UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of Policy Planning
Bureau of Economics
Bureau of Competition

April 21, 2015

The Honorable Jeanne Kirkton
Missouri House of Representatives
State Capitol – Room 135BC
Jefferson City, MO 65101-6806

Dear Representative Kirkton:

The staffs of the Federal Trade Commission's ("FTC") Office of Policy Planning, Bureau of Economics, and Bureau of Competition[1] appreciate the opportunity to respond to your invitation for comments on Missouri House Bill 633 ("HB633").[2] You have asked us to provide input on the "competitive impact" of HB633, which would amend Missouri's Nurse Practice Act to remove some, and impose other, constraints on collaborative practice arrangements between physicians and Advance Practice Registered Nurses ("APRNs"). As currently drafted, HB633 may lower the costs of these arrangements by facilitating electronic collaboration. However, the bill retains a mandatory collaborative practice structure that FTC staff have identified as raising possible competitive issues. Additionally, the potential benefits of electronic collaboration may go unrealized unless the new statutory provisions explicitly *supersede*, rather than supplement, more onerous regulations that currently require in-person collaboration.

As discussed in FTC staff's May 2014 letter[3] responding to your invitation for comments on Missouri House Bills 1481 and 1491 ("HB1481" and "HB1491," respectively),[4] and as explained in FTC staff's March 2014 policy paper, *Policy Perspectives: Competition and the Regulation of Advanced Practice Registered Nurses*,[5] state mandated collaborative practice agreements between physicians and APRNs raise considerable competitive concerns and may frustrate the development of innovative and effective models of team-based health care.[6] In our 2014 comments, FTC staff noted that because HB1481 "operated within the confines of mandatory collaborative practice agreements," that bill was "likely to be less beneficial for competition and consumers than HB1491."[7] However, because HB1481 would have permitted electronic collaboration between an APRN and a physician, we recognized that the bill could potentially lower the costs of mandatory collaborative practice arrangements. HB633 may, in theory, yield the same benefits of electronic collaboration. These benefits, however, may not be realized because of new costs potentially imposed by the bill.

Expert bodies, such as the Institute of Medicine, have determined that APRNs are "safe and effective as independent providers of many health care services within the scope of their training, licensure, certification and current practice."[8] As such, APRNs can serve a vital role in mitigating the effects of shortages of primary care providers and reducing problems with access to care that are most prevalent in less densely populated and lower income areas.[9] Within that context, the FTC staff policy paper examined in detail the evidence and arguments concerning the ability of APRNs to practice independently. The report also provided an in-depth competitive analysis of statutory and regulatory provisions governing the scope of practice of APRNs, particularly mandatory

collaborative practice arrangements. In its policy paper, FTC staff concluded that restrictive provisions that impede APRNs' ability to practice independently will likely lead to "decreased access to health care services, higher health care costs, reduced quality of care, and less innovation in health care delivery."[10]

FTC staff recognize that health and safety are of paramount importance when states regulate the scope of practice of health care professionals. FTC staff encourage the Missouri legislature to scrutinize claimed health and safety justifications for its current supervision and collaboration requirements, review carefully whether any claims of potential patient harm are adequately substantiated and well founded, and evaluate whether the collaboration requirements are warranted – not only for APRNs, but also for other health care professionals whose scope of practice would be affected by HB633.[11] If APRNs and other health care professionals are permitted to practice to the extent of their education, training, and abilities, the state could benefit from enhanced competition, including potentially lower costs and greater patient access to care. If the current restrictions are already greater than patient protection requires, we urge the legislature to adopt a bill that removes, rather than increases, oversight requirements that could further limit the provision of health care services by APRNs and, perhaps, other members of health care delivery teams.

Overview and Analysis of HB 633

FTC staff encourage innovative forms of collaboration that may foster competition by APRNs, including innovations based on more effective electronic communication.[12] Although HB633 retains a mandatory collaborative practice arrangement, the bill contains some amendments that potentially could make these arrangements less burdensome for APRNs and collaborating physicians, including new statutory provisions that may promote certain forms of electronic communication and remote chart review. These efficiencies, however, may not outweigh the burdens imposed by the new responsibilities.

