care professionals, and FTC staff express no opinion on the ultimate health and safety standards

or required for certain chronic pain indications or treatments that may present heightened consumer risks. In light of concerns about the Bill's likely competitive impact, however, we urge careful scrutiny of the need for SB1662.

a. The Bill Raises Significant Competitive Concerns

The breadth of the limitations in SB1662 threaten a variety of competitive harms. First, by limiting the supply of health care professionals who can provide the covered pain treatments, it appears likely to exacerbate health care access problems. An IOM report on pain and pain treatment observes that under-treatment of chronic pain is widespread, and that "undertreatment generates enormous costs to the [health care] system and to the nation's economy."[20] The same report notes that, "chronic pain rates are likely to continue to rise,"[21] and suggests that the general population of primary care physicians, as well as some specialist physicians, may be undertrained and inexperienced in best pain management practices.[22] Access problems may be particularly acute in rural areas, where alternative providers of pain management services appear to be in short supply.[23] As noted above, many areas in Illinois already are subject to shortages of both primary care and specialist physicians,[24] and CRNA practices disproportionately serve rural patients.[25]

The Bill's effects would likely be felt most acutely by Illinois' most vulnerable populations – the elderly, the disadvantaged, and rural citizens. As the IOM pain report notes, "pain is more prevalent and less likely to be adequately treated in certain population groups, including the elderly, women, children, and racial and ethnic minorities."[26] The same report notes that, nationally, rural areas face particular shortages of pain care specialists,[27] even though aspects of rural life may increase the likelihood of injuries requiring pain treatment.[28] Based on recent reports, numerous Illinois counties appear to have zero specialized providers of anesthesia or pain care, and in more than two dozen counties CRNAs are the only such licensed providers.[29]

In addition, SB1662 may reduce competition on price, convenience, and quality among remaining providers. By limiting the ability of CRNAs to provide chronic pain management services, the Bill likely will reduce the competitive pressures – and constraints – on practitioners and facilities that remain able to offer pain treatment. Higher out-of-pocket prices, more limited hours, and reduced distribution of services throughout the state all may tend to reduce access to pain treatment. Higher prices, in particular, may force difficult choices on some Illinois health care consumers who rely on relief from chronic pain to go about their daily lives. As an article in *Health Affairs* noted, "when costs are high, people who cannot afford something find substitutes or do without."[30]

Finally, the Bill may reduce innovation in health care delivery. Restrictions on CRNAs may limit not only physician-CRNA collaborations, but also the ability of health care providers to develop, test, and implement the most efficient teams of pain management professionals. For example, under SB1662, attending or supervising physicians could not delegate the administration of a restricted procedure to a non-physician professional.[31] The Bill's restrictions also may impede CRNA access to training opportunities, especially as standards of care for chronic pain treatments evolve.

b. Legislative Consideration of Health and Safety Issues

FTC staff urge legislators to carefully consider whether there is evidence to justify the broad restriction on CRNA practice that SB1662 would impose. We urge the legislature to consult with experts in nursing and medicine and to rely upon other pertinent information to clarify various technical matters. We also encourage the legislature to consider the nature of current chronic pain treatment practice in Illinois and consider available empirical and other evidence that may bear on patient safety issues, including relevant IOM reports.[32]

If the legislature finds that regulation is warranted—for example, with respect to particular procedures or indications—we recommend that the legislature consider how best to tailor provisions and restrict CRNA practice only to the extent required to ensure patient safety.[33] In this circumstance, the legislature may wish to consider a more flexible regulatory approach, rather than the categorical statutory limits proposed in SB1662. Appropriate regulations may more readily be recalibrated over time, as the scientific understanding of chronic pain and pain therapy progresses, and may more readily take account such developments and more easily target particular risks.[34]

[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 ("Commission") or of any individual Commissioner. The Commission has, however, voted to authorize us to submit these comments.

[2] Letter from Hon. Heather A. Steans, Illinois Senate, to Andrew I. Gavil, Director, FTC Office of Policy Planning (Feb. 25, 2013).

[3] Ill. Comp. Stat. Art. 65 § 65-5(b), (b-5).

[4] *See generally* INSTITUTE OF MEDICINE, THE FUTURE OF NURSING: LEADING CHANGE, ADVANCING HEALTH (2011) [hereinafter IOM NURSING REPORT] (especially Summary, 1-15).

[5] *Id*. at 4.

[6] INSTITUTE OF MEDICINE, COMMITTEE ON ADVANCING PAIN RESEARCH, CARE, AND EDUCATION

[14] *See* FTC Staff Letter to the Hon. Jeanne Kirkton, Missouri House of Representatives, Concerning Missouri House Bill 1399 and the Regulation of Certified Registered Nurse Anesthetists (March 2012), *available at* http://www.ftc.gov/os/2012/03/120327kirktonmissouriletter.pdf; FTC Staff Letter to the Honorable Gary Odom, Tennessee House of Representatives, Concerning Tennessee House Bill 1896 (H.B. 1896) and the Regulation of Providers of Interventional Pain Management Services (Sept. 2011), *available at* http://www.ftc.gov/os/2011/10/V11001tennesseebill.pdf; FTC Staff Letter to the Hon. Rodney Ellis and the Hon. Royce West, the Senate of the State of Texas, Concerning Texas Senate Bills 1260 and 1339 and the Regulation of Advanced Practice Registered Nurses (May 2011), *available at* http://www.ftc.gov/os/2011/05/V110007texasaprn.pdf; FTC Staff Letter To The Hon. Daphne Campbell, Florida House of Representatives, Concerning Florida House Bill 4103 and the Regulation of Advanced Registered Nurse Practitioners

[26] IOM PAIN REPORT, *supra* note 6, at 48.

[27] *Id.* at 80, 157.

[28] *Id.* at 80.

[29] Am. Ass'n of Nurse Anesthetists, Distribution of Illinois Anesthesia Providers (Oct. 2011) (map and county-level table based on AMA master file and reporting to U.S. Dep't Health and Human Servs., HRSA).

[30] William Sage, David A. Hyman & Warren Greenburg, *Why Competition Law Matters to Health Care Quality*, 22 HEALTH AFFAIRS 31, 35 (Mar./Apr. 2003). Although estimates of the elasticity of demand for health insurance coverage vary, the empirical evidence is clear that higher costs result in less coverage. *See* DAVID M. CUTLER, HEALTH CARE AND THE PUBLIC SECTOR, National Bureau of Economic Research Working Paper W8802, Table 5 (Feb. 2002), *available at* http://papers.nber.org/papers/W8802.

[31] SB1662, Ill. 98th Gen. Assembly, § 10.

[32] *See, e.g.*, IOM NURSING REPORT, *supra* note 4, at 111 (citing diverse evidence, including Dulisse & Cromwell, *supra* note 25, in concluding that CRNAs provide high-quality care, with no evidence of patient harm, with respect to anesthesia and acute services).

[33] *See, e.g. id.* (with respect to CRNA provision of anesthesia and acute services, Dulisse & Cromwell "found no increase in patient mortality or complications in states that opted out of the [Centers for Medicare and Medicaid Services] requirement that an anesthesiologist or surgeon oversee the administration of anesthesia by a CRNA.").

[34] Another potential advantage of a regulatory approach is that the regulatory process would facilitate full participation by all stakeholders with an interest in the safe, effective, and efficient delivery of pain management services, including physicians, CRNAs, hospitals, and others.