



**[BILLING CODE: 6750-01S]**

**FEDERAL TRADE COMMISSION**

**Announcement of Public Workshop, “Examining Health Care Competition”**

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of public workshop and opportunity for comment.

**SUMMARY:** The Federal Trade Commission (“FTC” or “Commission”) will hold a public workshop, “Examining Health Care Competition,” on March 20-21, 2014, to study certain activities and trends that may affect competition in the evolving health care industry. The workshop will explore current developments related to professional regulations; innovations in health care delivery; advancements in health care technology; measuring and assessing health care quality; and price transparency for health care services. This notice poses a series of questions upon which the FTC seeks public comment. The Commission will consider these comments as it prepares for the workshop and may use them in a subsequent report or policy paper.

**DATES:** The workshop will be held on March 20-21, 2014, in the Conference Center of the FTC office building at 601 New Jersey Avenue, NW, Washington, DC. For additional information, visit the workshop Web site at <http://www.ftc.gov/news-events/events-calendar/2014/03/examining-health-care-competition>. Prior to the workshop, the Commission will publish an agenda and additional information on its Web site. To be considered for the workshop, comments in response to this notice must be submitted by March 10, 2014. In addition, any interested person may submit written comments in response to this notice and workshop discussions until April 30, 2014.

**ADDRESSES:** Interested parties may file a comment online or on paper by following the instructions in the **SUPPLEMENTARY INFORMATION** section below. Write “Health Care Workshop, Project No. P131207” on your comment and file your comment online at <https://ftcpublic.commentworks.com/ftc/healthcareworkshop> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex X), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Patricia Schultheiss, Attorney Advisor, Office of Policy Planning, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, 202-326-2877, or Karen Goldman, Attorney Advisor, Office of Policy Planning, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, 202-326-2574, [examininghealthcareworkshop@ftc.gov](mailto:examininghealthcareworkshop@ftc.gov). For more detailed information about the workshop, including an agenda, please visit the workshop Web site: <http://www.ftc.gov/news-events/events-calendar/2014/03/examining-health-care-competition>.

**SUPPLEMENTARY INFORMATION:**

The Federal Trade Commission seeks to better understand the competitive dynamics of evolving health care product and service markets. Information obtained during this workshop will enrich the Commission’s knowledge in this critical sector of the economy and thereby support the Commission’s enforcement, advocacy, and consumer education efforts. The workshop will consider issues related to the professional regulation of health care practitioners; innovations in health care delivery; advancements in health care technology; developments in measuring and assessing health care quality; and recent efforts to make price information for health care

services more transparent. The Commission may convene subsequent workshops in the near future to examine additional competition issues in the health care industry.

### *Professional Regulation of Health Care Providers*

The Commission has long been interested in the competitive implications of professional regulation in health care.<sup>1</sup> The Commission seeks to inform itself of new developments and refine its understanding of the ways in which professional regulations governing the scope of practice for health care providers may affect competition.

Professional regulations may protect patient safety, improve quality of care, and provide useful information to consumers who are choosing among health care providers. Greater competition may result when regulatory changes expand the number of health care providers or services available to consumers by increasing the use of advanced practice nurses, dental therapists, and other qualified non-physician or non-dentist professionals. Such increased competition may provide consumers with benefits such as lower prices and improved access to health care services. Some regulations may, however, unnecessarily restrict the ability of non-physician health care professionals to practice to the full extent of their training, imposing costly limitations on professional services without well-founded consumer safety justifications or other consumer benefits to offset those costs. Such overly restrictive professional regulations are likely to suppress beneficial competition by non-physician health care providers and may prevent

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<sup>1</sup> See, e.g., FTC & U.S. DEPT OF JUSTICE (“DOJ”), IMPROVING HEALTH CARE: A DOSE OF COMPETITION (2004), available at <http://www.ftc.gov/reports/healthcare/040723healthcarerpt.pdf>; FTC Staff Comment Before the Massachusetts House of Representatives Regarding House Bill 6 (H.2009) Concerning Supervisory Requirements for Nurse Practitioners and Nurse Anesthetists (Jan. 2014), available at [http://www.ftc.gov/sites/default/files/documents/advocacy\\_documents/ftc-staff-comment-massachusetts-house-representatives-regarding-house-bill-6-h.2009-concerning-supervisory-requirements-nurse-practitioners-nurse-anesthetists/140123massachusettursesletter.pdf](http://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-massachusetts-house-representatives-regarding-house-bill-6-h.2009-concerning-supervisory-requirements-nurse-practitioners-nurse-anesthetists/140123massachusettursesletter.pdf); Letter from FTC Staff to Hon. Timothy Burns, Louisiana Legislature (May 1, 2009) (regarding proposed restrictions on mobile dentistry), available at <http://www.ftc.gov/policy/policy-actions/advocacy-filings/2009/05/ftc-staff-comment-louisiana-house-representatives-0>; FTC Staff Comment Before the Kentucky Cabinet for Health and Family Services Concerning Regarding Proposed Rule to Regulate Limited Service Clinics (Jan. 2010), available at <http://www.ftc.gov/os/2010/02/100202kycomment.pdf>.

