

FEDERAL TRADE COMMISSION

This policy paper represents the views of the FTC staff and does not necessarily represent the views of the Commission or any individual Commissioner. The Commission, however, has voted to authorize the staff to issue this policy paper.

Policy Perspectives

CONTENTS

EXECUTIVE SUMMARY	1
I. INTEREST AND EXPERIENCE OF THE FTC	5
II. BACKGROUND ON APRNS AND SCOPE OF PRACTICE ISSUES	7
II.A. Advanced Practice Registered Nurses	7
II.B. Competition Perspectives on Professional Regulations that Restrict APRN Scope of Practice	11
II.B.1. Form of Federal Law that States for PRN	12
II.B.2. A for State for PRN License State that A for	16
V for C m	
III. APRN SCOPE OF PRACTICE COMPETITION ADVOCACY COMMENTS AND ADDITIONAL ANALYSIS BY FTC STAFF	18
III.A. II.B.	

EXECUTIVE SUMMARY

concerns because they effectively give one group of health care professionals the ability to restrict access to the market by another, competing group of health care professionals, thereby fgp{kpi"jgcnvj"ectg"eqpuw ogtu"vjg"dggpLvu"qh"itgcvgt"eq o rgvkvkqp05"Kp"cf fkvkqp."CRTPu"rnc{"c" critical role in alleviating provider shortages and expanding access to health care services for medically underserved populations.⁴ For these reasons, the FTC staff has consistently urged state ngikuncvqtu"vq"cxqkf"ko rqukpi"tguvtkevqpu"qp"CRTP"ueqrg"qh"rtcevekeg"wpnguu"vjqug"tguvtkevqpu" ctg"pgeguuct{"vq"cfftguu"ygnm/hqwpfgf"rcvkgpv"uchgv{"eqpegtpu05 Based on substantial evidence cpf"gzrgtkgpeg."gzrgtv"dqfkgu"jcxg"eqpenwfgf"vjcv"CRTPu"ctg"uchg"cpf"ghhgevkxg"cu"kpfggrgfgpv" rtqxfgtu"qh"o cp{"jgcnvj"ectg"ugtxkegu"ykvj"kp"vjg"ueqrg"qh"vjgkt"vtckkpi."nkegpuwtg."egtkLecvkqp." and current practice.⁸ Therefore, new or extended layers of mandatory physician supervision may pqv"dg"lwuvkLgfo

Moreover, additional supervision requirements may not be tailored to accommodate the myriad tgnvkvqujkr"o"eqmcdqtcvkxg."eqpuwnkpi."qt"tghgtcn/dcugf"o"co qpi"CRTPu."rtk o ct{"ectg" doctors, specialty physicians, and other health care professionals, and may impair the abilities of health care professionals and provider institutions to develop new models of health care delivery in response to consumer preferences, health care needs, and new technologies. Under vtc fkvkqpcn"cu"ygnm"cu"g ogtikpi"o qfgnu."cnn"qh"vjgug"rtqxfgtu"ecp"eqvtdkdwvg"vq"uchg."ghLekgpv." and coordinated patient care, consistent with each professional's education, licensure, and

50) Rctvkewncv{"rgu"qh"rj{ukekcp"uwr gtxkukqp"qt"oeqnmcdqtcvkxg"rtcevekeg"tgswwtgo gpvu."cpf"vjg"yc{"u"vjg{"ecp" go rgygt"rj{ukekcp"vq"ko rfgf"CRTP"gpvt{"kpvc"jgcnvj"ugtxkegu"o ctmgvu."ctg"fkuewuugf"infra, text accompanying pqvgu"59/690

60) CRTPu"cntgcf{"rtqxfg"cfkurtqrvtkvqpcvgn{"jki"j"ujctg"qh"rtk o ct{"ectg"ugtxkegu"kp"ogfkecm{"wpfgtugtvgf"ctgcu" and for medically underserved populations, and they may be better able to meet increasing demand in such contexts when they can work independent of undue supervision requirements. See generally NAT'L GOVERNORS ASS'N, NGA PAPER: THE ROLE OF NURSE PRACTITIONERS IN MEETING INCREASING DEMAND FOR PRIMARY CARE (2012), [jwr<ll y y0pici0qtiLEngulnxglukvgulPICILEngulr fhl3434PwtugRtcevkqpgtuRcrgt0r fh](http://www.nursingworld.org/pubsandjournals/2012/01/primary-care-paper) [hereinafter NGA PRIMARY CARE PAPER].

5. FTC and staff advocacy comments, testimony, and letters are detailed in Section III of this paper, below, and vjgug"cpf"tgnvvgf"eq o o gpvu"ctg"nkuvf"kp"Cr r gpfkz"3"qh"vjku"rqkne{"rcrgt."cpf"cxckncdng"qp"vjg"HVE"rqkne{"ygd" page at [jwr<ll y y0hve0iqxlrqkne/lcfxqce/lcfxqce/Lnkpiu](http://www.ftc.gov/leaded/qxlrqkne/lcfxqce/lcfxqce/Lnkpiu).

80) See, e.g., IOM FUTURE OF NURSING REPORT, supra pqvg"4."cv"; ;="NGA PRIMARY CARE PAPER, supra note 6."cv"9/;"*uwvf{"hwpfgf"d{"W0U0"Fr0v"Jgcnvj"("Jwo cp"Ugtxu0."tgxkykpi"nkvgtcvwtg"rgtkpgpv"vq"PR"uchgv{" cpf"eqpenwfkpi"oPqpg"qh"vjg"uvwfkgu"kp"vjg"PI C0u"nkvgtcvwtg"tgxky"tckug"eqpegtpu"cdqvw"vjg"swcnkv{"qh"ectg" qhhgtgf"d{"PRu0"Oquv"uvwfkgu"ujqygf"vjcv"PR/rtqxfgfg"ectg"ku"eq o rctcdng"vq"rj{ukekcp/rtqxfgfg"ectg"qp" ugxgtcn"rtqeguu"cpf"qwveq o g"ogcuwtgu00+="CHRISTINE E. EIBNER ET AL., RAND HEALTH REPORT SUBMITTED TO THE COMMONWEALTH OF MASSACHUSETTS, CONTROLLING HEALTH CARE SPENDING IN MASSACHUSETTS: AN ANALYSIS OF OPTIONS"; ;"422;+."jwr<ll y y0tcpf0qti leqpvpgvlfc o ltcpflrwdulvgejpkcnatgrqtvu1422;|TCPFAVT9550r fh]jgtgkpcvgt"oEIBNER ET AL., MASSACHUSETTS REPORT0_ "0uwvfkgu"jcxg"ujqyp"vjcv"vjg{"rtqxfg"ectg"uk o knct"vq"vjcv" rtqxfgfg"d{"rj{ukekcpu00+"Uq o g"qh"vjg"rtk o ct{"tgugetej"wpfgtn{kpi"vjgug"cuuguu o gpvu"ku"ekvgf"infra"pqvg"3590

I. INTEREST AND EXPERIENCE OF THE FTC

Competition research and advocacy are an important part of the FTC's statutory mission.³⁹

Y jkng"Ugevkqp"8"qh"vjg"HVE"Cev³: gives the Commission the authority to conduct investigations that might lead to enforcement actions, it also grants more general authority to investigate and report on market developments in the public interest, including authority to make legislative recommendations based on those investigations.³:

The FTC has frequently utilized this unique authority to explore competition dynamics in the j gcnvj"ectg"kpfwuvt{0"Hqt"gzco r ng."kp"4225"vjg"Eq o o kuukqp"cpf"vjg"Cpvkvtwuv"Fxkukqp"qh"vjg"W0U0" Department of Justice jointly conducted extensive hearings on health care competition issues.⁴² Dcugf"qp"vjqug"jgctkpiu."cnqpi"ykvj"cp"HVE/urquptgf"yqtmujqr"cpf"kpfgrgpfgp"uvchh"tgugcte.j." vjg"vyq"ci gpekgu"kp"4226"lqkpvn{"tngcugf"ceq o r tggjgpukxg"tgrqtv"qp"j gcnvj"ectg"eq o r gvkvkqp⁴³ Among other topics, the hearings and report addressed potential competition concerns associated with professional regulations in the health care sector, including licensure and scope of practice

