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October 27, 2020

# School Nursing and Telehealth V.2

## FREQUENTLY ASKED QUESTIONS



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EDUCATION

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## Introduction

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The Oregon Department of Education, in consultation with the Oregon State Board of Nursing, is providing this FAQ in response to questions from school districts related to nurse service provision via telehealth. The scope of practice for the Oregon-licensed nurse in any setting, including the school setting, is established by the Oregon State Board of Nursing (OSBN). Nothing in this document should be interpreted as direction that a nurse is permitted to operate outside of OSBN’s established legal scope of practice standards appropriate to the nurse’s level of licensure. This document is meant to be a resource in combination with other guidance and resources on ODE’s [Ready Schools and Safe Learners](#) and [COVID-19 FAQ resource](#) webpages.

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### Equity Concerns Related to the Provision of Telehealth

- I worry about how equity comes into play here as we assess candidacy. Will we be finding those more advantaged families as candidates more often than those that are less advantaged?
- I am concerned that telehealth services will offer our already advantaged families a higher level of support than those students from nondominant culture, historically disadvantaged families, and those with lower economic resources.
- I am finding it very difficult to actually connect with all 60+ of my students. A number of barriers exist within the 2020-21 instructional models that did not exist previously (e.g., lack of student presence on campus, access to the internet/technology, availability of adult support) and may disproportionately impact some of my students. I am worried that distance learning is widening the gap between our students with more advantages and those who were already behind.

The [Ensuring Equity and Access: Companion Guidance to Ready Schools, Safe Learners and Comprehensive Distance Learning](#) was drafted to help school districts and staff consider how to recognize and meet the strengths and challenges experienced by learners who have been historically marginalized by educational systems. Within these groups are emergent bilingual students, students of migrant and farmworker families, students who are LGBTQ2SIA+ (Lesbian, Gay, Bisexual, Transgender, Questioning/Queer, 2 Spirited, Intersex, Asexual, Plus other non-heterosexual orientations or non-binary genders), students experiencing disability(ies), students in foster care, students who have an incarcerated loved one, and students experiencing houselessness.

If not acknowledged and addressed as part of the planning process, these intersectionalities of race, socioeconomic status, disability, and gender have the potential to further impact opportunities and compound discrimination and oppression. As multiple educators and health service providers have indicated, the current educational paradigm may be compounding these issues, or at the very least, making the provision of services more complex.

The school closure in March of 2020 was an emergency response. As we move and plan forward, and school districts draft plans for the 2020-21 school year, we will need to seek innovative ways to serve students. Telehealth is one such innovation. It allows students to access health services that they may have difficulty accessing otherwise. In addition, telehealth provides students with an opportunity to engage with their education and connect in real time. Working with district staff, students and families to support the provision of services via telehealth is an important way to ensure access to required health services.

## The Provision of a Free Appropriate Public Education (FAPE)

### Have any FAPE requirements been waived?

No. Each school district/school program must ensure that students who experience disabilities have equal access to the same opportunities available to the general student population, including the provision of FAPE. (34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA)). SEAs, LEAs, schools, and ECSE programs must ensure that, to the greatest extent possible, each student who experiences a disability can be provided the special education and related services identified in the student's Individualized Education Program (IEP)/Individualized Family Service Plan (IFSP) developed under IDEA, or a plan developed under Section 504. (34 CFR §§ 300.101 and 300.201 (IDEA), and 34 CFR § 104.33 (Section 504)). However, the Department understands there may be exceptional circumstances that could affect how a particular service is provided.

School districts and/or school programs must make every effort to provide special education and related services to students in accordance with the student's IEP, IFSP, or, for students entitled to FAPE under Section 504, consistent with a plan developed to meet the requirements of Section 504. The services in a student's IEP, IFSP, or 504 Plan must be delivered, and teams should work with students and families to determine the methodology for delivering the services.

Please see [Ensuring Equity and Access: Companion Guidance to Ready Schools, Safe Learners and Comprehensive Distance Learning](#) for additional information about service provision across instructional models.

## The Provision of Telehealth

### Can School nurses provide telehealth services in a school setting?

**Yes.** OSBN has defined telehealth nursing practice as *the practice of nursing occurring over distance using a communication technology device or application*. What the individual school nurse needs to know is that the exact same nursing scope of practice standards apply regardless of whether nursing services are provided face-to-face or through the use of telecommunications technology.

OSBN has published an Interpretive Statement titled [Telehealth Nursing](#). The focus of the document is to define the term *telehealth nursing practice* and to communicate the need for adherence to Oregon's Nurse Practice Act (including Oregon nurse licensure) when engaging in telehealth nursing practice with a resident of Oregon. To access the Board's Telehealth Nursing interpretive statement, visit the [Board's Practice Statements and FAQs webpage](#).

### Additional Information/Considerations Related to Nursing Practice:

- The individual nurse has the legal responsibility to accept or to decline a client assignment based on whether they possess the knowledge, skills, abilities, and competencies to complete the assignment safely. This would include possessing the

knowledge, skills, abilities, and competencies necessary to properly utilize a specific telecommunications technology in the provision of nursing services.

