

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 18 Delaware Code, Section 3365 (18 **Del.C.** §3365)
16 **DE Admin. Code** 4102

FINAL

ORDER

4102 School-Based Health Centers

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing School-Based Health Centers. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 18 **Del.C.** §3365.

On January 1, 2017 (Volume 20, Issue 7), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by February 10, 2017, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing School-Based Health Centers were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (January 1, 2017 through February 10, 2017).

Delaware Health Care Association

Section 2.0 Definitions

- The definition of Parent has been changed to match the definition of Parent in 13 Del. C. Section 8-201. We believe the definition of Parent should not be changed because the current definition points specifically to the parent or legal guardian as the representative who authorizes School Based Health Center (SBHC) enrollment. Please clarify why the definition of Parent has changed, and how the new definition will impact SBHC enrollment procedures.

DPH Response:

The Agency appreciates and acknowledges these comments.

Clarification was necessary to ensure that it did not conflict with consent of minors for services, and impede access to these services, per Delaware law.

Section 4.0 Service Provision

- 4.1 appears to eliminate parental consent for SBHC services for children under 18 years of age. Parental consent for SBHC services has been a long standing and integral policy for obtaining parent and school district support for the SBHCs. Aside from two areas specifically protected by law (mental health and reproductive health), medical providers cannot legally see minors without parental consent.

The rationale for removing 4.1 from the regulations needs to be explained and clarified. We suggest specifying in the regulations when parental consent is required and when it is not. Otherwise, we fear the apparent elimination of parental consent from the regulations will damage relationships between the parent, schools, and SBHC staff and, as a result, negatively impact student health outcomes.

DPH Response:

The Agency appreciates and acknowledges these comments.

As written, 4.1 is inconsistent with Delaware law.

Health care providers in Delaware are permitted to accept the consent of minors for reproductive health under 13 Del. Code, Section 710 and they may choose to provide such services without notifying the parent or they may choose to notify the parent. However, pursuant to 16 *Del. C.* 710, a provider may not notify the parents of the consultation, examination or

treatment of a minor in connection with a sexually transmitted infection without the minor's consent. There is no requirement that a health care provider provide such treatment to a minor without parental involvement.

Per 16 Del. Code, Section 5003 (f) (3), the proposed regulations track the law in that the requirement for parental consent to receive voluntary outpatient mental health services has been removed and any minor age 14 and over may consent and that consent is binding on the provider.

- 4.3.3 and 4.3.4 eliminate health education and nutritional consultation. The change is confusing given that historically, health education and nutrition were seen as critical student health services. The recent RFP for SBHC seems to affirm this historical perspective by including nutrition as an essential SBHC service component (i.e., BMI is a benchmark in the proposed evaluation tool). We suggest including health education and nutritional consultation in the menu of services outlined in Section 4.3.

DPH Response:

The Agency appreciates and acknowledges these comments.

DPH will add "nutrition consultation/education", as outlined in former Section 4.3.4 to the menu of services listed in Section 4.3.

- 4.4 requires SBHCs to promote, "vaccination among enrolled students." This conflicts with proposed changes to Section 4.1, which appears to eliminate student enrollment. Eliminating enrollment requirements in one section but referring to "enrolled students" in other sections of the proposed regulation is confusing. We support maintaining student enrollment requirements as we stated previously in Sections 2.0 and 4.1.

DPH Response:

The Agency appreciates and acknowledges these comments.

For consistency, DPH will remove "enrolled" from the section header 4.4 and 4.4.1 and 6.3

Section 6.0 Billing and Reimbursement

- 6.1 eliminates the requirement that SBHCs implement and maintain a third party insurance billing process for services provided. The original intent of this requirement was to allow medical vendors to bill for services. If this language is removed from regulations, then what will be inserted in its place to allow medical vendors to bill for services so that insurance companies are compelled to accept and reimburse claims from SBHCs? Providers must have certainty that they may bill third parties for services provided in order that SBHC contracts remain financially viable. We suggest maintaining the current language in Section 6.1.

DPH Response:

The Agency appreciates and acknowledges these comments.

