S T A T E O F N E W Y O R K

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2013-2014 Regular Sessions

I N A S S E M B L Y

February 20, 2013

Introduced by M. of A. PAULIN, GOTTFRIED, BENEDETTO -- Multi-Sponsored by -- M. of A. HIKIND, HOOPER -- read once and referred to the Committee on Health -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to retail clinics and limited services clinics

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The public health law is amended by adding a new section 230-e to read as follows:

S 230-E. RETAIL CLINICS. 1. AS USED IN THIS SECTION, "RETAIL CLINIC" MEANS A FACILITY OR PORTION OF A FACILITY, REGARDLESS OF OWNERSHIP OR FORM OF ORGANIZATION, THAT PROVIDES HEALTH CARE SERVICES OR TREATMENT (OTHER THAN PHARMACY) PROVIDED BY A HEALTH CARE PRACTITIONER LICENSED, CERTIFIED, REGISTERED OR AUTHORIZED TO PRACTICE UNDER TITLE EIGHT OF THE EDUCATION LAW, ACTING WITHIN HIS OR HER LAWFUL SCOPE OF PRACTICE, THAT: (A) IS WITHIN THE SPACE OF A RETAIL BUSINESS OPERATION, SUCH AS A PHARMACY OR A STORE OPEN TO THE GENERAL PUBLIC; (B) IS LABELED, BRANDED, ADVERTISED OR MARKETED WITH THE NAME OR SYMBOL OF A RETAIL BUSINESS ENTITY; OR (C) IS LABELED, BRANDED, ADVERTISED OR MARKETED WITH THE NAME OR SYMBOL OF A BUSINESS ENTITY, OTHER THAN A BUSINESS ENTITY THAT PROVIDES HEALTH CARE SERVICES OR TREATMENT PROVIDED AT THE FACILITY. HOWEVER, A FACILITY OR PORTION OF A FACILITY SHALL NOT BE DEEMED TO BE A RETAIL CLINIC IF IT ORDINARILY IS USED ONLY FOR PROVIDING HEALTH CARE SERVICES TO EMPLOYEES OF THE RETAIL BUSINESS OPERATION.

2. THE TREATMENTS AND SERVICES THAT MAY BE PROVIDED BY A RETAIL CLINIC SHALL BE LIMITED TO THE PROVISION OF TREATMENT AND SERVICES TO PATIENTS

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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FOR ACUTE EPISODIC ILLNESS OR CONDITION; EPISODIC PREVENTIVE TREATMENT AND SERVICES SUCH AS IMMUNIZATIONS; OPHTHALMIC DISPENSING AND OPHTHALMOLOGIC OR OPTOMETRIC SERVICES PROVIDED IN CONNECTION WITH OPHTHALMIC DISPENSING; OR TREATMENT AND SERVICES FOR MINOR TRAUMAS THAT ARE NOT REASONABLY LIKELY TO BE LIFE-THREATENING OR POTENTIALLY DISABLING IF AMBULATORY CARE WITHIN THE CAPACITY OF THE RETAIL CLINIC IS PROVIDED; BUT SHALL NOT INCLUDE MONITORING OR TREATMENT AND SERVICES OVER PROLONGED PERIODS.

3. A RETAIL CLINIC SHALL BE DEEMED TO BE A "HEALTH CARE PROVIDER" FOR THE PURPOSES OF TITLE TWO-D OF ARTICLE TWO OF THIS CHAPTER. A PRESCRIBER PRACTICING IN A RETAIL CLINIC SHALL NOT BE DEEMED TO BE IN THE EMPLOY OF A PHARMACY OR PRACTICING IN A HOSPITAL FOR PURPOSES OF SUBDIVISION TWO OF SECTION SIXTY-EIGHT HUNDRED SEVEN OF THE EDUCATION LAW.

