



FEDERAL TRADE COMMISSION

Regulating the Professions: The Intersection of Competition and Consumer Protection Policies

March 1, 2010

Gustav P. Chiarello
Attorney Advisor
Office of Policy Planning
Federal Trade Commission

*The views expressed herein are my own, and do not reflect the views of
the Federal Trade Commission or any individual commissioner.*

OFFICE OF POLICY PLANNING
FEDERAL TRADE COMMISSION



Overview

- FTC Mission and Background
- Competition Advocacy
- Healthcare and Limited Service Clinics



FTC MISSION

OFFICE OF POLICY PLANNING
FEDERAL TRADE COMMISSION



FTC MISSION

- The FTC is charged with preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.
 - 15 U.S.C. §45
- This mandate includes enforcement of the antitrust laws and statutes protecting consumers from fraud, including false and deceptive advertising, as well as consumer and business education and policy research.



The Role of Competition and Consumer Protection Policy in the Economy

- Competition policy and consumer protection policy are key elements of the American economic system.
- Together, they enhance consumer welfare by fostering a competitive marketplace that gives consumers greater informed choice and leads to greater availability of products with the qualities desired by consumers at the lowest prices.



The Role of Competition and Consumer Protection Policy in the Economy

- Strong competition benefits consumers by creating incentives for innovation, and by motivating sellers to provide more truthful, useful information about their products.
- Consumer protection policy supports those goals by ensuring the empowerment of consumers to participate in the marketplace by enabling them to make well-informed decisions about their choices.
- The interplay between protecting competition and ensuring that consumers can make effective choices among competing offerings is a constant feature of competition and consumer policy in the United States.



COMPETITION ADVOCACY

OFFICE OF POLICY PLANNING
FEDERAL TRADE COMMISSION



Professional Regulation

- Professions in the United States are often subject to laws and regulations specifying who may enter the profession and what types of minimal competency requirements must be satisfied before the individual can receive a license.
- In the United States, there is no national license to practice in several professions: such as law, medicine, nursing, dentistry, accounting, and more.
- Rather, each state and the District of Columbia has adopted different standards for licensing individuals to various professions.



Principles of FTC Competition Advocacy

- Look at government imposed restrictions on competition and determine if they stand up to a cost-benefit test:
 - Will the regulation restrict competition?
 - If so, does this provide consumers with a benefit that would otherwise not arise?
 - Do consumers value this benefit more than it costs them in lost competition?
 - Are there less restrictive ways to reach the same goal?
- Base opinion on empirical evidence and FTC expertise in economics, competition, and consumer protection



Examples of Advocacy Regarding Scope of Practice-type regulations.

- **Health Care Delivery: May, 2008:** Comment to Illinois Legislature regarding limited service clinics (advocating that the legislature remove anticompetitive components of proposed legislation that would impede clinics' ability to compete with other health care providers).
- **Practice of Law: April, 2008:** Comment to South Carolina Supreme Court regarding practice of law (advocating that the Court regulate the practice of law to allow for non-attorney competition for services requiring neither the skill nor knowledge of one trained in the legal profession).
- **Dentistry: 1980's and early 1990s:** Comments to state legislatures and boards in Texas, South Carolina, Montana, Tennessee, New Jersey and others regarding rules that would limit the scope of practice of non-dentists, the relationships dentists may have with non-dentists, advertising constraints among dentists, and other competition related concerns arising from proposed rules.



HEALTH CARE AND LIMITED SERVICE CLINICS

OFFICE OF POLICY PLANNING
FEDERAL TRADE COMMISSION



Limited Service Clinics: Regulatory Issues

- Location: Does retail setting pose consumer harm issues?
- Professional services: Are the services provided within the scope of services of the trained professional?
- Are there other social benefits: Does treatment at an LSC prevent later treatment in an ER?



Massachusetts Department of Health Comment

- FTC staff addressed a provision that would have required regulatory pre-approval of all advertising materials (broadly defined).
- False and misleading advertising were already prohibited under state and federal law.
- Agency pre-approval of all advertising materials might represent an undue burden on LSCs.



Massachusetts Department of Health Comment

- Restraint might deprive consumers of useful information about basic health care services.
- Requiring pre-approval for LSC advertising alone, and not that of other health care clinics, might put LSCs at a competitive disadvantage without offering countervailing consumer benefits
- The final regulations adopted by the Massachusetts DPH deleted the advertising restraints.
- Result: Staff's suggested changes were adopted.



Illinois Comment

- Illinois HB 5372 could be read to overly restrict retail clinic operation, to the detriment of Illinois health care consumers
- Proposed bill had vague terms on structural requirements not required of other health care providers.
- Proposed bill sought to require a “medical supervisor” who could oversee no more than two “facilities,” rather than oversight of medical staff.
- Advertising restraints similar to proposed Massachusetts rules.



Illinois Comment

- FTC staff advocated that the bill was vague, and as such could unnecessarily impose competitive restraint.
- Further, the restraints were not supported by evidence that consumers would benefit.
- In fact, consumers may be harmed by being denied access to the choice of services, and due to the lack of competition the rule would impose.
- Result: The Bill failed to pass.



Kentucky Comment

- In January, 2010 The Federal Trade Commission's staff sent a letter to the Kentucky Cabinet for Health and Family Services (CHFS) stating that certain new regulations proposed for the licensing of limited service clinics raise competitive concerns that were likely to increase the cost of health services.



Kentucky Comment

- Rules would impose distinct costs and restrictions on LSCs, but not on other limited-care operations such as urgent care centers.
- Rules would limit the scope of professional services that licensed health care professionals could provide within an LSC, but not necessarily elsewhere.
- Rules would impose physical or operational restrictions on LSCs but not on other comparable limited-care settings
- Rules would impose on LSCs licensing fees higher than those imposed on all other categories of health care facilities.
- Each provision could limit market entry by LSCs, reducing competition from LSCs on the price, convenience, and availability of basic health care services in the state, the staff concludes. Health and safety consumer protection benefits can offset the costs of potentially anticompetitive regulations, but there is no evidence that the discriminatory provisions in the proposed rule are likely to provide such benefits.



Conclusion

- Innovation in Health Care Delivery improves competition, which can bring higher quality at lower costs to consumers.
- Consumer health and safety are important public policy interests that must be maintained.
- Policymakers should seek the least restrictive means possible when constraining competition when seeking to further other public goals.



THANK YOU

FOR MORE INFORMATION PLEASE CONTACT:

Gustav P. Chiarello
Attorney Advisor
Office of Policy Planning
Federal Trade Commission
Room 396
600 Pennsylvania Ave., NW
Washington, DC 20580

Tel. 202-326-2633

Fax 202-326-3548

email: gchiarello@ftc.gov

OFFICE OF POLICY PLANNING
FEDERAL TRADE COMMISSION