- The Registered Nurse's (RN) scheduled ongoing safety evaluation of an existing delegation can occur electronically. This means that the RN may assess their client, and evaluate the assistive person's continued ability to perform the delegated procedure on the client safely, via telecommunications technology. The RN must continue to generate thorough, clear, accurate and timely documentation of these processes and outcomes. Reference: [OSBN Information regarding COVID-19](#).
- The Oregon Nurse Practice Act standards do not address *client consent*. However, based on current literature, the application of professional practice standards and application of nursing Code of Ethics (American Nurses Association), the prudent nurse would obtain verbal consent for nursing services and the provision of those services through (a certain/specific) telehealth technology and document such in the client health record.
- Division 45 conduct derogatory standards identify that it is conduct derogatory to the practice of nursing to engage in unsecured transmission of protected client data and to use social media to communicate, post, or otherwise distribute protected client data including client image and client identifiers. Please see the FAQ #3 below that addresses the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) enforcement discretion related to good faith provision of telehealth during the COVID-19 nationwide public health emergency.
- For the most recent Oregon Board of Nursing information regarding nursing licensure, practice, and nursing education programs during the COVID 19 pandemic, visit [OSBN Information Regarding COVID-19](#).

## Privacy Concerns and Virtual Platforms

**What platforms are HIPAA and FERPA compliant? What are our professional protections if a parent concern comes up?**

The ODE issued guidance entitled [Student Privacy Considerations and Distance Learning for All](#) to address concerns such as these. FERPA is silent on the use of virtual platforms. Further information about HIPAA compliance is provided below. Ultimately, the choice of a platform is a district level decision.

**Can I use Skype, Zoom, or Google to provide telehealth nursing services?**

It depends. There are multiple factors to consider when using telehealth technology. The Office for Civil Rights (OCR) at the Department of Health and Human Services (HHS) is responsible for enforcing certain regulations issued under the Health Insurance Portability and Accountability Act (HIPAA). Telehealth services are subject to HIPAA requirements for security, transmission, and confidentiality. Compliance with HIPAA requires that covered entities have appropriate administrative, physical, and technical safeguards in place and that they have reasonably implemented those safeguards. See the [HIPAA Security Series 101](#) for more information.

However, during the COVID-19 national emergency, which also constitutes a nationwide public health emergency, OCR will exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency. Covered entities seeking to use audio or video communication technology to reach patients where they live can use any non-public facing remote communication product that is available to communicate with patients.

To that end, OCR will temporarily allow providers to use applications such as Apple FaceTime, Facebook Messenger video chat, Google Hangouts video or Skype. The agency also specified that Facebook Live, Twitch, TikTok, and other public-facing video communication **should not** be used in the provision of telehealth.

Despite this temporary relaxation of rules, OCR does note that healthcare providers should notify parents that such third-party apps may pose privacy risk. In addition, providers should enable all available encryption and privacy modes when using such applications.

## **School Medicaid Billing**

### **Can school districts bill Medicaid for school health services (SLP, OT, RN, PT) provided through telehealth?**

**Yes.** A school district may bill Medicaid for health services provided to a student pursuant to their IEP or IFSP delivered in person or via telehealth when these conditions are met:

- a. A school district must be enrolled as a School Medical provider
- b. Student must be an actively enrolled Medicaid recipient
- c. Service must be identified on the student's IEP/IFSP
- d. The school must obtain informed written consent from the parent/guardian/person in parental relationship to access students' benefits
- e. Health service delivery must be aligned with Licensing Board requirements, including documentation.
  - i. Documentation must include the fact the service was provided via telehealth.
  - ii. Documentation of attendance is a critical component of service provision and is required for Medicaid billing. Please see [Ready Schools, Safe Learners Section 2b](#) for current information about attendance requirements and documentation. In order to align with Medicaid documentation requirements and to mitigate audit risk, when documenting service provision, Nurse and licensed mental providers should document their location, the location of the student, the therapy provided, and the service delivery method (in-person or via telehealth).

Documentation of attendance is a critical component of service provision and is required for Medicaid billing. Please see [Ready Schools, Safe Learners Section 2b](#) for current information about attendance requirements and documentation. In order to align with Medicaid documentation requirements and to mitigate audit risk, when documenting service provision, RNs should document their location, the location of the student, the therapy provided, and the

service delivery method (in-person or via telehealth). In the event that an LPN or a delegated health care aide is providing the service, documentation of supervision by the supervisor must be maintained.

## Future Updates

This document will continue to be updated based on:

- The continuing impacts of COVID-19 and the state’s evolving mitigation efforts as directed by Governor Brown and the Oregon Health Authority.
- Input from educators, students, families and community partners.
- An ongoing review of equity impacts.
- Learnings from efforts being rolled out in other states and countries.

Please see the curated information at the [Ready Schools, Safe Learners](#) and [Special Education COVID-19 Resources](#) pages for additional tools, links, and related documents.

## Resources for Implementation of Telehealth

- [Northwest Regional Telehealth Resource Center](#)
- [Roadmap for Action Advancing the Adoption of Telehealth in Child Care Centers and Schools to Promote Children’s Health and Well-Being](#)
- [The National Consortium of Telehealth Resource Centers](#)

## Additional Resources:

- [Joint Guidance on the Application of the Family Educational Rights and Privacy Act \(FERPA\) and the Health Insurance Portability Act of 1996 \(HIPAA\) To Student Records \(December 2019 Update\)](#)
- [Oregon State Board of Nursing](#)
- [National Association of School Nurses \(NASN\)](#)

## Contacts

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