4. THE COMMISSIONER SHALL MAKE REGULATIONS SETTING FORTH OPERATIONAL AND PHYSICAL PLANT STANDARDS FOR RETAIL CLINICS, INCLUDING, BUT NOT LIMITED TO: REQUIRING ACCREDITATION; DESIGNATING OR LIMITING THE TREATMENTS AND SERVICES THAT MAY BE PROVIDED; PROHIBITING THE PROVISION OF SERVICES TO PATIENTS TWENTY-FOUR MONTHS OF AGE OR YOUNGER; THE PROVISION OF SPECIFIC IMMUNIZATIONS TO PATIENTS YOUNGER THAN EIGHTEEN YEARS OF AGE; AND REQUIREMENTS OR GUIDELINES FOR ADVERTISING AND SIGNAGE, 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. SUCH REGULATIONS ALSO SHALL PROMOTE AND STRENGTHEN PRIMARY CARE THROUGH: (A) THE INTEGRATION OF SERVICES PROVIDED BY RETAIL CLINICS WITH THE SERVICES PROVIDED BY THE PATIENT'S OTHER HEALTH CARE PROVIDERS; AND (B) THE REFERRAL OF PATIENTS TO APPROPRIATE HEALTH CARE PROVIDERS, INCLUDING APPROPRIATE TRANSMISSION OF PATIENT HEALTH RECORDS.

5. THIS SECTION DOES NOT AUTHORIZE ANY FORM OF OWNERSHIP OR ORGANIZATION OF A RETAIL CLINIC OR PRACTICE OF ANY PROFESSION THAT WOULD NOT OTHERWISE BE LEGAL, AND DOES NOT EXPAND THE SCOPE OF PRACTICE OF ANY HEALTH CARE PRACTITIONER. WHERE ANY REGULATION UNDER THIS SECTION WOULD AFFECT THE SCOPE OF PRACTICE OF A HEALTH CARE PRACTITIONER LICENSED, REGISTERED, CERTIFIED OR AUTHORIZED UNDER TITLE EIGHT OF THE EDUCATION LAW, THE REGULATION SHALL BE MADE WITH THE CONCURRENCE OF THE COMMISSIONER OF EDUCATION.

S 2. Section 2801-a of the public health law is amended by adding a new subdivision 17 to read as follows:

17. (A) DIAGNOSTIC OR TREATMENT CENTERS 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 WITHIN SPACE USED BY AN EMPLOYER FOR PROVIDING HEALTH CARE SERVICES TO ITS EMPLOYEES, MAY BE OWNED AND/OR OPERATED BY LEGAL ENTITIES FORMED UNDER THE LAWS OF NEW YORK WHOSE STOCKHOLDERS OR MEMBERS, AS APPLICABLE, ARE NOT NATURAL PERSONS AND WHOSE PRINCIPAL STOCKHOLDERS AND MEMBERS, AS APPLICABLE, AND CONTROLLING PERSONS COMPLY WITH ALL APPLICABLE REQUIREMENTS OF THIS SECTION AND DEMONSTRATE, TO THE SATISFACTION OF THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL, SUFFICIENT EXPERIENCE AND EXPERTISE IN DELIVERING HIGH QUALITY HEALTH CARE SERVICES. IN ADDITION, A GENERAL HOSPITAL, A DIAGNOSTIC AND TREATMENT CENTER, AND ANY ENTITY THAT COULD OTHERWISE OWN A DIAGNOSTIC AND TREATMENT CENTER, MAY OWN A LIMITED SERVICES CLINIC. SUCH DIAGNOSTIC AND TREATMENT CENTERS SHALL BE REFERRED TO IN THIS SECTION AS "LIMITED SERVICES CLINICS". FOR PURPOSES OF THIS SUBDIVISION, THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL SHALL ADOPT AND AMEND RULES AND REGULATIONS, NOTWITHSTANDING ANY INCONSISTENT PROVISION OF

THIS SECTION, TO ADDRESS ANY MATTER IT DEEMS PERTINENT TO THE ESTABLISHMENT OF LIMITED SERVICES CLINICS; PROVIDED THAT SUCH RULES AND REGULATIONS SHALL INCLUDE, BUT NOT BE LIMITED TO, PROVISIONS GOVERNING OR RELATING TO: (I) ANY DIRECT OR INDIRECT CHANGES OR TRANSFERS OF OWNERSHIP INTERESTS OR VOTING RIGHTS IN SUCH ENTITIES OR THEIR STOCKHOLDERS OR MEMBERS, AS APPLICABLE, AND PROVIDE FOR PUBLIC HEALTH AND HEALTH PLANNING COUNCIL APPROVAL OF ANY CHANGE IN CONTROLLING INTERESTS, PRINCIPAL STOCKHOLDERS, CONTROLLING PERSONS, PARENT COMPANY OR SPONSORS; (II) OVERSIGHT OF THE OPERATOR AND ITS SHAREHOLDERS OR MEMBERS, AS APPLICABLE, INCLUDING LOCAL GOVERNANCE OF THE LIMITED SERVICES CLINICS; AND (III) RELATING TO THE CHARACTER AND COMPETENCE AND QUALIFICATIONS OF, AND CHANGES RELATING TO, THE DIRECTORS AND OFFICERS OF THE OPERATOR AND ITS PRINCIPAL STOCKHOLDERS, CONTROLLING PERSONS, PARENT COMPANY OR SPONSORS.

