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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
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COMMISSION AUTHORIZED

March 12, 1993

The Honorable Judy Baar Topinka
Chairperson, Committee on Public Health,
Welfare & Corrections
The Senate of Illinois
State House, Room 116
Springfield, IL 62706

Dear Senator Topinka:

The staff of the Federal Trade Commission[1] is pleased to submit this response to your request for views on S.B. 66. This bill would set up a demonstration program to test the feasibility of two kinds of alternative health care delivery systems, birth centers and postsurgical recovery care centers. We support this effort to explore how consumers and other providers will respond to these new ways to deliver health care services.

I. Interest and experience of the Staff of the Federal Trade Commission.

The Federal Trade Commission is empowered to prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.[2] Pursuant to this statutory mandate, the Commission encourages competition in the licensed professions, including the health care professions, and in the delivery of health care services generally, to the maximum extent compatible with other state and federal goals. For several years, the Commission and its staff have investigated the competitive effects of business practices of hospitals and health care professionals.[3] The staff of the Commission has also

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[1] These comments are the views of the staff of the Chicago Regional Office of the Federal Trade Commission, and do not necessarily represent the views of the Commission or any individual Commissioner.

[2] 15 U.S.C. § 41 et seq.

[3] See, e.g., American Medical Association, 94 F.T.C. 701 (1979), aff'd as modified, 638 F.2d. 443 (2d Cir. 1980), aff'd by an equally divided court, 455 U.S. 676 (1982); Medical Staff of Doctors' Hospital of Price George's County, 110 F.T.C. 476

commented, in response to requests, on legislative and regulatory proposals that may affect competition and consumer interests. On several occasions, the staff of the Commission has commented on the effects of state certificate-of-need ("CON") laws on competition among hospitals and other health care providers.[4] The staff of the Commission has also authored three studies dealing with CON regulation.[5]

II. Description of proposed legislation.

S.B. 66 would authorize a pilot program to establish alternative health care facilities. These alternative health care facilities would be similar in some ways to ambulatory surgical centers, which Illinois already permits. The principal difference would be that patients could stay overnight at these alternative health care facilities. In the last session of the

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(1988); Eugene M. Addison, M.D., 111 F.T.C. 339 (1988); Medical Staff of Holy Cross Hospital, No. C-3345 (consent order, Sept. 10, 1991); Medical Staff of Broward General Medical Center, No. C-3344 (consent order, Sept. 10, 1991). For cases involving competition among hospitals, see FTC v. University Health, Inc., 1991-1 Trade Cas. (CCH) ¶¶69,400, 69,444 (S.D. Ga.), rev'd, 938 F.2d 1206 (11th Cir. 1991); Hospital Corporation of America, 106 F.T.C. 361 (1985), aff'd, 807 F.2d 1381 (7th Cir. 1986), cert. denied, 481 U.S. 1038 (1987); American Medical Int'l, 104 F.T.C. 1 (1984).

[4] See, e.g., Comments to the Maryland Health Resources Planning Commission (August 6, 1987); Georgia Senate (March 4, 1988); Michigan House of Representatives (March 7, 1988); Pennsylvania House of Representatives (March 30, 1988); Georgia Senate (February 6, 1989); Nebraska Senate (February 22, 1989). See also Statement of Keith B. Anderson, Special Assistant to the Director, Bureau of Economics, Federal Trade Commission, before the North Carolina State Goals and Policy Board (March 6, 1989); Testimony of Mark D. Kindt, Regional Director, Cleveland Regional Office, Federal Trade Commission, before the Ohio Senate Health and Human Services Committee (June 21, 1989).

[5] Keith B. Anderson and David I. Kass, Certificate of Need Regulation of Entry into Home Health Care: A Multi-Product Cost Function Analysis, FTC Bureau of Economics Staff Report (1986); Monica Noether, Competition Among Hospitals, FTC Bureau of Economics Staff Report (1987); Daniel Sherman, The Effect of State Certificate of Need Laws on Hospital Costs: An Economic Policy Analysis (1988).

legislature, the Alternative Health Care Facilities Act[6] authorized one form of alternative health care model, the "subacute care hospital." At these facilities, which would provide a level of care intermediate between nursing homes and acute care hospitals, patients would typically stay for periods of several weeks. The Act also requires that these facilities be created from existing bed capacity of nursing homes or hospitals.

