**Development of Memorandums of Understanding for**

**School-Based Health Program Partnerships**

# Memorandums of Understanding

Memorandums of understanding (MOU) are legally binding contracts that establish the relationship between collaborating partners. For school districts and healthcare organizations working together to plan and implement school-based health (SBH) programs, an MOU formalizes the commitments and agreements regarding the operation of the SBH program. They define critical components of the relationship, including:

* Roles and responsibilities of both parties;
* Compliance with related federal, state, and local policy;
* Parameters of facility usage;
* Assurance of confidentiality and security;
* Duration of contract/agreement/relationship;
* Billing and compensation; and
* Ownership of liability.

In addition to establishing a legal, contractual relationship between healthcare providers and school districts, MOUs create the foundation for strong partnerships, which are critical for SBH program sustainability. Neither school districts nor SBH program providers can successfully implement a high-quality, sustainable SBH program without the support of the other entity.

Strong partnerships enhance the credibility and promote the collaborative relationship of SBH programs, ideally creating an image that is united and trustworthy for students, parents, and the community to increase their use of the SBH program services. Enhanced connections through strong partnerships also promote care coordination to ultimately improve student health outcomes and, by combining the skills, knowledge, and experience of both parties, strong partnerships lead to better quality of care.

From the initial planning and implementation through sustaining SBH programs overtime, well-developed MOUs create the foundation for a relationship that works together to manage risk and liability for both parties and for the students, families, and communities they serve.

**Key Terms**

***School-Based Health (SBH) Programs***

The National School-Based Health Alliance defines a school-based health program as a shared commitment between a community’s schools and healthcare organizations to support students’ health, well-being, and academic success by providing preventative, early intervention, and treatment services where students are—in school.

In Missouri, the Show-Me School-Based Health Alliance defines six types of programs that exist in school districts throughout the state. These include:

* **Comprehensive school-based health centers**—deliver integrated primary health and behavioral/mental health care as well as oral and vision care on a school site.
* **School-based health centers**—deliver primary care at minimum on a school site.
* **School-linked health centers**—located off campus at a fixed site near the school campus; may include transportation from school or priority appointments for students.
* **School-based mental health programs**—provided services only include behavioral/mental health.
* **Mobile programs**—providers travel to the site to deliver care, including primary health, oral, or vision services.
* **Telehealth programs**—patients access care from a fixed site and providers deliver care via telemedicine technology from a remote location.

***School-Based Health (SBH) Program Sponsoring Organizations***

SBH program sponsoring organizations are healthcare organizations such as Federally Qualified Health Centers (FQHCs), hospitals/community health systems, community behavioral health centers, for-profit health systems, or community-based non-profit originations that support the operations of the SBH program.

The MOU between a school district and an SBH program sponsoring organization defines the level of support and individual/shared responsibilities of operating the program for each partner. Responsibilities of the sponsoring organization may include:

* Providing health IT infrastructure;
* Employing SBH program providers;
* Providing medical equipment & supplies; or
* Billing health insurers & collecting patient revenue.

***School-Based Health (SBH) Program Providers***

SBH program providers are the health or behavioral/mental health professionals who serve students within SBH programs. While they are typically employed by the SBH program sponsoring organization, SBH program providers may also be employed by an additional partner.

# Creating Binding Contracts

# **School districts should start with a Request for Proposals (RFP) or bidding process to identify an SBH program provider.**

Even if there is no exchange of money and the school district is not “paying for services,” they are still providing facility usage, advertisement, and access to students that will result in payment. Given that this is a valuable opportunity for healthcare sponsors to expand their business and that it is to the school districts advantage to maintain positive relationships with partners throughout their communities, an RFP or bidding process alleviates some of the political repercussions that may come from selecting a healthcare sponsor without allowing other organizations to offer their services. While a formal bidding or RFP process is not required by law, most school districts already have policies in place that require some kind of competitive process.

In addition to the political benefits, the development of an RFP also helps school districts to delineate their student and community health and wellness needs and propose to a future healthcare sponsor how they would like those needs to be addressed. This will help to assure that both parties enter into the partnership with some key questions answered and decisions made.

# MOUs are legally binding contracts.

To be a legally-binding contract, based upon MO §432.070 and §162.301, school district contracts must be made in writing, dated, signed by an authorized person, and approved by the school board with at least four affirmative votes. Further, the content of MOUs must be within the scope of what the school board can do and include consideration, which is a legal term to describe the give and take of partnerships (i.e. the exchange of money, benefits, and responsibilities.

# It is advised that both the SBH program provider and the school district have a lawyer throughout the development of the MOU.

