

January 30, 2017

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

RE: DPH Proposed School-Based Health Centers Regulation [20 DE Reg. 528 (January 1, 2017)]

Dear Mr. Mack:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Public Health proposal to amend its school-based health center regulations "to make technical corrections to bring the regulations in line with recently revised statutes." At 528. Council would like to share 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 House Bill No. 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 seems very strange to us. Furthermore, 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 in §8.1.2.

Third, Council suggests the amended definition of "parent" in §2.0 be reconsidered. 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 strange. 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 also strange. 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 very limiting 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.

Tenth, Although Section 7.2 is not earmarked for revision, the Council notes that each individual SBHC must establish a written protocol which describes how information will be shared with the primary care provider of a student. This could lead to the development of numerous different protocols. Council suggests that DPH consider development of a uniform protocol for use by all SBHCs.

Eleventh, Section 8.1.2 is also not earmarked for revision; however, Council notes that parental satisfaction surveys are contemplated on a biennial basis. Since DPH is proposing to strike the

only section (4.1) referring to a parental role in authorizing services, and there are no sections envisioning parental involvement whatsoever, it seems irregular to require parental satisfaction surveys.

Thank you for your consideration of our comments. Please contact me or Wendy Strauss at the GACEC office if you have questions.

Sincerely,

Dafne A. Carnright
Chairperson

DAC:kpc

CC: The honorable Nicole Poore, Delaware State Senate
The honorable Kimberly Williams, Delaware State House of Representatives