



April 30, 2014

Edith Ramirez
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Comments to the FTC Concerning Health Care Workshop, Project No. P131207

Dear Chairwoman Ramirez:

On behalf of the American Association for Marriage and Family Therapy (AAMFT), we would like to thank the FTC for holding a public workshop, "Examining Health Care Competition," and for providing AAMFT with an opportunity to provide the FTC with comments concerning competition in the health care industry. As the national association representing the professional interests of more than 58,000 licensed marriage and family therapists (LMFTs) throughout the United States, AAMFT is concerned about regulatory and other barriers that impact competition in the health care field. AAMFT is also a member of the Coalition for Patients' Rights, a coalition of over 35 health professional organizations committed to ensuring health care choices for all consumers.

AAMFT welcomes the ongoing efforts of the FTC to create a more competitive health care environment that benefits patients. We believe that the FTC should continue to provide competition advocacy comments to state legislators, provide policy papers on overly restrictive regulations that suppress competition, and conduct economic studies on these issues.

Marriage and family therapists are licensed to provide mental health services in all 50 states and the District of Columbia. In order to become a LMFT, a person must have received a master's or doctoral degree in marriage and family therapy or a related discipline, passed a national exam and have completed two years of supervised clinical experience. LMFTs are trained to diagnose and treat mental and emotional disorders. Like psychiatrists, psychologists, licensed clinical social workers (LCSWs), and licensed professional counselors (LPCs), LMFTs practice independently in a variety of practice settings. Family therapists provide individual psychotherapy, as well as couples, family and group psychotherapy. Marriage and family therapists are one of the core mental health disciplines recognized by the federal government under the Public Health Services Act.

Scope of Practice Restrictions

In terms of the professional regulation of health care providers, AAMFT believes that professional regulations, particularly scope of practice regulations, that do not accurately reflect the education and training of health care providers is a major impediment to greater competition in the health care industry. Recent developments regarding regulation impacting competition in the behavioral health field have been mixed. Some recent developments in the regulation of LMFTs and other health care professionals will increase competition. For example, earlier this year, a bill was enacted into law in Wyoming that will eliminate a requirement that LMFTs,

LPCs and LCSWs in private practice settings provide services to Medicaid recipients only if the services are provided under the direction of a physician. Some providers who either were not able to find a physician to direct their work or otherwise did not want to mess with the hassle of this burdensome requirement will now decide to become Medicaid providers. The elimination of this barrier will increase the total number of mental health providers in the state Medicaid program and will save money for the program.

In other situations, laws that hinder competition have either been enacted or currently exist. In some states, groups representing some providers have filed litigation in order to overturn professional regulations that would result in greater competition. In many states, LMFTs are regulated by a licensure board that regulates multiple professions. In some of these states with composite licensure boards, boards consisting of a majority of members licensed in other professions have promulgated unnecessary regulations that have decreased competition. In other states, regulatory hurdles regarding the ability of LMFTs and other mental health providers to diagnose have been enacted. These types of regulations that restrict competition and that have no benefit to consumers do prevent some clinics and other employers from hiring qualified providers.

Licensure Portability

Current regulations concerning licensure portability also serve as a barrier to competition. In many states, the licensure portability laws affect the ability of LMFTs to relocate their practice to another state. For example, the licensure portability law in Arizona for LMFTs, LCSWs and LPCs required licensees from another state, in addition to meeting the standard education, examination and supervision requirements, to complete at least a minimum of 1,600 hours of supervised experience in Arizona and 50 hours of qualifying clinical supervision before they could obtain a license to practice independently in Arizona. Although this burdensome supervision restriction was eliminated in 2013 by the enactment of a new law, there are similar laws in other states that discourage providers from relocating to states that have these barriers. In some states, out-of-state licensees are required to take additional coursework even though these applicants already have a qualifying degree, years of clinical experience and no prior disciplinary actions. These unnecessary restrictions, which do not promote consumer safety, have caused behavioral health providers to decide not to move to states with such restrictions. Since providers who are new practitioners in a state will be more likely than established providers to treat consumers enrolled in Medicaid or other underserved populations, these barriers would have a disproportionate impact on these consumers.

Other Considerations

In terms of innovations of health care delivery, AAMFT believes that telehealth will continue to expand and will continue to bring about additional competition. However, some state regulatory barriers have hindered the growth of telehealth. The FTC's guidance to state regulators and other parties on the competitive aspects of telehealth can aid regulators in considering health care competition concerns along with consumer safety.

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AAMFT is also concerned about the lack of a sufficient number of in-network providers available to enrollees in some health care plans, particularly within the Qualified Health Plans that participate in the health care exchanges created under the Patient Protection and Affordable Care Act. Competition can be curtailed and consumer choice can be restricted if health plans do not have a sufficient number of providers or do not have a sufficient number of providers from the various health care professions.

Conclusion

AAMFT welcomes the FTC's efforts to promote competition in the health care field. We applaud the FTC for issuing competition advocacy comments analyzing the potential competitive effects of proposed legislation in several states impacting the ability of advanced practice registered nurses (APRNs), dental hygienists, and other professionals to practice. Since these comments are helpful to state legislators in ascertaining the likely competitive impact of scope of practice and related legislation, we suggest that the FTC continue providing these comments to state legislators.

The FTC's recent policy paper, "Policy Perspectives: Competition and the Regulation of Advanced Practice Nurses," is an excellent examination of the regulatory barriers APRNs encounter and the potential competitive harms from unnecessary supervision requirements. AAMFT commends the FTC for undertaking this project and encourages the FTC to write additional policy papers examining barriers that mental health and other health care providers encounter that might harm competition. In addition, we encourage the FTC to undertake more detailed economic studies of how the professional regulation of health care providers impacts competition. The FTC's continued guidance on competition in the health care field will greatly assist state legislators and regulators in understanding the implications of professional regulation in health care.

Thank you for providing AAMFT with an opportunity to comment. If you have any questions or need any information from AAMFT, please contact Roger Smith at 703-253-0485 or at rsmith@aamft.org.

Sincerely,

Tracy Todd, PhD
Executive Director
American Association for Marriage and Family Therapy