



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: December 21, 2012

TO: Ms. Deborah Harvey
Division of Public Health

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 16 DE Reg. 600 [DPH Proposed School-Based Health Centers Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Health's (DPHs) proposal to adopt a regulation establishing standards for school-based health centers. The proposed regulation was published as 16 DE Reg. 600 in the December 1, 2012 issue of the Register of Regulations. SCPD has the following observations.

First, the Administration promoted legislation (H.B. 303) which was enacted in 2012 despite considerable debate and introduction of multiple amendments. SCPD identified a significant concern with the application of the legislation to parents of students with disabilities. In a nutshell, federal law bars claims against insurance policies of IDEA and §504-identified students if there would be any adverse financial impact without parental consent. At the behest of SCPD and the Governor's Advisory Council for Exceptional Citizens (GACEC), Rep. Quinton Johnson introduced H.A. 3 to H.B. 303. In exchange for not pursuing the amendment, DHSS agreed to adopt a conforming regulation with specific language. This agreement was confirmed in writing through a May 10, 2012 email which can be provided on request. Unfortunately, the DPH proposed regulation does not conform to the Department's commitment. The truncated reference in the regulation is as follows:

6.3. Any services provided by SBHCs pursuant to a student's Individualized Education Program (IEP) are not subject to third-party billing.

This omits all federally required protections for students with §504 plans. It also omits federally required protections for students being evaluated for eligibility under the IDEA and §504 who do not yet have an IEP or §504 plan.

At a minimum, this section should be revised as follows:

6.3. The following services shall be exempt from third-party billing:

6.3.1. Any services provided to a student related to an evaluation or assessment of eligibility under the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq, or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §701 et seq.; and

6.3.2. Any services provided to a student implementing an Individualized Education Program (IEP) or Section 504 Plan developed in conformity with either of the above federal laws.

Second, in §1.0, substitute “§§33365 and 3571G” for “§33365 and 3517G”.

Third, in §2.0, the first sentence does not conform to the Administrative Code Drafting and Style Manual available at <http://regulations.delaware.gov/documents/drafting&stylemanual.pdf>. Section 3.1.2 of the Manual recites as follows:

The first paragraph should read, “The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise.”

Fourth, in §3.1, third sentence, the grammar is problematic. Consider substituting “SBHCs do not supplant...”.

Fifth, §4.1 limits the authority to enroll a minor to a parent or guardian. The Division should consider whether a “relative caretaker” or “custodian” could authorize enrollment or if a definition of “parent” should be added which includes a “relative caregiver” or “custodian”. See Title 14 Del.C. §§202 and 3101(7) and Title 13 Del.C. §707.

Sixth, there is no provision authorizing a student who has reached the age of majority to “self-enroll”. See Title 14 Del.C. §3101(7) and Title 13 Del.C. §707. This should be addressed in the regulation.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

cc: The Honorable Quinton Johnson
The Honorable Rita Landgraf
Dr. Karyl Rattay
Ms. Deborah Gottschalk
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council