167 (e) Not less than thirty days prior to the effective date of any
168 transaction that results in an affiliation between one hospital or
169 hospital system and another hospital or hospital system, the parties to
170 the affiliation shall submit written notice to the Attorney General of
171 such affiliation. Such written notice shall identify each party to the
172 affiliation and describe the affiliation as of the date of such notice,
173 including: (1) A description of the nature of the proposed relationship
174 among the parties to the affiliation; (2) the names of the business
175 entities that are to provide services following the effective date of the
176 affiliation; (3) the address for each location where such services are to

177 be provided; (4) a description of the services to be provided at each
178 such location; and (5) the primary service area to be served by each
179 such location.

180 (f) Written information submitted to the Attorney General pursuant
181 to subsections (b) to (e), inclusive, of this section shall be maintained
182 and used by the Attorney General in the same manner as provided in
183 section 35-42.

184 (g) No partnership, professional corporation, limited liability
185 company or other entity formed to render professional services shall
186 be a captive professional entity of an insurance company.

187 **[**(g)**]** (h) Not later than December 31, 2014, and annually thereafter,
188 each hospital and hospital system shall file with the Attorney General
189 and the Commissioner of Public Health a written report describing the
190 activities of the group practices owned or affiliated with such hospital
191 or hospital system. Such report shall include, for each such group
192 practice: (1) A description of the nature of the relationship between the
193 hospital or hospital system and the group practice; (2) the names and
194 specialties of each physician practicing medicine with the group
195 practice; (3) the names of the business entities that provide services as
196 part of the group practice and the address for each location where such
197 services are provided; (4) a description of the services provided at each
198 such location; and (5) the primary service area served by each such
199 location.

200 **[**(h)**]** (i) Not later than December 31, 2014, and annually thereafter,
201 each group practice comprised of thirty or more physicians that is not
202 the subject of a report filed under subsection **[**(g)**]** (h) of this section
203 shall file with the Attorney General and the Commissioner of Public
204 Health a written report concerning the group practice. Such report
205 shall include, for each such group practice: (1) The names and
206 specialties of each physician practicing medicine with the group
207 practice; (2) the names of the business entities that provide services as
208 part of the group practice and the address for each location where such
209 services are provided; (3) a description of the services provided at each

210 such location; and (4) the primary service area served by each such
211 location.

212 **[**(i)**]** <u>(j)</u> Not later than December 31, 2015, and annually thereafter,
213 each hospital and hospital system shall file with the Attorney General
214 and the Commissioner of Public Health a written report describing
215 each affiliation with another hospital or hospital system. Such report
216 shall include: (1) The name and address of each party to the affiliation;
217 (2) a description of the nature of the relationship among the parties to
218 the affiliation; (3) the names of the business entities that provide
219 services as part of the affiliation and the address for each location
220 where such services are provided; (4) a description of the services
221 provided at each such location; and (5) the primary service area served
222 by each such location.

223 Sec. 3. Section 19a-508d of the 2016 supplement to the general
224 statutes is repealed and the following is substituted in lieu thereof
225 (*Effective October 1, 2016*):

226 Each health care provider that refers a patient to another health care
227 provider who is not a member of the same partnership, professional
228 corporation or limited liability company formed to render professional
229 services but is affiliated with the referring health care provider shall
230 notify the patient, in writing, that the health care providers are
231 affiliated. Such notice shall also **[**(1)**]** inform the patient that the patient
232 <u>(1)</u> is not required to see the provider to whom he or she is referred
233 and that the patient has a right to seek care from the health care
234 provider chosen by the patient, and (2) **[**provide the patient with the
235 Internet web site and toll-free telephone number of the**]** <u>may contact</u>
236 <u>the</u> patient's health carrier to obtain information regarding <u>other</u> in-
237 network health care providers and estimated out-of-pocket costs for
238 the referred service. A health care provider is not required to provide
239 notice to a patient pursuant to this section if the health care provider
240 otherwise provides substantially similar notice to patients pursuant to
241 federal law. For purposes of this section, "affiliated" means a
242 relationship between two or more health care providers that permits

243 the health care providers to negotiate jointly or as a member of the
244 same group of health care providers with third parties over rates for
245 professional medical services. "Affiliated" does not include
246 participation in an accountable care organization or similar value-
247 based collaborative care model where the participating providers do
248 not jointly negotiate with third parties over rates for professional
249 medical services.

