

# Memorandums of Understanding: Best Practices for School-Based Health Program Partnerships

February 27, 2020

# Show-Me School-Based Health Alliance of MO

**Mission:** We support communities in building and sustaining quality school-based health programs.



**Access to Resources & Best Practices**

**Peer-to-Peer Networking Across MO Programs**



## Target Audience

School districts, community stakeholders, and the healthcare providers that serve them.



**Advocacy & Coalition Building**

**Technical Assistance**



**Data Collection & Evaluation**

**Training & Education**



# Webinar Objectives & Speakers



Describe the purpose, components, and development process of memorandums of understanding (MOUs) between healthcare organizations and school districts



Identify key challenges and legalities/liabilities in MOU development & best practices for overcoming



Plan for the development and refinement of MOUs and review associated policies



Learn how to develop a successful partnership between schools and healthcare provider

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## What is a School-Based Health Program?

A school-based health program is a shared commitment between a community's schools and health care organizations to support students' health, well-being, and academic success by providing preventative, early intervention, and treatment services where students are - **in school**.



National School-Based Health Alliance





# Missouri SBH Program Type Definitions

## THE BIG SIX

The Show-Me School-Based Health Alliance has expanded the types of school-based health programs to represent the six types of programs that exist in districts throughout Missouri.



### ① Comprehensive School-Based Health Center

Comprehensive School-Based Health Centers are a partnership between schools and community health organizations that deliver primary health care, behavioral/mental health care, oral care, and vision care coordinated by the center—even if they are delivered by different providers.

### ② School-Based Health Center

School-Based Health Center (SBHC) programs are partnerships between schools and community health organizations that deliver primary health care, at minimum, through a fixed site on a school campus.

### ③ School-Linked Health Care

School-Linked Health Care programs are linked with schools to coordinate and provide health care for students. Services are delivered off campus through a fixed site near the school.

### ④ School-Based Mental Health Program

School-based mental health programs are partnerships similar to SBHCs but only provide behavioral/mental health.

### ⑤ Mobile Health Care

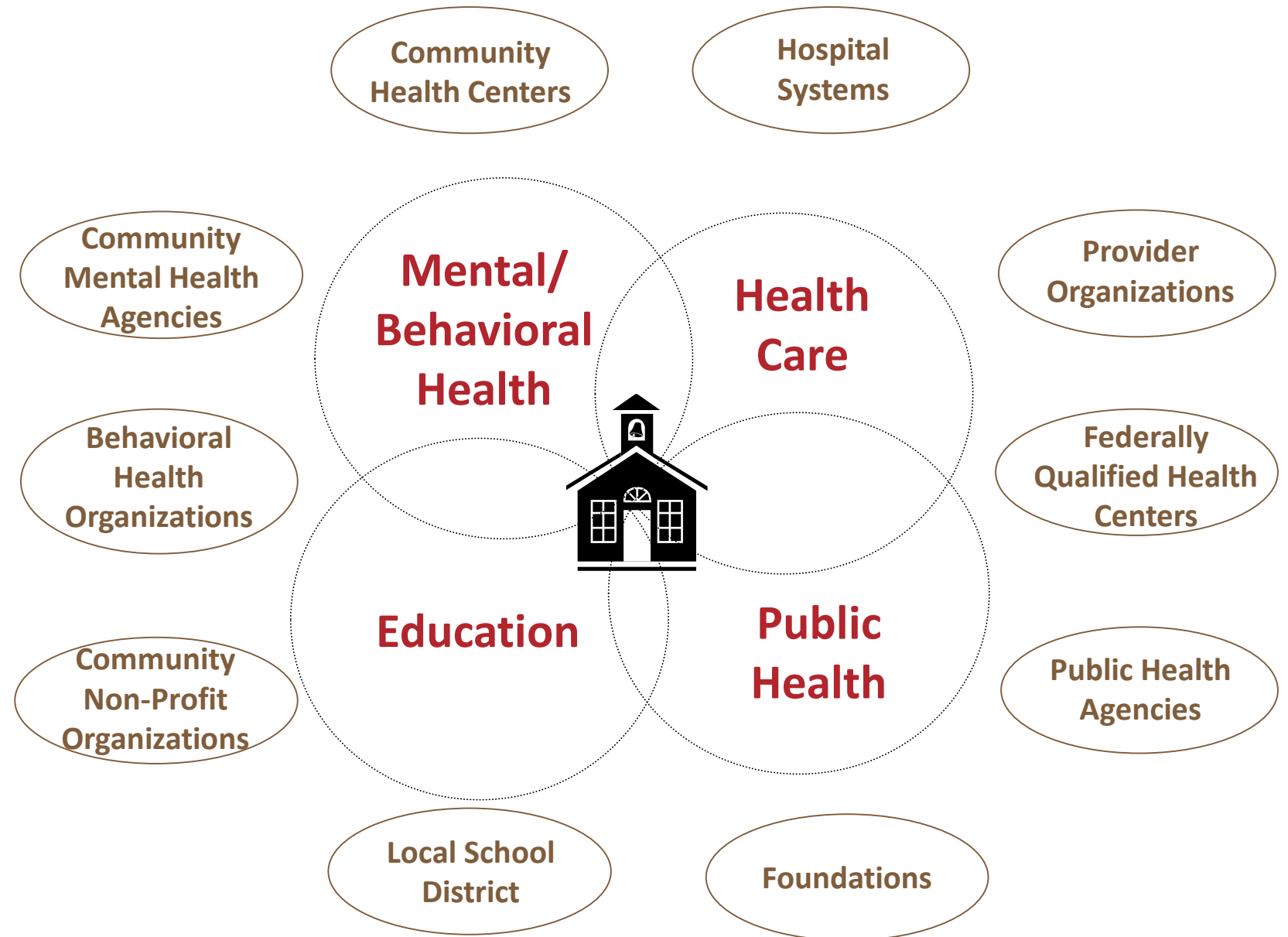
Mobile Health Care programs are without a fixed site that rotate a health care team through a number of schools, including mobile van/bus/clinic on wheels that parks on or near school property/campus.