S.B. 66 would amend the Act to authorize two additional kinds of alternative health care facilities. Birth centers would specialize in childbirth services for healthy mothers without complications. Patients would stay only 24 hours. Postsurgical recovery care centers would provide recovery care for generally healthy patients undergoing surgical procedures that require an overnight stay. Patients could stay only a maximum of 72 hours. In contrast to the patients in the "subacute care hospitals," patients at these two new kinds of facilities would typically be relatively healthy individuals who are receiving treatments that are not expected to lead to complications.

The Act and the bill follow many of the recommendations of Illinois' Acute Care Task Force, whose final report was submitted to the Illinois General Assembly in June, 1992. The two newly proposed models would be required to have formal working relationships with hospitals, and birth centers would be required to be able to transfer a patient to a hospital within 15 minutes. The Act requires that the demonstration program models be established in several different parts of the State, and also requires these alternative health care models to obtain certificates of need under the state Health Facilities Planning Act.[7] Facilities must seek Medicare and Medicaid certification and must "provide charitable care consistent with that provided by comparable health care providers in the geographic area."[8]

III. Issues raised by S.B. 66.

The facilities that the demonstration program would authorize would be intermediate between doctor's offices and free-standing ambulatory surgical centers on the one hand and full-service acute care hospitals on the other. These centers would make available to consumers new ways to receive health care services. As the report of the Acute Care Task Force recognizes,

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[6] Alternative Health Care Delivery Act, 1992 Ill. Laws 1188 (the "Act").

[7] Id., §30(a), (b).

[8] Id., §30(d).

more and more procedures that once required a hospital stay are being done in doctors' offices or outpatient clinics.[9] Birth centers and recovery care centers represent another step in that direction. In general, we support measures that increase the range of product or service options among which consumers can choose.[10] On many occasions, the staff of the FTC has supported removing restrictions on commercial aspects of health care delivery, consistent with maintaining desirable levels of quality of care, in order to permit providers to experiment with new ways to provide services.[11] Permitting innovations may lead to new ways of offering services that consumers would prefer or that are more efficient. Competition among new ways of delivering services and other, more established methods can also promote increased efficiency, and potentially lower costs, for all. Lower costs and increased competition can lead to lower consumer prices, greater supply of service options, and increased quality of services.

Widespread use of the kinds of facilities that the Act and S.B. 66 would authorize could lead to significant changes in how health care services are delivered. Not only could these changes alter the competitive relationships among different providers, but they could also affect the nature and quality of care consumers receive. Although alternative health care facilities are becoming more common, experience with them still appears to be limited. Their appearance raises some potentially difficult issues, such as how to provide fairly for the care of indigent patients and how to maintain the capacity to provide intensive and sophisticated acute-care services for the more difficult

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[9] Final Report of the Acute Care Task Force, p. 1 (June, 1992).

[10] These comments do not address issues of comparative quality of care offered by different service formats. Different formats could offer different, but still acceptable, levels of quality of care.

[11] See, e.g., Comments to the Missouri House of Representatives (February 27, 1989) (physical therapists); Tennessee Comptroller of the Treasury (April 13, 1990) (Boards of Dentistry, Dispensing Opticians, Optometry, and Veterinary Medical Examiners); Texas Sunset Advisory Commission (August 14, 1992) (Board of Optometry); Montana House of Representatives (October 30, 1992) (business relationships between dentists and denturists). See also Statement of David Keniry, Attorney, Boston Regional Office, Federal Trade Commission, before the Committee on Business Legislation, Maine House of Representatives (January 8, 1992) (optometry).

cases.[12] The report of the Acute Care Task Force discusses some of these policy issues, which are outside of our expertise. The demonstration program approach appears to be a sensible way to learn more about the extent of these potential problems, and, if they arise, how they might be resolved, while also permitting these new kinds of facilities an opportunity to show whether they can provide a combination of service and price that consumers desire.

IV. Conclusion.

S.B. 66 would permit a marketplace test of how well these kinds of alternative facilities could serve consumers and of how they would affect competition in the delivery of health care services. We believe this effort may promote competition among different ways of delivering health care services and increase the range of options among which consumers can choose.

Sincerely,

C. Steven Baker
Regional Director

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[12] The proposed facilities would be subject to requirements of the state's health care facilities planning process. The staff has frequently questioned CON procedures and requirements, for both failing to control costs and for dampening competition, see supra n. 4. Nevertheless, because Illinois maintains CON requirements for hospitals, hospitals could be placed at a competitive disadvantage if other facilities that might compete with them, such as these alternative health care facilities, were exempted from CON requirements.