390" Hqt"ci gpgtcn"fkuewuukqp"qh"vjg"HVE"øu"örqnke{"tgugcte.j"cpf"fgxgnqr o gpvö" o kuukqp"cpf"vjg"tqng"qh"vjg"cfxqcece{" program, see, e.g., WILLIAM E. KOVACIC, THE FEDERAL TRADE COMMISSION AT 100: INTO OUR 2ND CENTURY (2009), [jwvr<ll y y 0hve0 i qxl hve l y qtmuj q r u l hve 322 l f qeul hve 322 r v 0 r fh" * t g i c t f k p i " ö r q n k e { " T \(F ö " u g g " r r 0 " ; 4 / 3 2 ; = - t g i c t f k p i " c f x q e c e { " u g g " r r 0 " 3 4 3 / 4 6 + = " s e e a l s o " L c o g u " E 0 " E q q r g t . " R c w n " C 0 " R c w n g t . " \(" V q f f " L 0 " \ { y k e m k . " T h e o r y a n d P r a c t i c e o f C o m p e t i t i o n A d v o c a c y a t t h e F T C . " 9 4 " A N T I T R U S T L . J . " 3 2 ; 3 " * 4 2 2 7 + = " O c w t g g p " M 0 " Q j n j c w u g p . " I d e n t i f y i n g C h a l l e n g i n g , a n d A s s i g n i n g P o l i t i c a l R e s p o n s i b i l i t y f o r S t a t e R e g u l a t i o n R e s t r i c t i n g C o m p e t i t i o n , 4 " C O M P E T I T I O N P O L ' Y I N T ' L " 3 7 3 . " 3 7 8 / 9 " * 4 2 2 8 + = " e q o r g v k v k q p " c f x q e c e { " ö d g { q p f " g p h q t e g o g p v ö " q h " v j g " c p v k v t w u v " n c y u + = " Y k n k c o " G 0 " M q x c e k e . " M e a s u r i n g W h a t M a t t e r s : T h e F e d e r a l T r a d e C o m m i s s i o n a n d I n v e s t m e n t s i n C o m p e t i t i o n P o l i c y R e s e a r c h a n d D e v e l o p m e n t . " 9 4 " A N T I T R U S T L . J . " : 8 3 " * 4 2 2 7 + = " V k o q v j { " L 0 " O w t k u . " E j c k t o c p . " H g f 0 " V t c f g " E q o o ø p . " T g o c t m u " c v " j g " k p v g t p c v k q p c n " E q o r g v k v k q p " P g v y q t m " R c p g n " q p " E q o r g v k v k q p " C f x q e c e { " a n d A n t i t r u s t A u t h o r i t i e s , C r e a t i n g a C u l t u r e o f C o m p e t i t i o n : T h e E s s e n t i a l R o l e o f C o m p e t i t i o n A d v o c a c y * U g r v 0 " 4 : . " 4 2 2 4 + . " j w v r < l l y y 0 h v e 0 i q x l r w d n k e / u v c v g o g p v u l 4 2 2 4 l 2 ; l e t g c v k p i / e w n w t g / e q o r g v k v k q p / g u u g p v k c n / t q n g / e q o r g v k v k q p / c f x q e c e { = " C t p q n f " E 0 " E g n p k e m g t . " T h e F e d e r a l T r a d e C o m m i s s i o n ' s C o m p e t i t i o n a n d C o n s u m e r A d v o c a c y P r o g r a m . " 5 5 " S t . L O U I S U . L . J . " 5 9 ; " * 3 ; : ; + = " O c w t k e g " G 0 " U v w e m g . " B e t t e r C o m p e t i t i o n A d v o c a c y . " : 4 " S t . J O H N ' S L . R E V . " ; 7 3 " * 4 2 2 : + 0 " H q t " c " t e g e p v " q x g t x k g y . " u g g " V e t c " K u c " M q u n q x . " C o m p e t i t i o n A d v o c a c y a t t h e F e d e r a l T r a d e C o m m i s s i o n : R e c e n t D e v e l o p m e n t s B u i l d o n P a s t S u c c e s s . " : " C P I A N T I T R U S T C H R O N . " 3 " * 4 2 3 4 + 0](#)

3:0" 37"W0U0E0"È"680

3;0 Id. cv"È"68*c+."*d+."*h+0

420 See *Competition in the Health Care Marketplace*, *supra* "pqvg"370

430 FED. TRADE COMM'N & U.S. DEP'T OF JUSTICE, IMPROVING HEALTH CARE: A DOSE OF COMPETITION (2004), [jwvr<ll y y 0hve0 i qxl tgrqtul j g c m v j e c t g l 2 6 2 9 4 5 j g c n v j e c t g t r v 0 r f h \[h e r e i n a f t e r F T C & D O J , A D O S E O F C O M P E T I T I O N \] .](#)

regulations.⁴⁴ Related professional regulation issues also were the subject of prior FTC research⁴⁵ and competition advocacy.⁴⁶

II. BACKGROUND ON APRNS AND SCOPE OF PRACTICE ISSUES

II.A. Advanced Practice Registered Nurses

Advanced Practice Registered Nurses (APRNs) are registered nurses who have completed additional education and training to provide a broad range of nursing services, including the diagnosis and treatment of acute and chronic illnesses.⁴⁸ APRNs are trained to provide a broad range of services, including the diagnosis and treatment of acute and chronic illnesses.⁴⁸ APRNs are trained to provide a broad range of services, including the diagnosis and treatment of acute and chronic illnesses.⁴⁸ APRNs are trained to provide a broad range of services, including the diagnosis and treatment of acute and chronic illnesses.⁴⁸

boards.^{4:} "Vjgtg"ctg"hwqwt"v{ rgu"qh"CRT Pu<"pwtug"rtcevkqpgtu"*PRu+="pwtug"okfykxgu"*PO Yu+="egtvkŁgf"tgi kuvgtgf"pwtug"cpguvjgvkuvu"*ETPCu+="cpf"enkpkecn"pwtug"urgekcnkuvu"*EPUu+⁰⁴: Despite vjku"tcpig"qh"cxckncdng"urgekcnkuvu."oquv"CRT Pu"ctg"gpici gf"kp"rtk o ct{"ectg.⁵²"cpf"oquv"CRT Pu" are trained and licensed to provide a broad range of primary care services.⁵³ This policy paper u{pvjguk|gu"HVE"uvchh"cfxqece{"eqo o gpvu"tgi ctfkpi"tgi wncvkqpu"crnkcedng"vq"CRT Pu"cpf"PRu" igpgtcnn{."tcvjgt"vjcp"tgi wncvkqpu"hwqewugf"qp"urgekcnk|gf"CRT Pu"uwej"cu"ETPCu"qt"PO Yu⁰⁵⁴

CRT Pu."nkmg"qvjgt"jgcnvj"ectg"rtqhgaukqpcnu."ctg"uwdlgev"vq"xctkqwu"ecvgi qtkgu"qh"uvcvg"tgi wncvkqp⁰ Kp"cnm"uvcvgu"cpf"vjg"fkuvtkev"qh"Eqnw o dkc."CRT Pu"hceg"nkegppuwtg"tgswkto gpvu"vjcv"fgvgt okpg" who may enter the profession.⁵⁵"Tgncvgf"ueqrg"qh"rtcevkge"twngu"hwvtjgt"fgŁpg"vjg"v{ rgu"qh" ugtxkegu"CRT Pu"ctg"cwvjqtg|gf"vq"rtqxfk"cpf"vjg"gzvpgv"vq"y jkej"vjg{"ctg"rgt okvvgf"vq"rtcevkge"

4:0 See *id.*"cv"45."63/640

4:0 See *id.*

520 See, e.g., CATHERINE DOWER & EDWARD O'NEIL, ROBERT WOOD JOHNSON FOUND., RESEARCH SYNTHESIS REPORT NO. 22: PRIMARY CARE HEALTH WORKFORCE IN THE UNITED STATES, 8*4233+."http://www.rwjf.org/content/dam/farm/tgrqtvulkuuwgadtghul4233ltylh624326luwdcuugvultylh624326a3"*oRtk o ct{"ectg"PRu"ocmg"wr"vjg"oclkqv{"qh"vjg"rtqhgaukqp."ykvj"qxgt"82"rtgegpv"tgrqtkpi"vjgkt"ockp"enkpkecn"urgekcnv{"vq"dg"hc okn{"ectgłö+0

530 See, e.g., EIBNER ET AL., MASSACHUSETTS REPORT, *supra* pqvg"8."cv"; ;"*fguetkdkpi"tcpig"qh"ugtxkegu+; NGA PRIMARY CARE PAPER, *supra* pqvg"6."cv"5/60

540 Y jkng"vjku"rqnke{"rcrgt"fqgu"pqv"urgekŁecn{"fkuewuu"vjgo."qvjgt"HVE"uvchh"cfxqece{"eqo o gpvu"jcxg"cf ftguugf"kuuwgu"rgtvckpkpi"vq"urgekcnk|gf"CRT Pu."cu"y gnm"cu"urgekŁe"dwukpguu"o qfgnu"ykvj"y jkej"CRT Pu"oc{"rtcevkge" *uwej"cu"nk okvgf"ugtxkeg"enkpkcu+0"See, e.g., Comment from FTC Staff to the Ky. Cabinet for Health and Family Servs. *Lcp⁰4232+."_____

independently.⁵⁶ Y j kng"gpvt{"swcnkŁecvkqpu"hqt"CRT Pu"ctg"kpctgkupi n{"uk o knct"htq o "uvcvg"vq"uvcvg." v j g"tgi wncvkqpu"v j cv"fgŁpg"CRT P"ueqrg"qh"rtcevkeg"eqpvkpwg"vq"xct{"y k fgn{⁵⁷ Some scope of rtcevkeg"tguvtkvkqpu"ctg"rtqegfwtg/qtkgpvfg."nk o kvkpi "CRT Pu"cdknkv{"vq"rtguetkdg"ogfkekpgu."tghgt" for, order, or perform certain tests or procedures, or treat certain indications.⁵⁸ Other restrictions hqewu"qp"v j g"v{"rgu"qh"rcvkpovu"CRT Pu" o c{"ugg0"Hqt"gzc o rng."CRT Pu" o c{"pqv"dg"cmnqygf"vq" õgzc o kpg" c"pgy"rcvkpov."qt" c"ewttgpv"rcvkpov"ykvj" c" o clqt"ejcu "kp" fkc ipquku"qt"vtgcvo gpv" rncu "

