

I-31-83-13

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

COMMISSION AUTHORIZED

OFFICE OF THE SECRETARY

MAR 7 1983

Carolyn Davis
Administrator
Health Care Financing Administration
U.S. Department of Health and
Human Services
Attention: BPP-519-P
P.O. Box 17073
Baltimore, Maryland 21235

Re: BPP-519-P

Dear Ms. Davis:

The Federal Trade Commission submits the following comments on the proposed revisions to the Conditions of Participation for Hospitals in Medicare and Medicaid. 48 Fed. Reg. 299 (Jan. 4, 1983). The comments relate to several portions of the proposed Conditions that may directly affect competition among hospitals and among providers of health care services.

The Federal Trade Commission and its operating units, the Bureau of Competition, the Bureau of Consumer Protection, and the Bureau of Economics, have obtained considerable knowledge in recent years about competition in the health care field. Through its law enforcement activities the Commission has taken action to investigate and prosecute anticompetitive behavior and unfair and deceptive practices of individuals and organizations involved in health care markets. In addition, the Commission seeks to work with groups in both the public and private sectors to remove obstacles that hinder competition among health care providers and institutions. The Commission believes that competition in the delivery of health care services can benefit consumers by increasing consumer choice and the availability of services, and that it can lower the cost of health care.

The Commission supports the efforts of the Health Care Financing Administration to provide hospitals maximum flexibility in deciding how to achieve the standards of service quality required by statute and regulation. It believes that such flexibility will permit hospitals to increase the efficiency of their operations and to respond better to competitive forces while continuing to meet the substantive standards established by the appropriate state and federal regulatory authorities for the protection of patient welfare.

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The Commission's comments on the proposed revisions to the Conditions of Participation are directed only to the competitive impact of certain portions of the regulations. The Commission expresses no views on the appropriateness of any of the other proposed regulatory revisions or on the substantive standards for assuring an acceptable quality of patient care or services within hospitals.

The Commission particularly supports the proposed changes that would permit hospitals to use their independent judgment in deciding whether to offer clinical hospital privileges and medical staff membership to a wider range of health care professionals. Consistent with the language of the Social Security Act, Sections 482.3 and 482.12(c) of the proposed regulations expand the types of practitioners that hospitals participating in the Medicare and Medicaid programs may allow to admit and care for patients. Section 482.22, according to the introductory comments to the proposed regulations, is intended to grant hospitals maximum flexibility in granting privileges and organizing its professional staff and would permit hospitals to grant medical staff privileges to other health care providers such as nurse midwives and nurse practitioners. In all cases, of course, hospitals would continue to be subject to state laws governing hospitals and the scope of practice of health professionals. The Commission thinks that the proposed regulations can permit hospitals to adapt better to local market forces by using personnel more efficiently and responding more directly to consumer demand for alternative health care services. This, in turn, may stimulate greater competition among health professions and hospitals, and assure the availability of more price and service alternatives to consumers.

The Commission also supports Section 482.52 of the proposed regulations, which allows hospitals who choose to participate in Medicare and Medicaid the discretion to permit administration of anesthesia by certified registered nurse anesthetists under the supervision of a physician, and Section 482.27, which makes clear that the Medicare and Medicaid Conditions of Participation do not prohibit the hospital from using a nonphysician laboratory specialist with a doctoral degree to direct the hospital's clinical laboratory. Both these provisions should give hospitals and their staffs greater flexibility, in their interest and that of their patients, in selecting qualified personnel. They could, therefore, promote competition and hospital efficiency, while preserving the ability of hospitals to establish and maintain standards of professional quality.

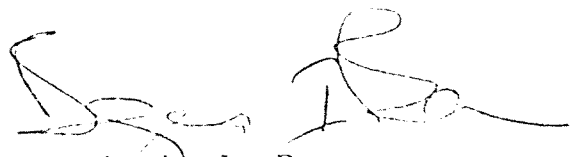
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Finally, the Commission supports Section 482.26 of the draft regulations. It mandates that in participating hospitals a qualified radiologist must provide supervision and interpret those tests that require a radiologist's "specialized knowledge." The proposed regulation allows hospitals to permit other qualified individuals to use radiologic equipment and administer procedures. The introduction to the proposed regulations states that the purpose of this change is to remove any indication that the Conditions require hospitals to have a radiologist interpret or reinterpret every X-ray. Requirements that all X-rays be interpreted by a radiologist can lead to duplication of services and to unnecessary double billing for two separate readings of one X-ray. Patients seen in emergency rooms, for example, may be treated by the attending physician based on his or her reading of an X-ray. A subsequent "official" reading of the X-ray by a radiologist can lead to a second charge for an interpretation that has no direct bearing on the patient's treatment. The regulations would remove any implication of a federal requirement that all X-rays be read by a radiologist and grant hospitals and their professional staffs discretion to determine when a reading of an X-ray by a radiologist is necessary, and to require it only in those cases.

However, the Commission thinks that the language of Section 482.26(c)(2) is unnecessarily vague. It recommends that the text be revised to make the purpose and effect of the change clear by stating explicitly that qualified personnel may be authorized to interpret X-rays as well as to "administer procedures."

In summary, the Commission thinks that the proposed regulations, by permitting hospitals greater flexibility in meeting required standards of care, can promote more cost-effective operation of hospitals and greater patient choice. The proposed regulations promise to increase the availability of price, service and quality options in health care services, within the bounds determined by applicable governing law, by increasing hospitals' ability to compete for patients by offering alternative mixes of professional services. This in turn may stimulate increased competition among health care practitioners.

By direction of the Commission.



Benjamin I. Berman
Acting Secretary