Under Delaware law, SBHCs are not required to bill third party insurance. Therefore, language is removed to be consistent with Delaware law.

State Council for Persons with Disabilities (SCPD)

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

DPH Response:

The Agency appreciates and acknowledges these comments.

§3365 is a current and active Delaware Code reference.

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.

DPH Response:

The Agency appreciates and acknowledges these comments.

The language referenced in your submitted comment was not included in the final Delaware law. Other Delaware laws govern the requirement for consent to medical services.

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.

DPH Response:

The Agency appreciates and acknowledges these comments.

DPH will eliminate the definition of “parent”. As it is only referenced one time in the regulation as it relates to satisfaction surveys within §8.1.2.

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.

DPH Response:

The Agency appreciates and acknowledges these comments.

The definition of “student” is not age restricted.

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

DPH Response:

The Agency appreciates and acknowledges these comments.

The language is consistent with Delaware law.

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”.

DPH Response:

The Agency appreciates and acknowledges these comments.

The language is consistent with Delaware law.

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.

DPH Response:

The Agency appreciates and acknowledges these comments.

Under Delaware law, SBHCs are not required to bill third party insurance.

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.

DPH Response:

The Agency appreciates and acknowledges these comments.

Per Delaware law, From **Title 13 § 1043 Authority**, “school board which shall have the authority to administer and to supervise the free public schools of the reorganized school district and which shall have the authority to determine policy and adopt rules and regulations for the general administration and supervision of the free public schools”.

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.

DPH Response:

The Agency appreciates and acknowledges these comments.

DPH will remove the word "locale" to clarify the regulation.

Christiana Health Care System

Section 4.0: Service Provision: Section 4.1:

Christiana Care supports the removal of language from the previous draft requiring a student to be "enrolled in the SBHC by his or her parent" in order for the student to obtain services at a SBHC. Christiana Care intends to continue to require student or parent consent, as applicable, for particular services in accordance with applicable state and federal laws and regulations, and in accordance with the contractual guidance issued by DPH to Medical Sponsors of SBHCsPI. Christiana Care recommends that the regulations include language to that effect, specifically, that "nothing in the regulations limits the ability of a SBHC to require student or parent consent, as applicable, for particular services in accordance with applicable state and federal laws and regulations, and in accordance with the contractual guidance issued by DPH to Medical Sponsors of SBHCs."

To the extent that the initial version of the proposed Regulations contemplated that SBHC providers, including Christiana Care, would utilize enrollment statistics as a method of measuring performance of the SBHCs, Christiana Care intends to rely on alternative metrics to demonstrate the success of the CCHS Centers, including de-identified data on services provided to patients and numbers of patient visits.

DPH Response:

The Agency appreciates and acknowledges these comments.

DPH will include the suggested and recommended language in the regulation as written, "nothing in the regulations limits the ability of a SBHC to require student or parent consent, as applicable, for particular services in accordance with applicable state and federal laws and regulations, and in accordance with the contractual guidance issued by DPH to Medical Sponsors of SBHCs."

Section 4.4: Promotion of vaccination among enrolled students:

Christiana Care supports the promotion of vaccination of students served by SBHCs, and recommends removing the word "enrolled" from the Section header and in 4.4.1 to make Section 4.4 consistent with Section 4.1.

DPH Response:

The Agency appreciates and acknowledges these comments.

DPH will remove "enrolled" from the section header 4.4 and 4.4.1 and 6.3

Section 6.0 Billing and Reimbursement:

While Christiana Care does not oppose the removal of the language requiring SBHCs to "implement and maintain a third-party insurance billing process for services provided," we recommend adding language to the regulation that that "nothing in these Regulations is intended to prohibit or otherwise restrict a provider from billing for services for which it is authorized to bill under applicable state and federal laws and regulations, and that nothing in these Regulations is intended to create an independent basis for the denial of payment of any claim."

DPH Response:

The Agency appreciates and acknowledges these comments.

DPH will include the suggested and recommended language in the regulation in Section 6.0 Billing and Reimbursement as written, "nothing in these Regulations is intended to prohibit or otherwise restrict a provider from billing for services for which it is authorized to bill under applicable state and federal laws and regulations, and that nothing in these Regulations is intended to create an independent basis for the denial of payment of any claim."