250 Sec. 4. (*Effective from passage*) The Commissioner of Public Health
251 shall study the licensure of limited service health clinics. Not later than
252 December 1, 2016, the commissioner shall submit a report, in
253 accordance with the provisions of section 11-4a of the general statutes,
254 to the joint standing committee of the General Assembly having
255 cognizance of matters relating to public health concerning the results
256 of such study. Such report shall include, but need not be limited to,
257 recommendations for legislation to establish a licensure category for
258 limited service health clinics.

259 Sec. 5. Section 19a-509 of the general statutes is repealed and the
260 following is substituted in lieu thereof (*Effective October 1, 2016*):

261 (a) All hospitals and all nursing homes shall include on their
262 admission forms a question as to whether a person is a veteran or the
263 spouse of a veteran. All hospitals shall include on their admission
264 forms a conspicuous notice that a self-pay patient may, upon request,
265 receive a copy of the hospital charges related to such patient. Such
266 admission forms shall also include a conspicuous notice specifying the
267 name and contact information of a person whom the patient may
268 contact to request a copy of the hospital charges related to the patient.

269 (b) All hospitals shall include in their bills to patients, and to third
270 party payors unless previously furnished, (1) an explanation of any
271 items identified by any code or by initials, and (2) the hospital's cost-
272 to-charge ratio. Upon request by a self-pay patient, a hospital shall
273 provide such patient with an itemized bill not later than thirty days
274 after the date of such request. Such itemized bill shall identify, in plain
275 language pursuant to chapter 742, each individual service, supply or

276 medication provided to the patient by the hospital and the specific
277 charge for such service, supply or medication.

278 (c) No nursing home may bill a patient or third party payor an
279 amount for telephone service, community antenna television service or
280 other telecommunications service, which amount includes a surcharge
281 or administrative fee or which otherwise exceeds the amount paid by
282 the nursing home to provide such service.

283 Sec. 6. Section 33-182aa of the general statutes is repealed and the
284 following is substituted in lieu thereof (*Effective October 1, 2016*):

285 As used in this chapter:

286 (1) "Affiliate" means any person that directly or indirectly through
287 one or more intermediaries, controls or is controlled by or is under
288 common control with another person. A person is deemed controlled
289 by another person if the other person, or one of that other person's
290 affiliates, officers, agents or management employees, acts as a general
291 partner or manager of the person in question;

292 (2) "Certificate of incorporation" means a certificate of incorporation,
293 as defined in section 33-1002, or any predecessor statute thereto;

294 (3) "Hospital" means a hospital licensed pursuant to chapter 368v;

295 (4) "Health system" means a business entity consisting of a parent
296 corporation of one or more hospitals licensed pursuant to chapter
297 368v, and affiliated through governance, membership or some other
298 means;

299 (5) "Medical school" means a school of allopathic medicine leading
300 to the M.D. degree, accredited by the Liaison Committee on Medical
301 Education, and affiliated through governance with or part of a
302 university that is either incorporated in this state or established
303 pursuant to any provision of the general statutes and accredited by the
304 New England Association of Schools and Colleges Commission on
305 Institutions of Higher Education; **[**and**]**

306 (6) "Provider" means a physician licensed under chapter 370, a
307 chiropractor licensed under chapter 372, an optometrist licensed under
308 chapter 380 or a podiatrist licensed under chapter 375; and

309 (7) "Independent practice association" means an organization of
310 independent providers and other licensed health professionals that
311 provide services to and on behalf of its members or owners. Such
312 services may include (A) practice management and administrative
313 services such as accounting, payroll, billing, human resource and
314 information technology services, (B) contract management and
315 managed care organizations, and (C) collaborative efforts to
316 implement value-based care models.