### ⑥ Telehealth

Telehealth programs deliver 100% of school-based health care services using telemedicine technology.

## The Who: Sponsorships

**HOW** programs  
are funded  
typically  
expands beyond  
the sponsoring  
agency



# Memorandum of Understanding (MOU)

- Establishes the relationship between/among collaborating partners
- Formalizes commitments and agreement regarding the operation of the SBHC
- MOU = Contract = Agreement

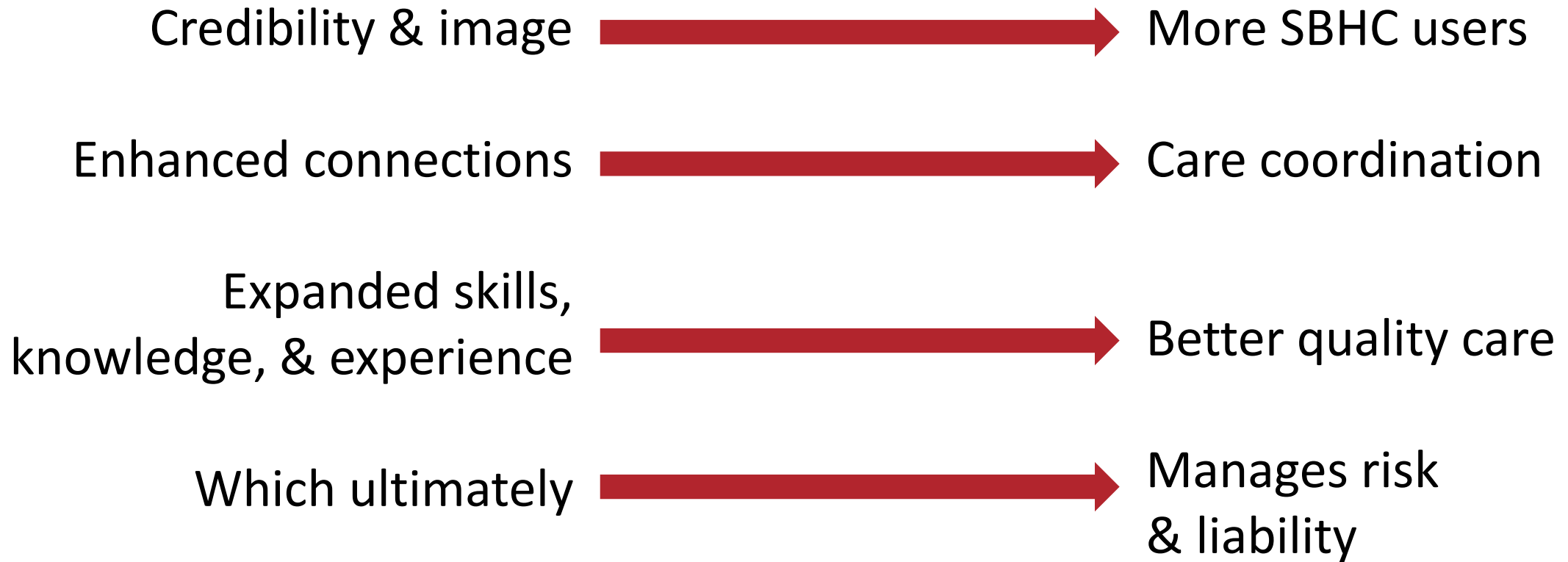


# MOUs: The Foundation for Strong Partnerships

The National School-Based Health Alliance highlights strong partnerships as one of their three main components of SBH program sustainability.

*“Enduring partnerships with school and community stakeholders create fully engaged and accountable partners who provide the spark of leadership that catalyzes resources, patrons, and institutions.”*

## Why are Strong Partnerships Critical for SBHCs?



# What Do Strong Partnerships Look Like?

## A strong partnership includes:

- Shared vision for student success
- Shared outcomes and common goals
- Integration of applicable policies, procedures, and structures
- SBH staff being part of the school environment – involvement in committees or assessment teams



Belton School District SBH Clinic ribbon-cutting in partnership with HCA Southland Clinic

# Fostering Strong Partnerships: MOU Development & Beyond

## Characteristics of strong partnerships

- Resourceful
- Transparent
- Knowledgeable
- Grass-roots & grass-tops

## Qualities of strong partnerships:

- Collective, shared vision
- Clear roles & responsibilities
- Mutual respect
- Shared decision-making

## Considerations for MOU Development

- Purpose
- Responsibilities of all parties
- Billing and compensation
- Confidentiality
- Termination provisions
- Procurement
- Amendment
- Notice of failure to perform
- Scope of agreement
- Assignment
- Duration of Contract
- Funds accountability and accounting
- Liability
- Security