FINDINGS OF FACT:

Changes made to the regulations based on the comments received are detailed in the summary of evidence. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing School-Based Health Centers is adopted and shall become effective June 11, 2017, after publication of the final regulation in the Delaware *Register of Regulations*.

Kara Odom Walker, MD, MPH, MSHS
DHSS SECRETARY
5/24/17

4102 School-Based Health Centers

1.0 Statement of Purpose

These regulations are intended to implement the provisions of 18 Del.C. §3365 and ~~3547G~~ 3571G, school-based health centers. These regulations apply to medical vendors who provide services at school-based health centers and health insurance plans who reimburse for covered medical services. These regulations define: (1) services offered in a school-based health center; (2) criteria for recognition as a school-based health center; (3) interactions with primary care providers; and (4) criteria for health promotion.

2.0 Definitions

The following words and terms, when used in this regulations, shall have the following meaning unless the context clearly indicates otherwise:

"Agency" means the Division of Public Health, Bureau of Adolescent and Reproductive Health, school-based health center program.

~~["Parent" means the parent or legal guardian authorized to enroll a student in the school-based health center a parent as defined by 13 Del.C. §8-201 or a nonparent or agency charged with caring for a child during the child's minority].~~

"School-based health center" means a health care clinic located in or near a school facility that is organized through school and health provider relationships that provides services designated in ~~section~~ Section 4.0 of this regulation.

"Student" means a child or adolescent who is enrolled in school.

3.0 Designation as a School-Based Health Center

- 3.1 School-based health centers (SBHC) are designed to reduce risk behaviors and improve health among children and adolescents through health promotion and education, early intervention, and preventive care. These services include physical examinations, treatment of minor acute medical conditions, counseling and community referrals. SBHCs do not supplant the primary care provider, but rather serve to coordinate care between students and their primary care provider, as well as increase access to services.
- 3.2 A health care clinic may be designated as a school-based health center (SBHC) by the Agency if it has demonstrated that it meets the criteria provided in ~~paragraphs~~ Sections 4.0-8.0 in these regulations. The Agency shall be the sole arbiter of the satisfaction of these criteria.
- 3.3 Application for designation shall be made to the Agency using a standard application form. The form is available by contacting the Division of Public Health, school-based health center program.
- 3.4 Designations are non-transferable and valid for a period of five years from date of issue. Application for renewal is available by contacting the Division of Public Health, school-based health center program.

4.0 Service Provision

- 4.1 ~~In order to obtain services at the SBHC, a minor student must be enrolled in the SBHC by his or her parent/guardian or relative caregiver acting pursuant to an Affidavit of Establishment of Power to Consent to Medical Treatment of Minors in accordance with Title 13 Del.C. §708. A student of the age of 18 years or more may consent for himself or herself.~~

[Nothing in the regulations limits the ability of a SBHC to require student or parental consent, as applicable, for particular services in accordance with applicable state and federal laws and regulations, and in accordance with the contractual guidance issued by DPH to Medical Sponsors of SBHCs.]

- ~~4.2~~**[4.2]** A SBHC shall be open during hours accessible to students. Information on hours of operation must be posted in areas frequented by students.

~~[4.3]~~**[4.3]** A SBHC is required to make services available under the categories of physical health, mental health, health education, and nutrition consultation/education, as outlined in this section All SBHCs shall provide through licensed professionals, primary health services to children, including comprehensive health assessments, diagnosis, and treatment of minor, acute, and chronic medical conditions, [nutrition consultation/education,] referrals to and follow-up for specialty care and oral and vision health services, mental health and substance use disorder assessments, crisis intervention, counseling, treatment, and referral to a continuum of mental health and substance abuse services including emergency psychiatric care, community support programs, inpatient care, and outpatient programs.