317 Sec. 7. Section 33-182bb of the general statutes is repealed and the
318 following is substituted in lieu thereof (*Effective October 1, 2016*):

319 (a) (1) Any hospital, health system or medical school may organize
320 and become a member of a nonprofit medical foundation under the
321 provisions of chapter 602 for the purpose of practicing medicine and
322 providing health care services as a medical foundation through
323 employees or agents of such medical foundation who are providers.
324 **[**Such**]**

325 (2) Any independent practice association or other business entity
326 (A) that is registered to do business in this state pursuant to title 33 or
327 34, (B) that has a principal place of business in the state, and (C) that
328 has sixty per cent or more of the entity's ownership and control held
329 individually or jointly by an independent practice association, a
330 provider, or a professional partnership, professional corporation or
331 limited liability company that is not a captive professional entity, as
332 defined in section 19a-486i, as amended by this act, and that is formed
333 to render professional medical services, and each partner, shareholder
334 or member of such professional partnership, professional corporation
335 or limited liability company is a physician licensed under chapter 370,
336 may organize and become a member of a medical foundation for the
337 purpose of practicing medicine and providing health care services as a
338 medical foundation through employees or agents of such medical

339 foundation who are providers. The ownership or control of any
340 independent practice association or other business entity organizing a
341 medical foundation pursuant to this subdivision may not include any
342 hospital, health system, medical school or medical foundation
343 organized pursuant to subdivision (1) of this subsection or insurance
344 company.

345 (3) A medical foundation shall be governed by a board of directors,
346 which shall consist of an equal or greater number of providers than
347 nonprovider employees of the members, in addition to such other
348 directors as may be elected by the members. The authority to appoint
349 or elect board members shall not be granted to any person or entity
350 that is not a member of the medical foundation.

351 [(2)] (4) Notwithstanding the provisions of this subsection, (A) no
352 employee or representative of a for-profit hospital, for-profit health
353 system, for-profit medical school or any entity that owns or controls a
354 for-profit hospital, for-profit health system or for-profit medical school
355 may serve on the board of directors of a medical foundation organized
356 by a nonprofit hospital, nonprofit health system or nonprofit medical
357 school or a medical foundation organized pursuant to subdivision (2)
358 of this subsection; (B) no employee or representative of a nonprofit
359 hospital, nonprofit health system, nonprofit medical school or any
360 entity that owns or controls a nonprofit hospital, nonprofit health
361 system or nonprofit medical school may serve on the board of
362 directors of a medical foundation organized by a for-profit hospital,
363 for-profit health system or for-profit medical school or a medical
364 foundation organized pursuant to subdivision (2) of this subsection;
365 and (C) no person shall serve on the board of directors of [a] more than
366 one medical foundation. [organized by a for-profit hospital, for-profit
367 health system or for-profit medical school and, at the same time, serve
368 on the board of directors of a medical foundation organized by a
369 nonprofit hospital, nonprofit health system or nonprofit medical
370 school.]

371 (b) Any medical foundation organized on or after July 1, 2009, shall

372 file a copy of its certificate of incorporation and any amendments to its
373 certificate of incorporation with the Office of Health Care Access
374 division of the Department of Public Health not later than ten business
375 days after the medical foundation files such certificate of incorporation
376 or amendment with the Secretary of the State pursuant to chapter 602.

377 (c) Any medical group clinic corporation formed under chapter 594
378 of the general statutes, revision of 1958, revised to 1995, which amends
379 its certificate of incorporation pursuant to subsection (a) of section 33-
380 182cc, shall file with the Office of Health Care Access division of the
381 Department of Public Health a copy of its certificate of incorporation
382 and any amendments to its certificate of incorporation, including any
383 amendment to its certificate of incorporation that complies with the
384 requirements of subsection (a) of section 33-182cc, not later than ten
385 business days after the medical foundation files its certificate of
386 incorporation or any amendments to its certificate of incorporation
387 with the Secretary of the State.