Given that the healthcare and education sectors must adhere to very different sets of policies and statutes, it is rare to find attorneys who know both well. The presence of a health law and an education law attorney may help to anticipate problems before they develop as well as understand and protect the respective interests of their parties. Separate attorneys may also help to establish expectations up front before emotions are involved in the development of a partnership.

# Do NOT copy someone else’s agreement.

Due to the unique needs of students and communities, school districts and healthcare sponsors should leverage the MOU development process to develop a contractual relationship that uniquely addresses their identified needs. Using someone else’s agreement eliminates key opportunities to understand and address the unique risks and challenges associated with your SBH program.

# Key Considerations and Questions for MOU Development

# Define the contractual relationship that both parties want and need.

Due to the unique needs of schools and students across school districts, partnerships look very different across SBH programs. Key questions to consider in defining the relationship and, thus the content required in a supporting MOU, include:

* Is your relationship just a facility usage agreement?
  + Temporary usage like a mobile clinic?
* Is the healthcare sponsor invited in during school hours to provide services that the district itself cannot provide?
  + Employee wellness program? Education to students?
* Is the healthcare sponsor in lieu of a nurse – i.e. acting as or replacing an employee?
  + Split employees?
* If the healthcare sponsor brings in telemedicine, is it:
  + Part of the services the school is required to provide to students with disabilities?
  + The school merely acting as a conduit for parents to access health care that is not school related?

# Define the legal relationship between the school district and the healthcare provider.

While the term “partnership” may be used to describe the relationship between a school district and their sponsoring organization, the legal relationship should be further defined. Key recommended language includes:

* Qualifying the sponsoring organization as an “independent contractor” defines them as a separate legal entity who is providing services.
* Defining the relationship as a “non-agency agreement” clarifies that neither party is an agent of the other, meaning that they may not act on each other’s behalf.
* Including a provision that discusses “3rd party beneficiaries” protects the school district and/or the sponsoring organization from being sued by 3rd parties based upon the contract and clarifies that only the school district and the sponsoring organization entering into the contract can sue based upon the terms of the contract.

# The school district can be a Medicaid provider to all Medicaid-eligible school age children located in their service area.

Under §432.070, RSMo., the school district can be a Medicaid provider to all Medicaid-eligible school age children through either their own employees of by contract through federally-qualified health centers, health departments, federally-certified rural health clinics, or physicians, hospitals or other licensed providers in the community.

# Agree on the parameters of exclusivity for the contracted services.

Once a sponsoring organization is contracted with a school district, there may be opportunities presented to the school district to develop additional partnerships to provide more of the services for which the sponsoring organization was initially contracted or for other types of services. In the MOU, both parties should agree upon the parameters of exclusivity for the contracted services. Key considerations include:

* Should the contract limit the school district to only one provider?
* Can/should the district contract with multiple providers for different services (e.g., health, mental health, dental, vision services, etc.)?
* Can the exclusive provider subcontract out promised services to another entity?
* Can the exclusive provider bring in other health services not discussed in the original contract?

# Define the scope of services to be provided by the SBH program provider.

Both the school district and healthcare sponsor must define and agree upon the types of services to be provided. There is significant opportunity here to address the findings of a needs assessment in what services are specifically provided. Questions to consider in defining the scope of services to be provided are:

* Preventative only?
* Non-emergency? Within the scope of a nurse practitioner or a physician?
* Emergency?
* First aid – in lieu of or to support the school nurse?
* Employee wellness plans?
* Education to students?
* Health screenings (e.g., hearing, vision, etc.)?
* Athletic physicals?
* Immunizations?
* Drug/alcohol testing?

# Define the how services provided to students, school district employees, families, and other patients will be paid or reimbursed.

Beyond defining which services the healthcare sponsor will provide, other key considerations relate to how the cost of the services provided will be covered. This is critical for both parties to understand; for school districts, it is important to understand how their students and families access care and what expectations the healthcare sponsor has for financial reimbursement of the services provided. For sponsoring organizations, it is important to be upfront about programmatic and operational costs and how those costs are shared between students/families, the school district, and their own operating budget. Key questions to further understand the scope of services include:

* Which are free as part of the agreement, which are at the district’s expense, which are billed to Medicaid, which are the families responsible for?
* Will students ever be billed directly?
* Will a student/family be turned away for failure to pay or delinquent account?
* Will the district or the service provide assist students/families in enrolling in Medicaid or other insurance plans?