- Third Party Beneficiary
- Scope of contract
- Facility usage
- Notice
- Signatures



# **Memorandums of Understanding: Best Practices for SBH Program Partnerships**

**Susan Goldammer, Esq., Associate Executive Director**  
Missouri School Boards' Association

# Requirements for a Binding School District Contract

- §432.070 and §162.301
- To be legal, contract must be
  - Within scope
  - Include consideration (the give and take)
    - Exchange of money, benefits, responsibilities
  - In writing
  - Dated
  - Signed by authorized person
  - Approved by the Board with at least four affirmative votes.

# RFP or Bidding?

- Even if district is not typically “paying” for the services, it is providing facility usage, advertisement, and access to clients that will result in payment.
- The law does not require formal bidding or an RFP process BUT most district policies require some kind of competitive process for services over a certain amount.
  - MSBA Policy DJF
- Politically it is better to provide the opportunity to many providers . . .

# Both Sides Need a Lawyer

- It is worth it in the long run.
  - Anticipate problems and solve them before they happen.
  - Set expectations up front before emotions are involved.
  - Negotiate cost of contract review up front.
- Do NOT copy someone else's agreement.
- MSBA's Council of School Attorneys:  
<https://www.mosba.org/council-of-school-attorneys/>

# Define the Relationship You Want/Need

- Just a facility usage agreement?
  - Temporary usage like a mobile clinic?
- Service provider invited in during school hours to provide services that the district itself cannot provide?
  - Employee wellness program? Education to students?
- Service provider in lieu of a nurse – i.e. acting as or replacing an employee?
  - Split employees?
- Telemedicine
  - As part of services school is required to provide to students with disabilities?
  - School merely a conduit for parents to access health that is not school related?