560 TRACY YEE ET AL., NAT'L INST. FOR HEALTH CARE REFORM, RESEARCH BRIEF NO. 13, PRIMARY CARE WORKFORCE SHORTAGES: NURSE PRACTITIONER SCOPE-OF-PRACTICE LAWS AND PAYMENT POLICIES⁴* gd0"4235+." jvr<ll y y 0u j et0qti I RER/Yqtmhqtg/PRu

" Cu"ykvj"qvjgt"jgcnvj"ectg"rtqhuukqu nu."v j g"uvcvgu" o c{"fgŁu "rtqhuukqu n"rtgtqicvkxgu"cpf"nk o kvu"dtqcf n{" or narrowly, through statutory law, administrative rules and decisions, and judicial decisions. *Compare, e.g.,* ALA. CODE ĒĒ56/43/:3* +* 234+. "y j e j"fgŁu u"õC fxcpegf"Rtcev eg"Pwtukpi"õ"õ]v j g"fgnkxgt{"qh"jgcnvj" care services by registered nurses who have gained additional knowledge and skills through successful completion of an organized program of nursing education that prepares nurses for advanced practice roles as egtv Łgf"tgikuv tgf"pwtug"rtcev v qu tu."egtv Łgf"pwtug"okf ykxgu."egtv Łgf"pwtug"cpguv gkvuv ."cpf"enku e n"pwtug" urgekcnkuv =õwith LA. REV. STAT. ANN. Ē59<;35*5+c+/*d+* 234+. "y j e j"fguetkdgu"CRT P"ueqrg"qh"rtcev eg"cu" including:

- * + " Assessing patients, analyzing and synthesizing data, and knowledge of and applying nursing principles at an advanced level.
- * k+ " Rtqxkfkpi"i w kfcpeg"cpf"v cej pi0
- * kk+ " Working with patients and families in meeting health care needs.
- * x+ " Collaborating with other health care providers.
- * + " Ocpcikpi"rcv gpv ø"rj uke n"cpf"ru{ejqukekcn" gcnvj/kmpguu"uvcv u"ykvj"tgictf"v "pwtukpi"ectg0
- * k+ " Utilizing research skills.
- * kk+ " Analyzing multiple sources of data and identifying and performing certain acts of medical diagnosis in accordance with the collaborative practice agreement.
- * kkk+ " Making decisions in solving patient care problems and selecting treatment regimens in collaboration with a licensed physician, dentist, or other health care provider as indicated.
- * z+ " Consulting with or referring patients to licensed physicians, dentists, and other health care providers in accordance with a collaborative practice agreement.

See also LA. ADMIN. CODE TIT. 46, PT. XLVII, § 4505 (2012) * qwkukcpc"Uvcv "Dqctf"qh" Pwtukpi"tgi wncv qpu" tgi ctfkpi "CRT Pu+0

570 IOM FUTURE OF NURSING REPORT, *supra* pqv "4."cv ; ~~see~~ also NGA PRIMARY CARE PAPER, *supra* pqv "6."cv 40

580 Hqt"gzc o rng."wpfgt"Hnqt kfc"nc y."cp" CRT P" o c{"õ} o qp kvqt"cpf"cnvgt"ftwi"v j g tcr kgu.õ"FLA. STAT. Ē"6860234*5+ *c+."dww o c{"pqv rtguetkd "eqpv tqmgf"uwduvcpeg"FLA. STAT. Ē":5;24*4+"cpf":5;207*3+*tguvtkvkpi"eqpv tqmgf" uwduvcpeg"rtguetkrvkpv"vq"egtvckp"õ"rtcevkvkqpgtu"õ"cpf"fgŁkpi"rtcevkvkqpgtu"vq"kp enwfg"r j {ukekcpu."dww pqv CRT Pu+0

wpnguu"vjg"rcvkgpv"ku"uggp"cpf"gzco kpgf"d{"c"uwr gtxkukpi"rj {ukekcp"ykvj"kp"ur gekŁgf"rgtkqf"qh" vk o gŁö⁵⁹

In addition, somewhat more than half of U.S. states maintain physician supervision requirements hqt"CRT Pu⁵:"kp"qvjgt"yqt fu."dgukfgu"nk o kvu"qp"vjg"v {rgu"qh"rcvkgpvu"CRT Pu" o c {"ugg"qt"vjg"v {rgu" qh"rtqegfwtgu"CRT Pu" o c {"rgthqt o."vjgug"uvcvgu"ueqrg"qh"rtcevkq"twngu"tguvtkv"vjg"fgi"tgg"vq" yjkej"CRT Pu" o c {"rtcevkq"kpfgrgpfgpv"0"Rj {ukekcp"uwr gtxkukqp" o c {"dg"tgs wktgf"ht"cnm"CRT P" practice,⁵; or for particular practice activities such as prescribing medications.⁶² Supervision twngu"uq o gvko gu"fgŁpg"vjg"rtco gvgtu"qh"uwr gtxkukqp" o qtg"ur gekŁecm {0"Uq o g"tgs wktg"vjcv" CRT P"rcvkgpv"ejctvu"dg"tgxkyg"fg"cv"uq o g"rctvkwnc"htgswgpe {=⁶³ some limit the number of kpfgrgpfgpv"CRT Pu"qpg"rj {ukekcp" o c {"uwr gtxkug. ⁶⁴ or restrict the physical distance permitted dgvyggp"c"uwr gtxkukpi"rj {ukekcp"cpf"c"uwr gtxkugf"CRT P"0"Hnqtkfc"nc y."hqt"gzco rng."k o rqugu" dtqc f"uwr gtxkukqp"tgs wktg o gpvu"qp"CRT P"rtcevkq." y jkng"cnuq"ur gekh {kp i"vjcv"cp"CRT P"ecppqv"

590 IOM FUTURE OF NURSING REPORT, *supra* pqvg"4."cv"3230"Vjg"tgrqtv"ecvncq i wgu"xctkqwu"tgi wncvqt {"tguvtkvqpu"qp" nursing practice. *Id.*"cv"322/24"dqz"5/3."379/83"cppgz"5/3"*tgi ctfkpi"uvcvg"ueqrg"qh"rtcevkq"tguvtkvqpu"ht"pwtug" r tcevkqpgtu+0

5:0 *See id.*"gur gekcn {"379/83"cppgz"5/3"*ur gekh {kp i"uvcvg/d {uvcvg"tgs wktg o gpvu"ht"uwr gtxkukqp"qt" o c pfcvqt {" ðeqmcdqtcvkxg"rtcevkq"ö"ht."gŁi0."CRT P"vtgc v o gpv." fkc i pquku."qt"rtguetkdkpi +0"Ceeqtfkpi"vq"vjg"pvcvkpcn"Eqwpekn" qh"Uvcvg"Dqct fu"qh"pwtukpi."49"uvcvgu"tgs wktg"uwr gtxkukqp"qt"c"eqmcdqtcvkxg"rtcevkq"ci tgg o gpv"ht"CRT P" practice. *See APRN Maps, supra* pqvg"47"*hqmqy"ðEPOö"j {rgtnkpm"wpfgt"ðkpfgrgpfgpv"Rtcevkq"ö"jgc fki +"*44" uvcvgu"rnwu"fkvutkev"qh"Eqnw o dkc"rgt o kv"kpfgrgpfgpv"rtcevkq+0

5;0 *See, e.g.,* FLA. STAT. È"6860234*5+*4234+*CRT P"ecp"rgthqt o"hwpevkqpu"ykvj"kp"U0Q0R0"qpn {"chvgt"ðgpvgtkpi"kpvc" c" uwr gtxkuqt {"tgnvcvqpujkr"ykvj"c"rj {ukekcp"cpf"uwdugswgppv {"Łnkp i"guvcdnkujgf"rtcevkq"rtqvqeqn"ykvj"tgi wncvqt+0 LA. REV. STAT. ANN. È"59<;35*:*4234+*hqt o cn"ytkvgp"eqmcdqtcvkxg"rtcevkq"ci tgg o gpv"tgs wktgf"ht"dqj"ðcevu" qh" o g fkecn" fkc i pquku"cpf"rtguetkrvkqö+0

