Retail Clinics in Healthcare: Corporate Practice of Medicine, Licensure, Scope of Practice Compliance
Navigating Emerging Relationships with Physicians, Hospitals and Payers

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What is the Corporate Practice of Medicine?

- Generally, corporate practice of medicine ("CPOM") prohibitions mandate that only licensed health care professionals, or entities wholly-owned by licensed professionals, may practice medicine.
  - CPOM restrictions preclude the practice of medicine through non-professional or "lay" corporations or other entities, and prohibit unlicensed persons from owning or controlling professional entities.

- Public policy concerns:
  - Divided loyalty between corporate profits and patient care
  - Doctors must have control over their professional judgment
  - Potential for commercial exploitation of the medical community
What is the Corporate Practice of Medicine?

- Over half of the states have laws that to varying degrees prohibit the corporate practice of medicine.

- Depending on the state, the CPOM doctrine derives from numerous sources, including statutes, case law, regulations, and advisory opinions.

- **Not limited to medicine** – many states have extended corporate practice prohibitions to other health care professions, such as:
  
  - Dentistry
  - Nursing
  - Physical Therapy
  - Optometry
  - Psychology/Behavioral Health
  - Veterinary Medicine
  - Chiropractic Medicine
  - Other Health Care Professions
Overview of the Friendly PC Model

- In an effort to comply with CPOM prohibitions, providers have implemented a “Friendly P.C.” structure to facilitate private and institutional investment:
  - A “Friendly P.C.” is a professional entity that is organized for the purpose of conducting a professional practice in affiliation with a practice management company.
  - A set of contractual relationships and corporate governance mechanisms are established between the PC and the Manager that separate ownership, control and management of the clinical and non-clinical operations of the organization in an effort to comply with CPOM requirements.
  - Because these contractual relationships and corporate governance mechanisms are rooted in state law, the exact contours of the friendly PC model can vary from state to state when implemented.
Basic Friendly PC Model

Retail Investor

“Friendly” MD(s)

100% ownership

Management Company

Retail Clinic, PC

100% ownership

Stock Transfer Agreement

Management Agreement

Management Fee ($)

Loan & Security Agreement (i.e. Working Capital Advance)

Lease/Sublease (as applicable)
Scope of Practice Laws and Regulations

- Determine range of health care services that HCPs are licensed to provide (NPs, PAs, LPN/LVN s)
- Limit the supply of health care services, raising serious competition issues
- Vary widely from state to state:
  - Independent practice / collaborative practice / physician supervision
  - Prescription privileges
  - Authority to order tests or refer to specialists
- FTC’s anti-competitive concerns
Ongoing Legislative Initiatives to Expand Scope of Practice

- **Full Practice**
  - State practice and licensure laws provide for nurse practitioners to evaluate patients, diagnose, order and interpret diagnostic tests, initiate and manage treatments—including prescribe medications and controlled substances—under the exclusive licensure authority of the board of nursing. This is the model recommended by the National Academy of Medicine, formerly called the Institute of Medicine and National Council of State Boards of Nursing.

- **Reduced Practice**
  - State practice and licensure law reduces the ability of nurse practitioners to engage in at least one element of NP practice. State requires a career-long regulated collaborative agreement with another health provider in order for the NP to provide patient care or limits the setting of one or more elements of NP practice.

- **Restricted Practice**
  - State practice and licensure law restricts the ability of a nurse practitioner to engage in at least one element of NP practice. State law requires career-long supervision, delegation or team-management by another health provider in order for the NP to provide patient care.
# Wide Disparity in Physician Supervision Requirements

<table>
<thead>
<tr>
<th>State</th>
<th>Ratio (NP:MD)</th>
<th>Requirements</th>
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| California| 4:1           | • Ratio applies only if NP is ordering drugs  
                • Physician supervision required |
| Florida   | 4:1           | • Physician may not supervise more than four offices in addition to the physician’s primary practice location |
| Illinois  | None stated   | • Physician delegation required  
                • Physician must be on-site once per month |
| Massachusetts | None stated | • Physician supervision required  
                • Physician must review charts once every three months |
| New Jersey| None stated   | • Physician collaboration required  
                • Physician must review charts (percentage or frequency not specified) |
| Texas     | 7:1           | • Physician delegation required  
                • Number of charts to be reviewed is determined by the parties to the prescriptive authority agreement |
Pressure to Reduce Costs

- Unmanned telehealth
- Medical assistant
- LVN/LPN
- Nurse practitioner
- Physician
Emerging Trends in Retail Health

Affiliation with health systems and other providers

- Co-Branding
- Physician, supervision, oversight, and clinical protocols
- Access to higher levels of care
- Medical group affiliation
  - medical group can treat patients who present out of scope
- Affiliations between health systems and retail clinics require analysis under the anti-kickback statute and privacy laws.

Example: Florida Hospital and Walgreens announced collaboration where Florida Hospital will operate and provide all clinical services at 15 retail health clinics located within Walgreens stores across Tampa. Walgreens plans to open a pharmacy at Florida Hospital Tampa, located at 3100 East Fletcher Avenue.
Emerging Trends in Retail Health

Solving access problems
- Underserved/rural communities
- Reduce strain on EDs

Care coordination and integration into the health care delivery system
- Data capture and sharing; integrated EHR
- Quality of care measurement; outcomes
- Cost-reduction efficacy

Expanded scope of services
- Bundling of retail health services with nutrition, wellness programs, chronic condition management, or medication management
- Health screenings
Integrating Telemedicine with Retail Clinics

- **Rite Aid** became the first retailer to enter telemedicine, rolling out its **NowClinic** program to in-store health clinics in Boston, Baltimore, Philadelphia and Pittsburgh.

- **HealthSpot** Stations - private, walk-in kiosk with integrated medical devices and staffed by a medical attendant – filed Chapter 7 bankruptcy liquidation in 2016.

- **VideoKall** - unmanned clinic is connected by satellite to a hospital call center (http://www.videokall.com/prototype.php)
Retail Clinics and Third-Party Payor Networks

- Payors are increasingly incorporating retail clinics into their networks
  - Direct contracting
  - Network “wraps”
- Retail clinics included in total cost of care
  - Risk-based payment programs
- Retail clinics part of networks for shared savings or bundled payment programs (e.g., ACOs)
The Future of Retail Medicine

- Key pillar of community-based medicine
- Increasing use of technology
- Better coordination across the health care delivery system
- Focus on wellness
- Access point to care and coverage for underserved communities
- Payor networks
Questions?

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