



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

Office of Policy Planning
Bureau of Competition
Bureau of Economics

January 29, 2016

The Hon. Valencia Seay
Georgia State Senate
420 State Capitol
Atlanta, Georgia 30334-2000

Dear Senator Seay:

The staffs of the Federal Trade Commission's Office of Policy Planning, Bureau of Economics, and Bureau of Competition¹ appreciate the opportunity to respond to your invitation for comments² on the likely competitive impact of House Bill 684³ ("HB 684"), which would expand the safety-net settingt st a6(ttic002 Tw0 Td (-)T6(t s)t266t)-4 G0 Tc rin the provision of dental care services and thereby benefit Georgia consumers, particularly underserved populations with limited access to preventive care.

I. INTEREST AND EXPERIENCE OF THE FEDERAL TRADE COMMISSION

The FTC is charged under the FTC Act with preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.

America's economy,⁵ and vigorous competition among sellers in an open marketplace gives consumers the benefits of lower prices, higher quality products and services, and increased innovation. Because of the importance of health care competition to the economy and consumer welfare, anticompetitive conduct in health care markets has long been a key focus of FTC law enforcement,⁶ research,⁷ and advocacy.⁸

FTC staff has addressed competition issues related to oral health care,⁹ including supervision of dental hygienists in public health settings, in both law enforcement actions and policy initiatives. In 2003, the Commission sued the South Carolina Board of Dentistry charging that the Board had illegally restricted the ability of dental hygienists to provide preventive dental services in schools without a prior examination by a dentist,¹⁰ thereby unreasonably restraining competition and depriving thousands of economically disadvantaged schoolchildren of needed dental care, with no justification.¹¹ The Board ultimately entered into a consent agreement settling the charges.¹²

In December 2010, FTC staff urged that the Georgia Board of Dentistry not adopt proposed rule changes that would have required indirect supervision by a dentist for dental hygienists providing dental hygiene services at approved public health facilities, and which could have been interpreted to require a dentist's initial diagnosis of all patients in such settings.¹³ In November 2011, FTC staff urged the Maine Board of Dental Examiners not to adopt proposed rules that would have restricted the scope of practice of Independent Practice Dental Hygienists participating in a pilot project designed to improve access to care in underserved areas of the state, by preventing them from taking certain radiographs without a dentist present.¹⁴

Several FTC staff advocacy comments also have addressed supervision requirements for advanced practice registered nurses ("APRNs"). A 2014 FTC staff policy paper, *Policy Perspectives: Competition and the Regulation of Advanced Practice Registered Nurses*, presents an in-depth analysis of the issue and explains that undue supervision requirements may exacerbate health provider shortages, increase health care costs and prices, and constrain innovation in health care delivery models.¹⁵ In the context of analyzing APRN regulations in many states, FTC staff has concluded that removing excessive supervision requirements can promote competition and achieve significant consumer benefits.¹⁶

II. CURRENT GEORGIA LAW AND PROPOSED AMENDMENTS TO SUPERVISION REQUIREMENTS FOR DENTAL HYGIENISTS

With few exceptions, current

clinics, health care facilities, long-term care facilities, and school based programs; or at other facilities or settings approved by the board.”²⁴ In addition, HB 684 would allow dental hygienists to provide dental screenings in any setting without direct supervision.²⁵

III.

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Respectfully submitted,

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Office of Policy Planning

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Bureau of Competition

¹ This letter expresses the views of the Federal Trade Commission’s Office of Policy Planning, Bureau of Economics, and Bureau of Competition. The letter does not necessarily represent the views of the Federal Trade Commission or of any individual Commissioner. The Commission, however, has voted to authorize us to submit these comments.

² Letter from Valencia Seay, Senator, Georgia Senate, to Karen Goldman, Attorney Advisor, Office of Policy Planning, Fed. Trade Comm’n (June 23, 2015) (on file with Office of Policy Planning).

³ HB 684 (LC 33 6136, 2015-2016) (to amend GA. CODE ANN. § 43-11-74), <http://www.legis.ga.gov/Legislation/20152016/152664.pdf>.

⁴ Federal Trade Commission Act, 15 U.S.C. § 45.

⁵ *Standard Oil Co. v. FTC*, 340 U.S. 231, 248 (1951) (“The heart of our national economic policy long has been faith in the value of competition.”).

⁶ *See generally* FTC STAFF, OVERVIEW OF FTC ANTITRUST ACTIONS IN HEALTH CARE SERVICES AND PRODUCTS (2013), <https://www.ftc.gov/system/files/attachments/competition-policy-guidance/hcupdaterev.pdf>.

⁷ *See, e.g.*, FTC & U.S. DEP’T OF JUSTICE (“DOJ”), IMPROVING HEALTH CARE: A DOSE OF COMPETITION (2004), <http://www.ftc.gov/reports/healthcare/040723healthcarerpt.pdf>.