institutional providers (such as hospitals) from developing innovative health care delivery models that rely more heavily on non-physician providers to provide efficient, safe care. While all patients may be affected by reduced competition from non-physician health care professionals, the impact may be particularly severe for vulnerable and underserved patient populations.

In the workshop, the Commission intends to study developments in the regulation of health care professionals, including accreditation, credentialing, licensure, and supervision/cooperation requirements. The Commission also intends to examine scope of practice issues in emerging health care professions, such as dental therapy and care coordination.

The Commission invites public comment on questions relevant to this topic, including:

- What recent developments have occurred in the regulation of health care professionals, particularly with respect to accreditation, credentialing, licensure, and supervision/cooperation requirements?
- What are the consequences of such regulations? To what extent are these regulations necessary to protect consumers or serve other important state interests? How do they affect the supply of services, patient safety, costs, care coordination, and quality of care?
- Is there evidence that quality of care is improved when professional regulations are narrowly tailored to protect patient safety while facilitating greater deployment of non-physician or non-dentist health care professionals?
- Do professional regulations affect staffing decisions at health care facilities? If so, how?
- To what extent might professional regulations unnecessarily restrict the scope of practice of non-physician or non-dentist health care professionals?

- What is the relationship between professional regulations and competition? Would changes to professional regulations enhance competition among health care providers? If so, what changes would be desirable?
- What is the relationship between professional regulations and access to care, especially for vulnerable and underserved patient populations?
- To what extent do professional regulations vary by state? Does state-by-state variation affect patient health, health care spending, or other important measures?
- How do current regulations concerning licensure and credentialing affect the ability of health care professionals to relocate or practice in more than one geographic area, particularly across state lines?
- Would greater state-to-state licensure portability improve competition? What issues would increased licensure portability raise?
- How do professional regulations affect reimbursement for health care services? Do professional regulations lead to reimbursement policies that reduce incentives for health care competition?
- What is the relationship between accreditation of education programs and professional regulation? To what extent do accreditation standards affect competition? Would changes to accreditation standards enhance competition among health care providers? If so, what changes would be desirable?
- Are there other factors that should be considered when analyzing the competitive implications of professional regulation in health care?

### *Innovations in Health Care Delivery*

Several new models for health care delivery, including retail clinics and telemedicine, have emerged in recent years, spurring additional competition in the provision of health care services. These models may offer significant cost savings while maintaining, or even improving, quality of care. These models may also increase the supply of health care services, which may expand consumer access to care. The Commission seeks to better understand the potential benefits of these new health care delivery models.

The Commission invites public comment on questions relevant to this topic, including:

- What are the prevalent and emerging forms of health care delivery?
- To what extent are health care services being delivered in new formats and locations, such as retail clinics? What trends are projected in the future?
- What are the competitive implications of the increased use of retail clinics on the supply of services, cost, quality, and access to care?
- To what extent is telemedicine being used today? What new developments are occurring in telemedicine? What role is telemedicine projected to play in the future?
- What are the competitive implications of the increased use of telemedicine on the supply of services, cost, quality, and access to care? Does the increased use of telemedicine raise any patient safety concerns?
- Are there regulatory or commercial barriers that may restrict the use of retail clinics, telemedicine, or other new models of health care delivery? If so, are there any valid justifications to support such restrictions?

- How do professional regulations affect telemedicine or other innovations in delivering health care services or expertise across geographic areas or jurisdictional boundaries, especially in rural or underserved areas?
- What, if any, changes in government regulations would facilitate the emergence of new health care delivery models, enhance competition among health care providers, and encourage additional innovation?
- What are the competitive implications of recent legislative proposals to expand or facilitate telemedicine across state lines?
- How are new health care delivery models reimbursed for providing services?
- Do regulations governing retail clinics, telemedicine, and other new models of health care delivery affect reimbursement? Could these regulations be modified in ways that would improve reimbursement for services provided under new models, better align incentives to implement new models, or otherwise promote innovation?
- Are there other factors that should be considered when analyzing the competitive implications of retail clinics, telemedicine, and other new models of health care delivery?

