MEDICAL SOCIETY
of the
STATE OF NEW YORK

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MEMORANDUM IN OPPOSITION

CLICK HERE FOR BILL STATUS — **A. 5124 (PAULIN)**

CLICK HERE FOR BILL STATUS — **S. 4069 (HANNON)**

AN ACT, to amend the public health law, in relation to the establishment of limited services clinics

This measure would allow diagnostic and treatment centers owned by for-profit companies to be established to provide health care services within the space of a retail business operation, such as a pharmacy, a store open to the general public, or a shopping mall. They would be referred to as "limited service clinics." The commissioner is required to promulgate regulations setting forth operational and physical-plant standards including: designation of the diagnoses and services that may be provided; a prohibition on providing care to children under two years of age; advertising guidelines; disclosure of ownership interests; informed consent; record keeping. The commissioner may consult with a work group composed of representatives from professional societies and others on how to strengthen and promote primary care, how to integrate services of limited-service clinics and health care providers, and how to appropriately transmit patient information. **This proposal would disrupt the independence of medical decision-making and the integrity of the doctor-patient relationship. Consequently, MSSNY strongly opposes it and urges its defeat.**

Specifically, this measure would permit publicly traded corporations to operate diagnostic or treatment centers through which health care services may be provided within a retail business including but not limited to a pharmacy, a store open to the general public, or a shopping mall. Currently, while there are some physician offices which have co-located with pharmacies in New York, there is no overlapping ownership, thereby protecting the sanctity of the doctor-patient relationship.

"Convenience care clinics" or "retail clinics" operate in states outside New York in big-box stores such as Walgreens or retail pharmacies such as CVS. They are a growing phenomenon across the nation, particularly among upper-class young adults who live within a one-mile radius of the clinic. These clinics are usually staffed by nurse practitioners or physician assistants and focus on providing episodic treatment for uncomplicated illnesses such as sore throat, skin infections, bladder infections, and flu. Physicians feel strongly that retail based "limited service" clinics pose a threat to the quality of patient care and to the ability of physician practices to sustain financially and should not be allowed to propagate in New York.

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Unlike primary care physician practices, retail or "limited service" clinics provide just one primary care function: first-contact care. We are concerned that retail clinics will harm continuity of care. Data from one study demonstrate that patients who visited retail clinics subsequently had less first-contact care and less continuity of care with primary care physicians ("Retail Clinic Visits and Receipt of Primary Care" [Reid 2012]). Another study found it noteworthy that "a large fraction of patients at retail clinics continued to report that they did not have a primary care physician" ("Visits To Retail Clinics Grew Fourfold From 2007 To 2009 Although Their Share Of Overall Outpatient Visits Remains Low" [Mehrotra and Lave 2012]). While this measure authorizes the Commissioner of Health to consult a work group of physicians and others concerning ways to enhance continuity of care and referrals to primary care physicians, this authority is permissive only. Moreover, retail or "limited service" clinics should not serve as replacement for a primary care physician.

While convenient to their clientele, retail or "limited service" clinics are not the most appropriate venue through which to provide care for the chronically ill, elderly, and pediatric population. Individuals with chronic conditions taking multiple medications which could have harmful interactions with medications prescribed for acute conditions require the type of care coordination found in a private physician practice, not at a retail or "limited service" clinic. Similarly, the health needs of the elderly are complex, and because retail or "limited service" clinics focus on episodic care, retail or "limited service" clinics are not an appropriate site of care for the elderly. Moreover, children are not adults and shouldn't be treated episodically. Treatment for a "minor condition" enables the pediatrician to catch up on immunizations, identify undetected illness, discuss any problems with obesity or mental health, and enhance their bond with the child and family.

Another concern is the potential conflict of interest posed by pharmacy-chain ownership of retail or "limited service" clinics, which provides implicit incentives for the nurse practitioner or physicians' assistant in these settings to write more prescriptions or recommend greater use of over-the-counter products than would otherwise occur. The same self-referral prohibitions and anti-kickback protections which apply to physicians are not applicable to retail clinics, raising the concern for significant additional cost to the health care system.

The retail clinic or "limited service" model of care delivery could lead to increased fragmentation of care and to the erosion of patient relationships with primary care physicians. This fragmentation could lead to missed diagnoses and missed opportunities for preventive services.

High quality of care requires ongoing care coordination among providers, necessitating a transfer of information to primary care providers after a patient has been seen at a retail clinic. Providing a patient with a printed record of the visit is not adequate to assure that the information reaches the primary care provider. And while EHRs are used in retail clinics, interoperability remains elusive.

It is significant that in 2008, more than twenty physician groups or hospital chains operated retail clinics, including Mayo Clinic and Geisinger Health Systems. Each retail clinic is linked to (a) primary care practice(s). In this integrated model, the retail clinic is the extension of the Patient Centered Medical Home. This type of model would enable the PCMH to offer extended hours and convenience for the patients served by the PCMH. This model is far preferable to the Minute Clinic model advanced as part of the aforementioned legislation, which merely provides episodic care for services more commonly provided in urgent care or ER, but at a lower price-point. Rather than only considering the cost of care, our developing system of care must at its core retain the care coordination and integrative structures of PCMH.

In New York State, section 2801-a(4)(e) provides as follows: "No hospital shall be approved for establishment which would be operated by a corporation any of the stock of which is owned by another corporation or a limited liability company if any of its corporate members' stock is owned by another corporation." The definition of a hospital in New York State would include a diagnostic and treatment center such as the limited service clinic proposed by this initiative. The only for-profit corporations/limited liability companies that are currently permitted to operate hospitals are corporations/companies owned by individuals. A very limited exception was enacted in 2007 to enable publicly traded companies to participate in the operation of dialysis facilities. This was

advanced, however, only after significant study over several years by the NYS Department of Health and the State Hospital Review and Planning Council and Public Health Council. This recommendation was expressly limited to dialysis facilities based on the unique characteristics of the service including:

- Chronic renal dialysis is a discrete, definable outpatient service, which varies little in how and when it is prescribed and administered;
- Virtually all those who receive chronic dialysis suffer from a common diagnosis (end stage renal disease);
- Chronic renal dialysis is the only service supported by a federally-guaranteed insurance program of coverage based on dialysis; and
- The continued decline in real terms of Federal payment for dialysis required an alternative to the State's prohibition on publicly traded corporations in this area if access to care is to be ensured over the longer term.

We submit that none of the indicia, which existed to support the limited exception to prohibitions against ownership of hospitals as that term has been defined or would be defined under this proposal, exist to support similar treatment for retail clinics operated by publicly traded corporations.

The retail clinic or "limited service" model of care delivery diverges from the integrated and coordinated care delivery model health policy makers believe will rein in the cost of health care while improving overall health outcomes. Importantly, the integrated and coordinated care delivery model emphasizes comprehensive care which is coordinated across all providers and for all patients, even those with more complex and chronic illnesses. Rather than bend the cost continuum, we will increase costs and negatively impact on quality of care.

We must also be mindful that this proposal may threaten the financial viability of primary care physician practices in the community. This will cause physician practices in certain areas to close or to be sold to large hospital systems, displacing their patients, their employees and further destabilizing the health care delivery system in that community. We strongly urge that you reject this proposal.

Respectfully submitted,

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