



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Louisiana State Board of Dentistry  
December 18, 2009

### Discussion

Children need regular oral health exams and treatments<sup>8</sup> and can be severely hurt when denied access to such care.<sup>9</sup> Access to care (particularly for children who qualify for Medicaid) is a common problem nationwide, despite many efforts to promote access.<sup>10</sup> For example, in 2007, Louisiana increased its public insurance coverage to encourage more dentists to treat children on Medicaid.<sup>11</sup> Still, less than one-third of Louisiana's dentists treat Medicaid-eligible patients, and only 37 percent of Medicaid-eligible children received any dental services at all.



parental authorization all dentists must obtain before treating children. We are unaware of a parent-dentist conference requirement when a dentist treats a child in an office. Because all practicing dentists must adhere to the same standards of conduct and care, there seems to be no consumer benefit from this requirement. Rather, this requirement will render it more difficult for dentists to provide these services by erecting an additional hurdle to bringing a dentist to a child.

Two other parts of the proposed rules also may make it harder to provide mobile dentistry to children. First, proposed §§313(J)(1) and (2) establish a means by which any member of the Board of Dentistry, which is composed mostly of competing dentists, may punish dentists for providing services in portable and mobile settings. Under Rule §§313(J)(1) and (2), every member of the Board may make an unannounced inspection of a dentist providing services in a portable or mobile setting. Dentists cannot be subject to an unannounced inspection when services are limited to the office; such inspections require at least 48 advance notice.<sup>18</sup> This authority could be seen as an invitation for Board members to act individually or in concert to punish dentists when they compete by providing mobile services. Subjecting dentists to the threat of an unannounced inspection when they treat patients in mobile settings, but not in office settings, may reduce dentists' willingness to treat patients in mobile settings.

Second, proposed §313(G)(1), requires dentists providing services in a portable or mobile setting to include in their consent form a statement "that if the minor already has a dentist, the parent or guardian should continue to arrange dental care through that provider." A dentist does not need to give this advice if the patient seeks treatment in an office.<sup>19</sup> It is unclear why this requirement is based on the setting of such services, especially because all dentists treat patients in accordance to the same prevailing standards of quality, safety and competence, regardless of setting.<sup>20</sup> Further, a rule mandating that one competitor advise a patient to return to another competitor is a form of market allocation that undermines the fundamental principles of competition, particularly because it is applied only in this setting.

---

<sup>18</sup> Rule §1204(A). Under §1204(B), the Board may conduct unannounced inspections of dentists only if "bona fide complaints have been received regarding non-adherence to Federal Centers of Disease Control guidelines or other issues involving sanitation.

<sup>19</sup> It may be the prevailing practice to advise patients in the midst of on-going treatments, to maintain the relationship with the dentist until such treatments are completed.

<sup>20</sup>

By making access to dental treatment in a mobile setting more difficult, the proposed rules are likely to reduce the number of poor children in Louisiana who receive dental care. At the same time, we are not aware of any evidence to suggest that the restrictions in the proposed rules identified above are likely to provide Louisianans with any benefits. Moreover, if the proposed amendments are necessary to assure patient safety, it is unclear why mobile dentistry offered by federal, state, and local government agencies, as well as free dental care provided in mobile settings are exempt from the rules.<sup>21</sup>

### Conclusion

As detailed above, certain sections of the proposed rules are likely to make it more difficult for poor children to access dental care. Further, these proposals do not seem to be calculated to provide Louisiana citizens with any countervailing benefits. Accordingly, FTC Staff urges the Louisiana Board of Dentistry to modify the proposed rules.

We appreciate your consideration of these issues.

Respectfully submitted,

Susan S. DeSanti  
Director  
Office of Policy Planning

Richard A. Feinstein  
Director  
Bureau of Competition

Howard Shelanski  
Deputy Director for Antitrust  
Bureau of Economics

---

<sup>21</sup> proposed Rule §313 (B)(1) & (3).