

## School-Based Telehealth and Services

*An Information Brief*

*November 2018*

### Introduction

A number of Maryland schools have experienced difficulty finding providers to deliver needed health care and special education services to students, especially in areas with provider shortages.<sup>1,2</sup> Telehealth has the potential to create efficiencies by increasing access to services, including primary and specialty care, chronic disease management, therapies, and special education and behavioral health services in schools. School-based telehealth involves the use of telecommunications, including interactive video conferencing and store-and-forward transmissions, to deliver a variety of health care and other services to children and youths while they are present in school settings.<sup>3</sup> This information brief provides an overview of school-based health centers (SBHCs), school health services, and special education services, the types of services that can be offered by school-based telehealth, and how providers are reimbursed for these services.

### SBHCs and School Health Services

Maryland law requires all public schools to have adequate school health services and programs.<sup>4</sup> Schools typically have a registered nurse, who is limited by scope of practice laws to “(i) maintain health; (ii) prevent illness; or (iii) care for or rehabilitate the ill, injured, or infirm,”<sup>5</sup> but not to diagnose or treat,<sup>6</sup> or another licensed health provider, such as a licensed practical nurse (LPN), certified nursing assistants (CNA), or a certified medication technician (CMT). Each school has a health suite that must provide, at a minimum: space for waiting, examination, treatment, storage, and resting; a separate room for private consultation; a lavatory with a toilet and a sink; a telephone; and locked file cabinets.<sup>7</sup> School health services include acute care for injuries and illnesses, care for chronic health conditions in coordination with a primary care provider,<sup>8</sup> screening for health problems, and maintaining up-to-date health and immunization records.<sup>9</sup>

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<sup>1</sup> American Journal of Speech Language Pathology. *Comparing Traditional Service Delivery and Telepractice for Speech Sound Production Using a Functional Outcome Measure*, February 2018. Available at: <https://www.ncbi.nlm.nih.gov/pubmed/29188278>.

<sup>2</sup> Archives of Assessment Psychology. *Equivalence of Remote, Online Administration and Traditional, Face-to-Face Administration of Woodcock-Johnson IV Cognitive and Achievement Tests*, 2018. Available at: <http://www.assessmentpsychologyboard.org/journal/index.php/AAP/article/view/122>.

<sup>3</sup> State Medicaid Best Practice School-Based Telehealth. American Telemedicine Association. July 2013. Available at: <http://www.americantelemed.org/main/policy-page/state-policy-resource-center/state-medicare-best-practices#>.

<sup>4</sup> COMAR 13A.05.05.05. More information is available at: [www.dsd.state.md.us/comar/comarhtml/13a/13a.05.05.05.htm](http://www.dsd.state.md.us/comar/comarhtml/13a/13a.05.05.05.htm).

<sup>5</sup> Health Occ. Art. § 8-101(n)(1), Ann. Code of MD. More information is available at: <https://law.justia.com/codes/maryland/2016/health-occupations/title-8/subtitle-1/section-8-101>.

<sup>6</sup> School-Based Health Centers, <http://marylandpublicschools.org/about/Pages/DSFSS/SSSP/SBHC/index.aspx>.

<sup>7</sup> COMAR 13A.05.05.10. More information is available at: <http://www.dsd.state.md.us/comar/comarhtml/13a/13a.05.05.10.htm>.

<sup>8</sup> COMAR 13A.05.05.07. More information is available at: <http://www.dsd.state.md.us/comar/comarhtml/13a/13a.05.05.07.htm>.

<sup>9</sup> *Ibid.*

SBHCs build on these existing school health services by offering comprehensive health care services through nurse practitioners or physicians. SBHCs are not intended to replace students' primary care providers. Medicaid regulations allow reimbursement for SBHCs that:

- Are located on school grounds;
- Provide on-site primary and preventive health care, referrals, and follow-up services;
- May provide on-site dental or behavioral health services, referrals, and other ancillary and supportive services; and
- Are approved by the Maryland State Department of Education (MSDE).<sup>10</sup>

SBHCs offer more complex services than the school health services program because they are required to have at least one physician, nurse practitioner, or physician assistant on site. The registered nurse, who is always the leader of the school health nursing team and is the expert in nursing and health, makes the decisions about how care is provided and who provides the care to the child in the school system.<sup>11</sup>

SBHCs must meet several additional requirements in order to receive Medicaid reimbursement. They must meet the licensure requirements of freestanding clinics and have a written agreement with one of the following sponsoring entities: a local health department, a federally qualified health center (FQHC), or a general clinic, which is defined as "a facility that is not part of a hospital, but is organized and operated to provide medical care to outpatients."<sup>12</sup>

MSDE develops standards for SBHCs<sup>13</sup> and approves SBHCs at three different levels based on hours, staffing, and services offered:

- Level I, or Core, SBHCs provide acute, urgent, and primary care services at least eight hours per week;
- Level II, or Expanded, SBHCs offer additional services, including mental health care and comprehensive preventive care at least 12 hours per week; and
- Level III, or Comprehensive, SBHCs provide comprehensive acute, urgent, preventive, and primary care services, as well as mental health care at least 20 hours per week.<sup>14</sup>

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<sup>10</sup> COMAR 10.09.76.03. Complete MDH requirements for SBHCs are available at: <http://www.dsd.state.md.us/comar/comarhtml/10/10.09.76.03.htm>.

