

## Memorandum

RE: Proposed Regulations for Retail Based Clinics

Date: April 25, 2014

### Executive Summary

Retail based clinics (RBCs) have become an increasing provider of health care services to many Americans. As RBCs have been integrated into the current health care model, there has been increasing criticism from various groups that suggest there is a strong need to amend the current RBC model into one that is more regulated and therefore more effective. The problems with the current regulations are the discontinuity between states and allowing clinics to fail to provide the most effective or pertinent care to the patients. From a variety of already proposed state regulations as well as other options, there is a strong suggestion that the FTC has the responsibility to create a new set of regulations for RBCs.

### Background

Retail based clinics are one of the newest health care delivery locations that having been springing up nationwide since the early 2000s. These clinics are often so new and diverse that states have not yet determined how to regulate them and what restrictions are necessary for these clinics to provide safe and appropriate levels of care for users. The increasing number of Americans who use these clinics suggesting that regulations from a federal level may be the most effective. "The proportion of American families who reported using a retail clinic in the previous year nearly tripled between 2007 and 2010, increasing from 1 percent of U.S. families in 2007 to 3 percent in 2010 (Tu, 1)." In a numerical sense, that is approximately 4.1 million American families citing use of these clinics.

Consumers are extremely attracted to the retail based clinic model as shown through the increased usage. "When asked why they chose retail clinics over other care settings, most clinic users cited convenience factors: extended operating hours, walk-in visits, and a convenient location (Tu, 1)." The extended operating hours are shown to receive a substantial proportion of all clinic visits, "44.4 percent in 2007-09 were on the weekend or during weekday hours when physician offices are typically closed (Mehrota, 2123)." Cost is also cited by many individuals as a reason for attending a RBC versus seeing one's primary care physician. With these benefits for using RBCs, it is likely that more of the American population will begin using these services especially as the number of clinics continues to grow.

Currently, states are on their own for deciding how to regulate retail based clinics. The California HealthCare Foundation produced a report in February 2009 comparing six states on how they were regulating RBCs. For example, in Massachusetts, the state government was looking at creating a separate regulatory category for retail clinics. In contrast, Florida was considering to license retail clinics in the same manner as any other health care facility. There were also considerations of requirements to clinics for making referrals to a primary care physician (Takach, 7). With such fragmented regulations, there is a lack of inter-state comparability and thus companies with clinics in multiple states have to adapt each clinic per state regulations.

Massachusetts has been a leader in health care reform since the 2006 passing of the reform law which attempted to provide health insurance to all state residents. Similarly, Massachusetts has led the way in regulating retail based clinics prior to any other US state. The main regulation for these clinics was to name them 'limited service clinics' and restrict them to a designated list of services that they could provide. In summary, these limitations restricted services to basic allergy/immunization services as well as several minor outpatient services that would likely not require follow-up (Cauchi, 2-3).

The increased reliance on primary care services and preventative measures that the Affordable Care Act promotes would likely have a positive influence on increasing RBC utilization. With this likely increased utilization, there is a prime opportunity for regulations to be enacted for RBCs. It is also a chance for the government to define the role they would like RBCs to play in the current health care market. In this manner, RBCs will be regulated in order to provide the best care available to Americans.

### Evidence

There are three main medical organizations that have voiced their negative opinions surrounding the retail based clinic model including the American Medical Association, the American Academy of Family Physicians, and the American Academy of Pediatrics. Their concerns surrounding the origination of the clinics involved "disrupting patients' relationships with their primary care physicians and interrupting their continuity of care (Mehrotra, 2123)." In 2010, their concerns added to include the new care offerings of care for chronic diseases including asthma, hypertension, and diabetes (2123).

The American Academy of Pediatrics lists several additional reasons on why RBCs are an inappropriate source of care for pediatric patients. Their reasons include: possible decreased quality of care, lack of access to a central health record that contains important patient information, and a use of tests for diagnosis with a lack of follow-up (Laughlin, e794). These concerns, however, do not just apply to pediatric patients, they can be applied to any patient using RBCs.