388 (d) Any medical foundation, regardless of when organized, shall file
389 notice with the Office of Health Care Access division of the
390 Department of Public Health and the Secretary of the State of its
391 liquidation, termination, dissolution or cessation of operations not later
392 than ten business days after a vote by its board of directors or
393 members to take such action. A medical foundation shall, annually,
394 provide the office with (1) a statement of its mission, (2) the name and
395 address of the organizing members, (3) the name and specialty of each
396 physician employed by or acting as an agent of the medical
397 foundation, (4) the location or locations where each such physician
398 practices, (5) a description of the services [it provides,] provided at
399 each such location, (6) a description of any significant change in its
400 services during the preceding year, (7) a copy of the medical
401 foundation's governing documents and bylaws, (8) the name and
402 employer of each member of the board of directors, and (9) other
403 financial information as reported on the medical foundation's most
404 recently filed Internal Revenue Service return of organization exempt
405 from income tax form, or any replacement form adopted by the

406 Internal Revenue Service, or, if such medical foundation is not
407 required to file such form, information substantially similar to that
408 required by such form. The Office of Health Care Access shall make
409 such forms and information available to members of the public and
410 accessible on said office's Internet web site.

411 (e) A medical foundation [shall not operate for profit and] may
412 operate at such locations as are designated by its members.

413 (f) A hospital, health system, [or] medical school, independent
414 practice association or other business entity authorized to organize a
415 medical foundation may organize and be a member of no more than
416 one medical foundation.

417 Sec. 8. Section 33-182ff of the general statutes is repealed and the
418 following is substituted in lieu thereof (*Effective October 1, 2016*):

419 [Chapter 602 is applicable] The provisions of titles 33 and 34, as
420 applicable, shall apply to a medical foundation organized pursuant to
421 this chapter, except to the extent that any of the provisions of this
422 chapter are interpreted to be in conflict with [the] such provisions, [of
423 said chapter 602,] in which event the provisions of this chapter shall
424 take precedence with respect to such medical foundation. A medical
425 foundation organized under this chapter may consolidate or merge
426 only with another medical foundation organized under this chapter or
427 under chapter 594 of the general statutes, revision of 1958, revised to
428 1995, that is duly organized pursuant to this chapter, a professional
429 corporation organized under chapter 594a, a limited liability company
430 organized under chapter 613 or a partnership or limited liability
431 partnership organized under chapter 614, if such corporation,
432 company or partnership is organized to render the same specific
433 professional services.

434 Sec. 9. Subsection (e) of section 17b-59d of the 2016 supplement to
435 the general statutes is repealed and the following is substituted in lieu
436 thereof (*Effective October 1, 2016*):

437 (e) Notwithstanding the provisions of subsection (d) of this section,
438 [if,] on or before [January] July 1, 2016, the Commissioner of Social
439 Services, [in consultation] with the approval of the State Health
440 Information Technology Advisory Council, established pursuant to
441 section 17b-59f, [submits] shall submit a plan to the Secretary of the
442 Office of Policy and Management for the [establishment] procurement
443 of a State-wide Health Information Exchange consistent with
444 subsections (a), (b) and (c) of this section. [, and such plan is approved
445 by the secretary] After receiving the secretary's approval of the plan,
446 the commissioner [may] shall implement such plan and enter into any
447 contracts or agreements to implement such plan to procure a health
448 information exchange. The Commissioner of Social Services shall not
449 acquire assets intended for use in the health information exchange
450 prior to entering into a contract to procure the health information
451 exchange.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage*	New section
Sec. 2	*October 1, 2016*	19a-486i
Sec. 3	*October 1, 2016*	19a-508d
Sec. 4	*from passage*	New section
Sec. 5	*October 1, 2016*	19a-509
Sec. 6	*October 1, 2016*	33-182aa
Sec. 7	*October 1, 2016*	33-182bb
Sec. 8	*October 1, 2016*	33-182ff
Sec. 9	*October 1, 2016*	17b-59d(e)

Statement of Legislative Commissioners:

In Section 1(f)(1), "complies with this section" was changed to "conforms to the requirements of this section"; in the last sentence of Section 7(a)(2), "medical school, medical foundation" was changed to "medical school or medical foundation" for clarity; and in Section 9, "if," was bracketed for clarity and internal consistency.