620 Tgictfkipi" o qtg"igpgtcn"cpf"rctvkwnc"uvcvwt {"fgŁpkvkqpu."ugg"*supra* pqvg"56"*eq o rctkpi"i gpgtcn"Cncdc o c" fgŁpkvkq"ykvj" o qtg"ur gekŁe"gpw o gtcvkq"qh"CRT P"rtcevkq"wpfgt"Nqwkukpc"nc y+0"Tgictfkipi"rtguetkdkpi."see *APRN Maps, supra* pqvg"47"*hqmqy"ðEPOö"j {rgtnkpm"wpfgt"ðkpfgrgpfgpv"Rtguetkdkpi"ö"jgc fki +"*44"uvcvgu" rnwu"fkvutkev"qh"Eqnw o dkc"rgt o kv"kpfgrgpfgpv"rtcevkq+=*see also, e.g.,* LA. REV. STAT. ANN. È"59<;35*:*4234+* hqt o cn"eqmcdqtcvkxg"rtcevkq"ci tgg o gpv"tgs wktgf"ht"rtguetkdkpi += W.VA. CODE ÈÈ"52/9/37*c+/*d+*ukipgf" eqmcdqtcvkxg"rtcevkq"ci tgg o gpv"ykvj"rj {ukekcp"tgs wktgf"ht"CRT P"rtguetkdkpi+0

630 *See, e.g.,* MISS. CODE ANN. È"95/37/42*5+*4234+*tgs wktkpi"guvcdnkuj o gpv"qh"c"ðeqmcdqtcvkxgleqpuwncvkxg" tgnvcvqpujkrö+*Id.*"È"95/37/42*E+*5+*gcej"ðeqmcdqtcvkxgleqpuwncvkxg"tgnvcvqpujkrö" o wuv"kpewfg"ðhqt o cn"swcnkv {" cuuwtepeglswcnkv {"k o rtqxo g gpv"rtqitc o.ð"kpewfkipi"cv"tgxky"qh"cv"ngcu"vjg"nguugt"qh"42"qt"32" ' "qh"CRT P"ö" ejctvu"gcej" o qpvj+0

640 *See, e.g.,* FLA. STAT. È"67:056:*6+c+/*d+.*e+*4234+*uwdugevkqpu" c/d"tguvtkv"pw o dgt"qh"qhŁegu"rj {ukekcp" o c {"uwr gtxkug+0

practice more than a certain distance from the primary place of practice of his or her supervising physician.⁶⁵

Some supervision rules use different terminology to the same or similar effect. A state may

“...require that a physician who is not a resident of this state and who is not a member of the board of medical practice shall not practice medicine in this state unless he or she is supervised by a resident physician who is a member of the board of medical practice and who is licensed to practice medicine in this state.”⁶⁶

“...no person shall practice medicine in this state unless he or she is a member of the board of medical practice and is licensed to practice medicine in this state.”⁶⁷

“...no person shall practice medicine in this state unless he or she is a member of the board of medical practice and is licensed to practice medicine in this state.”⁶⁸

“...no person shall practice medicine in this state unless he or she is a member of the board of medical practice and is licensed to practice medicine in this state.”⁶⁹

II.B. Competition Perspectives on Professional Regulations that Restrict APRN Scope of Practice

Professionals serve important consumer protection objectives, including safety and quality. To meet fully the interests of health care consumers, however, requires weighing competition

65) *Id.*, “E” 67:056: *6+*e+*tgs wktg u gkv jgt qp/ukv g uwr gtxkuk qp qt. ö]c_m uwe j qh Legu v j cv ctg pqv v j g r j {ukekcpøu rtk o ct { rnceg qh rtcevkeg o wuv dg y kv j kp 47 o kngu qh v j g r j {ukekcpøu rtk o ct { rnceg qh rtcevkeg qt kp c eqwpv { v j cv ku eqpvk i wqu v v j g eqwpv { qh v j g r j {ukekcpøu rtk o ct { rnceg qh rtcevkeg 0’0’0ö+= see also MO. CODE REGS. ANN. tit. 42”E 4372/70322*4+*C+/*D+*4234+*öcp CRTP y j q r tqxkf g u j g c n v j e c t g u g t x k e g u v j c v k p e n w f g v j g f k c i p q u k u c p f k p k v c v k q p q h v t g c v o g p v h q t c e w v g n { q t e j t q p k e c n n { k n n q t k p l w t g f r g t u q p u ö o c { p q v d g o q t g v j c p 72 o k n g u d { t q c f k p h g f g t c m n / f g u k i p c v g f j g c n v j r t q h g u u k q p c n u j q t v c i g e t g c u c p f p q v o q t g v j c p 52 o k n g u d { t q c f q v j g t y k u g +0

44. TEX. OCC. CODE ANN. § 157.051 (2012).

45. FTC staff are not aware of any state that imposes comparable requirements of collaborative practice on physician scope of practice, although some states impose various requirements on physicians who elect to enter

“...no person shall practice medicine in this state unless he or she is a member of the board of medical practice and is licensed to practice medicine in this state.”⁶⁸

“...no person shall practice medicine in this state unless he or she is a member of the board of medical practice and is licensed to practice medicine in this state.”⁶⁹

68) LA. REV. STAT. ANN.

rules. The goal should be to avoid imposing restraints that may tend to impair competition in a way that is greater than necessary to address legitimate health and safety concerns.

II.B.1. Form of Entry into Practice

Licensure is, by its nature, a process that establishes the conditions for entry into an occupation. As a threshold matter, any regulation or law that establishes entry conditions for an occupation tends to reduce the supply of individuals otherwise willing to provide the services associated with that occupation.⁶ Licensure is commonly required for many occupations, however, and a minimum degree of competence, based on education and training, to obtain the government's permission to provide professional services in a given jurisdiction.⁶ Scope of practice rules provide, and may prohibit a health care practitioner from offering certain services without supervision, or meeting other regulatory requirements. Unlicensed practice, or the provision of services outside one's scope of practice, generally is prohibited by statute and may be subject to services

time of delivery.⁷³ Without entry standards for medicine or nursing, consumers might have difficulty comparing the quality of services provided by different providers.⁷⁴ For similar reasons, consumers might have difficulty comparing the quality of services provided by different providers or general competencies and those with more specialized training and experience, as may be appropriate for particular health needs.⁷⁵ In addition, the oversight required for ongoing licensure

interest.⁵⁴ More generally, proponents of licensure also claim that quality of services may be higher in licensed professions.⁵⁵

Competition unnecessarily, which can be detrimental to health care consumers and have broader implications for the quality of care. The suggestion of a net social loss is not often made with regard to physician or nursing licensure in particular, and we do not make it here. *But see generally* [citations].

54. The suggestion of a net social loss is not often made with regard to physician or nursing licensure in particular, and we do not make it here. *But see generally*

kpew o dgpv"r j {ukekcpu" o c {"dg"kp u wncv g f" c i ckpu v" v j g" f g i t g g" q h" e q o r g v k v k q p" C R T P u" e c p" q h h g t l⁷⁹ It o c {"dg"kp" v j g" g e q p q o k e" u g n h/ k p v g t g u v" q h" v j q u g" r j { u k e k c p u" v q" r t q r q u g" c p f" c f x q e c v g" v j g" c f q r v k q p" q h" t g u v t k e v k q p u" q p" C R T P u" n k e g p u w t g" c p f" u e q r g" q h" r t c e v k e g" = " c p f" u w e j" r j { u k e k c p u" o k i j v" d g" d k c u g f" towards doing so.⁷⁷ Other factors, such as historically entrenched forms of training and care delivery, dated or erroneous beliefs about the training or performance of unfamiliar professions, q t" g x g p" r t q h g u u k q p c n" d k c u." o c {" e q p v t k d w v g" v q" c f x q e c e {" q p" d g j c n h" q h" g z e g u u k x g" C R T P u" t g i w n c v k q p l⁷⁷:

As discussed in greater detail below,⁸² c" i t q y k p i" d q f {" q h" g x k f g p e g" u w i i g u v u" v j c v" C R T P u" e c p." based on their education and training, safely perform many of the same procedures and services r t q x k f g f" d {" r j { u k e k c p u" V j w u." u e q r g" q h" r t c e v k e g" t g u v t k e v k q p u" o c {" g n k o k p c v g" C R T P u" c u" c p" k o r q t v c p v" u q w t e g" q h" u c h g." n q y g t/ e q u v" e q o r g v k v k q p l" U w e j" c" t g f w e v k q p" q h" e q o r g v k v k q p" o c {" n g c f" v q" c" number of anticompetitive effects.⁸³