4.3.1 Physical Health

4.3.1.1 ~~Assessment, diagnosis and treatment of minor illness/injury.~~

4.3.1.2 ~~Immunizations, in accordance with recommendations from the Division of Public Health.~~

4.3.2 Mental Health

4.3.2.1 ~~Individual and group counseling.~~

4.3.2.2 ~~Referral for long term counseling and mental health evaluations and emergency treatment.~~

4.3.3 Health Education

4.3.3.1 ~~Individual, group or classroom education, including but not limited to, healthy lifestyles and preventive health.~~

4.3.4 Nutrition Consultation/Education

4.3.4.1 ~~Individual, group or classroom education, including but not limited to, healthy eating and weight management.~~

4.3.5 Subject to school board approval

[4.3.5.4 4.3.1] ~~Diagnosis and treatment of sexually transmitted diseases, reproductive health, provision of contraceptives, and HIV testing and counseling. Provision of these services by SBHCs is~~ may be provided by a SBHC ~~subject to the approval of the school board governing the SBHC~~ **[locale]**.

4.3.64 Promotion of vaccination among **[enrolled]** students

4.3.64.1 ~~SBHCs must promote provision of all vaccinations required or recommended by the Division of Public Health to~~ **[enrolled]** ~~students either on site or through referral to a primary care provider.~~

4.3.64.2 ~~SBHCs shall promote vaccination among students through education and awareness activities.~~

5.0 Staffing

5.1 ~~A SBHC shall provide services through health professionals who: maintain up to date Delaware licensure, training and proper certification in their individual discipline for the population to be served.~~

5.1.1 ~~Are experienced in community health and providing health services to school-aged children and adolescents.~~

5.1.2 ~~Have knowledge of health promotion and preventive health strategies for children and adolescents.~~

5.1.3 ~~Maintain up to date training and proper certification for the population to be served.~~

5.2 ~~The organizational structure of the SBHC must be adequate to provide for appropriate clinic supervision of staff, and to ensure that staff are assigned responsibilities that are consistent with their education and experience and legally within their scope of practice. Staffing of the SBHC must include: an individual designated as having overall responsibility for the management of the SBHC.~~

5.2.1 ~~An individual designated as having overall responsibility for the management of the SBHC.~~

5.2.2 ~~A licensed advanced practice nurse, physician assistant or physician, on a part-time basis at minimum.~~

5.2.3 ~~An individual trained and experienced in nutrition for school-aged children and adolescents.~~

5.2.4 ~~A licensed clinical social worker, psychologist or mental health counselor.~~

5.2.5 ~~An individual responsible for the management of medical records.~~

6.0 Billing and Reimbursement

6.1 ~~SBHCs are required to implement and maintain a third-party insurance billing process for services provided.~~

6.2 ~~A SBHC shall not charge co-pays or any other out-of-pocket fees for use of SBHC services.~~

6.32 ~~The following services shall be exempt from third-party billing:~~

6.32.1 ~~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~~

6.32.2 ~~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.~~

6.43 ~~Insurance information on each student~~ **[enrolled]** ~~in the SBHC must be updated annually at minimum.~~

[6.4 Nothing in these Regulations is intended to prohibit or otherwise restrict a provider from billing for services for which it is authorized to bill under applicable state and federal laws and regulations, and that nothing in these Regulations is intended to create an independent basis for the denial of payment of any claim.]

7.0 Information Storage and Sharing

- 7.1 A SBHC must keep detailed records on the treatment of students receiving services, including but not limited to, documentation of contact with primary care providers.
- 7.2 A SBHC shall establish written protocol that describes how information will be shared with the student's primary care provider.

8.0 Quality Improvement

- 8.1 A SBHC must implement and maintain a quality assurance plan. Components of the plan shall include at a minimum:
 - 8.1.1 Ongoing clinical and medical record reviews by peers to ensure conformity with current standards of practice. The plan must include provisions for implementing corrective actions when deficiencies are noted.
 - 8.1.2 Satisfaction assessments conducted with parents, students and/or school staff on a biennial basis.
 - 8.1.3 The Agency may perform such reviews as it determines necessary to ensure continued compliance with SBHC standards. Review may include site visits, reviews of records and documents, or such other oversight as determined necessary by the Agency.

16 DE Reg. 982 (03/01/13)

20 DE Reg. 980 (06/01/17) (Final)