PH *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 17 $	FY 18 $
UConn Health Ctr.	General and Clinical Funds – Cost/Revenue Loss	Significant	Significant
Social Services, Dept.	GF - Cost	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

Section 1 of the bill results in a potential significant cost and revenue loss to the University of Connecticut Health Center (UCHC) by setting limits on physician non-compete agreements. Non-compete agreements are used to protect initial investments, and ensure that physicians do not leave the institution to develop or join competing practices close by once they are acclimated to the area and have developed a patient base. Limiting such agreements would require the UCHC to provide greater inducements for physicians to remain with the UCHC. Additionally the UCHC could lose significant clinical revenue if patients follow physicians to their new practices.

Section 9 will result in a cost to the Department of Social Services (DSS) due to requiring, rather than allowing, the department to implement a plan for the procurement of a State-wide Health Information Exchange. Under current law, plan implementation can be accomplished without procurement. The actual fiscal impact of the bill's provisions is dependent on the cost of the contract.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis
sSB 351

AN ACT CONCERNING MATTERS AFFECTING PHYSICIANS AND HOSPITALS.

SUMMARY:

This bill:

1. sets limits on physician non-compete agreements, such as restricting them to no more than one year and a 15-mile radius from the physician's primary practice site;

2. allows independent practice associations and other physician-controlled entities not affiliated with a hospital to establish a for-profit or nonprofit medical foundation and makes other changes concerning medical foundations;

3. requires the Department of Social Services (DSS) commissioner to submit a plan to procure a statewide health information exchange, rather than allowing him to submit a plan to establish an exchange, and makes related changes;

4. prohibits any entity formed to render professional services from being a "captive professional entity" of an insurance company and expands an existing definition of that term;

5. requires hospital bills to include the hospital's cost-to-charge ratio;

6. changes the required information providers must give to patients when referring the patient to an affiliated provider; and

7. requires the Department of Public Health (DPH) commissioner to study and report on the possible licensure of limited service

health clinics.

EFFECTIVE DATE: October 1, 2016, except upon passage for the provisions on physician non-compete agreements and the DPH commissioner's study of limited service health clinics.

§ 1 — PHYSICIAN NON-COMPETE AGREEMENTS

The bill sets limitations on physician covenants not to compete—i.e., contracts or agreements that restrict a physician's right to practice medicine in any geographic area of the state for any period of time. Such covenants that exceed what is allowed by the bill are against public policy and are void and unenforceable.

It appears that the bill applies to existing contracts. If so, it is unclear how the bill comports with the Contracts Clause of the U.S. Constitution (see BACKGROUND).

Allowable Scope and Restrictions

Under the bill, a physician covenant not to compete is valid and enforceable only if the covenant:

1. is necessary to protect a legitimate business interest and the covenant's geographic reach, time limitation, and other provisions are necessary to protect that interest, and

2. is otherwise reasonable and not contrary to public policy.

The bill prohibits any such covenant from restricting a physician's competitive activities (1) for longer than one year or (2) beyond 15 miles from the primary site where the physician practices (i.e., the office, facility, or location from where a majority of the revenue from the physician's services is generated).

The bill sets an additional restriction for covenants between physicians and (1) hospitals, health systems, or medical schools or (2) medical foundations formed by any such entities. It allows such covenants to restrict a physician's right to practice only with another such entity or medical foundation.

It also provides that a physician covenant not to compete is void if (1) it expires or (2) the employer terminates the employment or contractual relationship, unless that termination is for good cause.

If a covenant not to compete is rendered void and unenforceable under the bill, the remaining provisions of the contract remain in full force and effect.

Enforcement

The bill prohibits physician covenants not to compete from being subject to injunctive relief or specific enforcement in a court. Instead, a party alleging a violation of such a covenant may bring an action for actual damages suffered, subject to neutral binding arbitration conducted by a court-appointed arbitrator. The party bringing the action must pay the action's costs.

The party seeking to enforce the covenant must prove by clear and convincing evidence (1) that the covenant conforms to the bill's requirements, (2) that the covenant was violated, and (3) the actual damages suffered.

