



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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January 18, 2017

Mr. Jamie Mack
Division of Public Health
Jesse Cooper Building
417 Federal Street
Dover, DE 19901

RE: 20 DE Reg. 528 [DPH Proposed School-Based Health Centers Regulation (1/1/17)]

Dear Mr. Mack:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Public Health's (DPH's) proposed regulation to amend its school-based health center regulations "to make technical corrections to bring the regulations in line with recently revised statutes." The proposed regulation was published as 20 DE Reg. 528 in the January 1, 2017 issue of the Register of Regulations. SCPD has the following observations.

First, in §1.0, DPH should consider deletion of the reference to §3365. That statute was in effect only until January 1, 2017.

Second, the Legislature enacted H.B. 234 in 2016 with the understanding that "(u)nder DPH regulations students under 18 must enroll for services by having a parent or guardian sign a consent form". See synopsis. There was no evidence of a legislative intent to eliminate a consent requirement. In contrast, DPH is striking the operative §4.1 which addresses who can consent to services. This makes little sense. Moreover, DPH is retaining a revised definition of "parent" in §2.0. There is no reason to have a definition of "parent" if §4.1 is stricken. The only residual reference to "parent" in the entire regulation is a passing reference to satisfaction surveys within §8.1.2.

Third, the amended definition of "parent" in §2.0 merits reconsideration. For example, it would not cover a court-appointed guardian of a student ages 18 and up. It would also not cover a relative caregiver who is not "charged with caring" but is voluntarily caring for a child. The reference to 13 Del.C. §8-201 is odd. That Code section is from the chapter on establishing paternity and maternity. DPH could consider a cross reference to the Code section specifically addressing consent to health care (Title 13 Del.C. §707) which includes relative caregivers, parents, and guardians.

Fourth, the definition of “student” in §2.0 is odd. It does not cover students ages 18 and above. School-based health centers have historically served students age 18 and above. See, e.g., current §4.1, second sentence.

Fifth, revised §4.2 contemplates SBHCs only serving “children”. This is “underinclusive” since it omits students age 18 and above.

Sixth, revised §4.2 limits persons serving students to “licensed professionals”. See also revised §5.1. This would exclude a host of professionals and paraprofessionals, including certified school psychologists [14 DE Admin Code §1583]; unlicensed autism services providers [18 Del.C. §3570A(e)(2) and (f)]; physical therapist assistants [24 Del.C. §2602(9)]; occupational therapy assistants [24 Del.C. §2002(5)]; psychological assistants [24 Del.C. §3507]; and speech pathology aides [24 Del.C. §3702(12)]. DPH should consider retaining the current language, “health professionals” (§5.1). Section 5.2 already limits provision of services to that within a staff member’s “education and experience and legally within their scope of practice”.

Seventh, the enabling legislation for SBHCs explicitly requires insurers to cover some costs of care. See 18 Del.C. §3571G(c). DPH proposes to eliminate the only regulation contemplating insurer billing: ~~“6.1 SBHCs are required to implement and maintain a third party insurance billing process for services provided.”~~ There is some “tension” between the statutory requirement and elimination of this regulation.

Eighth, §4.3 disallows diagnosis and treatment of certain conditions and diseases without school board approval. This should be reconsidered. If there is valid consent, what is the interest of the school board in excluding diagnosis and treatment? In particular, the rationale for requiring school board approval of HIV testing in revised §4.3 is not self-evident and singling out this form of screening may be imprudent.

Ninth, §4.3 refers to “approval of the school board governing the SBHC locale.” This is an odd reference and ignores the overlapping “locales” covered by local districts and Vo-tech school districts. Vo-tech districts are required to maintain SBHCs. See 14 Del.C. §4126. The “locales” of local districts and Vo-tech districts overlap.

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

Sincerely,



Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

cc: The Honorable Nicole Poore
The Honorable Kimberly Williams
The Honorable Bryan Townsend
The Honorable David Sokola
The Honorable Earl Jaques
The Honorable David Bentz
Ms. Karyl Rattay, DHSS-DPH
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
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