(1) Length of Supervision Period

First, the bill (as approved by the Committee of Professional Registration and Licensing[13]) would alter the current requirement that the collaborating physician document *at least* one month of supervised practice before the APRN can practice independently. The revised supervision period would last *up to* one month, as agreed upon by the APRN and the physician.[14] In addition, this provision would specify that a new supervision period is not required when "the collaborating physician is new to a patient population to which the collaborating" APRN "is already familiar."[15]

These amendments could potentially decrease the amount of time a collaborating physician must be physically present to supervise the APRN before the APRN can practice independently. As a result, the bill likely would reduce the costs of collaboration and perhaps help mitigate some challenges that APRNs face in securing collaborative arrangements. This statutory revision also likely would minimize disruptions to health care clinics when there is a change in the collaborating physician. Thus, from a competition perspective, it appears to offer greater potential benefits than the current law.

(2) Ability for Physician to Review Charts Off-Site

Second, HB633 would effectuate an amendment to provide greater flexibility as to a collaborating physician's location when reviewing at least ten percent of the charts documenting the

APRN's delivery of health care services.[16] The bill would amend the existing statute to specify that the collaborating physician may perform the chart review off-site. This could facilitate a more efficient exchange of information among providers and potentially lower the costs of collaboration. If the collaborating physician has the flexibility to perform chart review remotely, a physician may be more willing to enter into a collaborative practice arrangement.

(3) Mandatory Consultations for Certain Services

Although the above amendments may facilitate more efficient collaborations, the bill also contains a new provision that could create additional record-keeping responsibilities for APRNs, as well as additional consultation and chart review responsibilities for collaborating physicians. Specifically, HB633 would require the collaborating physician to be available for a consultation in person or electronically if an APRN provides services for conditions "other than acute, self limiting, or well defined problems."[17] For "a new or significantly changed condition other than acute self limiting or well defined problems," the proposed amendment also would require the collaborating physician, another physician designated in the collaborative agreement, or the patient's primary care physician to review the "patient's chart and approve or make appropriate modifications to the plan of treatment."[18] These additional requirements could make it more burdensome for a physician to collaborate with an APRN or other health care professional specified in the bill, which could result in fewer physicians who would be willing to collaborate. Moreover, the language describing the conditions that would trigger these additional oversight responsibilities is vague and may create uncertainty, which could further discourage physicians from entering into collaboration agreements.

(4) Unclear Whether New Provisions Would Replace or Supplement Existing Ones

As currently worded, it appears that HB633 would not specifically supplant current regulations that require a physician to meet certain supervisory obligations in person. Thus, in addition to imposing new burdens, the bill may not achieve the potential efficiencies associated with off-site chart reviews and consultations. Indeed, these additional responsibilities likely would increase the costs of collaboration, unless the bill specifically supersedes existing regulatory requirements.

For example, Missouri regulations currently require the collaborating physician to visit the APRN clinic at least every two weeks to review records, provide consultations, and be available to see patients.[19] If, as the bill would require, the collaborating physician is available for electronic consultation and can perform chart reviews remotely, it may not be necessary for the physician to physically visit the clinic every two weeks. Legislatively removing the more rigid supervision requirements could promote innovation in health care delivery and quality by allowing providers to develop and implement practice protocols in accordance with patient and institutional needs.[20]

Similarly, the regulations currently require the collaborating physician to provide a follow-up evaluation and visit within two weeks after the patient's encounter with an APRN for certain new or significantly changed conditions.[21] For the same conditions, HB633 would require the collaborating physician or the patient's primary care physician to review the patient's chart and approve or make appropriate modifications to the plan of treatment. If the APRN provides the patient's primary care physician with a record of the encounter, the primary care physician could effectively follow up with the patient. If the collaborating physician, in accordance with the current regulations, also must see a patient within two weeks of the APRN encounter, this likely would create undue inconvenience and

additional costs for the patient and the collaborating physician without any apparent countervailing benefits.

As the above examples suggest, HB633 may create new responsibilities in addition to those in the existing regulations. We respectfully urge the legislature to consider whether these new responsibilities should explicitly replace existing supervision regulations, which could enable more flexible collaboration and foster more innovative approaches to care delivery.

