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School Nursing and Telehealth V.3

FREQUENTLY ASKED QUESTIONS



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Introduction

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 standards and scope of practice appropriate to the nurse’s license type. This document is meant to be a resource in combination with other guidance and resources on ODE’s [Planning for the 2022-2023 School Year](#) web page.

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School Nurse Telehealth FAQs

The Provision of a Free Appropriate Public Education (FAPE)

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 a free appropriate public education (FAPE) (34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA)). State Education Agencies, Local Education Agencies, schools, and Early Childhood Special Education programs must ensure that, to the greatest extent possible, each student who experiences a disability 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)).

School districts and/or school programs must make every effort to provide special education and related services, which may include mental and/or behavioral health 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. The provision of health services via telehealth is one methodology that may be utilized to ensure a FAPE.

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 and standards of practice 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 (NPA) 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 the assessment of the student and the type of services required; and 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. Nurses should work with school district leadership to ensure they can complete their assigned duties wherever possible, including through the receipt of additional training as needed.

- Based on the assessment of the student, the individual nurse must determine that the delivery of nursing services to a student via telehealth is appropriate.
- There is nothing in the NPA that expressly prohibits the Registered Nurse’s (RN) use of telecommunications technology to complete a scheduled ongoing safety evaluation of an existing delegation. 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 electronically. The RN must continue to generate thorough, clear, accurate and timely documentation of these processes and outcomes. Reference: [OSBN Information regarding COVID-19.](#)
- The NPA 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 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 Q & A 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 pandemic, visit [OSBN Information Regarding COVID-19.](#)

Privacy Concerns and Virtual Platforms

Are records created by medically-licensed staff providing health related services to students pursuant to an IEP/IFSP or Section 504 plan considered education records and thus, subject to FERPA privacy protections? Is this any different with Telehealth?

Family Education Rights and Privacy Act (FERPA) requirements apply to the information contained in student education records. FERPA does not specifically address online settings. It is important to note that records created during the provision of school health services, whether provided in-person or via Telehealth, are considered education records as defined by FERPA at 34 CFR § 99.2. However, in regards to Telehealth, there are HIPAA security implications because the health services are provided via an electronic platform.

See [Student Privacy Considerations and Remote/Online Education Platforms](#) and [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 \(December 2019 Update\)](#) for more information about FERPA, HIPAA, and digital privacy.

Can I use Skype, Zoom, or Google to provide nursing telehealth 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 risks. In addition, providers should enable all available encryption and privacy modes when using such applications.

See [Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency](#) for the complete release. OCR has also published an [FAQ](#) related to this change.

School Medicaid Billing

Can school districts bill Medicaid for school health services (SLP, OT, RN, PT) provided via 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. Documentation must include the fact the service was provided via telehealth.

Documentation of attendance is a critical component of service provision and is required for Medicaid billing. In order to align with Medicaid documentation requirements and to mitigate audit risk, when documenting service provision, nurses should document their location, the location of the student, the therapy provided, and the service delivery method (in-person or via

telehealth). Please see OHA's [Telemedicine—Telehealth Guidance for School-Based Health Services Providers](#) for additional information.

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
- Updates from federal partners
- An ongoing review of equity impacts

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 \(NASN\)](#)

Contact Information

Oregon State Board of Nursing

- Gretchen Koch, Oregon State Board of Nursing, gretchen.koch@osbn.oregon.gov

Oregon Department of Education – School Health

- Ely Sanders, School Health Specialist, ely.sanders@ode.oregon.gov

Oregon Department of Education – School Medicaid

- Jennifer Dundon, Operations & Policy Analyst, jennifer.dundon@ode.oregon.gov

Oregon Health Authority

- Corinna Brower, State School Nurse Consultant, corinna.e.brower@dhsosha.state.or.us