## §167.606, RSMo.

- The school district can be a Medicaid provider to all Medicaid-eligible school age children located in the service area.
- Can be through employees or by contract through:
  - Federally qualified health centers;
  - Health departments;
  - Federally certified rural health clinics;
  - Physicians, hospitals or other licensed providers in the community.

# Define the Legal Relationship

- Independent contractor!
- Nonagency agreement: Neither party is the agent of the other
  - Unless that is not true!
- 3<sup>rd</sup> Party beneficiary clause: The contract cannot be enforced by a 3<sup>rd</sup> party beneficiary.

# Exclusivity?

- Only one provider?
- Can the exclusive provider subcontract out promised services to some other entity?
- Can the exclusive provider bring in other health services not discussed in the original contract?
- Can/should the district contract with multiple providers for different services?
  - Health
  - Mental health
  - Dental
  - Eye clinic

# Scope of Services to be Provided

- Preventative only?
- Non-emergency?
  - Within scope of nurse practitioner or physician?
- Emergency? (probably not)
- First aid – in lieu of school nurse?
- Employee wellness plans?
- Education to students?
- Health screenings? (Hearing, sight, etc.)
- Athletics physicals?
- Immunizations?
- Drug/alcohol testing?

# Scope of Services

- Which are free as part of agreement, which are at 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 provider assist students/families in enrolling in Medicaid or other insurance plan?



# Scope of Services

- Participation in district planning?
  - Wellness committee, emergency plans, threat assessment teams, suicide crisis response team, health and wellness curriculum
- Participation in individual planning?
  - IEP teams, 504 plans, health plans, counseling for students at risk of suicide, counseling for students who are bullied
- Providing training to district staff?
  - Suicide awareness, prevention and response
- Joint training?
  - Example: Active shooter drills, fire/tornado drills

# Who Will Be the Patients?

- Students?
- Employees/families?
  - Just those in district's insurance or all?
- Parents/families?
- Public in general?

# Staffing Issues

- Whose employees are they?
- Who makes sure they are appropriately credentialed?
- Responsibility for worker's compensation insurance, unemployment, Fair Labor Standards Act, Affordable Care Act (insurance), training, etc.
- Responsibility for day-to-day supervision

# Staffing Issues

- Mandatory background checks for clinic staff?
  - FBI background check like school employees or some other?
  - What background excludes?
- Staffing levels – up to provider or is minimum staffing specified?
  - Can telehealth be used?
- Can district object to health care workers or is district involved in selecting?

# Facility Use

- Space provided
  - Soundproof?
  - Medical tile flooring?
  - Separate restroom or access to restroom?
- Access to that space?
  - Access codes, keypads, locked doors
  - Separate entrance?
- Equipment provided/not (computers, refrigerator, sink)

# Facility Use

- Utilities/Internet provided or not?
  - Plumbing and water, electricity, telephone, internet, Wi-Fi
  - Lighting?
  - Emergency generator?
- Ventilation, heating and air conditioning
- Maintenance
- Cleaning responsibilities?
  - Biohazard waste?
- Parking
- Signage

# Security

- Is clinic only for students and staff or public in general?
- Hours/days/months of operation same as the school?
- Separate access point or will all patients have to have access to school?
  - Who on school district's staff will have access to space?
- What do we do with adult patients that have serious criminal records? How will students be protected?
- What if district has banned parent/patient from district property?

## §566.149, RSMo.

- Most (not all) registered sex offenders are prohibited from being on school property or within 500 feet of school property unless the superintendent or Board gives them permission.
- Policy KK expands to all registered sex offenders.



# Management of Medical Services

- Which party will staff, ensure properly licensed?
- Compliance with Medicaid, Medicare, insurance plans and other state and federal rules applicable to medical services.
- Which party will create health protocols?
- Billing Medicaid, Medicare, insurance, patients and collection responsibilities.
- Clerical, scheduling responsibilities
- Select and purchase supplies, furniture, equipment?
- Computers and IT support?

# Maintaining Medical Records

- Contract must include language regarding the “maintenance of medical records . . .” §167.606
- Contract needs to require provider to maintain medical records in accordance with state and federal law. (HIPAA)
- Provider owns and controls records and the district cannot have access without written authorization.
- Issue to Discuss/Train: How will provider communicate health information to district? How will district communicate to provider?

