

H.R. 1427, The Truth in Healthcare Marketing Act of 2013

Frequently Asked Questions

ISSUE

Consumers want and need more information about their health care provider.

QUESTIONS

→What does the purpose of this legislation?

This legislation would improve consumer access to accurate information about health care providers.

→Why is the legislation necessary?

As the health care marketplace has evolved in recent decades, consumer access to accurate information about their health care provider has not kept pace with the changes. Today, there is significant consumer confusion in the new health care marketplace concerning the licensing, education, training and skills of different health care providers.

Common terms once reserved exclusively for specific health care providers are now used by other health care providers. A health care provider who identified him or herself as a “doctor” has long been assumed to be a medically trained physician. Similarly, a health care provider in training who identified him or herself as a “resident” was long assumed to be physician completing a physician residency program. However, in recent years, the meanings of these and other titles have been blurred. Many different types of health care providers including even nurses now identify themselves as “doctors.” Indeed, nursing programs have begun to shift their students’ titles from “student nurses” to “residents” – a term typically reserved for physicians undergoing advance training in a medical specialty.

Moreover, provisions included in the Patient Protection and Affordable Care Act (PPACA) will further blur differences among health care providers and accelerate confusion. The so-called “Non-Discrimination in Health Care,” provision includes a prohibition against health plans “discriminating” against health care providers for purposes of participation or coverage. This broad and unprecedented prohibition effectively limits the ability of health plans to properly distinguish among varying health care providers and will exacerbate confusion over providers’ education, training and skills.

Consumers need access to accurate information about health care providers. And while the FTC is unlikely to halt recipients of “Doctors of Nurse Practice” degrees and other non-medical degrees from calling themselves “Doctors,” the commission can enhance transparency by addressing misrepresentation and working to ensure that patients and consumers have more information about the actual license under which their “Doctor” practices.

→What does this legislation do?

The legislation applies longstanding Federal Trade Commission (FTC) consumer protections to the new health care marketplace. Specifically, the bill would 1) make it unlawful to misrepresent a health care provider's licensure, education, training, degree or clinical expertise and 2) require the disclosure of the license under which the provider practices - physician, nurse, technician, etc. – in any advertisement.

→Doesn't the Federal Trade Commission already have jurisdiction over this issue?

Section 5 of the FTC Act declares unfair or deceptive acts or practices unlawful. However, it is not clear that Section 5 is being applied to the new health care marketplace and health care providers. Indeed, the FTC has undertaken little if any enforcement of unfair or deceptive acts in the health care marketplace as they apply to health care providers and advertisements.

→Does this legislation change the scope-of-practice of any providers?

No. The legislation explicitly provides that “Nothing in this Act shall be construed or have the effect of changing State scope of practice for any health care professional.”

→Why is this legislation important?

In other areas of commerce, Congress has worked to empower FTC to take action to ensure consumers have accurate information about the products and services being purchased. Whether it is “The Fur Products Labeling Act” that gives consumers information about fur garments or the “Dolphin Protection Consumer Information Act,” that ensures consumers access to accurate information about the harvesting of tuna, Congress has empowered the FTC to enhance transparency and provide consumers more information where there is a need. There is an urgent need in the health care marketplace, and the FTC should be directed to provide consumers of health care services more transparency and information regarding health care providers and health care provider advertisements.