



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Loockerman St., Dover, DE 19904  
302-739-4553 (voice) 302-739-6126 (fax) <http://www.gacec.delaware.gov>

## **MEMORANDUM**

**DATE:** May 7, 2012

**TO:** The Honorable Members of the Delaware General Assembly

**FROM:** Terri A. Hancharick, Chairperson  
GACEC

**RE:** **House Bill No. 303 (School Based Health Centers: Insurer Reimbursement)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed House Bill No. 303 on School Based Health Center Insurance Reimbursements. This bill was introduced on April 24, 2012 and released from the House Economic Development/Banking/Insurance/Commerce Committee on May 2nd. Two amendments have been placed with the bill. Council would like to share the following observations.

First, consistent with the synopsis, School Based Health Centers (SBHCs) exist in twenty-eight (28) Delaware high schools. The Centers offer a wide array of diagnostic and treatment services to students (lines 23-30 and 53-60). The bill is designed to implement a general Medicaid requirement that private insurance be billed for a covered service prior to billing to Medicaid (lines 9-10). The bill disallows an SBHC from charging a student a co-pay or out-of-pocket fee (lines 41-42 and 72-73). State-regulated health insurers would be required to reimburse SBHCs for the cost of services "as if those services were provided by a network provider" (lines 33-35 and 63-65). The amendments appear to address the sensitive issue of parental consent to reproductive services.

Second, Council notes that there is a significant oversight in the legislation. Public schools may incorporate SBHC services into an IEP or Section 504 Plan (e.g. counseling; medical evaluation; school health services). Federal law bars billing a parent's health insurance for services required for a free, appropriate public education ("FAPE") without parental consent. A parent cannot be forced to allow access to his/her insurance if such access could potentially result in a "financial loss". The attached HHS Policy Clarification [18 IDELR 558 (November, 1991)] summarizes the law:

Medicaid providers, including schools and their health care practitioners, must bill private plans first if a Medicaid recipient has private coverage for the relevant service. ...

Whether a school would actually choose to bill private insurers for services covered by more than one source of insurance would depend on the school's policies regarding health insurance billing

and the potential for an associated cost to the family. Under Federal policy on the use of parents' insurance proceeds, the requirements that a free, appropriate public education be provided "without charge" or "without cost" mean that an agency may not compel parents to file an insurance claim when filing the claim would pose a realistic threat that the parents of children with disabilities would suffer a financial loss not incurred by similarly situated parents of other children. Financial losses include, but are not limited to, the following:

- A decrease in available lifetime coverage or any other benefit under an insurance policy;
- An increase in premium under an insurance policy; or
- An out-of-pocket expense such as the payment of a deductible amount incurred in filing a claim.

At 561. See also attached OSERS Policy Letter to D.Rose, 18 IDELR 531 (September 19, 1991) [public agencies may not require parents to consent to filing of claim with private insurance or Medicaid]; and attached OSERS Policy Letter to G. Spinner, 18 IDELR 310 (November 13, 1991) [parents must give explicit consent to the filing of a claim by a public agency against their insurance policies to pay for required special education and related services where doing so poses a realistic threat of financial loss and be fully informed that refusal will not result in denial of services]. This policy applies to students covered by both the IDEA and Section 504 of the Rehabilitation Act. OSERS Policy Letter to G. Spinner, 18 IDELR 310, 311 (November 13, 1991). These policy interpretations are essentially reiterated in the relevant IDEA regulation, 34 C.F.R. 300.154.

Given these considerations, Council would suggest that the sponsors of House Bill No. 303 consider adding the following subsection to the bill:

Insurer reimbursement to an SBHC for provision of services in fulfillment of an obligation under either the Individuals with Disabilities Education Act or Rehabilitation Act of 1973, codified at 20 U.S.C. 1400 and 29 U.S.C. 794 respectively, shall conform to any limitations established by such federal laws, including any requirement of parental consent and assurance of no adverse financial effect under a health insurance policy. The Division of Public Health, in consultation with the Department of Education, may issue regulations implementing this subsection.

Thank you for your time and consideration of our observations and recommendations. Please feel free to contact me or Wendy Strauss at the GACEC office should you have any questions.

TAH:kpc

CC: The Honorable Rita Landgraf, Delaware Health and Social Services (DHSS)  
The Honorable Lillian Lowery, Department of Education (DOE)  
Debbie Gottschalk, DHSS  
Mary Ann Mieczkowski, DOE

Enclosures