# Confidentiality

- FERPA v. HIPAA: Two federal confidentiality laws with different rules (Additional information at <https://www.hhs.gov/sites/default/files/2019-hipaa-ferpa-joint-guidance-508.pdf>)
- Clearest method of legally sharing information between the school and the provider is obtaining written consent by the parent/student.
- What type of information needs to be shared between the school and the provider?
  - Student schedules, immunization records, contact information for parents, counseling notes, IEP/504 information, athletic physicals, etc.
- How will consent be obtained?
  - Enrollment packet? Medical consent for services?

# Other Confidentiality Issues

- Soundproof space to meet with patients?
- Waiting room that is visible to other students or visitors?
- Are students called out of class for appointments?
- Is the sign-in sheet visible to others?

# Student Records

- FERPA General Rule: The district must have written consent from a parent/guardian to share records with a health provider.
- Most Relevant Exceptions:
  - Health and safety emergency
  - The health provider is considered a “school official”
- Easier to get written consent from parents!
  - How will that be obtained? What is the district’s role?

# Advertising and Consent for Services

- How will students/parents be informed about the services available?
- What is the district's role in securing consent for services?
  - Consent included in enrollment packet?
  - Consent for district to discuss custody issues, changes?
  - Relative caregiver affidavits give persons other than parents/guardians the ability to make educational and medical decisions. §431.058
    - Can this school record be shared?
  - Consent necessary for telehealth services in schools. §208.677

# Payments: The Give and Take

- In money?
  - How frequently, when due?
  - What will happen if payments are late?
  - Start-up costs?
- In facility use?
  - What will happen if facility becomes unusable for some reason?
- In access to students/patients (and Medicaid funding)

# Responsibility for Risks (Liability)

- For injury of a patient/student.
- For loss of property/theft.
- For employment issues, including payment of wages and taxes.
- For injury/damages to the clinic or school district.
- School indemnify, defends and holds harmless the health provider if sued for actions/omissions of the school.
- Health provider indemnifies, defends and holds harmless the school for actions/omissions of the health provider.



# Insurance

- Do the parties have it?
- Does it cover what you are doing?
- Do the parties need to provide proof of insurance to each other?
- Is the insurance in the appropriate amounts to cover the potential liability?
  - Sovereign immunity cap for single incident in 2020: \$2,905,664
  - For a single person per incident: \$435,849

# Insurance

- General liability
- Worker's Compensation
- Malpractice
- Errors and Omissions for officers, agents and employees
- Note: The contract should specifically state that the district is not waiving any defenses available to it under law, including the state sovereign immunity law.

# Contraceptives

- §167.711
- Requires school districts to identify the family practitioner for each student.
- “Contraceptive devices or contraceptive drugs shall not be provided by school personnel or their agents. When a child seeks contraceptive devices or contraceptive drugs, the child shall be referred to the previously designated family practitioner.” (emphasis added)
- Point: Nonagency agreement can help (if true).

# Abortion Services

- §170.015, RSMo.
- “No school district or charter school, or its personnel or agents, shall provide abortion services, or permit a person or entity to offer, sponsor, or furnish in any manner any course materials or instruction relating to human sexuality or sexually transmitted diseases to its students if such person or entity is a provider of abortion services.”
- Point: Nonagency agreement can help (if true).

# Communication/Data

- Utilization rates?
- Satisfaction rates?
- Audits?
- Basic income/expense information?
- Note: School districts forget that not every entity is subject to the Sunshine Law.

# Term of the Contract

- Set and then negotiable?
  - Length of term might be dependent on the upfront costs of setting up the service.
- Renewable upon notice?
- Automatically renewable unless terminated by either party?
  - How much notice to terminate?
- Escape clauses
  - Ex. Loss of appropriately licensed physician

# Termination

- By mutual agreement
- For substantial breach
- For criminal activity or failure to follow law
- If debarred or excluded as a Medicaid provider
- Termination payments
- Vacating property

# Representatives

- Who is the point person for communications between the parties?
  - Who may generate or receive legal notices
  - Best not to name in contract, but perhaps give title or state that the parties will exchange that information at a set time.
- Official address of each party.