(B) THE FOLLOWING PROVISIONS OF THIS SECTION SHALL NOT APPLY TO LIMITED SERVICES CLINICS OPERATED PURSUANT TO THIS SUBDIVISION: (I) PARAGRAPH (A) OF SUBDIVISION THREE OF THIS SECTION; (II) PARAGRAPH (B) OF SUBDIVISION THREE OF THIS SECTION, RELATING TO STOCKHOLDERS AND MEMBERS OTHER THAN PRINCIPAL STOCKHOLDERS AND PRINCIPAL MEMBERS; (III) PARAGRAPH (C) OF SUBDIVISION FOUR OF THIS SECTION, RELATING TO THE DISPOSITION OF STOCK OR VOTING RIGHTS; AND (IV) PARAGRAPH (E) OF SUBDIVISION FOUR OF THIS SECTION, RELATING TO THE OWNERSHIP OF STOCK OR MEMBERSHIP.

(C) A LIMITED SERVICES CLINIC SHALL BE DEEMED TO BE A "HEALTH CARE PROVIDER" FOR THE PURPOSES OF TITLE TWO-D OF ARTICLE TWO OF THIS CHAPTER. A PRESCRIBER PRACTICING IN A LIMITED SERVICES CLINIC SHALL NOT BE DEEMED TO BE IN THE EMPLOY OF A PHARMACY OR PRACTICING IN A HOSPITAL FOR PURPOSES OF SUBDIVISION TWO OF SECTION SIXTY-EIGHT HUNDRED SEVEN OF THE EDUCATION LAW.

(D) THE COMMISSIONER SHALL PROMULGATE REGULATIONS SETTING FORTH OPERATIONAL AND PHYSICAL PLANT STANDARDS FOR LIMITED SERVICES CLINICS, WHICH MAY BE DIFFERENT FROM THE REGULATIONS OTHERWISE APPLICABLE TO DIAGNOSTIC OR TREATMENT CENTERS, INCLUDING, BUT NOT LIMITED TO: REQUIRING ACCREDITATION; DESIGNATING OR LIMITING THE TREATMENTS AND SERVICES THAT MAY BE PROVIDED; PROHIBITING THE PROVISION OF SERVICES TO PATIENTS TWENTY-FOUR MONTHS OF AGE OR YOUNGER; THE PROVISION OF SPECIFIC IMMUNIZATIONS TO PATIENTS YOUNGER THAN EIGHTEEN YEARS OF AGE; AND REQUIREMENTS OR GUIDELINES FOR ADVERTISING AND SIGNAGE, 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. SUCH REGULATIONS ALSO SHALL PROMOTE AND STRENGTHEN PRIMARY CARE THROUGH: (I) THE INTEGRATION OF SERVICES PROVIDED BY LIMITED SERVICES CLINICS WITH THE SERVICES PROVIDED BY THE PATIENT'S OTHER HEALTH CARE PROVIDERS; AND (II) THE REFERRAL OF PATIENTS TO APPROPRIATE HEALTH CARE PROVIDERS, INCLUDING APPROPRIATE TRANSMISSION OF PATIENT HEALTH RECORDS.

(E) WHERE A LIMITED SERVICES CLINIC IS A RETAIL CLINIC UNDER SECTION TWO HUNDRED THIRTY-E OF THIS CHAPTER, IT SHALL BE SUBJECT TO THAT SECTION IN ADDITION TO THIS SUBDIVISION.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided that effective immediately, the commissioner of health shall make regulations and take other actions reasonably necessary to implement the provisions of the public health law enacted by this act when they take effect.