

# MEDICAL SOCIETY of the STATE OF NEW YORK

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**MEMORANDUM IN OPPOSITION**

**On Senate Health Committee  
Agenda**

**S. 2529 (RIVERA)**

**In Assembly Higher Education**

**A. 3033 (MCDONALD)**

**AN ACT to amend the public health law and the education law, in relation to including certain pharmacists as qualified health care professionals and authorizing such pharmacists to complete a waived test**

This measure would add pharmacists to the list of licensed health care professionals authorized under public health law to perform non-invasive laboratory tests as an adjunct to their professional services. **The Medical Society of the State of New York is opposed to this measure.**

This measure does not provide the continuum of care that has become essential and expected in today's medical practice, and would lead to siloed, rather than integrated care. The present system recognizes that CLIA-waived testing of patients by pharmacists must be under an established protocol and supervision of a physician, or other primary care provider, who can help to interpret the test results, provide needed context and most importantly set forth a care plan for the patient. There is no good reason why pharmacies should be able to test the patient in the absence of a specific order from a physician or other primary care provider when they don't have the ability to prescribe. If the lab test contains an abnormal result, what will the pharmacist be recommending to the patient? Conversely, we are concerned about "false negatives". We are gravely concerned that this legislation is a back-door attempt to allow for the establishment of the retail clinics within pharmacies. The concept of corporate owned retail clinics is one that the NYS Legislature has repeatedly rejected.

NYS Education Law defines the practice of pharmacy to be: The practice of the profession of pharmacy is defined as the preparing, compounding, preserving, or the dispensing of drugs, medicines and therapeutic devices on the basis of prescriptions or other legal authority, and collaborative drug therapy management in accordance with the provisions of section sixty-eight hundred one-a of this article. Their scope of practice does not include prescribing a medication or recommending treatment for a condition.

Under the bill's provisions, MSSNY envisions a costly scenario for the patient-- where the patient goes to a "pharmacy" for the CLIA-waived test; pays the co-pay for the test and then must go back to the physician, an urgent care center or a hospital to be treated by physician, a nurse practitioner or a physician assistant. These providers would then write a prescription. Then, the patient would go to the pharmacy to get the prescription filled! All of these will be at the patient's expense—between the co-

pay for the test, the prescription, and the visit. It is also probable, that the physician, nurse practitioner or physician assistant who, in their due diligence, will most likely order a new test to confirm the results of the pharmacy. This legislation also has no requirement to convey test results to the patient's physician of record.

Additionally, there is absolutely no-demonstrated need for NOT continuing the present system of how a CLIA-waived test is conducted in the pharmacy. Having physician oversight to this process is an important step in ensuring the continuum of health care.

For the above reasons, the Medical Society of the State of New York opposes this measure and urges its defeat.

**Respectfully submitted,**

**Division of Governmental Affairs**

Pfc/oppose

4/16/21