790" V j k u" k u" v t w g" g x g p" v j q w i j" C R T P u" c p f" r j { u k e k c p u" c t g" p q v" r g t h g e v" u w d u v k w v g u." c p f" g x g p" v j q w i j" o c p {" q h" v j g" u g t x k e g u" r t q x k f g f" d {" C R T P u" c p f" r j { u k e k c p u" c t g" e q o r n g o g p v c t {" t c v j g t" v j c p" e q o r g v k v k x g l" H V E" u v c h h" f q" p q v" u w i i g u v" v j c v" C R T P u" c p f" r j { u k e k c p u" u e q r g" q h" r t c e v k e g" u j q w n f" d g" v j g" u c o g." d w v" v j c v" d q v j" C R T P u" c p f" r j { u k e k c p u" c t g" c d n g" v q" r t q x k f g" c p" q x g t n c r r k p i" u g v" q h" u g t x k e g u l" ð O q u v" q d u g t x g t u" e q p e n w f g" v j c v" o q u v" r t k o c t {" e c t g" v t c f k v k q p c n n {" r t q x k f g f" d {" r j { u k e k c p u" e c p" d g" f g n k x g t g f" d {" P R u" c p f" R C u l" ð O T A H E A L T H T E C H. C A S E S T U D Y, *supra* p q v g": . " c v" 5; 0" See also ASS'N OF AMER. MED. COLLS., PHYSICIAN SHORTAGES TO WORSEN WITHOUT INCREASES IN RESIDENCY TRAINING *p0f0+, j w r u < l l y y l c c o e l q t i l f q y p n q c f l 3 7 2 7 : 6 l f c v c l r j { u k e k c p a u j q t v c i g u a h c e v u j g g w l r f h [hereinafter AAMC, PHYSICIAN SHORTAGES_0" k p" k v u" r t q l g e v k q p u" q h" r j { u k e k c p u" u w r r n {" c p f" f g o c p f." v j g" C C O E" c u u w o g u" v j c v" g c e j" c f f k v k q p c n" v y q" P R u" * C R T P u" q t" r j { u k e k c p u" c u u k u v e p v u + " t g f w e g" r j { u k e k c p u" f g o c p f" d {" q p g." y j k e j" u w i i g u v u" v j c v" C R T P u" c p f" r t k o c t {" e c t g" f q e v q t u" c t g" c e v w c n" q t" r q v g p v k c n" e q o r g v k v q t u" h q t" c v" n g c u v" u q o g" u g v" q h" u g t x k e g u l

7:0"

Licensure and scope of practice regulations thus have potential positive and negative consequences for health care consumers. Consumers are protected by assurances that their health care providers meet minimum criteria for education, training, knowledge and skills, which supports critical safety and quality objectives. At the same time, however, when licensure and scope of practice restrictions are broader than necessary to protect patient health and safety, they may or expand the range of services they offer. These effects, in turn, may diminish competitive

II.B.2. A f S f P L m S

and the potential adverse competitive impact of regulations, along with other legitimate policy goals.⁸⁴

The approach proposed by FTC staff takes into account the potential competitive impact of the regulations will redress those concerns, and the availability of any less restrictive means of achieving the same legitimate results. This approach also recognizes that competition can work to favor, rather than undermine, health care quality, which means that policymakers do not necessarily have to choose between protecting consumers and promoting competition: increased consumer protection and increased competition can occur at the same time. We urge legislators and policymakers to apply the following analytical framework to evaluate the reasonably available evidence:

- Yknn"vjg"tgi wncvkqp"uk i pkŁecpvn{"k o r g f g"eq o r g v k v k p p" d { " h q t " g z c o r n g . " o c m k p i " k v " o q t g " e q u v n { " q t " f k h Ł e w n v " h q t " v j g " t g i w n c v g f " i t q w r " q h " r t q h g u u k q p c n u " v q " g p v g t " k p v q " e q o r g v k v k p p . " q t " g z r c p f " their practices, or by otherwise increasing the cost of health care services or reducing their availability?

840" Yg"fq"pqv" o gcp"vq"uw i i guv"vjcv"r j { ukecp"qt"pwtukpi "nkegpuwtg" i gpgtcmm{"ngc fu"vq"pgv"uqekcn"nquu0"UrgekŁecnn{" hqt"rwrqgu"qh"vjku"rqnke{"rcrgt."yg"cuuw o g"vjcv"dqvj" c"dcugnkpg"CRTP"nkegpukpi"tgik o g"cpf"uq o g"tg i wncvqt {" nk o kvu"qp"CRTP"ueqrg"qh"rtcevkeg"ctg"pgeguuct {"cpf"fguktcdng."gxgp"y jgtg"cf fkvkqpcn"ueqrg"qh"rtcevkeg" restrictions may be overly burdensome. See supra pqvgu"73/77"cpf"ceeq o rcp {kpi "vgzv0"C" fgvckngf"fkuewuukqp"qh" vjg"rqvqpvkcn"eq o r g v k v k x g " j c t o u " f q p g " d { " r c t v k e w n c t " w p f w g " t g i w n c v q t { " t g u v t k e v k q p u " q p " C R T P " r t c e v k e g " k u " v j g " u w d l g e v " of Section III.A of this policy paper, *infra*.

- Ctg"vjgtg"cp{"uki pkŁecpv"cpf"pqp/ur gewncvkxg"eqpuw o gt"j gcnvj"cpf"uchgv{"pggfu"vjcv" particular regulatory restrictions, extant or proposed, are supposed to meet?
- Fq"vj qug"rctvkewnct"tgi wncvkqpu"cevwcn{"rtqxfkfg"vjg"kpvgpfgf"dggpŁvu"ó"uwej"cu" k o rtqxo gpvu"kp"j gcnvj"ectg"qwveq o gu"qt"ctgfwegf"tkum"qh"jct o "htq o "rqqt/swcnkv{"ugt xkegu" ó"qt"ctg"vjgtg"iqqf"itqwpfu"vq"vj kpm"vjg{"ctg"nkmg{"vq"rtqxfkfg"vj qug"dggpŁvuA
- Ctg"vjgtg"qvjgt"fg o qpuvtcvgf"qt"tgcupcdn{"nkmg{"eqpuw o gt"dggpŁvu"cuuqekcvgf"ykvj"vjg" rtqrqugf"tgi wncvkq*"g0i0."tgfwef"kpht o cvkqp"qt"vtcpucevkqp"equvu"hq"eqpuw o gt"yjq"ctg" choosing among providers, reduced consumer confusion in distinguishing among different v{rgu"qh"rtqxfgtu."gve0+A
- Yjgp"eqpuw o gt"dggpŁvu"ctg"unki jv."kpuwduvcpkcn."qt"jki jn{"ur gewncvkxg."c"tgi wncvkq"vjcv" k o rqug"pqp/vtkxkc"ko rgfk o gpvu"vq"eq o rgvkvkqp"ku"pqv"lwuvkŁgf0"⁸⁵
- If pertinent consumer harms have occurred, or risks are found to be substantial, is the

III. APRN SCOPE OF PRACTICE COMPETITION ADVOCACY COMMENTS AND ADDITIONAL ANALYSIS BY FTC STAFF

ngcfkpi"gej"ōrcvkgpv/egpvgtgfö"vgco⁹³ As noted above, the FTC staff has not questioned the
wvknkv{"qh"vgco/dcugf"ectg"qt"vjg"pqvkqp"vjcv"uqog"v{rgu"qh"ectg"oc{"tgswktg"gzvgpukxg"ogfkecn"
training. At the same time, particular supervision requirements can burden, rather than facilitate,
vgco/dcugf"ectg0"Vjg"HVE"uvchh"swgukqpu."vjgtghqtg."y jgvjgt"gxkfgpeg"uwrrqtvu"cuvcvwwqt{"
ocpfcvg"hqt"uqog"rctvkewnct"oqfgn"qh"vgco/dcugf"ectg"vjcv"ku"cnyc{u"ngf"d{"c"rtkocct{"ectg"
physician. The FTC staff also asks whether evidence supports the contention that patients receive
uwduvcpfctf"ectg."qt"ctg"jctogf."y jgp"vjg"ncy"fqgu"pqv"ko rqug"urgekŁe"uwrgtxkukqp"tgswktgogpvu"
qp"CRTPu"cpf"vjgkt"rcvkgpvu0

III.A. Potential Competitive Harms from APRN Physician Supervision Requirements

CRT P r j { ukekcp"uwr gtxkukqp"tgs wktg o gpvu"tckug"ugxgtcn"tgncv g f"eq o rgykvkxg"eqpegtpu0"D { " tguvtkevki "CRT Puø"ceeguu"vq"vjg" o ctmgv rnceg."uwr gtxkukqp"tgs wktg o gpvu" o c {"fgrtkxg"jgcnvj"ectg" eqpuw ogtu"qh"vjg" o cp {"dggpŁvu"qh"eq o rgykvkqp" c o qpi "fkhhgtgpv"v { rgu"qh"jgcnvj"ectg"rtqxkfgtu0"

This reduction in competition may exacerbate provider shortages and thereby contribute to access problems, particularly for underserved populations that already lack adequate and

consumers.⁹⁵ Beyond aggregate or average projected shortages, the United States suffers from widespread distributional problems in the supply of health care professionals.⁹⁶ Reduced

the United States.⁹⁹ "Kv" jcu"dggp" guvk o cvgf" vjcv" cr rtqzk o cvgn{ "ukzv{ /Lxg" o knkqp" C o gtkecpu" nkxg" kp" uwej" qhLekcm{ " fguk i pcvgf" ujqtcig" ctgcu0⁹:

In many areas, those shortages are expected to persist or worsen, especially in light of health care reform efforts that will enable many more Americans to obtain health care insurance.⁹: As a result, millions of Americans soon will have a greater ability to pay for health care – especially routine primary care and preventive services they currently do without:² – but it is unclear how the existing population of practitioners can meet this increasing demand.^{:3}

Gcej" qh" vjg" ugxgp" HVE" uvchh" cfxqece{ "eq o o gpvu" ekvgu" uvcvg/urgekLe" fcvc" vq" wpfgtueqtg" pcvkqpcn" concerns about access to care. In Louisiana, for example, FTC staff noted that

990 *Shortage Designation: Health Professional Shortage Areas & Medically Underserved Areas/Populations*, HEALTH RESOURCES & SERVS. ADMIN., <http://www.hrsa.gov/shortage/>"*ncuv"xkukvgf"Hgd0"5."4236+*" guvk o cvkpi" vjcv" cr rtqzk o cvgn{ "9.722" cf fkvkqpcn" rtk o ct{ "ectg" rj { ukekecpu" yqwnf" dg" tgswkgtf" vq" ejcpig" vjgug" JRUC" fguk i pcvkqpu." dcugf" qp" c" rqrwncvkqp" vq" rtcevkvkqpgt" tcvkq" qh" 5.722<30" J TUC" jcf" rtgxxkwun{ " guvk o cvgf" ujqtcig" qh" cdqww" 38.222" rtk o ct{ "ectg" rj { ukekecpu" dcugf" qp" c" fkhgtgpv" o qfgn. "cpf" eqpvkpwgu" vq" tgeqipk|g" vjcv" qvjt" uqwtegu" cpf" o qfgnu" uwi i guv" jki jgt" ujqtcig" pw o dgtu+= "see also HRSA PHYSICIAN WORKFORCE REPORT, *supra*" pqvg" 95." cv" 92/ 94=" KAISER FOUND., IMPROVING ACCESS, *supra*" pqvg" 78." cv" 3" *kpcfgswcvg" uwr rn{ "qh" rtk o ct{ "ectg" rtqxxfgtu" ku" qpg" qh" vjg" ð o clqt" jgcnvj" ectg" ejcmgpi gu" hceki" vjg" W0U0" vqfc{ ð=" cpf" kv" ku" guvk o cvgf" vjcv" ðW0U0" yknn" hceg" cp" guvk o cvgf" ujqtcig" qh"; 3.222" rj { ukekecpu. " urnkv" cdqww" gxgo v" g O O

o qtg"vjcp"jcnh"qh"Nqwkukcpc"rqrwncvkqp"nkxgu"kp"chfgfgtcnm{/fgukipcvgf"]JRUC_0"
Cnm"86"Nqwkukcpc"Rctku jgu"eqpvckp"JRUCu."cpf75"gpvktg"Rctku jgu"eq o rtkug"rtk o ct {"
ectg"ujqtvcig"ctgcu0"Cp"guvk o cvgf"987.222"Nqwkukcpcpu"ó" o qtg"vjcp"39"rgtegpv"qh"
the State's population – lack health insurance.⁴

HVE"uvchh"ekvgf"ch"Nqwkukcpc"Frctvo gpv"qh"Jgcnvj"cpf"Jurkvcnu"tgrqtv"kpfkckvki"vjcv"õ]u_
jqtvcigu"chhgevkpi"vjg"ceeguukdknkv{"cpf"cxckncdknkv{"qh"rtk o ct{/ectg"rj{ukekcpu"0"0"0"rqug"ch"
ukipkŁecpv"rtqdnq o "kp"vjg"fgnkxgt{"qh"jgcnvjectg"kp"Nqwkukcpc"0:5"Uvchh"cnuq"ekvgf"uvcvg/urgekŁe"
sources projecting that health care reform would exacerbate shortages as more Louisiana
consumers gain health insurance and seek access to primary health care services.⁶ FTC staff
have raised analogous concerns about existing professional shortages and access to basic health
ectg"ugtxkegu"kp"qvjgt"CRTP"cfxqece{" o cvgtkcnu0:7

Jgcnvj"rqnke{"gzzrgtvu"jcxg"nqpi"eqpukfgtgf"vjg"tqng"CRTPu"okijv"rnc{"kp"cmngxckvki"rtqxfgt"
ujqtvcigu."rctvkewnctn{"kh"CRTPu"ctg"uwdlgev"vq"hg ygt"cpf"nguu"equvn{"tguvtkevqpu0"Hqt"gzc o rng."kp"
3;:8."y jcv"ycu"vjgp"vjg"W0U0"Eqpigtuu"QhŁeg"qh"Vgejpqni{"Cuuguu o gpv"qdugt xgf.

Vjg"wug"qh"pwtug"rtcevkvkqpgtu"*PRu+"cpf"rj{ukekcp"cuukuvcpvu"*RCu+"vq"rtqxfgf"
primary health care traditionally provided only by physicians developed during
vjg"3;82u"kp"tgurqpug"vq"ch"rgtegxgf"ujqtvcig"cpf" o cnfkuvtkdwwkqp"qh"rj{ukekcpu0"
Uqekgvcn"uwr rqtv"hqt"vjku"ppqxckvki"kp"vjg"fgnkxgt{"qh"jgcnvj

O

r qv g p v k c n " h q t " P R u " c p f " R C u " v q " k o r t q x g " c e e g u u " c p f " v q " n q y g t " e q u v u " y j k n g " o c k p v c k p k p i "
the quality of care.:⁸

O q t g q x g t . " c n v j q w i j " ö] o _ q u v " q d u g t x g t u " e q p e n w f g " v j c v " o q u v " r t k o c t { " e c t g " v t c f k v k q p c n n { " r t q x k f g f "
d { " r j { u k e k c p u " e c p " d g " f g n k x g t g f " d { " P R u " c p f " R C u . ö : 9 " Q V C " c n u q " q d u g t x g f " v j c v " C R T P u * P R u + " h c e g f "

v j g " o q u v " e q o o q p " p q p / r j { u k e c p " j g c n v " j " e c t g " r t q x k f g t u " q h " r t k o c t { " e c t g " u g t x k e g u . ö : 5 and they provide a large number of primary care services – independently in some states, and subject to collaborative practice agreements or supervision requirements in other states. : 6 " C R T P u " ö] v _ c m g " j g c n v " j k u v q t k g u " c p f " r t q x k f g " e q o r n g v g " r j { u k e c n " g z c o u = f k c i p q u g " c p f " v t g c v " c e w v g " c p f " e j t q p k e " k m p g u u g u = " r t q x k f g " k o o w p k | c v k q p u = " r t g u e t k d g " c p f " o c p c i g " o g f k e c v k q p u " c p f " q v j g t " v j g t c r k g u = " q t f g t " c p f " k p v g t r t g v " n c d " v g u v u " c p f " z / t c { u = " r t q x k f g " j g c n v " v g c e j k p i " c p f " u w r r q t v k x g " e q w p u g n k p i 0 ö : 7

C u " r t k o c t { " e c t g " r t q x k f g t " u j q t v c i g u " j c x g " y q t u g p g f . " C R T P u " j c x g " r n c { g f " c p " g x g p " i t g c v g t " t q n g " k p " c n n g x k c v k p i " v j g " g h h g e v u " q h " u j q t v c i g u " c p f " o k v k i c v k p i " c e e g u u " r t q d n g o u 0 " H q t " g z c o r n g . " C R T P u " o c m g " u p a g r e a t e r s h a r e o f t h e p r i m a r y c a r e w o r k f o r c e i n l e s s d e n s e l y p o p u l a t e d a r e a s , l e s s u r b a n c t g u . " c p f " n q y g t " k p e q o g " c t g u . " c u " y g m " c u " k p " J R U C u 0 : 8 R e l a t i v e t o p r i m a r y c a r e p h y s i c i a n s , C R T P u " c t g " o q t g " n k m g n { " v q " r t c e v k e g " k p " w p f g t u g t x g f " c t g u " c p f " e c t g " h q t " n c t i g " p w o d g t u " q h " o k p q t k v { " r c v k g p v u . " O g f k e c k f " d g p g L e k c t k g u . " c p f " w p k p u w t g f " r c v k g p v u 0 : 9 I n a d d i t i o n , t h e s h o r t e r a n d l e s s c o s t l y g f w e c k q p " c p f " v t c k p k p i " t g s w k t g o g p v u " q h " C R T P " r t c e v k e g " u w i i g u v " v j c v " C R T P u " o c { " d g " c d n g " v q " o g g v "

