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School-Based Health Centers

Grow in Popularity

By [Lisa O. Stump, J.D.](#), and [Stuart J. Vogelsmeier, J.D.](#)

The recent delay the commencement of the “employer mandate” provisions of the Affordable Care Act (“ACA”) has many commentators predicting the impact of this delay on employers, providers, and the uninsured. One tangible impact of the ACA that has already been felt is the expanded support for School-Based Health Centers. The Health Resources and Services Administration (“HRSA”) of the U.S. Department of Health and Human Services reports that over \$175 Million has been awarded to over 470 School-Based Health Centers in 2011-2012. HRSA estimates that these grants will increase the number of students who will receive health care services at School-Based Health Centers to over 1,614,000. Additionally, as recently as July 3, 2013, the U.S. Department of Health and Human Services awarded School-Based Health Centers in the states of Indiana and Washington additional funding to facilitate student identification and enrollment in Medicaid. Eighteen states, including Illinois, direct state funds for School-Based Health Centers. Over 2,000 School-Based Health Centers operate nationally, according to National Assembly on School-Based Health Care census data. About twenty percent of School-Based Health Centers receive funding through the HRSA Health Center Program. Given the growth in School-Based Health Centers, providers should become aware of the issues related to the development and operation of such facilities.

What Are School-Based Health Centers? Although there is no uniform definition of a School-Based Health Center, these centers are typically offices within or on the grounds of a school. School-Based Health Centers typically offer the one or more of the following services:

- Primary medical care
- Mental and behavioral health care
- Dental and oral health care
- Health education
- Substance abuse counseling
- Case Management
- Nutrition education

Students are treated at School-Based Health Centers for acute illnesses, including the flu, and chronic conditions, such as asthma. School-Based Health Centers typically emphasize preventive

services, and often offer dental, vision and hearing screening. School-Based Health Centers are typically operated in some type of arrangement between the school, and a community health organization such as a hospital, local health department, or physician group.

What are the legal issues involved in the development and operation of a School-Based Health Center?

- Determination of whether the school will be the actual provider of services (in Missouri, a school district may become a Medicaid provider), or whether the school will contract with an existing provider to operate the School-Based Health Center.
- Contractual or lease arrangement between the provider/operator of the School-Based Health Center and the school. If the School-Based Health Center is located in a public school, state statutes regarding leasing of public property must be considered.
- Contracts with the individual providers, such as primary care physicians or nurse practitioners.
- Arrangements with lab facilities regarding basic diagnostic test, such as strep tests.
- State law consent issues regarding medical care. Most of the patients will be minors (under age 18). In Missouri, parental consent is generally required for the medical care provided to minors, except that Missouri law clearly allows a minor to consent to his/her own treatment for pregnancy, venereal disease, and drug or substance abuse treatment.
- Federal privacy rules under HIPAA protecting a patient's individually identifiable health information".
- Enrollment of the School-Based Health Center or the individual providers as Medicaid providers, and with commercial payors.
- Meeting state licensing regulations in states, such as Illinois, in which School-Based Health Centers are specifically regulated. This may include reviewing the limitations on the types of services (e.g., primary and preventive care, early periodic screening, diagnostic and treatment).
- Review of state law regarding the ability of School-Based Health Centers to provide contraceptive devices or drugs, or whether referrals for such contraceptive devices or drugs can be made to other practitioners.
- Obtaining professional liability, general commercial liability, premises liability, and workers' compensation coverage for the School-Based Health Center and its providers.
- The Family Educational Rights and Privacy Act ("FERPA"). FERPA protects that privacy of parents and students by controlling access to, and release of, information held in students' "educational records". Given that many School-Based Health Center funding sources want data to support the theory that providing health care services in the school setting improves student outcomes, the potential release of educational records needs to be planned properly.
- Application of the Americans with Disabilities Act or the Individuals with Disabilities Education Act in relation to health care services provided at School-Based Health

Centers, including whether translators are required for students with limited English proficiency who are treated in the School-Based Health Center.

- State laws regarding background checks for health care workers must be examined.
- Review of policies regarding visitors to the School-Based Health Center.
- If the School-Based Health Center is located on public school property, Federal discrimination laws would likely apply to the School-Based Health Center.
- State laws regarding child abuse reporting would mostly likely apply to a School-Based Health Center.

School-Based Health Centers address many of the barriers to health care services for school-aged children. Some studies have concluded that School-Based Health Centers reduce emergency room visits. Although there are a number of legal issues involved in the development of a School-Based Health Center, those issues may be viewed as necessary steps, rather than as obstacles.

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