⁸ FTC and staff advocacies take many forms, including letters or comments addressing specific policy issues, Commiss

[examiner-0](#); Comment from FTC Staff to the Comm'n on Dental Accreditation (Dec. 2, 2013) (concerning accreditation standards for dental therapists), <http://www.ftc.gov/policy/policy-actions/advocacy-filings/2013/12/ftc-staff-comment-commission-dental-accreditation>; N.C. State Bd. of Dental Exam'rs v. FTC, 135 S. Ct. 1101 (2015) (upholding an FTC ruling that the North Carolina State Board of Dental Examiners illegally thwarted lower-priced competition by engaging in anticompetitive conduct to prevent non-dentists from providing teeth whitening services to consumers in the state); Comment from FTC Staff to the La. State Bd. of Dentistry (Dec. 18, 2009) (concerning proposed rules on the practice of portable and mobile dentistry), <http://www.ftc.gov/os/2009/12/091224commentladentistry.pdf>; Comment from FTC Staff to the La. House of Representatives (May 1, 2009), <http://www.ftc.gov/os/2009/05/V090009louisianadentistry.pdf>; Comment from FTC Staff to the La. House of Representatives (May 22, 2009) (concerning legislation on the practice of in-school dentistry), <http://www.ftc.gov/os/2009/05/V090009louisianahb687amendment.pdf>; *see generally* *Advocacy Filings by Subject, Dentistry*, FED. TRADE COMM'N, http://ftc.gov/opp/advocacy_subject.shtm#detg (last visited Jan. 21, 2016).

¹⁰ *See* S.C. State Bd. of Dentistry, 138 F.T.C. 229, 233-40 (2004), <http://www.ftc.gov/os/decisions/docs/Volume138.pdf#page=234>.

[docs/7511 Permitted Services Supervision Levels by State.pdf](#). There are no express provisions for indirect supervision, general supervision, or direct access in Georgia laws or regulations, but the regulatory requirement of a dentist's authorization for dental hygienists services provided at certain public facilities is comparable to a requirement of general supervision. *See infra* note 22 and accompanying text.

¹⁹ GA. COMP. R. & REGS. 150-5-.03 (Supervision of Dental Hygienists).

²⁰ Catlett & Greenlee, *supra* note 18, at 110.

²¹ GA. CODE ANN. § 43-11-74(d).

²² Currently, Georgia regulations require a dentist to authorize the services provided by dental hygienists in these settings, either in person, through video conferencing, by written standing orders, or through department protocols. *See* GA. COMP. R. & REGS. 150-5-.03(3)(b).

²³ GA. CODE ANN. § 43-11-74(e)(1), (2).

²⁴ HB 684, GA. CODE ANN. § 43-11-74(d) (proposed). HB 684 would also strike the language at GA. CODE ANN. § 43-11-74(d) requiring the Georgia Board of Dentistry to provide regulations specifying a level of supervision at public health and safety-net settings, suggesting that authorization by a dentist might not be required. However, HB 684 does not propose to amend current Georgia law that generally authorizes the Georgia Board of Dentistry to adopt regulations on the scope of practice and supervision of dental hygienists. *See* GA. CODE ANN. § 43-11-9. Thus, it is not clear whether HB 684 alters the authority of the Georgia Board of Dentistry to adopt or retain regulations requiring a dentist to authorize services provided by dental hygienists.

²⁵ *See* HB 684, GA. CODE ANN. § 43-11-74(e)(2) (proposed).

²⁶ *See* NATIONAL GOVERNORS ASS'N, THE ROLE OF DENTAL HYGIENISTS IN PROVIDING ACCESS TO ORAL HEALTH CARE 4-5 T

scale (based on the patient's ability to pay." Georgia Dep't of Public Health, Oral Health, <https://dph.georgia.gov/oral-health>.

⁴¹ See NATIONAL GOVERNORS ASS'N, *supra* note 26, at 10 (2014). One study suggests that even without any supervision, dental hygienists' preventive care is "at least as good as hygiene care provided with dentists' supervision," and does not "increase the risk to the health and safety of the public or pose an undue risk of harm to the public." James R. Freed, Dorothy A. Perry, & John E. Kushman, *Aspects of Quality of Dental Hygiene Care in Supervised and Unsupervised Practices*, 57 J. PUB. HEALTH DENTISTRY 68, 74 (1997). See also Catlett & Greenlee, *supra* note 18, at 111 (requiring the physical presence of a dentist is unnecessary for most dental hygiene care because "there is little possible danger in most dental services provided").

⁴² *A Vision for the Delivery of Oral Health Care to Vulnerable and Underserved Populations*, in COMMITTEE ON ORAL HEALTH ACCESS TO SERVICES, INSTITUTE OF MEDICINE AND NATIONAL RESEARCH COUNCIL, IMPROVING ACCESS TO ORAL HEALTH CARE FOR VULNERABLE AND UNDERSERVED POPULATIONS 234 (2011).

⁴³ *Id.* at 235.

⁴⁴ See NATIONAL G