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Oregon's Extended School Closure Special Education Guidance

FREQUENTLY ASKED QUESTIONS:
SCHOOL NURSE TELEHEALTH



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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 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 [COVID 19 FAQ and resource page](#).

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School Nurse Telehealth FAQs

1. Is a district and/or school program required to provide FAPE to students who experience disabilities as part of “Distance Learning for All”?

As of April 13, 2020, all Oregon school districts will begin offering Distance Learning for All to students. As such, the 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 IEP/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.

Once districts are providing Distance Learning for All, school districts and/or school programs must make every effort to provide special education and related services to the student in accordance with the student's Individualized Education Program (IEP), Individualized Family Service Plan (IFSP) or, for students entitled to FAPE under Section 504, consistent with a plan developed to meet the requirements of Section 504. While the services in a student's IEP, IFSP, or 504 Plan must be delivered, these plans do not dictate the methodology for delivering the services.

The Department also notes that general education for all students -- including those who experience disability -- has fundamentally changed with the shift to Distance Learning for All. Therefore, IEPs will need to be reviewed in light of the district's Distance Learning for All plan to determine how services can be provided to ensure FAPE for each student. Districts will then need to provide those services to the extent possible; these services will look different in this new context of distance learning. Services will not look the same as they do when students attend school. Teams should consider the definition of specially designed instruction and related services, in the context of the district's Extended School Closure Guidance plan.

"Specially Designed Instruction" (SDI) means adapting, as appropriate to the needs of each student, the content, methodology or delivery of instruction for the following purposes:

- To address the unique needs of the student that result from the student's disability; and
- To ensure access of any student experiencing a disability to the general curriculum in this instance, the district's Extended School Closure Guidance plan, so that the student can meet the educational standards within the jurisdiction of the agency that apply to all children.

Related services should be considered in the context of what specially designed instruction (special education services) means within the district's Distance Learning for All Plan. Related services are developmental, corrective, and supportive services required to assist a child, who has been identified as a child experiencing a disability, to benefit from special education services.

Supplementary aids and services, program modifications, and supports for school personnel should be considered in the context of "to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate" (in this instance to participate in the district's Continuous Learning Plan with their nondisabled peers).

If a student's specially designed instruction looks different due to the shift to Distance Learning for All, logic dictates that the related services that allow a student to benefit from that SDI may also look different. These decisions are inherently individualized. Therefore,

once the regular school session resumes, IEP/IFSP Teams and, as appropriate to an individual student who experiences a disability, the personnel responsible for ensuring FAPE to a student for the purposes of Section 504, should plan to make individualized determinations as to whether compensatory services are needed to make up for any skills that may have been lost because of an extended school closure.

For further detail refer to:

- [Frequently Asked Questions Regarding Special Education in Light of the Coronavirus \(COVID-19\) Outbreak](#)
- [Distance Learning For All: Ensuring Care, Connection and Continuity Of Learning For Students Who Experience Disability](#)

2. 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](#).

3. 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 tech 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.

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. This change is expected to be temporary.

4. Can I 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.

5. Will the ODE or the Oregon Health Authority (OHA) provide additional guidance related to school telehealth services.

Yes. The ODE is working with the OHA, Oregon Medical Licensing Boards, and telehealth stakeholder groups to develop comprehensive guidance related school telehealth services. The OHA is also developing telehealth rules specific to School Based Health Services (School Medicaid).

6. What resources are available to support implementation of telehealth in my district?

- [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](#)

7. 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 \(NASN\)](#)

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