



May 3, 2024

**ILLINOIS HEALTH AND HOSPITAL ASSOCIATION
M E M O R A N D U M**

To: Chief Executive Officers, Member Hospitals and Health Systems
Chief Financial Officers
Chief Operating Officers
Compliance Officers
Government Relations Leaders
In-House Counsel
Human Resources Leaders

From: A.J. Wilhelmi, President & CEO
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SUBJECT: **FTC Issues Final Rule Banning Non-Competes**

On April 23, 2024, during a special Open Commission Meeting, the Federal Trade Commission (FTC) voted, 3-2, to adopt a final rule (the “Final Rule”) banning most non-compete clauses as an “unfair method of competition.” Although the FTC does not have jurisdiction over non-profit entities, the FTC has indicated that it intends to review an entity’s nonprofit status to ensure that it is truly operating as a nonprofit and, if not, then the Final Rule would be applicable to that entity. Additionally, if a hospital’s employed physicians are employed through a for-profit entity (for example, through a for-profit physician practice plan), then the Final Rule would apply to this entity. Thus, Illinois hospitals should review this memo and the [Summary and Frequently Asked Questions](#) document that IHA has prepared.

The initial version of this Final Rule was first announced in January 2023, and underwent an extensive public comment process. The FTC received approximately 26,000 comments, of which roughly 25,000 (according to the FTC) supported a total ban on non-competes.

Although there were hopes that the Final Rule would be less aggressive than the proposed rule, most of the provisions—including the near total ban on non-competes—remained the same in the Final Rule.

Absent judicial intervention (as discussed below), the Final Rule will become effective 120 days after publication in the Federal Register (the “Effective Date”). Thus, by late summer 2024, most employers, except for non-profit organizations, will not be able to enforce existing or obtain new non-competes in the U.S. except in extremely narrow circumstances.

Shortly after the rule was announced on April 23, two federal lawsuits were filed in Texas. The

first lawsuit challenging the Final Rule, filed on the same day it was adopted, was [Ryan, LLC v. Federal Trade Commission](#). Among other relief, the Ryan suit seeks to have the rule vacated and set aside. The U.S. Chamber of Commerce filed the second lawsuit, [U.S. Chamber of Commerce v. Federal Trade Commission](#), the very next day.

Both lawsuits raise significant legal questions concerning whether the FTC has the authority to regulate non-compete agreements, including retroactively invalidating millions of agreements already in place, or whether this is best left to the legislative process. In addition, Plaintiffs in these cases are either seeking or will seek an injunction which, if granted, would delay the Effective Date of the Final Rule until the courts decide the cases.

IHA will continue to monitor ongoing litigation against the FTC's Final Rule and provide updates.

In the meantime, to help Illinois hospitals understand how the Final Rule, if it proceeds, may impact them, IHA has prepared a [Summary and Frequently Asked Questions](#) document.