# Define the scope of services in terms of district planning and training efforts.

In addition to services provided to those served by the SBH program, the scope of services provided by healthcare sponsors may also expand to engagement in district planning and training efforts. Given the expertise of the healthcare sponsor, they may be able to support the school district in a variety of areas outside of direct service provision. Questions for consider when discussing the health care sponsor’s involvement in such activities including:

* Will the healthcare sponsor participate in district planning efforts?
  + These may include wellness committee, emergency planning efforts, threat assessment team, suicide crisis response team, health and wellness curriculum development
* Will the healthcare sponsor participate in individualized planning efforts?
  + These may include IEP teams, 504 plans, health plans, counseling for students at risk of suicide, counseling for students who are bullied
* Will the healthcare sponsor provide training to school district staff?
  + Trainings may include suicide awareness, prevention, and response or infection control
* Will the healthcare sponsor participate in joint trainings? Will participation in these trainings be mandatory or voluntary?
  + Trainings that may require healthcare sponsor participation may include active shooter, fire, or tornado drills

# Agree upon who will be served by the SBH program—in other words, who are the patients?

While the primary patients of SBH programs are almost always students, programs across the United States serve a variety of other patient groups based upon the unique needs of communities. It is critical for both parties to understand the needs of students and communities and to agree upon the scope of patients to receive care. The location of the SBH program within a school campus is often a key influence on whether families and community members are able to access services while maintaining a safe and controlled school environment. It is common for SBH programs to begin with students as the primary patient group and phase in the ability to serve staff, families, and the greater community overtime. The key groups to consider, as well as some considerations, when determining who will be served include:

* Students
  + All students in the district? Students in one school building?
* Faculty/staff/employees of the school district
  + When will staff be able to access services during the school day? Will they have access to care outside of school hours?
  + How will staff & student privacy be protected?
  + Will only those on the district’s insurance be seen or all employees? What will the copay or fee structure look like for staff?
  + Will their families also be served?
* Parents/Families
  + Will this include immediate family—parents/guardians and siblings not enrolled in school? What about grandparents, including those who may be the primary caretaker of students?
  + What will the copay or fee structure look like for staff?
  + When will parents/families be able to access services during the school day? Will they have access to care outside of school hours?
* Community members or the general public
  + Will access be restricted to specific groups? For instance, those who are already patients of the healthcare sponsor? Local government employees?
  + When will community members be able to access services during the school day? Will they have access to care outside of school hours?
  + How will community member admittance to campus be regulated while protecting and maintaining their privacy and confidentiality as well as maintaining a safe and secure school environment?

# Determine responsibilities related to the staff of the SBH program.

The MOU should clearly define who is the employer of the staff of the SBH program. This includes delineating responsibility for worker’s compensation insurance, unemployment, Fair Labor Standards Act, Affordable Care Act (provision of health insurance), training, etc. While responsibility for these requirements is usually the sponsoring organization, due to the variety of types of SBH program partnerships, this must be clearly outlined for both the school district and the SBH program sponsoring organization as well as clearly communicated to SBH program staff.

During the development of the MOU, partners should also delineate responsibility for the employee’s day-to-day supervision and the reporting structures for various emergent and routine employee needs.

It should also be clear who is responsible for ensuring SBH program staff are appropriately credentialed and the standards and process by which they are held for maintaining credentials.

Because school districts are responsible for protecting minors, school district employees are required to undergo FBI background checks, which is the highest level of background check available and beyond the background check implemented by the sponsoring organization. Partners need to agree on the parameters for background checking SBH program employees, who will be responsible for paying for them, and what actions will be taken by whom if a background check produces findings that do not align with school district policies.

The hiring process for SBH program staff as well as staffing levels should also be defined. Key questions to consider include:

* What is the school districts role in the hiring process?
  + Do they participate in the selection process?
  + Is the school district able to object to SBH program staff hires or allocations? On what grounds are they able to provide their input?
* Who determines staffing levels?
  + Is it up to the provider or is there a minimum level of staffing defined and agreed upon by both partners?
  + Can telehealth be used to reach defined staffing levels?

# Define parameters for the use of school district facilities by the SBH program provider as well as the responsibility for necessary renovations and equipment.

There are several critical considerations when determining an appropriate space to house SBH programs within school campuses. Space requirements for SBH programs vary based on the type of services they will provide patients (e.g., behavioral/mental health, immunizations, acute care, etc.) as well as based upon the SBH program sponsoring organizations credentialing requirements, which vary based upon whether the organization is a hospital, federally-qualified health center, or other type of provider organization.

When working to identify an appropriate space for the location of the SBH program as well as necessary renovations, critical considerations that should be discussed as well as defined in the MOU include:

* Is the space provided soundproof to protect patient confidentiality?
* Does the space have medical-grade tile flooring?
* Is there access to plumbing?
* Does internet and Wi-Fi extend to space for the SBH program to access EHR and other vital technologies?
* Is there a separate restroom or access to a restroom for patients?
  + Depending on services provided, patients may need facilities to provide urine samples or wash their hands.
* Are current ventilation, heating, and air conditioning sufficient for the scope of services to be provided?
* If parents and/or community members will be accessing the facility on their own, is there designated space for them to park during the school day?
* Is there, or an opportunity to add, signage to direct parents and/or community members from the parking lot, through the appropriate entrance, and to the physical location of the SBH program?

