

February 23, 2024

Senator Deb Patterson
900 Court St. NE, S-411
Salem, Oregon 97301

Dear Chair Patterson and members of the Senate Health Care Committee,

We write to encourage the adoption of a ban on non-competition agreements for medical practitioners, as encompassed in House Bill 4130. You have the opportunity to save many lives and a lot of money with such a ban.

This ban is particularly important to apply to the dialysis industry, where two dominant clinic chains that control 70-80% of the market use non-compete contracts for medical directorships to thwart the emergence of rival clinics that would offer more innovative care.¹ Home Dialyzors United and the National Kidney Foundation have both asked the FTC to eliminate the non-competes wielded, because of the toxic way these provisions harm patients.²

There is no nice way to say it. Dialysis in the United States is, because of the consolidated market structure, killing large numbers of people who would otherwise survive if these non-competes were unenforceable. The United States government spend \$50 billion a year on dialysis, far more than other nations. Yet mortality rates for the first year of dialysis are 22% in America, between 9-12% in Western Europe, and 5-6% in Japan.³ That equates to tens of thousands of excess deaths, every single year.⁴ Within the U.S., those who receive care through the government-run Veterans Administration outside of chains like DaVita have much higher survival rates than those who did so outside the VA.

The reason for this stark reality is dominant chains reduce quality of treatment where they have market power. As one economist found, “when facility acquisitions consolidate ownership... [clinics] lower quality as a result,” and “hospitalization rates rise while survival rates fall.”⁵ Non-competes are a core mechanism to block the emergence of rival clinics, which otherwise would be small and relatively easy to set up. Caregivers in this industry are often afraid, and burnout is common.

Comments to the Federal Trade Commission from anonymous nephrologists reveal the extent the problem. “As a dialysis physician,” one anonymous doctor told the FTC, elimination of non-competes would help “us innovate treatment options that we can administer ourselves without being threatened by the big dialysis companies that hire us as their medical directors who would then control what we can do or not.”⁶ Said another, noncompetes “prevented me from opening a

¹ *How to Make a Killing Blood, Death and Dollars in American Medicine* by Tom Mueller. WW Norton, 2023.

² <https://www.regulations.gov/comment/FTC-2023-0007-19265>
<https://www.regulations.gov/comment/FTC-2023-0007-20299>

³ *How to Make a Killing Blood, Death and Dollars in American Medicine* by Tom Mueller. WW Norton, 2023. p. 10

⁴ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6317601/>

⁵ https://www.nber.org/system/files/working_papers/w27274/w27274.pdf

⁶ <https://www.regulations.gov/comment/FTC-2023-0007-20366>

dialysis clinic in the inner city area of Harrisburg, where it was needed very badly.”⁷ A common theme is coercion from the incumbents. “The implied and often written threat of costly litigation directed towards physicians who wish to pursue other career opportunities while continuing to provide care for patients...”

Claims that dialysis clinic chains offer special training are bunk for multiple reasons. The main one is these chains run their businesses almost entirely with public money, as dialysis is the only treatment covered by Medicare for all ages. Put another way, the doctors, nurses, technicians, and other staff who run the clinics are financed by taxpayers, as is virtually all training and care.

Beyond dialysis, non-competes are ubiquitous in the health care industry, harming the ability of physicians, nurses, lab technicians, and more to increase their pay, improve their working conditions, and ultimately serve their patients. According to the FTC, eliminating non-competes will significantly lower health care costs. More than a dozen states already ban non-competes for some or all classes of healthcare worker, including Colorado, Massachusetts, Tennessee, and New Mexico.

A failure to apply a ban on non-competes to the dialysis industry means excess cost, excess death, and more taxpayer funds lavished on a corrupt set of medical middlemen.

Regards,

American Economic Liberties Project
Beta Cell Action
Economic Security Project
National Employment Law Project
Open Markets Institute
Oregonizers
People's Parity Project
Public Citizen
Unity Fellowship of Christ Church
Workplace Fairness

⁷ <https://www.regulations.gov/comment/FTC-2023-0007-17458>