From an economic perspective, economists address concern over RBC monopolies who are currently able to dictate what services they want to provide and what type of provider provides the services regardless of what is best for the patient. "The biggest two companies have made their mark and driven the growth of retail clinics in the last three years, while capturing over 70 percent of the market (Keckley, 4)." In a typical market, the government would step in to ensure that two companies do not have this much control over the market, however the market for health care has been notoriously deregulated. Putting the needs of the patient first suggests why governmental intervention in this market is necessary.

The timing of the Affordable Care Act becoming enacted presents the ideal time frame for creating regulations. "Retail clinics are expected to be a key treatment location for millions of uninsured Americans once they obtain health coverage Jan. 1, 2014 either through a private health plan operating on an exchange or through the expanded Medicaid health insurance programs for the poor (Japsen, 1)." With this increased utilization of RBCs, the need for strong, consistent regulation becomes more apparent. Japsen also mentions that the shortage of primary care physicians could play a role in the increased utilization of RBCs as he mentions that most care providers at RBCs are either nurse practitioners or individuals with advanced degrees as opposed to actual physicians (1). RBCs would then be able to fill the void of a lack of physicians available with the ability to treat patients using other medical providers for preventative and primary care

and allowing physicians to fulfill the role of managing care of advanced diseases, and working with referrals to specialists.

### Problem

Certain states have already become aware of the concern on how to regulate retail based clinics and have been working through their own legislation. However, there are still several states with a lack of regulation as well as disagreement between the states with legislation on exactly what should be regulated in regards to services, providers, or both. This is an issue that affects a growing number of Americans, with a likelihood to expand exponentially as more individuals seek care with their insurance under the ACA.

The growing pressure from recommendations from professional organizations such as the AMA and the AAP suggest that immediate action is necessary to allow RBCs a place in the current health care system that will not negatively impact a patient's health. The evidence, backed by these organizations, suggest that individuals need a primary care physician to ensure better care management and continuity which would better define the services that that physician provides. However, there are certain services which may not impact an individual's overall health or need follow-up, such as influenza vaccines or minor conditions, which is the niche of the health care market that RBCs could fall under. A partnership of care between an individual's primary care physician and local RBCs could provide even better care, allowing physicians to provide the highly technical care or treat major concerns, and thus allowing clinics to provide the rest, providing relief to the possible physician shortage that may occur under the ACA.

### Policy Options

There are several options for looking at the best way to resolve the growing concern with the current RBC model. First, Kentucky in 2011 adopted several regulations for RBCs based off FTC suggestions which could be translated by the FTC as regulations on a federal scale. Kentucky imposed physical and operational restrictions on clinics as well as increasing licensing fees on these type of clinics. These regulations were claimed to mainly improve health and safety, but as a drawback would limit competition (FTC). The limiting competition would in turn, increase costs which would decrease the draw of RBCs. Second, the FTC can continue to allow states to regulate these type of clinics with no impact on who can provide medical care in these clinics and what type of services the clinic can offer to the public. In this option, the FTC would only provide the suggestion to individual states to create regulations for RBC, but would have no further role with RBC management. Finally, the FTC can provide new regulations that is similar to the Massachusetts model that would be translatable on a national scale. These would provide mandates for primary care provider information sharing from RBCs and limit the extent of services provided.

### Recommendation

Although there are costs and benefits associated with each of the available policy options, the final option of the FTC providing regulations mandating information sharing and limiting services provided, will allow RBCs to find their niche in the health care system as well as providing quality and effective care. It is recommended that the FTC will create a solution that will:

- Create legislation to provide federal regulations on the services provided by RBCs and how the services will be provided in coordination of care with primary care physicians

- Allow states to provide additional regulations for RBCs based in their states
- Instruct each state to create a department to oversee RBCs and ensure that they are continuing to provide effective measures of care
- Have Congress integrate the new RBC model into existing legislation for Medicaid and Medicare
  1. Provide adequate reimbursement for these clinics for the services that they provide
  2. Provide incentives to patients who use RBCs versus using their primary care doctor for minor services

This initial blueprint of the actions that both the FTC and Congress should take together will allow RBCs to be reasonably integrated into the current model of health care. As the usage of these clinics increases, it is vital to take these preemptive steps to allow a seamless transition of RBCs into the health care system and allowing Americans to receive the best care when they need it and in a convenient location.

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