



COVID-19 TELETHERAPY AND DATA PROTECTION CONSIDERATIONS

DOES THE HIPAA PRIVACY RULE APPLY TO SCHOOL DISTRICTS?

Educational agencies are typically subject to FERPA, not HIPAA. As such, districts should continue to utilize technology platforms that are compliant with FERPA and Education Law 2-d to deliver teletherapy services. Even though districts employ healthcare providers, districts are not generally HIPAA covered entities because the providers typically do not engage in covered transactions, such as billing a health plan electronically for their services. Additionally, the U.S. Department of Health & Human Services has advised that even if a district is a covered entity and must comply with the HIPAA Transactions and Code Sets Rules, the district would not be required to comply with the HIPAA Privacy Rule if it only maintains health information in FERPA education records. Finally, please note, **covered entities will not be subject to penalties for violations of the HIPAA Privacy, Security, and Breach Notification Rules that occur in the good faith provision of telehealth during the COVID-19 nationwide public health emergency.**

UPDATES TO IEPS



Temporary changes to service delivery due to school closures **do not** require changes to the IEP

WRITTEN CONSENT



Written consent is **not** required; however, service providers should **keep record of verbal acknowledgement** that services will be provided via Teletherapy

SERVICES



Teletherapy can be used for **all modalities** including PT, OT, and Speech

DATA SECURITY



Schools are typically subject to FERPA, not HIPAA. As such, continue to **utilize district authorized platforms that are compliant with FERPA and Education Law 2-d**

GROUP SESSIONS



Sessions **can be held** without violating FERPA if no student PII is shared by the teacher/therapist during the session (shared images of participants are directory information¹)

STUDENT CONFIDENTIALITY



Communications can be sensitive so **set clear expectations** such as no recording of any session and encouraging the use of earbuds or headphones

**FOR MORE INFORMATION
CLICK ON THE
INFORMATIVE RESOURCES**

NYSED—MEDICAID IN EDUCATION ALERT (APRIL 2, 2020)

HHS AND ED—GUIDANCE ON THE APPLICATION OF FERPA AND HIPAA TO STUDENT HEALTH RECORDS

HHS—FAQS ON TELEHEALTH AND HIPAA DURING THE COVID-19

The information provided in this brochure does not, and is not intended to, constitute legal advice; instead, all information and content is for general informational purposes only. For more information or if you have further questions, please contact your legal counsel.

¹ Educational agencies should also refer to local policies, as technology and instructional practices are implemented.