<sup>11</sup> See Maryland School-Based Health Center Policy Advisory Council, *Maryland School-Based Health Center Standards*, rev. March 2018.

<sup>12</sup> 42 CFR § 440.90. More information is available at: [https://www.ecfr.gov/cgi-bin/text-idx?SID=c1d0a68455d0fc114c46027d45dd29cf&mc=true&node=se42.4.440\\_190&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=c1d0a68455d0fc114c46027d45dd29cf&mc=true&node=se42.4.440_190&rgn=div8).

<sup>13</sup> COMAR 13A.05.05.05. Please see <http://www.dsd.state.md.us/comar/comarhtml/13a/13a.05.05.05.htm> establishing joint jurisdiction of the Maryland Department of Health and the Maryland Department of Education.

<sup>14</sup> MSDE. (2006, April; revised March 2018). *Maryland School-Based Health Center Standards*. Retrieved from <http://marylandpublicschools.org/about/Documents/DSFSS/SSSP/SBHC/MarylandStandardsSBHC2018.pdf>.

Table 1 summarizes the key differences between school health services and SBHCs.

**Table 1. Summary of Differences between School Health Services Programs and SBHCs**

Characteristic	School Health Services	SBHC
Mandatory in Maryland Public Schools	Yes	No
Clinical Staff	Typically an RN/LPN/CNA/CMT	NP/MD/PA
Services	Emphasis on Health Promotion and Disease Prevention; Illness Care and Chronic Disease Management; Emergency Care	Full Health Clinic Services
Third Party Billing	No	Yes
Affiliation with a Free-Standing Clinic, Local Health Department, or FQHC	No	Yes

### Reimbursement for Telehealth Services in Schools

Maryland law requires private payers to cover health care services appropriately delivered through telehealth and may not exclude from coverage a health care service solely because it is provided through telehealth and not in-person.<sup>15</sup> Medicaid will not reimburse telehealth providers for services that require in-person evaluation or cannot be reasonably delivered via telehealth.<sup>16</sup> Medicaid defines telehealth as the delivery of medically necessary somatic or behavioral health services to a patient at an originating site by a distant site provider, through technology-assisted communication.<sup>17</sup>

Medicaid sets requirements for the types of providers and sites that can qualify for reimbursement as originating and distant provider sites, and these sites must first register with the Maryland Medicaid Telehealth Program.<sup>18</sup> Originating sites are defined as the location of a Medicaid participant at the time the telehealth service is rendered that is equipped with telehealth technology for secure viewing and transmittal of the patient’s information.<sup>19</sup> Distant sites are where the licensed provider is located at the time the telehealth service is rendered.<sup>20</sup> “Elementary, middle, high, or technical schools with a supported nursing, counseling, or medical office” are permitted to serve as originating sites.<sup>21</sup> Community-based substance use disorder providers, opioid treatment programs, outpatient mental health centers, and FQHCs are included among allowed distant site providers; other distant site providers register as individually licensed medical service clinicians rather than in terms of physical locations.<sup>22</sup> Medicaid reimburses both the originating and distant sites for telehealth services: the originating site receives a

<sup>15</sup> Ins. Art. § 15-139(c), Ann. Code of MD. More information is available at: <http://mgaleg.maryland.gov/webmga/firmStatutesText.aspx?article=gin&section=15-139&ext=html&session=2019RS&tab=subject5>.

<sup>16</sup> Md. Medicaid Telehealth Program, Telehealth Provider Manual, updated May 2, 2018, accessed September, 2018. More information is available at: <https://mmcp.health.maryland.gov/SiteAssets/SitePages/Telehealth/Telehealth%20Program%20Manual%2005.2.18.pdf>.

<sup>17</sup> COMAR 10.09.49.02. More information is available at: <http://www.dsd.state.md.us/comar/comarhtml/10/10.09.49.02.htm>.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> COMAR 10.09.49.07. More information is available at: <http://www.dsd.state.md.us/comar/comarhtml/10/10.09.49.07.htm>.

<sup>22</sup> *Ibid.*

transmission fee, which is only reimbursed for telehealth services; and the distant site receives the full Medicaid payment rate for services provided.<sup>23</sup>

Approved telehealth providers are required to provide clinically appropriate<sup>24</sup> services that are distinct from those provided by the originating site provider.<sup>25</sup> Because telehealth policies require the distant care to be coordinated by a clinician, the originating site provider may only be reimbursed for the facility fee/telehealth transmission fee. Medicaid can only reimburse an MSDE-approved SBHC enrolled with the Medicaid program as an originating site. A school health service program could act as an originating site under the Medicaid telehealth regulations,<sup>26</sup> but would not be reimbursed for transmission and facility fees because school health services are not recognized as Medicaid providers.