# Other Details

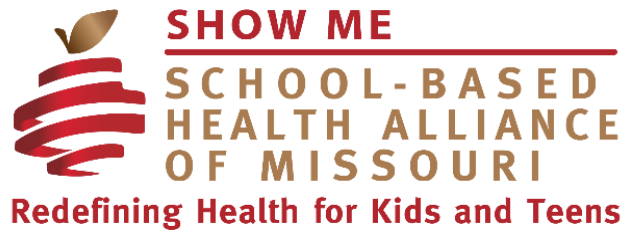
- Amendments: How made.
- Governing law: Needs to be Missouri!
- Ability to assign: No! Unless consent by both parties
- Attorney fees for enforcement?
- Force Majeure: Not responsible for complying if act of God
- 3<sup>rd</sup> Party Beneficiary: Contract not to be enforced by someone other than the parties.

Thank You!

## Questions?

## Next Steps

- Kindly complete [our evaluation](#) of today's training
- Access the slides, resources, and recording from today's presentation on our website and via email
- Access additional resources from MSBA & MOSBHA



## Resources

### Missouri School Board Association

**[w]** [www.mosba.org](http://www.mosba.org)

### MSBA's Council of School Attorneys:

<https://www.mosba.org/council-of-school-attorneys/>

### National School-Based Health Alliance

**[w]** [www.sbh4all.org](http://www.sbh4all.org)

### Show-Me School-Based Health Alliance

**[w]** [www.moschoolhealth.org](http://www.moschoolhealth.org);

**[p]** 800-807-8494

**[e]** [info@MOschoolhealth.org](mailto:info@MOschoolhealth.org)

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## Next MOSBHA Webinar

### **School-Based Health Program Teams: School Nurse & School-Based Health Provider Communication & Collaboration**

Thursday, April 30<sup>th</sup>

11:00 AM to 12:00 PM

Register at [moschoolhealth.org/news-events](https://moschoolhealth.org/news-events)

**All are welcome, including  
district nurse/wellness leadership, school nurses, and school-based  
health providers with existing or planning  
for SBH partnerships!**

## Communities of Practice

Next Meeting on Tuesday, March 24<sup>th</sup>  
10:00 AM to 11:00 AM

- Discussion-based virtual forum open to all
- Held every other month via Zoom
- Topics vary by month
- Register at [moschoolhealth.org/news-events](https://moschoolhealth.org/news-events)

# 2020 SMSBHA COMMUNITIES OF PRACTICE CALENDAR

10:00 AM TO 11:00 AM

**JANUARY 28**  
ACCESS

Including discussion on getting consent forms, marketing and getting traffic into your health program, hours of operation, and student appointment policies.

**MARCH 24**  
STUDENT FOCUS

Discussion topics to include engaging youth, confidentiality, age-specific considerations, and much more!

**SEPTEMBER 22**  
SCHOOL  
INTEGRATION &  
WELLNESS

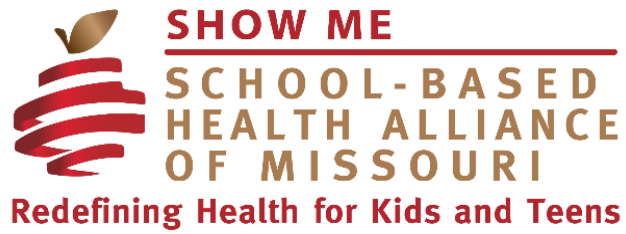
Including discussion on collaboration between school and SBH program staff, crisis response, and student and school wellness.

**MAY 12**  
SYSTEMS  
COORDINATION

Parent/guardian engagement, partnering with community providers and organizations, and community advisory boards to be among topics discussed.

**NOVEMBER 10**  
ACCOUNTABILITY  
& EVALUATION

Discussion topics to include developing evaluation plans, assessing program outcomes and effectiveness, and collecting quality data.



Thank you to those whose financial and in-kind contributions support our efforts!



# Interco Charitable Trust



*a catalyst for change*

*Missouri Foundation for Health*



**MISSOURI SCHOOL BOARDS' ASSOCIATION**