§§ 6-8 — MEDICAL FOUNDATIONS

Authority Extended to Independent Practice Associations and Other Specified Entities

Current law (1) authorizes a hospital, health system, or medical school to organize and become a member of a medical foundation to practice medicine and provide health care services as a medical foundation through its employees or agents who are physicians, chiropractors, optometrists, or podiatrists ("providers") and (2) prohibits a medical foundation from operating for profit.

The bill allows certain other entities to form for-profit or nonprofit medical foundations. This applies to independent practice associations and certain other entities formed to render professional medical services.

For this authority to apply, the independent practice association or

other business entity must:

1. be registered to do business in Connecticut under applicable state law and have its principal place of business in the state:

2. have at least 60% of its ownership and control held individually or jointly by an independent practice association, a provider, or a professional partnership, professional corporation, or limited liability company (LLC) that is not a “captive professional entity” (as defined in section 2);

3. be formed to provide professional medical services; and

4. not be owned or controlled in whole or part by a hospital, health system, medical school, or medical foundation organized by any of them.

Also, if the entity is a partnership, professional corporation, or LLC, each partner, shareholder, or member must be a physician.

Under the bill, an “independent practice association” is an organization of independent providers and other licensed health professionals that provides services to and on behalf of its members or owners, including (1) practice management and administrative services, such as accounting, payroll, billing, human resources, and information technology, (2) contract management and managed care organizations, and (3) collaborative efforts to implement value-based care models.

By law and the bill, an entity may organize and join no more than one medical foundation.

Current law provides that the non-stock corporation law applies to a medical foundation organized under the medical foundation law, except that any of the medical foundation law’s provisions that conflict with the non-stock corporation law are controlling. The bill makes a conforming change for new medical foundations that are subject to other business entity laws, specifying that the medical foundation law

controls in the case of a conflict.

Board of Directors

As under existing law, a medical foundation must be governed by a board of directors, with providers comprising at least half of the board.

The bill prohibits anyone who is employed by, represents, or owns or controls a hospital, health system, or medical school (whether nonprofit or for-profit) from serving on the board of a medical foundation organized by an independent practice association or other entity formed to render professional medical services as described above. Existing law prohibits anyone who is employed by, represents, or owns or controls a for-profit hospital, health system, or medical school from serving on the board of a medical foundation organized by such a nonprofit entity and vice versa.

Current law prohibits an individual from simultaneously serving on the boards of a medical foundation organized by a for-profit and nonprofit entity. The bill expands this by prohibiting anyone from serving on the board of more than one medical foundation, however organized.

Annual Reporting Requirements

Existing law requires medical foundations to file specified information annually with DPH's Office of Health Care Access (OHCA). The bill (1) extends this requirement to the new medical foundations it authorizes and (2) adds to the information that all medical foundations must report.

In addition to what is required by current law, the bill requires medical foundations to annually provide to OHCA:

1. the names and addresses of their organizing members,
2. the name and specialty of each physician employed by or acting as an agent of the medical foundation and the locations where he or she practices,

3. the name and employer of each board member, and

4. a copy of their governing documents and bylaws (under existing law and the bill, medical foundations must file their certificates of incorporation with OHCA).

Under current law, this required annual reporting includes a description of the medical foundation's services. The bill specifies that this must be a description of the services provided at each location where a physician employed by, or acting as an agent of the foundation, practices.

By law and under the bill, OHCA must make this information available to the public and accessible on its website.

§ 9 — STATEWIDE HEALTH INFORMATION EXCHANGE PLAN

By law, DSS has administrative authority over the Statewide Health Information Exchange (which is not yet operational).

Current law establishes a procedure for the commissioner to enter a contract to establish the exchange without issuing a request for proposals. He may do so if (1) by January 1, 2016 and in consultation with the State Health Information Technology Advisory Council, he submitted a plan, consistent with the law's requirements for the exchange, to the Office of Policy and Management secretary and (2) the secretary approves the plan.

