

COMMENTS OF THE  
BUREAU OF COMPETITION  
BUREAU OF CONSUMER PROTECTION  
BUREAU OF ECONOMICS  
OF THE  
FEDERAL TRADE COMMISSION

TO THE  
BOARD FOR LICENSING HEALTH CARE FACILITIES  
OF THE  
STATE OF TENNESSEE<sup>1</sup>

Competition plays an important role in the delivery of health care services. Increasingly, there is competition among physicians and other health care providers licensed by the States, including such non-physician providers as nurse midwives, nurse practitioners, and nurse anesthetists. Such competition should benefit consumers by offering choices and treatment alternatives to patients, and there is evidence it will lower the cost of health care.<sup>2</sup> The Federal Trade Commission seeks to work with groups in both the public and private sectors to remove obstacles that hinder competition among licensed health care providers, practicing within the requirements of State law.

One of the FTC's principal responsibilities is the enforcement of the antitrust laws, and the FTC has developed considerable knowledge about competition in the health care field through its investigations of anticompetitive conduct in that

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<sup>1</sup> The views contained herein represent those of the Federal Trade Commission's Bureau of Competition, Bureau of Consumer Protection, and Bureau of Economics, and do not necessarily represent the views of the Federal Trade Commission or of any individual Commissioner.

<sup>2</sup> See, e.g., n.4 on page 4 of these comments.

field.<sup>3</sup> The Commission has, for example, taken actions to stop restrictions on truthful advertising by physicians, to stop boycotts, aimed at limiting competition among health care providers, and to analyze issues relating to denial of hospital privileges for non-physician health care providers. We therefore appreciate the opportunity to comment on the competition and consumer issues involved in granting hospital staff privileges to nurse midwives, nurse practitioners, and nurse anesthetists in Tennessee.

Registered nurses certified as nurse midwives, nurse practitioners, and nurse anesthetists are authorized by law to offer patients a variety of services that overlap with the services commonly offered by physicians. In Tennessee, these nurses are licensed by the state and trained to work in expanded practice roles under written medical protocols within the scope of practice permitted by state law as delineated by Tennessee Code Annotated § 63-740 et seq. and Tennessee Rules and Regulations 10000-1-.04(3). For example, nurse midwives provide obstetrical and gynecological care for the medically uncomplicated patient. Nurse practitioners provide certain kinds of primary care for well patients. Nurse anesthetists administer certain types of anesthesia and monitor patients under anesthesia under certain circumstances in place of an anesthesiologist.

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<sup>3</sup> In addition, the FTC and its staff have prepared reports and economic studies about competition in the health care field, and have offered their views on proposals similar to that now before the Board.

These non-physician practitioners, then, are authorized by the State of Tennessee to provide services closely related to those provided by physicians, and they can offer these services in ways and at prices that might otherwise be unavailable. For example, under Tennessee law, a nurse midwife, working as an independent practitioner in collaboration with a back-up physician, can offer a patient an approach to obstetrical care that differs significantly from the services provided by most obstetricians. Similarly, a patient who prefers the care of an obstetrician-nurse midwife team can select such care and is not limited to traditional care by an obstetrician.

The increased availability of qualified non-physician providers may have a beneficial effect on health care generally. As such providers begin to practice in greater numbers, more health care personnel will be available to address the problems of shortages and maldistribution of primary care and other providers. Faced with competition from such non-physician providers, physicians may choose to expand the services they offer or to lower their prices. Some physicians may choose to concentrate on procedures for which their training is more valuable, thereby increasing the availability of physicians to provide more complicated or high-risk care. Physicians may also have further incentives to use their own resources more efficiently, thereby lowering costs. In fact, there is evidence that where qualified nurse practitioners are authorized to

practice independently in collaboration with physicians, fees are below the prevailing rates in other areas.<sup>4</sup>

However, as non-physician health care providers receive the training and State government authorization to expand their practices, they may run directly into an obstacle which prevents them from providing the full range of their services to the community: the inability to obtain hospital privileges. Some form of access to hospital privileges is essential for any health care practitioner who is authorized to provide services that are best delivered in a hospital setting. For example, if a nurse midwife does not have access to a hospital facility, he or she cannot accept as a patient a woman who wants a combination of a hospital birth and care by a nurse midwife. If a nurse anesthetist does not have hospital privileges, he or she may be precluded from working as an independent practitioner even though such practice is authorized by state law. Thus, patients may have to pay higher fees to cover the charges of both the nurse and his or her employer. Without privileges these non-physician health care providers may be precluded from taking advantage of the support services offered by a hospital, and may in reality be unable to offer the alternative services which the State of Tennessee has expressly authorized them to provide.

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<sup>4</sup> See Physician Extenders: Their Current and Future Role in Medical Care Delivery, Congress of the United States, Congressional Budget Office 47 (1979); see also Cherry and Foster, "Comparison of Hospital Charges Generated by Certified Nurse-Midwives' and Physicians' Clients," 27 J. Nurse-Midwifery 7 (Jan.-Feb. 1982).

Furthermore, limitations on a full practice which result from restrictions on hospital privileges may discourage highly qualified and competent individuals from training and entering into specialty nursing fields -- or from practicing in particular States -- because there is a perception that there is no possibility of independent practice and responsibility. This result would harm consumers by decreasing choices and removing some of the competitive pressures that encourage physicians constantly to improve the services that they provide.

In offering these comments we do not attempt to suggest the standards that the State of Tennessee should adopt or that a hospital should establish for granting privileges to nurse midwives, nurse practitioners, or nurse anesthetists. These standards may involve quality of care considerations and decisions that turn on medical safety questions, and we are not in a position to offer advice on such determinations. Moreover, we are not suggesting that the State should require a hospital to grant privileges regardless of the hospital's needs or to grant privileges to individual practitioners who are considered unqualified. However, in our view, appropriate access to hospitals for expanded practice nurses who meet the necessary standards would substantially benefit competition and consumers, because it would help ensure that such nurses are able to offer the services they have been trained and authorized by State law to provide. We urge the Board to encourage hospitals to adopt procedures to afford qualified nurse midwives, nurse

practitioners, and nurse anesthetists an opportunity to obtain hospital privileges in appropriate circumstances.

In sum, access to an essential facility -- the hospital -- by non-physician providers in appropriate circumstances may lead to substantial consumer benefits. Both new consumer options and competitive pressures on practitioners already in the market (leading to lower costs and improvements in quality) have the potential for providing important improvements in consumer welfare in the health care field. With health care now consuming almost ten percent of the Gross National Product, allowing qualified competitors such as nurse midwives, nurse practitioners, and nurse anesthetists to offer their services fully and compete vigorously in the marketplace can be expected to improve the delivery of health care services.

We thank the Board for consideration of these comments.