



Charles N. Kahn III  
President and CEO

July 1, 2021

Carl Lisman  
President  
Uniform Law Commission  
111 N. Wabash Avenue, Suite 1010  
Chicago, Illinois 60602

Dear Mr. Lisman:

On behalf of the Federation of American Hospitals (FAH), we appreciate the opportunity to provide insight on the Uniform Law Commission's (ULC) draft uniform law provisions on non-compete agreements for health care providers. The FAH is the national representative of more than 1,000 leading tax-paying hospitals and health systems throughout the United States. FAH members provide patients and communities with access to high-quality, affordable care in both urban and rural areas across 46 states, plus Washington, DC and Puerto Rico. Our members include teaching, acute, inpatient rehabilitation, behavioral health, and long-term care hospitals and provide a wide range of inpatient, ambulatory, post-acute, emergency, children's, and cancer services.

The FAH believes that the current draft blanket prohibition on non-compete agreements for health care providers is overreaching. We urge the ULC to remove the section prohibiting non-compete agreements with health care providers or, alternatively, redraft the guidance to consider how to protect reasonable non-compete agreements with health care providers. If the latter case, the ULC should seek guidance from health care stakeholders to draft a policy to protect reasonable non-compete agreements. The FAH would welcome the opportunity to work with the ULC in this process.

If adopted by the ULC and enacted by state legislatures, the draft blanket prohibition would fundamentally alter the ability of employers to include non-competition clauses in their employment agreements with physicians and other health care workers. Currently, with respect to providers, there is no proposed carve-out for non-competition agreements in connection with the sale of a business or a physician practice, as is provided for under most current state laws. The inability for buyers to restrict physician sellers in connection with the sale of their business would have a material impact on health care transactions and is a significant reversal of widely accepted restrictive covenant approaches under current State law.

There are many pro-competitive reasons to use non-compete covenants in this industry, especially as the covenants are only enforceable if they protect a legitimate interest. This is a tool used by hospitals to ensure their communities can provide access to high quality care. It would be very difficult for health care providers to invest considerable resources in an arrangement for the benefit of a local community if there was not the ability to use non-compete clauses to protect these investments and provide the intended benefit. This would accelerate access to care issues, such as in rural areas, as a reasonable non-compete agreement is necessary to assure continuity of care in vulnerable communities.

Accordingly, the FAH urges the ULC to either eliminate the ban on non-compete agreements with respect to health care providers or fully consider the issue through engagement with stakeholders while redrafting new guidance. Please let me know if you have any questions or wish to discuss further.

Sincerely,

A handwritten signature in black ink, appearing to be "Andrew M. ...". The signature is fluid and cursive, with a large initial "A" and a long horizontal stroke at the end.