

FTC Again Urges Consideration of Competitive Impact on State Regulation of APRNs

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The Federal Trade Commission (FTC) submitted written comments last week on the likely competitive impact of a legislative proposal in West Virginia to modify the supervision requirements imposed on *Advanced Practice Registered Nurses (APRNs)* for certain activities. The legislative proposal would permit some APRNs, under limited conditions, to write prescriptions without a formal agreement with a particular supervising physician. It would also place the regulation of certain APRNs under the authority of the West Virginia Board of Medicine or Board of Osteopathic Medicine. In its well-established role of promoting competition in the health care industry through enforcement, study, and advocacy, the FTC has a record of actively urging the opening of health care markets to a broader range of providers. In 2014, the agency issued a paper titled [Policy Perspectives: Competition and the Regulation of Advanced Practice Nurses](#), in which it advocated for the expansion of APRN scope of practice.

The FTC has repeatedly recognized “the critical importance of patient health and safety, and [] defer[s] to state legislators to determine the best balance of policy priorities and to define the appropriate scope of practice for APRNs and other health care providers.” Nonetheless, the FTC argues that “undue regulatory restrictions on APRN practice can impose significant competitive costs on patients and third-party payors, and may frustrate the development of innovative and effective models of team-based health care.”

The West Virginia proposal would allow an APRN to be licensed by either the Board of Medicine or Osteopathic Medicine to prescribe medicine without the formal collaborative written agreement with a physician as currently required if that APRN: i) [h]as at least five years of clinical prescribing experience in a collaborative arrangement with a physician; ii) is working solely in an area that has been designated ... as a Health Professional Shortage Area; and iii) has a recommendation from his or her collaborative physician which recommends that the [APRN] be permitted to prescribe without a collaborative arrangement.

The FTC cautioned here that although the modifications proposed in West Virginia “could benefit patients, as it would permit a route to independent prescribing, at least for some APRNs under certain conditions,” it still “raises significant competitive concerns..., first because of the many conditions and exclusions it would impose on independent APRN prescribing, and second because of the regulatory conflicts of interest that appear to be inherent in the Bill’s requirements of physician

permission for and oversight of APRN prescribing.” The FTC further commented that placing APRNs under the Boards of Medicine or Osteopathic Medicine also “raises concerns about potential biases and conflicts of interest.”

Specifically, the FTC raised concerns that: i) regulatory constraints on APRN practice limit the ability of APRNs to expand access to primary care services and ameliorate both current and projected health care workforce shortages; ii) legal or regulatory hurdles to APRN practice may raise the costs of APRN services, thereby reducing supply and further diminishing access to basic primary care; and iii) rigid supervision [and collaborative agreement] requirements may impede, rather than foster, development of effective models of team-based care. The FTC also discussed similar concerns for restrictions placed on specialist APRNs, such as nurse midwives and nurse anesthetists.

The FTC urged the West Virginia legislature to consider the competitive impact of the proposal and to “avoid restrictions on APRN practice that are not narrowly tailored to address well-founded patient safety concerns.”

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