



To: All NJEA Field Staff

From: Aileen O’Driscoll, Esq., Managing Attorney

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Re: Advisory re: Speech and Counseling Teleservices Related to COVID-19

Late last week a bill was signed into law (P.L. 2020, c. 3; A3860/S2289) authorizing the use and billing of telehealth and telemedicine for the duration of this public health emergency. It allows health care providers, defined to include nurses, psychologists, clinical social workers, professional counselors and speech pathologists who are licensed under Title 45, to provide services within the scope of their licensure via telehealth or telemedicine. The full text of the law can be found here: https://www.njleg.state.nj.us/2020/Bills/A4000/3860_I1.PDF.

Based upon this new law, some districts are requiring counselors and speech therapists to provide services virtually. An initial review of the law appears to allow these practices without endangering licensure status. Members should reach out to their professional associations for guidance.

As to those members who are not licensed under Title 45, but are DOE certified to provide services to schools, it is our opinion that the DOE will permit them to provide teleservices in these exceptional circumstances, although the NJDOE has yet to issue specific guidance. Please note that OTs and PTs are licensed under different provisions (not Title 45), so this new law is not applicable to them, and that school psychologists, social workers, and speech therapists do not have to be licensed under Title 45 to provide services in schools, provided they have the proper NJDOE certification(s).

The new law itself does not speak specifically to the school context. However, a proposed bill was passed in the Assembly yesterday that would provide great clarity. That bill, A3904, would add to the school law explicit authorization to deliver speech language services and counseling services “to special education students through the use of electronic communication or a virtual or online platform, as appropriate” during states of emergency such as the current one. (Full text here: https://www.njleg.state.nj.us/2020/Bills/A4000/3904_I1.PDF.) That bill could be passed by the Senate as early as next week. A similar version of that bill, A3813/S2292, which contains the same language regarding this particular issue, has already passed both houses and is on the governor’s desk (Full text here: https://www.njleg.state.nj.us/2020/Bills/A4000/3813_R1.PDF). We will update you if and when either of those bills is signed into law. **Also, please be reminded that the Legislature is still in session, and amendments could be made to A3904.**

For districts that are requiring teleservices, locals and members should inquire into the district's plan for providing those services. Critically, privacy and patient confidentiality laws and regulations still apply to those teleservices, both state and federal (FERPA and HIPAA). **Locals should push districts to meet their responsibilities to ensure the platforms and methods for delivering teleservices comply with all privacy laws. Locals should also negotiate the following: any impact on caseload, and receiving the appropriate materials and training.**

As of the time of this writing, the NJDOE has not issued guidance on this issue. As a general note on special education services, the NJDOE has advised that when school is back in session, IEP teams will have to evaluate the services provided during school closures and make provisions for any necessary compensatory services.