Other considerations for delineating responsibilities related to facilities include:

* Who will be responsible for facility maintenance?
* Who will be responsible for IT support, related to both equipment support as well as issues and troubleshooting with internet access?
* Who will be responsible for cleaning the facility? How will biohazardous waste be disposed properly?
* Who will be responsible for the cost of utilities such as water, electricity, telephone, and Wi-Fi?

# Address security concerns related to access to the SBH program.

Security concerns will vary based upon the physical location of the SBH program and the patients who are able to access services. Key questions to consider to address security concerns include:

* Is the clinic for students and staff or public in general?
* Will hours/days/months of operation be the same as the school?
  + What will happen when the school is closed for snow days or other emergent reasons?
* Does the SBH program have a separate access point or will all patients have access to the school as they access services?
* Who on the school district’s staff will have access to the space?
* How will students be protected if adult patients have serious criminal records, especially registered sex offenders (see §566.140, RSMo.)?
* What if the school district has banned a parent/patient from district property?

# Define the responsibilities of both parties in the management of medical services.

Although it may seem obvious that the sponsoring organization is accountable, to protect future potential interests, clearly define in the MOU who’s responsible for:

* Compliance with Medicaid, Medicare, insurance plans, and other state and federal rules applicable to medical services, including billing and payment collection responsibilities.
* Creation of health protocols, such as if a school staff or SBH program staff were to get hurt in the SBH program space, emergency situations, and infection control.

# Assure compliance with state and federal policies related to maintaining medical records and patient confidentiality, including the use of consent forms.

School districts are held to the standards of FERPA for the maintenance of medical records while SBH program sponsoring organizations must abide by HIPAA. The relationship between these two policies in SBH program environments must be delineated in the MOU to best meet the needs of the student. More information on the interpretation and relationship between these two policies can be found here.

Generally, the MOU must include language regarding the “maintenance of medical records…,” per §167.606. The contract should also require the sponsoring organization to maintain medical records in accordance with state and federal law, including HIPAA. The SBH provider usually owns and controls medical records of students served by the SBH program and the district cannot have access to them without written authorization.

The clearest method of legally sharing information between the school district and sponsoring organization is obtaining written consent by the parent/student along with consent for services.

Partners should discuss how the SBH provider will communicate health information to the district and how the district will communicate to the provider as well as what type of information needs to be shared between the school and the provider, including:

* Student schedules?
* Immunization records?
* Contact information for parents?
* Counseling notes?
* IEP/504 information?
* Athletic physicals?

# Determine consent for services advertising and procurement procedures.

It is critical to delineate responsibilities of the school district and sponsoring organization in advertising and collecting consent forms. Key questions to consider include:

* Will the consent form be included in enrollment packets? Who will work to ensure they are included?
* Will the school district market the SBH program and facilitate the collection of consent forms?
* If consent forms are returned to school staff, what procedures will be established to get them to SBH program staff?

# Define parameters for anything given or taken by both parties.

If there are funds, use of facilities, or any other commodity exchanged between the school district and the SBH program sponsoring organization, there are several key considerations that should be discussed, including:

* If money will be exchanged, how frequently will payments be dur? When is the due date? What will happen if payments are late?
* Will start-up costs be shared between the two parties? What specifically will each party be responsible for?
* If facility use will be exchanged, what will happen if the facility becomes unusable for some reason?

# Address who is responsible for risks and liability.

# Finalizing Binding Contracts

# Set the term of the contract and define termination parameters.

The length of the term of the contract must be negotiated and agreed upon by both parties. The length of the term of the contract may be dependent on the upfront costs of setting up the SBH program or on other factors such as planned phased growth of the program overtime.

Renewal terms should also be defined, including if the renewal process will take place upon notice from either party or if the contract is automatically renewable unless terminated by either party. Time periods for notice of termination and additional negotiations

Escape clauses should also be clearly defined so that either party may exit the agreement. For example, if the SBH program no longer has an appropriately licensed physician, due to termination, turnover, or other extenuating circumstances, is the SBH program provider still held to the terms as outlined?

Other mechanisms for termination should also be agreed upon and included in the MOU. The termination process should also be discussed and defined, including the payments due after termination, for SBH programs with a payment structure in place, and parameters for vacating the property. Some considerations for defining the mechanisms by which the contract could be terminated include:

* By mutual agreement
* For substantial breach of the MOU/contract
* For criminal activity or failure to follow law
* If debarred or excluded as a Medicaid provider

# Identify key representatives from both parties.