Conclusion

FTC staff recognize that, while it is important to promote competition in health care markets, legislators also must scrutinize relevant safety and quality evidence to determine whether legitimate safety concerns exist and, if so, whether mandatory collaborative practice requirements are the best way to address these concerns. Having reviewed the findings of the Institute of Medicine and other expert bodies on issues of APRN safety, effectiveness, and efficiency, FTC staff have concluded that the kinds of supervision requirements found in many mandatory collaborative practice agreements do not appear to be justified by legitimate health and safety concerns. We hope you will carefully consider this body of research when considering whether there is adequate countervailing evidence to justify maintaining Missouri's current collaborative practice requirements.

Although HB633 does not eliminate collaborative practice agreements, it does appear to allow certain collaborative arrangements that may reduce costs for health care providers and promote procompetitive innovation in health care delivery. Most of these benefits, however, are more likely to be realized if certain existing regulatory obligations are removed. FTC staff respectfully recommend that the Missouri legislature review the current statutory and regulatory requirements to determine whether HB633 will – or should – supplant more restrictive regulations, and whether the bill is appropriately tailored to address any legitimate and substantiated health and safety concerns.

We appreciate the opportunity to provide our input on HB633. We hope that our comments and the FTC staff policy paper will be of assistance as you consider these issues.

Respectfully submitted,

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[1] This letter expresses the views of the Federal Trade Commission's Office of Policy Planning, Bureau of Economics, and Bureau of Competition. The letter does not necessarily represent the views of the Federal Trade Commission ("FTC" or "Commission") or of any individual Commissioner. The Commission, however, has voted to authorize staff to submit these comments.
[2] Letter from the Hon. Jeanne Kirkton, Missouri House of Representatives, to Marina Lao, FTC Office of Policy Planning (Feb. 25, 2015).
[3] Letter from Andrew I. Gavil et al., Federal Trade Commission, to the Hon. Jeanne Kirkton, Missouri House of Representatives (May 5, 2014) [hereinafter May 2014 FTC Letter].
[4] Letter from the Hon. Jeanne Kirkton, Missouri House of Representatives, to Susan S. DeSanti, FTC Office of Policy Planning (Feb. 18, 2014).
[5] FED. TRADE COMM'N STAFF, POLICY PERSPECTIVES: COMPETITION AND THE REGULATION OF ADVANCED PRACTICE NURSES (2014), https://www.ftc.gov/system/files/documents/reports/policy-perspectives-competition-regulation-advanced-practice-nurses/140307aprnpolicypaper.pdf [hereinafter FTC STAFF POLICY PERSPECTIVES].
[6] May 2014 FTC Letter, *supra* note 3.
[7] *Id*. at 5.
[8] FTC STAFF POLICY PERSPECTIVES, *supra* note 5, at 2, n.6 and accompanying text, *citing* INST. OF MED., NAT'L ACAD. OF SCIENCES, THE FUTURE OF NURSING: LEADING CHANGE, ADVANCING HEALTH 98-99 (2011).
[9] FTC STAFF POLICY PERSPECTIVES, *supra* note 5, at 25.
[10] *Id*. at 38.
[11] HB633, as approved by the Committee of Professional Registration and Licensing on March 12, 2015, would amend the statute to also include physician assistants and assistant physicians. Although these comments and our March 2014 policy paper refer specifically to APRNs, we also encourage the legislature to consider our comments, and scrutinize available health and safety evidence, as it evaluates whether and how to impose mandatory collaborative practice arrangements on physician assistants and assistant physicians.
[12] FTC STAFF POLICY PERSPECTIVES, *supra* note 5, at 4.
[13] Unless otherwise indicated, our comments in this letter pertain to the version of HB633 as amended by the Committee of Professional Registration and Licensing on March 12, 2015.
[14] HB633, amending MO. REV. STAT. § 334.104.4(9).
[15] *Id*.
[16] HB633, amending MO. REV. STAT. § 334. 104.3(9).
[17] HB633, amending MO. REV. STAT. § 334.104.3 to add § 334.104.3(11). Punctuation errors in the original.
[18] *Id*. Punctuation errors in the original.
[19] 20 CSR 2150-5.100(4) (F), 20 CSR 2200-4.200(4) (F).
[20] FTC STAFF POLICY PERSPECTIVES, *supra* note 5, at 31-32.
[21] 20 CSR 2150-5.100(3) (H), 20 CSR 2200-4.200(3) (H).