To: House Commerce Committee
From: Jessa Barnard, Executive Director
Date: January 28, 2026
RE: H. 205 – Agreements Not to Compete

The Vermont Medical Society is the largest physician membership organization in the state, representing over 3,100 physicians, physician assistants and medical students across specialties and geographic locations. The mission of the VMS is to optimize the health of all Vermonters and the health care environment in which Vermont physicians and PAs practice medicine.

Overall, VMS supports the new directions taken in draft 1.2 of H. 205: we support restricting the use of noncompetes to the maximum extent possible, addressing nonsoliciation and stay or pay provisions. We do request additional several clarifications, as well as coordination with H. 385, which is currently under consideration in the House Health Care Committee.

Background Concerns with Agreements Not to Compete in Health Care

Noncompete clauses are extensive in health care. Estimates from the American Medical Association is that they affect between 37% and 45% of physicians nationwide; they may impact up to 45% of health care workers as a whole. The primary ethical and policy issues with noncompetes in health care are that they can restrict patients' access to care, disrupt care continuity by forcing providers to move or stop practicing, and limit clinician autonomy, potentially harming communities, especially in underserved areas. The **Federal Trade Commission (FTC)** and American Medical Association have both voiced concerns with the impact of noncompetes in health care. As recently as September 10, Federal Trade Commission Chairman Andrew N. Ferguson sent letters to several large healthcare employers and staffing firms urging them to conduct a comprehensive review of their employment agreements—including any noncompetes or other restrictive agreements—to ensure they are appropriately tailored and comply with the law. See the announcement here. The letters state that: "Noncompetes may have particularly harmful effects in healthcare markets where they can restrict patients' choices of who provides their medical care—including, critically, in rural areas where medical services are already stretched thin."

In 2024, the **American Medical Association (AMA)** adopted policy H-265.987, stating that the AMA "opposes all restrictive covenants between employers and physician employees." In 2023, the AMA adopted policy to "support policies, regulations, and legislation that prohibits covenants not-to-compete for all physicians in clinical practice who hold employment contracts with for-profit or non-profit hospital, hospital system, or staffing company employers." The enforcement of noncompetes raises significant issues about the patient-physician relationship and the continuity of patient care. AMA Council on Ethical and Judicial Affairs Ethics Opinion 11.2.3.1 acknowledges this concern, stating in part that "Covenants-not-to-compete restrict competition, can disrupt continuity of care, and may limit access to care." Continuity of patient care is particularly concerning when the patients treated by the physician against whom the noncompete is enforced have chronic conditions and finding another physician to provide adequate care is problematic
In short, noncompetes in health care can:

- **Restrict Patient Access:** Noncompetes can limit where and when patients can access care, especially in rural or underserved areas where options are already scarce.

- **Disrupt Care Continuity:** Patients who have a relationship with a specific provider may be unable to continue that relationship if a noncompete forces the provider to relocate or change practices.
- **Reduce Clinician Autonomy:** Noncompetes can restrict clinicians' ability to practice medicine and limit their professional freedom, impacting career development.
- **Increase Health Disparities:** Removing noncompetes can help reduce health disparities by increasing the number of available specialists and improving access to care.

VMS Position on Noncompetes/Reasonableness: VMS Supports a Prohibition on Noncompetes for Healthcare Professionals

At least four states have statutes that ban noncompetes for physicians and/or health care providers in all contexts: **Arkansas, Massachusetts, New Hampshire**, and **Wyoming**. Many additional state laws ban noncompetes in health care with certain exceptions that vary from state to state including: **Oregon, Maryland, Florida, Rhode Island, Montana, Colorado, South Dakota, Indiana, Louisiana, Indiana** and **Pennsylvania**. (KFF parses somewhat differently – stating that as of 2024 15 states and DC prohibit noncompetes, with some that apply to all health care professionals and some that apply to certain categories of health care professionals).

Vermont Medical Society supports a broad ban, such as the states listed above – and extending this language to all licensed, certified or registered health care professionals as defined at 18 V.S.A. § 9402 (7).

Regarding Draft 1.2 of H. 205, we do appreciate that the exception is limited to those individuals who are executive employees making over $100,000. We do prefer a full ban for all in health care – and this is an area that may need to be reconciled between H. 205 and H. 583, which does currently contain an outright ban. At a minimum, additional definition of what constitutes an executive employee could be helpful.

Nonsolicitation

VMS believes that over restrictive nonsolicitation agreements can prevent health care professionals from serving or communicating with patients in a way that limits continuity of necessary health care services. We strongly support language in H. 205 that states that a health care provider could provide notice of their change in employment.

VMS supports additional clarifying language such as that in Colorado's SB25-083, which voids agreements that would prohibit or "materially restrict" a departing physician from disclosing the following information to a patient to whom the physician was providing consultation or treatment before the physician's departure:

(1) the health-care provider's continuing practice of medicine;
(2) the health-care provider's new professional contact information; or
(3) the patient's right to choose a health-care provider.

Pay or Stay

VMS does support continued use of "pay or stay" provisions as important tools for health care workforce recruitment and retention. VMS is comfortable with parameters regarding

which "pay or stay" provisions are enforceable, such as those contained within H. 205, as long as they are prospective and not retroactive.

Out of state Contracts

To address contracts that may have been entered with an out of state employer/staffing agency, VMS recommends adopting language like that adopted by New Mexico in Senate Bill 82 of 2017 that specifies a covenant not to compete applies to services offered in this state and the employment contract cannot be subject to the laws of another state

> *A. A non-compete provision in an agreement, which provision restricts the right of a health care practitioner to provide clinical health care services* ***in this state****, shall be unenforceable upon the termination of:*
> *(1) the agreement;*
> *(2) a renewal or extension of the agreement; or*
> *(3) a health care practitioner's employment with a party seeking to enforce the agreement.*
> *B. A provision in an agreement for clinical health care services to be rendered in this state is* ***void****, unenforceable and against public policy if the provision: (1****) makes the agreement subject to the laws of another state****; or (2) requires any litigation arising out of the agreement to be conducted in another state."*

Thank you for considering our comments on H. 205. We would be happy to participate in any further work regarding noncompetes and how they apply in the health care setting. Contact me at any time at jbarnard@vtmd.org.