

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 3365 (16 Del.C. §3365)

FINAL

ORDER

4102 School-Based Health Centers

NATURE OF THE PROCEEDINGS:

The Delaware Department of 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 **Delaware Code**, Chapter 33, Section 3365.

On December 1, 2012 (Volume 16, Issue 6), 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 December 31, 2012, 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*.

Entities offering written comments include:

- Aetna, Larry Lewis, Jr., Director, State Government Affairs
- State Council for Persons with Disabilities
- Governor’s Advisory Council for Exceptional Citizens

Public comments and the DHSS (Agency) responses are as follows:

Aetna, Larry Lewis, Jr., Director, State Government Affairs:

Aetna offers suggestion and seeks clarification on the section of the proposed regulation pertaining to Billing and Reimbursement.

6.1 SBHC are required to implement and maintain a third-party insurance billing process for services provided at the SBHC.

Comment: For purposes of effective adjudication Aetna suggest that a claim for services shall provide: (i) detailed and descriptive medical and patient data, (ii) a corresponding referral (whether in paper or electronic format), if required for the applicable claim, (iii) whether submitted via an electronic transaction using permitted standard code sets (e.g., CPT-4, ICD-10 or its successor standard, HCPCS) as required by the applicable Federal or state regulatory authority (e.g., U.S. Dept. of Health & Human Services, U.S. Dept. of Labor, state law or regulation) or otherwise, all the data elements of the UB-04 or CMS-1500 (or successor standard) forms (including but not limited to Member identification number, national provider identifier (“NPI”), date(s) of service, complete and accurate breakdown of services).

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will not include details for billing claims within the regulation. The Agency recommends that the requirements for submitting billing claims be established with the School-Based Health Center medical vendors directly.

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

Comment: Is it anticipated carriers should recovery the uncollected member out-of-pocket expense from the plan sponsor for employer sponsored plans?

Agency Response: The Agency appreciates and acknowledges these comments. However, the Agency will not advise on billing practices.

State Council for Persons with Disabilities and Governor’s Advisory Council for Exceptional Citizens:

The State Council for Persons with Disabilities (SCPD) and the Governor’s Advisory Council for Exceptional Citizens (GACEC) have 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.

Agency Response: The Agency appreciates and acknowledges these comments.

The Agency agrees to revise section 6.3 to read:

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 "§§3365 and 3571G" for "§3365 and 3517G".

Agency Response: The Agency appreciates and acknowledges these comments. The Agency agrees to make the revision in 1.0 to read §3365 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."

Agency Response: The Agency appreciates and acknowledges these comments. The Agency agrees to revise the first sentence of 2.0 to 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...".

Agency Response: The Agency appreciates and acknowledges these comments. The Agency agrees to revise the third sentence of 3.1 to read "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."

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.

Agency Response: The Agency appreciates and acknowledges these comments.

The Agency agrees to revise 4.1 to include a 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.

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.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency agrees to add a second sentence to 4.1 that states "A student of the age of 18 years or more may consent for himself or herself".

The public comment period was open from December 1, 2012 through December 31, 2012.

Based on comments received during the public comment period only non-substantive changes have been made to the proposed regulation. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

Based on public comments received, non-substantive changes were made to the proposed regulations. 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 are adopted and shall become effective March 11, 2013, after publication of the final regulation in the Delaware Register of Regulations.

Rita M. Landgraf, Secretary

4102 School-Based Health Centers

1.0 Statement of Purpose

These regulations are intended to implement the provisions of 18 Del.C. §3365 and 3517G, 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 [these this] regulations, [should 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.

“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 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. SBHC[s] 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 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 SPHC, aA] minor student must be enrolled in the SBHC by his or her parent/guardian [in order to obtain services at the SBHC 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].
- 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 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.
 - 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

4.3.5.1 Diagnosis and treatment of sexually transmitted diseases, reproductive health, provision of contraceptives, and HIV testing and counseling. Provision of these services by SBHCs is subject to the approval of the school board governing the SBHC locale.

4.3.6 Promotion of vaccination among enrolled students

4.3.6.1 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.

4.3.6.2 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:

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:

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.

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

6.4 Insurance information on each student enrolled in the SBHC must be updated annually at minimum.

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) (Final)