; 50 NGA PRIMARY CARE PAPER, *supra* note 4, at 4. One recent study, based on Medicare billing data, suggests ; 07 ' " i t q y v j " k p " v j g " p w o d g t " q h " O g f k e c t g " r c v k g p v u " u g g p " d { " P R u . " h t q o " 3 ; ; : " v q " 4 2 3 2 0 " M w q " g v " c n 0 . " s u p r a p q v g " ; 2 . " c v " 3 4 5 : 0 " C p " C r t k n . " 4 2 3 5 " D g t m g n g { " H q t w o " T g r q t v " u w i i g u v u " c " t q w i j n { " 3 2 ' " P R " u j c t g " q h " r t k o c t { " e c t g " x k u k v u " k p " v j g " u v c v g . " y k v j " f c v c " h t q o " q v j g t " u v c v g u " t c p i k p i " h t q o " 7 0 3 ' " * P g y " L g t u g { + " v q " 4 ; 0 : ' " * O k u u q w t k + 0 B E R K E L E Y F O R U M , U N I V . O F C A L I F O R N I A , B E R K E L E Y , A N E W V I S I O N F O R C A L I F O R N I A ' S H E A L T H C A R E S Y S T E M : I N T E G R A T E D C A R E W I T H A L I G N E D F I N A N M C 1 0 0 6 1 2 7 9 2 W B T T T 1 1 T S A M E F F 0 D C (R 3 1 . 3 1 5 7 9 3 2 6 . 4 T 6 C (S) T E M C P N) T 3 R T H E R

access to health care, particularly in historically underserved areas.³²²

problems are more likely to be exacerbated, with patients deprived of basic care. One study of primary care physicians, ³²³ and analogous evidence has been developed regarding restrictions on primary care physicians.³²⁴ A recent study attempts to measure the impact of primary care physician shortages on access to primary care in underserved areas, and for underserved populations, as well as research regarding the health effects associated with changes in access.



of collaboration are independently established by institutional providers, from large hospital systems to small physician practices, to individual practitioners, with the particulars varying according to resources and demands at the point of service.³³² Health and safety standards may be established by the professions themselves, institutional providers, health and safety regulators, and the courts.³³³ They do refer patients to physicians or hospitals. They also may choose to consult or collaborate with other providers. They may develop models of consultation and collaboration that they and collaborating physicians deem useful or important, under terms agreeable to all collaborating parties. None of our research has identified any privately implemented model of professional collaboration or oversight.

Neither party would choose to contract, absent a regulatory requirement, and for which there are no added costs. Some of these added costs may be passed on to individual health care consumers, as in the case of the proposed rule.

Other physicians may be willing to form agreements, but may offer prices that are not competitive with those of independent practitioners. Other physicians may be willing to form agreements, but may offer prices that are not competitive with those of independent practitioners. Other physicians may be willing to form agreements, but may offer prices that are not competitive with those of independent practitioners.

³³²It has been reported that more than half of all nurse practitioners are employed in private physician practices.
⁴⁹⁰; ' + "qt" j qurkvcnu *4603 ' +. "c o qpi "qv jgt "kp uvkvwkqpcn" r tqxkfgt "ugvvpki u0" Lqj p "M0" K i ng j ctv. "Expanding the Role of Advanced Practice Nurse Practitioners – Risks and Rewards, 368 N. ENGL. J. MED. 1935, 1937 (2013).

³³³Tgi ct f kpi "fkxgtug" r tcevk eg "ugvvpki u" cpf "CRTP/O

vjg{"yqwnf"kp"kpfgrgpfgpv"rtcevkeg"uvcygu0"Vjqug"CRTPu"ctg"nkmg{"vq"vt{"vq"rcuu"vjg"kpetgcugf"
equvu"cnqpi"vq"vjgkt"rcvkgpvu"qt"vjktf/rctv{"rc{qtu."rqvgpvkcm{"tckukpi"vjg"rtkegu"qh"

explained above, under these circumstances, the prices physicians charge for collaborative agreements may tend to rise, or the quantity or quality of collaborative input may tend to fall.³³⁹

rtcevegu."jqurkvcnu."tgvckn"enpkueu."cpf"qvjgt"rtqxfgtu"vq"gzrgtkogpvykvj"fgzkdng"qxgtukijv"cpf"eqmcdqtcvkqp"cttcpiogopvu"hqt"gornq{gf"qt"qvjgtykug/chLkncvfg"CRTPu0

Jgcenvj"ectg"rtqxfgtu"vjcv"gornq{"qt"eqpvtcev"ykvj"CRTPu"v{rkecm{"fgxgnqr"cpf"ko rngogp"vjgkt"qyp"rtceveg"rtqvveqnu"cpf"vjgkt"qyp"vgc o /dcugf"eqmcdqtcvkqp"cpf"uwr gtxkukqp"rtqvveqnu."vq"promote improved quality of care, satisfy their business objectives, and comply with applicable regulatory requirements.³⁴⁴ They do so independent of the question whether their states impose rctkewnct"uwr gtxkukqp"qt"deqmcdqtcvkqpö"vtkevwtgu0"Tkikf"uwr gtxkukqp"tgswtgogpvu"ó"ko rqugf"by statute or regulation – can arbitrarily constrain this type of innovation, as they can impose nkokvu"qt"equvu"qp"pgy"cpf"dpgpLekcn"eqmcdqtcvkxg"cttcpiogopvu."nkokv"c"rtqxfgtu"cdknkv{"vq"ceeqo o qfcvg"uvchLpi"ejcpi gu"cetquu"egpvtcn"cpf"ucvgnkv"hceknkvku"qt"rtgenwfg"uog"rtqxfgt"strategies altogether.³⁴⁵Hqt"gzco rng."kh"uwr gtxkukqp"tgswtgu"c"urgekLe"ytkvvgp"ci tggogp"dgvyggp"cp"kpfxkfwcn"CRTP"cpf"cp"kpfxkfwcn"rj {ukekcp.³⁴⁶"qt"tguvtkevu"vjg"pwodgt"qh"CRTPu"c"rj {ukekcp"may supervise,³⁴⁷ providers may be constrained in their ability to develop and implement more xctkdng"qt"fgzkdng"o qfgnu"qh"vgc o /dcugf"ectg."equwncvkqp."cpf"qxgtukijv."ceeqtfkpi"vq"rcvkgpv"needs and institutional needs and resources.³⁴⁸ In addition, as addressed in FTC staff's Florida eqoogpvu."tguvtkevkpu"qp"vjg"rgtokuukdng"rj {ukecn"fkuvcpvg"dgvyggp"CRTPu"cpf"uwr gtxkukpi "

3440 See *id.*="Lwnkg"Uqejcnmk ("Lqpcvjcp"Ygkpgt, *Health Care System Reform and the Nursing Workforce: Matching Nursing Practice and Skills to Future Needs, Not Past Demands*, in IOM FUTURE OF NURSING REPORT, *supra* note 4."cv"cr r0"HI

3450 See Julie Fairman, *Factors Influencing Value – Enhancing Entrepreneurship in Health Care Delivery*"*TCPF"Rqnke{"U{ o rqukw o ."Qev0"6."4233+0" Yg"tgeqipk|kpi"vjcv"pqv"cn"uwej"tgswtgogpvu"ctg"equv{"qt"nkokvpi"hqt"cm"providers and that, there may be practical limits to effective supervision, wherever some form of supervision is desirable.

3460 See, e.g., LA. REV. STAT. ANN. § 37:913(3)(c+*4234+=*see also* LA. ADMIN. CODE vkv0"68."rv0"ZNXKK."E"6727"*4234+0

3470 See, e.g., MO. CODE REGS. ANN. TIT. 20 § 2150-5.100 (2) (D) *pq"oqtg"vjcp"5"CRTPu"rgt"eqmcdqtcvkpi"rj {ukekcp+=FLA. STAT. E"67:056:*6+*c+/*d+*tguvtkevkpi"pwodgt"qh"qhLegu"rtkct{"cpf"urgekcnv{"ectg"rj {ukekcpu"oc {"uwr gtxkug+0"HVE"uvchh"tgeqipk|g"vjcv"vjgtg"oc {"dg"rtceveken"nkokvu"vq"ghgvevkg"uwr gtxkukqp"qh"CRTPu"d {"rj {ukekcpu"*cuuokpi"uwej"uwr gtxkukqp"ku"uogvko gu"pggfgf+."cpf"vjgug"mkp fu"qh"nkokvckp"oc {"ocmg"ugpug"wpfgt"rtkewnct"ektewouvcpegu0"Kpfggf."uog"CRTPu"okijv"ygneqog"vjgo0"kv"okijv"uogvko gu"dg"ko rqtvcpv"vjcv"rj {ukekcp"*qt"urgekcnkv."qt"uwd/urgekcnkv+"ku"kp"vjg"ucog"tqqo."vjg"pgzv"tqqo."qt"cv"ngcuv"swkemm {"accessible in the same building. We question, however, whether these kinds of limitations are inherently dpgpLekcn"kp"cm"eqpvzvu."uwej"vjcv"vjgtg"ku"cn"ngikvko cvg"dcuku"vq"ko rqug"vjgo"ctdkvtctkn {"cetquu"vjg"dqctf."cu"these regulations do.

