

July 7, 2017

SENT VIA EMAIL

Kerry E. Maloney
Board Counsel
State Board of Dentistry
kmaloney@pa.gov

Re: State Board of Dentistry Proposed Regulation 16A-4633 – Expansion of PHDHP Practice Sites

Dear Mr. Maloney:

The Pennsylvania State Board of Dentistry recently proposed a rulemaking that would expand the settings where a public health dental hygiene practitioner (“PHDHP”) may perform services without the supervision of a dentist. These public comments are submitted on behalf of Liberty Resources, Inc. and Vision for Equality, Inc. Both organizations enthusiastically encourage the adoption of the proposal, and also note ways that further regulatory changes could be made to ensure access to adequate dental care for all.

The Commenters

Liberty Resources, Inc. is a not-for-profit, consumer-controlled organization that advocates and promotes independent living for all persons with disabilities. As a Center for Independent Living under 29 U.S.C. § 796f-4, Liberty Resources advocates with people with disabilities, individually and collectively, to ensure civil rights and equal access to all aspects of life in the community. Liberty Resources is one of the first Centers for Independent Living in Pennsylvania, and has been consistently able to add services to address the needs of its community. Liberty Resources has long advocated for improved access to dental care among

other forms of health services, including by promoting the use by dentists of offices and equipment that are fully accessible to people with disabilities.

Vision for Equality, Inc. serves a mission of assisting and empowering people with disabilities and their families to seek quality and satisfaction in their lives. The organization offers individual assistance, training and monitoring to people with disabilities and their families. Vision for Equality advocates locally, statewide, and nationally for people with disabilities to have opportunities, equal rights, and access to quality services and supports, and to become informed, powerful, and respected members of their communities.

The Need

Both Liberty Resources and Vision for Equality recognize that adequate dental care is essential to overall health, and that too many people miss out on dental care for reasons including economic, cultural, and logistical factors. Routine and improved access to preventive dental care is key to reducing oral diseases and related conditions that often lead to more complex health problems. According to statistics collected by the Pennsylvania Department of Human Services (“DHS”), five times more children are affected by dental decay than by asthma, and seven times more have dental decay than suffer from hay fever.¹ The same statistics indicate that 33% of children in low-income households have untreated tooth decay. Children in households with an annual income of less than \$20,000 are three times more likely to have untreated cavities than children in households with an annual income of more than \$100,000. Although children with disabilities and low-income children are entitled under federal and state law to receive preventive dental care and treatment, in Pennsylvania, as of 2015 only 44.4% of Medicaid enrollees aged 1-

¹ Pennsylvania Association of Community Health Centers, *Importance of Access to and Utilization of Oral Health Care in Pennsylvania* (March 2013), available at <http://pachc.com/pdfs/Importance%20of%20Access%20to%20and%20Utilization%20of%20Oral%20Health%20Care%20in%20Pennsylvania.pdf>.

20 had at least one preventive dental service within one year.² Last year, a RAND report prepared for the Pennsylvania Department of Health found that rural areas are more likely to have shortages of pediatric dentists and dentists who accept Medicaid.³

Liberty Resources and Vision for Equality share the goal of ensuring that quality dental care is available for all Pennsylvanians, including people with disabilities, and believe that encouraging greater use of PHDHPs by removing logistical and regulatory barriers is an important step toward this goal. PHDHPs hold the potential to expand access to cost-efficient preventive dental services, especially for those who have limited access to a traditional dentist's office because of a disability, or because of a lack of finances or transportation. Regulations that needlessly limit the settings where PHDHPs can practice have the effect of leaving many Pennsylvanians without meaningful access to adequate preventive dental care, particularly people with disabilities.

The proposed rulemaking would yield an even greater impact if combined with a potential change in DHS policy to allow PHDHPs to be recognized as Medicaid providers. This combination of reforms would create even more opportunities for those most in need to access preventive dental care.

The Proposed Regulations Should be Adopted in Full

Both Liberty Resources and Vision for Equality enthusiastically support the adoption of Proposed Regulation 16A-4633 relating to the expansion of PHDHP practice sites. The proposal

² See U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, *FY 2015 Annual EPSTD Participation Report* (Sept. 29, 2016), available at <https://www.medicaid.gov/medicaid/benefits/downloads/fy-2015-epsdt-data.zip>.

