

**MEDICAL SOCIETY**  
of the  
**STATE OF NEW YORK**

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*Division of Governmental Affairs*  
**MEMORANDUM IN OPPOSITION**

**FY 2017 NYS Executive Budget**  
**Part G-S.6407/A.9007**  
**Health & Mental Hygiene**  
**Article VII Legislation**

**RETAIL CLINICS**

**MEMO IN OPPOSITION**

The proposed budget 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, requiring accreditation: designating or limiting the treatments and services that may be provided; prohibiting the provision of services to patients under two years of age; specific immunizations to patients younger than eighteen years of age and advertising guidelines; disclosure of ownership interests; informed consent; record keeping, referral for treatment and continuity of care, case reporting to the patient's primary care or other health care providers, design, construction, fixtures and equipment and requiring a commitment to locate such clinics in medically underserved regions of the state. For all of the reasons stated herein, the Medical Society of the State of New York urges the defeat of this proposal.

Chief among our concern regarding this proposal is that this is the first time that the state would allow publicly traded corporations to establish health clinics without need for certificate of need review. As discussed below we respectfully submit that the so called dialysis precedent is not appropriately applied to this retail clinic proposal.

Specifically, the budget language 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. This proposal would disrupt the independence of medical decision-making and the integrity 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 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.

Another significant concern is the potential conflict of interest posed by pharmacy chain ownership of retail 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. Rather than bend the cost continuum, this proposal will increase costs and negatively impact on quality of care.

As indicated above, we believe that the policy direction taken with this proposal—to obviate the need for certificate of need review—is inappropriate. 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.

We must also be mindful that this proposal may threaten the financial viability of primary care physician practices in the community at a time when we have been working hard to expand primary care and medical home capacity particularly at a time when MACRA's Merit-Based Incentive Payment System (MIPS), Alternative Payment Model (APM) and other transformational payment methodologies like value based payment reward physicians only if they provide same day access to care, provide for care collaboration and demonstrated enhanced quality of care. This will likely 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.

For all of the reasons stated above, we strongly urge that the Legislature reject this proposal.

Respectfully Submitted,

**ELIZABETH DEARS, ESQ.**