



Guidance Providing Medicaid Reimbursement for Special Education Services During the COVID-19 Pandemic

April 2020

On April 2, 2020, the New York State Department of Health (DOH), Office of Health Insurance Programs (OHIP), New York State Education Department (SED), and Preschool/School Supportive Health Services Program (SSHSP) issued guidance broadly expanding the ability of all Medicaid providers, including school districts, to use a variety of communication methods to deliver remote services to students during the current COVID-19 pandemic. The details of this expansion are summarized below.

Key takeaways include:

- Medicaid-reimbursable SSHSP services that are delivered through video conference, video available on smartphones or similar devices, or telephonic communication are reimbursable during the current State of Emergency due to the COVID-19 pandemic. *Please note that this includes telephonic communications.*
 - In the recently updated “Medicaid Update Special Edition: Comprehensive Telehealth Guidance,” telehealth was expanded to include telephone conversations.
 - This guidance (last updated March 25, 2020) can be found at: https://health.ny.gov/health_care/medicaid/program/update/2020/no05_2020-03_covid-19_telehealth.htm#telephonic_reimb
- Services may be reimbursed for Medicaid eligible students with current IEPs. Services that were provided on or after March 1, 2020 through the above listed methods can be reimbursed at the same level of payment as if the services were delivered in-person.
- Districts do not have to change the IEP or written orders/referrals to reflect this temporary change in service delivery during the State of Emergency.

Consistent with the latest guidance from SED, including the March 28, 2020 Memorandum from SED’s Assistant Commissioner Suriano, Districts should be evaluating and determining how to provide the services detailed in each student’s IEP during the State of Emergency to the greatest extent possible. This may include providing services via telephone or video. If these services were Medicaid eligible when provided in-person, Districts can continue to seek payment for such services even if they are not

provided face-to face during the State of Emergency. Districts should ensure that the provision of these services are documented appropriately and accurately to receive Medicaid reimbursement.

Districts should consider whether the systems used to provide such services are compliant with all applicable legal requirements including but not limited to FERPA and Education Law § 2-d. We recommend that the District encourages its service providers to use District-approved applications or programs, and that the District periodically check in with the service providers to confirm that such programs are being used, and that personally identifiable student data remains confidential.

Districts may still have to evaluate whether or not compensatory services are needed for students upon their return to school where the length and frequency of services during the State of Emergency deviates from the student's IEP. As we discussed in a prior legal alert, SED's Assistant Commissioner Suriano has stated that the Department expects each district to evaluate any student's need for compensatory services moving forward and determine the level of services needed for that student to ideally reach the same level of success he/she would have achieved had the school closure not taken place once students return to school. Suriano also stated that compensatory services should be determined on a student-by-student basis, and that compensatory services may not need to be provided on a 1:1 basis (e.g., calculating the number of hours of missed sessions during the COVID-19 closure period and then simply adding those hours to new session hours once the student returns to school).

Webster Szanyi LLP attorneys are ready and prepared to assist you with any questions you may have regarding the above, or any other questions you may have concerning COVID-19. Please do not hesitate to contact any members of our Education or Labor and Employment Groups: Melanie Beardsley, Ryan Smith, Susan McClaren, Heather Dechert and Marnie Smith.