³ Matthew D. Baird et al., *Access to Dental Providers in Pennsylvania* (2016), available at http://www.rand.org/content/dam/rand/pubs/research_reports/RR1300/RR1351/RAND_RR1351.pdf.

would amend 49 Pa. Code § 33.205b, the regulation defining the locations where a PHDHP may practice. The proposed rulemaking adds to the current regulation examples of “health care facilities” as defined by the Health Care Facilities Act and “facilities” as defined by the Public Welfare Code, and adds to the list of practice settings “[a]n office or clinic of a physician who is licensed by the State Board of Medicine or the State Board of Osteopathic Medicine.”

Liberty Resources and Vision for Equality believe that allowing PHDHPs to practice in these types of care settings (including hospitals, physicians’ offices, and assisted-living facilities) would facilitate one-stop treatments, as people with limited finances and transportation options would have an easier time receiving preventive dental care alongside other health services. The proposed expansions of practice settings would be especially valuable for people with disabilities, by reducing time and travel required to access basic oral health services. In addition, the expansions would be particularly important in rural areas with a shortage of dentists. Other jurisdictions have had highly positive experiences with expanding the role of paraprofessionals in preventive dental care, and published studies indicate such reforms increase access to care without compromising safety. *See* Amanda Dunker et al., Nat’l Governors Assoc., *The Role of Dental Hygienists in Providing Access to Oral Health Care* (Jan. 2014), 12-13 & nn. 66-76, available at <http://www.nga.org/files/live/sites/NGA/files/pdf/2014/1401DentalHealthCare.pdf> (collecting sources).

Liberty Resources and Vision for Equality are also supportive of the proposed language for § 33.205b(c)(3) that would clarify that the expanded practice settings include patients’ “places of residence or other independent living environment.” Both organizations have a long and ongoing role in advocating for deinstitutionalization and independent living, including expanding access to services in home and community environments for people with disabilities.

The proposed regulations would promote these aims by making preventive dental care more accessible in non-institutional settings. To even further advance these aims, Liberty Resources and Vision for Equality encourage the Board of Dentistry to consider allowing the provision of services by PHDHPs in “places of residence or other independent living environment” regardless of whether the PHDHPs are doing so under the auspices of a “health care facility.”

The Proposed Regulations Would be Bolstered by Permitting PHDHPs to be Reimbursed by Medicaid

The proposed expansion of practice sites for PHDHPs would trigger important improvements in access to preventive dental care. These changes would be even more effective if they were combined with a change in policy by the Department of Human Services to allow PHDHPs to bill as Medical Assistance providers.

About eighteen states already allow certain dental paraprofessionals to bill as Medicaid providers. *See generally* American Dental Hygienists’ Association, *Reimbursement*, <http://www.adha.org/reimbursement>. For example, Connecticut and Oregon have both promulgated regulations that permit highly credentialed oral health paraprofessionals (akin to PHDHPs in Pennsylvania) to bill as Medicaid providers. *See* Conn. Agencies Regs. § 17b-262-695(b) (“All dental hygienists who participate in Medicaid shall be public health dental hygienists.”); Or. Admin. R. 410-123-1260(3)(b)(A)(ii) (authorizing Medicaid reimbursement for assessments performed by “a dental hygienist with an expanded practice dental hygiene permit”). These states’ experiences show that this type of reform improves access and utilization of preventive dental services without creating quality-of-care problems, and can help control costs by forestalling the need for costlier treatments, including hospitalizations, for acute dental emergencies. Liberty Resources and Vision for Equality encourage the Board of Dentistry to support this additional potential reform by the Department of Human Services.

Conclusion

The Board of Dentistry should complete the rulemaking as proposed. In addition, other reforms by the Board of Dentistry and by the Department of Human Services would go beyond these changes to ensure that even more Pennsylvanians have access to preventive dental care.

Submitted on behalf of Liberty Resources and Vision for Equality by,

DECHERT LLP
Richard L. Berkman, Esq.
richard.berkman@dechert.com
215-994-2684

Catherine Wigglesworth, Esq.
catherine.wigglesworth@dechert.com
215-994-2432

THE PUBLIC INTEREST LAW CENTER
Mary M. McKenzie, Esq.
mmckenzie@pubintl.org
267-546-1319

Benjamin D. Geffen, Esq.
bgeffen@pubintl.org
267-546-1308