The bill instead requires the commissioner, by July 1, 2016 and with the council's approval, to submit a plan to the secretary to procure a statewide health information exchange consistent with the law's requirements. (This section does not take effect until October 1, 2016.)

The bill requires the commissioner, after the secretary approves the plan, to implement it and enter any necessary contracts to procure such an exchange. It prohibits the commissioner from acquiring assets intended for the exchange before entering such a contract.

§ 2 — CAPTIVE PROFESSIONAL ENTITIES

The bill prohibits partnerships, professional corporations, LLCs, or other entities formed to render professional services from being captive professional entities of an insurance company.

For this purpose, it expands an existing definition of "captive professional entity" that applies to notice requirements of material changes to certain physician group practices (see BACKGROUND).

Current law defines a captive professional entity as a professional corporation, LLC, or other entity formed to render professional services in which a beneficial owner is a physician employed by or otherwise designated by a hospital or hospital system. The bill (1) specifies that a partnership may be a captive professional entity, (2) adds to the types of relationships the physician may have to the employing or similar organization, and (3) adds to the types of such organizations.

Thus, the bill defines a captive professional entity as any partnership, professional corporation, LLC, or other entity formed to render professional services in which a partner, member, shareholder, or beneficial owner is a physician directly or indirectly employed by, controlled by, subject to the direction of, or otherwise designated by:

1. a hospital, hospital system, or medical school, or medical foundation formed by a hospital, hospital system, or medical school; or

2. an entity that controls, is controlled by, or is under common control with any of these, whether through ownership, governance, contract, or otherwise.

This definition also applies to the bill's provisions on medical foundations (see above).

§ 5 — COST-TO-CHARGE RATIO ON HOSPITAL BILLS

The bill requires hospitals to include their cost-to-charge ratio on bills to (1) patients and (2) third party payers unless provided to such

payers already.

§ 3 — NOTICE OF REFERRAL TO AFFILIATED PROVIDERS

By law, health care providers generally must give patients written notice when referring them to an affiliated provider who is not a member of the same partnership, professional corporation, or LLC as the referring provider.

For this purpose, current law defines "affiliated" as a relationship between two or more providers that permits them to negotiate, jointly or as members of a provider group, with third parties over rates for professional medical services. The bill specifies that this does not include participating in an accountable care organization or similar value-based collaborative care model where the participating providers do not jointly negotiate such rates with third parties.

The bill also eliminates a requirement that the required notice include the website and phone number of the patient's health carrier from which to obtain information on in-network providers and estimated out-of-pocket costs. Instead, it requires the notice to inform the patient that he or she may contact his or her carrier to obtain information on other in-network providers and such estimated costs.

§ 4 — STUDY OF LIMITED SERVICE HEALTH CLINIC LICENSURE

The bill requires the DPH commissioner to study the licensure of limited service health clinics. By December 1, 2016, he must report on the study to the Public Health Committee, including on recommendations for legislation to establish a licensure category for these clinics.

BACKGROUND

Contracts Clause

The Contracts Clause of the U.S. Constitution (Article I, Section 10) bars states from passing laws that impair the obligation of contracts. When analyzing an alleged contracts clause violation, the threshold inquiry for a court is whether a state law has substantially impaired a

contractual relationship. If so, in deciding whether to uphold the law at issue, the court must determine whether the (1) law has a legitimate and important public purpose and (2) adjustment of the rights of the parties to the contractual relationship was reasonable and appropriate in light of that purpose (*Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411-413 (1983)).

Notice of Material Change to Physician Group Practice

By law, parties engaging in a transaction that materially changes a physician group practice must notify the (1) attorney general at least 30 days before the transaction takes effect and (2) DPH commissioner no later than 30 days after it takes effect. For this purpose, a material change includes any of the following transactions between a physician group and various entities, including a captive professional entity:

1. a merger, consolidation, or affiliation;
2. the acquisition of all or substantially all of the physician group's property and assets, capital stock, membership interests, or other equity interests;
3. the employment of all or substantially all of the group's physicians; or
4. the acquisition of an insolvent group practice.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute
Yea 18 Nay 10 (03/21/2016)