CONNECTICUT HOSPITAL ASSOCIATION

TESTIMONY OF
CONNECTICUT HOSPITAL ASSOCIATION
SUBMITTED TO THE
PUBLIC HEALTH COMMITTEE
MONDAY, MARCH 7, 2016

SB 351, An Act Concerning Matters Affecting Physicians And Hospitals

The Connecticut Hospital Association (CHA) appreciates this opportunity to submit testimony concerning **SB 351, An Act Concerning Matters Affecting Physicians And Hospitals**.

Before commenting on the bill, it's important to point out that Connecticut hospitals provide core healthcare services to all of the people in Connecticut, 24 hours a day, regardless of ability to pay. Connecticut hospitals offer safe, accessible, equitable, affordable, patient-centered care that protects and improves peoples' lives.

SB 351 makes several changes to the laws impacting hospitals, healthcare, and physicians. CHA has concerns with several sections of the bill.

Section 1 prohibits, with very narrow exceptions, a covenant not to compete in a physician's employment contract or in any other contract for professional services. In general terms, Section 1 prohibits a covenant not to compete if such covenant has a restrictive term of longer than two years, or is geographically broader than fifteen miles from the physician's primary practice location "as set by the terms of the contract." If the contract is with a hospital, health system, medical school, or medical foundation, the covenant not to compete is further limited in that it may only restrict a physician from practicing with another hospital, health system, medical school, or medical foundation. As written, CHA has several concerns with the section. First, Section 1 treats physician contracts with hospitals, health systems, medical schools, and medical foundations differently than physician contracts with other entities and groups that contract for a physician's identical services. If the state has an interest in protecting physicians from restrictive covenants, there is no reason that different rules should apply to hospitals, health systems, medical schools, and medical foundations than apply to any other physician practice group.

Second, Section 1 sets a geographic restriction at fifteen miles "from the primary site where such physician practices under the terms of such agreement or contract." The geographic limit of 15 miles is too limiting and should be increased. For many physician specialties, patients come from a broader geography than is represented by a 15 mile radius. It is also entirely unclear what is meant by the primary site as set by the terms of the contract.

Sections 2 and 3 attempt to close a loophole in Connecticut law that currently allows an entity that does not have a healthcare license or act through licensed providers, including an insurer, to purchase or assume business control of a physician practice and not be subject to the Certificate of Need laws or the reporting requirement to the Attorney General. As drafted, Sections 2 and 3 partly close the loophole, but not completely. Section 2 should be expanded to further amend Connecticut General Statutes Section 19a-486i to cover physician group arrangements with any insurance company or other entity "or its affiliate or subsidiary where the management or control of the group practice will be carried out by the business entity after the merger, consolidation or other affiliation."

Section 4 appears to codify Connecticut's corporate practice of medicine doctrine. As drafted, CHA opposes Section 4, which would impact every licensed healthcare provider in the state. First, Section 4 only partly captures the corporate practice of medicine doctrine as set forth in a 1954 Connecticut Attorney General Opinion, its ensuing case law, and subsequent statutory enactments that have an effect on the corporate practice of medicine, such as the Medical Foundation Act. The 1954 Connecticut Attorney General Opinion clearly and explicitly exempts nonprofit hospitals from the prohibition of the corporate practice of medicine, and there has been no contrary suggestion or inference in any opinion, enforcement, review, activity, or ruling since – as it is generally accepted that in Connecticut, a hospital must act through its physicians and staff, some of whom will be employees of the hospital. Because the bill does not exempt hospitals—even though they have always been exempt—the new law would draw into question which staff can deliver care at a hospital, and implies that such staff would need to be employed by the hospital. In fact, the language states that an entity, such as a hospital, is required to hire physicians to work for them. The vast majority of physicians who provide care at hospitals are not employed, but are private attending physicians who have staff privileges. We do not believe that is the intended purpose of Section 4; however that is its effect.

Second, Section 4 limits the type of oversight required by, for example, the Connecticut Medical Examining Board, The Joint Commission, and CMS through its Medicare Conditions of Participation, and others. Hospitals and their medical committees are required to design, train, and enforce various rules through their medical staff – whether the physicians are employed or not. CHA and its hospitals respect the importance of physician judgment and the sanctity of the physician-patient relationship, but federal law and all modern measures for quality control, quality improvement, and patient safety dictate that hospitals play a significant role in how the organized medical staff oversees its members for services delivered at hospitals. As drafted, this would prohibit a hospital from requiring a physician to comply with state or federal laws or best or evidenced-based practice, even though that would likely disqualify the hospital from participation in Medicaid or Medicare. If the Committee decides to take action on Section 4, CHA urges the Committee to include the well-settled exemption for hospitals, as set forth in the 1954 Connecticut Attorney General Opinion, which has never been relaxed by any law, rule, opinion, or practice.

Additionally, the language of Section 4 would permit *any business* to practice medicine legally, as long as does so through hired physicians. This is contrary to the long-established rules that would permit only those corporate entities that are licensed, or affiliated with a licensed entity or provider, to practice medicine and employ physicians.

Section 8 requires hospitals to include on their bill "the cost-to-charge ratio for each item billed." CHA is unsure of the goal of Section 8, and notes there is not a cost to charge ratio for each item billed.

CHA looks forward to working with this Committee on these issues.

Thank you for your consideration of our position. For additional information, contact CHA Government Relations at (203) 294-7310.