3480 Cf. Christine Everett et al.,

fqevqtu" o c { "tguvtkev" r t q x k f g t u ø " c d k n k v { " v q " f g x g n q r " p g y " o q f g n u " q h " p g v y q t m g f " q t " v g n g o g f k e k p g /
facilitated collaboration.³⁴⁹

CRT P u " c n u q " j c x g " r n c { g f " c " e g p v t c n " t q n g " k p " v j g " f g x g n q r o g p v " q h " c n v g t p c v k x g " u g v k p i u " h q t " e c t g "
f g n k x g t { " p q v c d n { " t g v c k n " e n k p k e u 0 " T g v c k n " e n k p k e u " ó " u q o g v k o g u " e c m n g f " ð u v q t g / d c u g f ö " q t " ð n k o k v g f "
u g t x k e g ö " e n k p k e u " ó " v { r k e c m n { " c t g " n q e c v g f " y k v j k p " n c t i g t " t g v c k n " u v q t g u . " u w e j " c u " e j c k p " f t w i u v q t g u . "
c p f " v { r k e c m n { " c t g " u v c h h g f " d { " C R T P u 0 " E q p u w o g t u " j c x g " h q w p f " t g v c k n " e n k p k e u " v q " d g " c " e q p x g p k g p v . "
İ g z k d n g . " c p f " e q u v / g h h g e v k x g " e j q k e g " h q t " d c u k e " o g f k e c n " e c t g " e q o r t k u k p i " c " n k o k v g f " u g v " q h " r t k o c t { "
e c t g " u g t x k e g u " k p e n w f k p i . " h q t " g z c o r n g . " v t g c v o g p v " h q t " o k p q t " k p h g e v k q p u " * u q t g " v j t q c v u . " g c t " k p h g e v k q p u . "
u k p w u " k p h g e v k q p u . " g v e 0 + . " v j g " r t q x k u k q p " q h " k o o w p k | c v k q p u . " c p f " t q w v k p g " r t g x g \$ O O *



Eqmcdqtcvkqp"cpf"eqqtfkpcvkqp"co qpi"j gcnvj"ectg"rtqxkfgtu"ctg"xgt{"qhvpg"dgpgLekcn0³⁵³

Indeed, improved collaboration and coordination among health care providers are fundamental i qcnu"qh"o cp{"ewttgpv"j gcnvj"ectg"s wcnkv{"cpf"equv/eqpvckp o gpv"kpvkcvkxgu0"Cpvkvtwuv"nc y"cpf" policy recognize the potential for procompetitive provider collaborations, consistent with such initiatives. But effective collaboration does not require that physicians formally supervise

collaboration and referral to meet patients' needs.

Improved collaboration and coordination among *all* health care providers is a fundamental goal that has been the focus of many private and public innovations in health care delivery.³⁵⁷ Effective whether the goals of collaboration and coordination can be achieved via less restrictive their scope of practice requires or encourages collaboration with a physician – just as licensed physicians are trusted to decide when to collaborate with other physicians.

III.B. APRN Supervision Requirements Should Serve Well-Founded Patient Protection Concerns

FTC staff fully recognize the critical importance of patient health and safety. None of the forgoing discussion is meant to undercut the valid health and safety concerns that motivate many regulations governing health care professionals. We defer to state legislators to survey the

³⁵⁷A report by the Robert Wood Johnson Foundation describes several private and public models of innovative

However, in the course of preparing previous advocacy comments addressing particular
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 ghgvekvxgpguu."cpf"ghŁekgpe{³⁵⁹ We have also conducted our own reviews of pertinent literature
 and considered stakeholder input. Based on our research, the kinds of supervision requirements
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 cpf"uchgv{"eqpegtpu"UrgekŁecm{"qwt"tgugcte j "fkf"pqv"kf gpvkh{"uk i pkŁecpv"gxkfgpvkct{"uwr rqtv"
 hqt"gvjgt"vjg"enck o "vjcv"kpfgrgpfgpv"CRTP"rtcevk eg"ikxgu"tkug"vq"uk i pkŁecpv"uchgv{"eqpegtpu."
 or the claim that mandatory supervision requirements redress such concerns. In Louisiana, for
 example, there was no record of patient harm associated with expired or defective collaborative
 practice agreements. Similarly, in Florida, it appeared that statutory restrictions on independent
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 and in many jurisdictions and care settings they have done so without mandatory physician

3590. See, e.g., *supra* pqvgu"8." :. : 8/ : ; "qdugt xcvkqpu"htq o "KQO."vjg"QhŁeg"qh"Vge j p q i {"Cuuguo gpv."cpf"vjg"
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 ; ; "ekvki "U0C"Dtqyp" ("F0"G0" I tk o gu."A Meta-analysis of Nurse Practitioners and Nurse Midwives in Primary
 Care."66*8+"NURSING RESEARCH"554*3 ; ; 7+= "JULIE FAIRMAN, MAKING ROOM IN THE CLINIC: NURSE PRACTITIONERS
 AND THE EVOLUTION OF MODERN H

uwrgtxkukqp"qt"eqmcdqtcvkxg"rtcevkeg"tgswktg o gpvu0"Hqt"vjku"tgcuqp."vjg"KQO"eqpenwfgf."övjg" eqpvgpvkqp"vjcv"CRTPu"ctg"nguu"cdng"vjcp"rj {ukekcpu"vq"fgnkxgt"ectg"vjcv"ku"uchg."ghhgevkg."cpf" ghLekgpv"ku"pqv"uwr rqtvgf"d {"vjg"fgcefgu"qh"tgugcte"j"vjcv"jcu"gzco kpgf"vjku"swguvkqp0³⁵; To vjg"eqpytct{"c"nctig"dqf {"qh"go rktkecn"tgugcte"j"uvtqpin {"uwi iguvu"vjcv"CRTPu"ctg"uchg"cpf" effective providers of diverse primary care services.³⁶² Similarly, we have not seen research uwi iguvkpi"vjcv"vjg"uchgv {"qt"swcnkv {"qh"rtk o ct {"ectg"ugtxkegu"fgenkpgu"y jgp"CRTP"uwrgtxkukqp"qt" collaborative practice requirements are lessened or eliminated.

FTC staff recognizes that particular contexts of care – including particular kinds of patients, rtqefwtgu."qt"jgcnvj"ectg"ugvvpkiu"ó" oki jv"tgswktg"uq o g"hqt o "qh"uwrgtxkukqp0" Yg"urgekLecm {" note, however, that independent prescribing authority does not appear to fall within this category. Vjg"cdknkv {"vq"y tkvg"rtguetkrvkqpu"ó"cv"ngcu"v"hqt"ppp/eqpytqngf"uwduvcpegu.³⁶³ such as prescribing cpvkdqvkqeu"vq"vtgcv"uvtgr"vj tqcv"ó"ku"qpg"qh"vjg"fgLpkpi"etkvtkc"hqt"kpfgrgpfgpv"CRTP"rtcevkeg" and has been an ongoing source of contention.³⁶⁴ Studies have examined outcomes associated ykvj"CRTPu"ykvj"kpfgrgpfgpv"rtguetkdkpi"cwvjqtkv {"cpf"vjg"tguwvnu"jcxg"uwi iguvvf"eq o rctcdng" qwveq o gu"dgvy ggp"CRTPu"cpf"rj {ukekcpu0³⁶⁵ FTC staff are not aware of any contrary empirical gxfkfgpeg"vq"uwr rqtv"vjg"eqpvgpvkqp"vjcv"vjgtg"ctg"rcvkgpv"jct o u"qt"tkumu"cuuqekcvgf"ykvj"CRTP"

35; OIOM FUTURE OF NURSING

care providers can, and typically does, occur even without mandatory physician supervision

many instances, legislators may well discover that there is little or no substantiation for claims of patient harm. If, however, health and safety risks are credible, regulations should be tailored patient protection requires.

resource for state legislators who seek our views on these and other competition policy issues, and we welcome a continued dialogue with all interested stakeholders.

APPENDIX 1

APRN Scope of Practice Advocacies

FTC Staff Comment Before the Massachusetts House of Representatives Regarding

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FTC Staff Letter to the Hon. Theresa W. Conroy, Connecticut House of Representatives,

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FTC Staff Testimony Before Subcommittee A of the Joint Committee on Health of the State of

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FTC Staff Comment Before the Louisiana House of Representatives on the Likely Competitive

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Eqpegtpkpi" Mgpvwem{"Ugpcvg" Dknn"3:9"cpf"vjg" Tg i wncvkqp"qh" C fxcpegf"Rtcevkeg" Tg i kuvgtgf" Nurses"*Ocje"4234+." [jvvr<ll y y 0hve0 i qxlqul42341251342548m { auvch f gvgvt0r fh.](#)

FTC Staff Letter to the Hon. Rodney Ellis and the Hon. Royce West, The Senate of the State of

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FTC Staff Comment Before the Kentucky Cabinet for Health and Family Services
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FTC Staff Comment to Representative Elaine Nekritz of the Illinois General
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FTC Staff Comment Before the Massachusetts House of Representatives Regarding House
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