#### *Advancements in Health Care Technology*

Recent advancements in health care technology may have competitive implications. The Commission seeks to better understand developments in electronic health records, health data exchanges, and technology platforms for health care payers and providers, including the current state of competition among hardware and software platforms. In addition, the workshop will examine certain new consumer-oriented health technologies, such as mobile medical applications and personal medical records technologies, that may improve patient engagement and quality of care. The Commission invites public comment on questions relevant to this topic, including:

- What is the current state of competition in health information technology markets serving institutional providers, health care professionals, patients, and payers?
- Do innovators in health information technology face barriers to entry? If so, are these barriers significant impediments to competition? How might these barriers be reduced?
- What new and established technologies have been most important to the development and deployment of telemedicine or “telehealth”?
- What policies could further technical innovation conducive to effective and efficient telemedicine?
- To what extent are information technology vendors and health care providers sharing patient health information? Are there significant impediments to the useful flow of patient health information to improve health care coordination and quality?
- Do recent health care technology advancements raise standard-setting, network effects, or interoperability issues?
- What has been the impact of health information technology advancements and policies on physicians and other caregivers? What has been the impact on patients?
- Does the adoption of particular health care technologies lead to increased switching costs and customer lock-in issues?
- Are there other factors that should be considered when analyzing the competitive implications of emerging health care technologies?

### *Measuring and Assessing Quality of Health Care*

In the workshop, the Commission intends to examine recent developments in the measurement and assessment of health care quality. In particular, the Commission will consider whether, and

to what extent, information related to quality of care affects competition and informs health care choices by patients, providers, employers, payers, and other health care decision-makers.

The Commission invites public comment on questions relevant to this topic, including:

- How is health care quality measured and evaluated, and for what purposes? Are these current measures effective?
- Have there been any recent innovations in quality measurement?
- What challenges are encountered when measuring quality? Do these challenges differ depending on whether process or structure measures are used, versus outcome measures?
- To what extent is quality assessment shifting away from process and structure measures, and towards outcome measures?
- How, and to what extent, do quality measures account for higher-risk patient populations, so that providers are neither penalized for treating sicker patients nor rewarded for selectively treating healthier patients? Can risk adjustment be improved?
- How is quality information shared with various health care decision-makers, including patients, providers, employers, and payers? Are there better ways to convey such information?
- Does available quality information empower patients, providers, and other health care decision-makers to choose more cost-effective and better care?
- Does available quality information facilitate improved care coordination?
- Are there ways to improve quality information so that it is more useful to patients, providers, and other health care decision-makers?
- Is a standard measure likely to emerge that would allow patients, providers, and other health care decision-makers to effectively compare providers based on quality?

- Are there other factors that should be considered when analyzing the competitive implications of quality measurement and assessment?

### *Price Transparency of Health Care Services*

Payers, employer groups, and health care systems are engaged in efforts to make price information (often combined with quality information) more transparent to patients, providers, employers, payers, and other health care decision-makers. Price transparency may be used as a means to control costs while maintaining quality in the provision of health care services. A potential benefit of price transparency is that it may enhance competition among health care providers or between different, potentially substitutable, treatments, thereby leading to reduced prices for health care services and a more efficient allocation of health care resources. Some forms of price transparency may, however, facilitate price coordination among health care providers, thereby dampening competition. The Commission seeks to better understand the competitive implications of price transparency for health care services.

The Commission invites public comment on questions relevant to this topic, including:

- What types of benefit designs (*e.g.*, co-insurance, high-deductible health plans, reference pricing) utilize price transparency as a means to control costs while maintaining quality? What degree of transparency is necessary to achieve each type of benefit design?
- To what extent might price transparency enhance competition among health care providers or between different treatments?
- To what extent might price transparency facilitate price coordination among health care providers and thereby undermine the potential benefits of competition?
- Are there ways to focus the use of price transparency so that it enhances competition without resulting in negative consequences?

- What is the relationship between transparency of price and quality information? Is price information more meaningful to patients, providers, and other health care decision-makers when combined with quality information? Do pricing data alone provide sufficient information to enable meaningful health care decisions?
- Are there other factors that should be considered when analyzing the competitive implications of price transparency in the health care industry?

*Request for Comment*

You can file a comment online or on paper. To be considered for the workshop, comments in response to this notice must be submitted by March 10, 2014. In addition, any interested person may submit written comments in response to this notice and workshop discussions until April 30, 2014. Write “Health Care Workshop, Project No. P131207” on your comment. Your comment – including your name and state – will be placed on the public record of this proceeding, including on the publicly accessible FTC Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial

information which . . . is privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/healthcareworkshop> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “Health Care Workshop, Project No. P131207” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex X), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The

Commission will consider all timely and responsive public comments that it receives on or before April 30, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

By direction of the Commission.

Donald S. Clark,  
Secretary.

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