

UNDERSTANDING THE RETAIL BASED CLINIC DEBATE

By Mathew Levy, Esq.

Kern Augustine Conroy & Schoppmann, P.C.

In recent years, more and more Americans who visit their local retail pharmacy are presented with the option of seeing a nurse practitioner or doctor for a primary care visit instead of scheduling an appointment with their primary care provider at these retail based clinics (RBCs). RBCs have emerged in several states, including New York. These clinics have been met with public praise, public outcry and varied responses from local and state governments, practitioners and medical societies. This article is intended to provide the basic information on RBCs necessary to facilitate a discussion as to how to address RBCs from a health policy standpoint.

Retail Based Clinic Set-Up

RBCs are generally located in an existing retail drug store or supermarket and consist of a reception area and examination rooms. RBCs are typically staffed with nurse practitioners who are supervised via the telephone by off-site physicians. Sometimes full-time physicians staff the RBCs. The nurse practitioners in many RBCs use computer software during patient consultations that serve as both a diagnostic tool and check and balance on the limitation of the scope of the nurse practitioner's medical practice. This practice raises questions as to whether primary care provided primarily by nurse practitioners in a clinic setting, in the absence of on-site physicians, is appropriate or instead constitutes an inappropriate and illegal practice of medicine by nurse practitioners.¹ Uninsured patients are charged between \$50 and \$80 per visit; however, many RBCs have established contractual relationships with insurance companies and therefore, accept health care insurance. RBCs such as MinuteClinic argue that they provide affordable, accessible care for health problems such as urinary tract infections and minor bacterial infections in a clinic structure where more serious health issues are triaged and referred appropriately to qualified professionals.

New York State Law

A physician interested in contracting with an RBC to supervise the work done by nurse practitioners should consult competent counsel to review all contracts and agreements for the purpose of making sure that the work expected of the physician does not offend New York State Law. New York Education Law § 6902, which outlines the scope of practice of nursing, provides in pertinent part that, “A certified nurse practitioner may diagnose illness and physical conditions, and perform therapeutic and corrective measures within a specialty area of practice in **collaboration with a licensed physician qualified to collaborate in the specialty involved, provided such services are performed in accordance with a written practice agreement and written practice protocols.**” Further, patient records must be reviewed by the collaborating physician in some manner no less than every three months. Finally, “no physician shall enter into practice agreements with more than four nurse practitioners who are not located on the same physical premises as the collaborating physician,” which can arguably be

¹ Kershaw, Sarah “Drugstore Clinics Spread, and Scrutiny Grows,” New York Times Online, http://www.nytimes.com/2007/08/23/nyregion/23clinic.html?_r=1&ref=health&oref=slogin, Accessed on August 24, 2007.

interpreted to mean that as long as a doctor is collaborating with less than four, the physician does not have to be physically present on the premises.²

Even though the definition of the practice of nursing allows for a nurse practitioner to practice under the supervision of a physician, New York Education Law § 6530(33), which defines Physician Misconduct states that “[f]ailing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensee” constitutes misconduct. Therefore, it is advisable that a consulting physician at an RBC must take care to adequately supervise the RBC’s nurse practitioners and document his or her supervision meticulously.

Continuity of Patient Care and the Quality of Medical Care Debate

The cause of the heated debate over RBCs stems from the balance between the need for affordable care that is readily accessible (absent extensive wait-times), and the need for continuity of care, the provision of high-quality medical care and appropriate case management. Additionally, RBCs are a source of competition to primary care physicians who are already struggling in a health care economy where reimbursements for primary care are often low. The American Medical Association (AMA)³ and the American Academy of Family Physicians (AAFP)⁴ have issued guidelines advising that, among other standards, retail based health clinics meet high quality standards, adhere to appropriate scope of practice standards, and address continuity of care issues. However, the American Academy of Pediatrics (AAP) has opposed RBCs and strongly discourages their use, citing continuity of care issues.⁵ The AAP is particularly concerned with the following aspects of RBC care: (1) Fragmentation and possible lower quality of care, (2) Care for children with special health care needs, (3) Lack of access to a central health record, (3) Use of tests and diagnosis without proper follow-up, and (4) Public health issues surrounding exposure to contagious diseases in a retail environment.

Locally, The Medical Society of the State of New York has inquired of the New York State Department of Health to ascertain how, if Minute Clinic (an RBC company) was not an Article 28 Facility, it could own and operate RBCs and employ physicians or nurse practitioners to staff clinics while operating in accordance with New York State Law.

In conclusion retail based clinics present a variety of issues for New York practitioners, particularly primary care providers. Doctors seeking to supervise RBCs should seek competent counsel to ensure that RBC agreements comply with New York State Law. Practitioners must ensure that care provided in RBCs meets acceptable quality standards and those RBCs communicate with patients’ primary care providers. Patient education on the uses and limitations of RBCs is also advisable in order to ensure that New Yorkers continue to receive the highest quality medical care.

² New York Education Law § 6902.

³ See, <http://www.ama-assn.org/amednews/2007/07/16/prl20716.htm>, Accessed August 24, 2007.

⁴ See, <http://www.aafp.org/online/en/home/policy/policies/r/retailhealthclinics.html>, Accessed August 24, 2007.

⁵ See, <http://aap.org/advocacy/releases/retailclinics.htm>, Accessed August 24, 2007.