



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

Office of Policy Planning  
Marina Lao, Director

April 24, 2015

The Honorable Kenneth Sheets  
Representative, District 107  
Texas House of Representatives  
P.O. Box 2910  
Austin, TX 78768-2910

Dear Representative Sheets:

The Federal Trade Commission's (Commission or FTC) Office of Policy Planning appreciates your request for comments on Texas House Bill 778 (HB 778). As you noted in your letter, the bill, if enacted, would provide

that a health plan in Texas may not deny a pharmacist or pharmacy the right to participate as a provider or preferred provider if the pharmacist or pharmacy agrees to provide prescription drugs in accordance with the terms of the health plan and accept the conditions that apply to pharmacists and pharmacies that have been designated as providers or preferred providers under the health plan. This type of legislation is typically referred to as "any willing provider" or "any willing pharmacist" legislation.<sup>1</sup>

FTC staff are familiar with the evidence and arguments concerning "any willing provider" or "any willing pharmacist" provisions. Notably, the Commission authorized its staff to issue a March 7, 2014 public comment to the Centers for Medicare and Medicaid Services (CMS) concerning proposed changes to Medicare prescription drug benefit programs.<sup>2</sup> The FTC staff comment expressed concerns that "any willing pharmacy provisions . . . may impair, rather than enhance, the ability of plan sponsors to negotiate lower prices." The comment concluded that

[b]ased on FTC staff's experience in this area, as well as [their] review of empirical studies of preferred provider contracting and any willing provider and [freedom of choice] (FOC) laws, there are two clear and consistent conclusions in the literature:

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<sup>1</sup> Letter from the Honorable Kenneth Sheets to Marina Lao, Director, Office of Policy Planning, at 1.

<sup>2</sup> The March 7, 2014 staff comment to CMS is available at <https://www.ftc.gov/policy/policy-actions/advocacy-filings/2014/03/federal-trade-commission-staff-comment-centers>.

- Selective contracting with pharmacies and other health care providers can lower prices paid by plans and their beneficiaries; and
- Any willing provider and FOC laws tend to raise prices or spending because they impair the ability of . . . plan[s] to engage in selective contracting.<sup>3</sup>

The CMS comment also cited several prior FTC staff comments expressing similar concerns about proposed any willing pharmacy laws that were under consideration in several states.<sup>4</sup>

We hope the attached staff comment to CMS will be useful to your deliberations on HB 778.<sup>5</sup>

Respectfully submitted,



Marina Lao, Director  
Office of Policy Planning

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<sup>3</sup> FTC staff comment to CMS at 6.

<sup>4</sup> FTC staff comment to CMS at 8, note 16.

<sup>5</sup> This staff letter expresses the views of the FTC's Office of Policy Planning. This letter, as well as the March 2014 FTC staff comment to CMS, do not necessarily represent the views of the Commission or of any individual Commissioner. The Commission did vote to authorize staff to issue the CMS comment, which discusses issues pertinent to the proposed bill in Texas.