Medicaid regulations also include technical requirements for telehealth services that apply to schools. These include: “(1) a camera that has the ability to manually or under remote control provide multiple views of a patient with the capability of altering the resolution, focus, and zoom requirements according to the service; (2) unless engaging in a telehealth communication with a participant who is deaf or hard of hearing, audio equipment that ensures clear communication and includes echo cancellation; (3) bandwidth speed and image resolution sufficient to provide quality video to meet a minimum of 15 frames per second, or higher, as industry standards change; (4) display monitor size sufficient to support diagnostic needs used in the telehealth services; and (5) create video and audio transmission with less than 300 millisecond delay.”<sup>27</sup> Because the information transferred from the SBHC is subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA),<sup>28</sup> such data must be transferred securely<sup>29</sup> between sites.

## Overview of Special Education Services

An understanding of overall special education requirements provides important context for the role of telehealth to deliver special education services in schools. The Individuals with Disabilities Education Act (IDEA)—originally enacted by Congress in 1975—requires free, appropriate public education for eligible children with disabilities.<sup>30</sup> The term “free appropriate public education” refers to special education and related services that: (1) are provided at public expense without charge and under public supervision; (2) meet the standards of the state educational agency; (3) include an appropriate preschool, elementary school, or secondary education school in the state; and (4) are provided in conformity with the individualized education program (IEP).<sup>31</sup>

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<sup>23</sup> COMAR 10.09.49.11. More information available at: <http://www.dsd.state.md.us/comar/comarhtml/10/10.09.49.11.htm>

<sup>24</sup> COMAR 10.09.49.05(A)(3). More information is available at: <http://www.dsd.state.md.us/comar/comarhtml/10/10.09.49.05.htm>.

<sup>25</sup> *Id.* at section (A)(1).

<sup>26</sup> COMAR 10.09.49.02(B)(10). More information is available at: <http://www.dsd.state.md.us/comar/comarhtml/10/10.09.49.02.htm>

<sup>27</sup> COMAR 10.09.49.08. More information is available at: <http://www.dsd.state.md.us/comar/comarhtml/10/10.09.49.08.htm>.

<sup>28</sup> 45 CFR Part 160 (A) 45 CFR Part 164(E). More information is available at: <https://www.ecfr.gov/cgi-bin/text-idx?SID=58542bd6be129f38e90e0979f4b4d909&mc=true&node=sp45.1.160.a&rgn=div6>; <https://www.ecfr.gov/cgi-bin/text-idx?SID=58542bd6be129f38e90e0979f4b4d909&mc=true&node=sp45.1.164.e&rgn=div6>.

<sup>29</sup> Federal tools, guidance documents, and educational materials regarding HIPAA security are available at: <https://www.healthit.gov/topic/privacy-security-and-hipaa/health-it-privacy-and-security-resources-providers>.

<sup>30</sup> 20 USC § 1400(d). More information available at: [http://uscode.house.gov/view.xhtml?req=\(title:20 section:1400 edition:prelim\) OR \(granuleid:USC-prelim-title20-section1400\)&f=treesort&edition=prelim&num=0&jumpTo=true](http://uscode.house.gov/view.xhtml?req=(title:20 section:1400 edition:prelim) OR (granuleid:USC-prelim-title20-section1400)&f=treesort&edition=prelim&num=0&jumpTo=true).

<sup>31</sup> 20 USC § 1401(9). More information available at: [http://uscode.house.gov/view.xhtml?req=\(title:20 section:1401 edition:prelim\) OR \(granuleid:USC-prelim-title20-section1401\)&f=treesort&edition=prelim&num=0&jumpTo=true](http://uscode.house.gov/view.xhtml?req=(title:20 section:1401 edition:prelim) OR (granuleid:USC-prelim-title20-section1401)&f=treesort&edition=prelim&num=0&jumpTo=true).

The IDEA requires schools to create IEPs for children with disabilities.<sup>32</sup> An IEP is a document that describes (1) the child's current academic and functional levels, (2) the measureable annual goals designed to address the needs arising out of the child's disability and to assist the child to make progress in the general education curriculum, and (3) the special education and related services needed to assist the child in attaining those goals.<sup>33</sup> Maryland enacted regulations to implement the IDEA, which assure a free appropriate public education for all students with disabilities, in accordance with the student's IEP.<sup>34</sup>

When a parent or educator believes that a child may have a disability, the student must be referred to a public agency in writing.<sup>35</sup> After receiving the referral, the public agency evaluates the student with parental consent to determine if the student has a disability.<sup>36</sup> In order to conduct the evaluation, the school forms an IEP team that includes the parents, the regular education teacher, a special education teacher or provider, a public agency representative, others with knowledge or expertise, and the student, if appropriate.<sup>37</sup> If the student meets the criteria under the IDEA, the IEP team will evaluate the child and develop the IEP, identifying the services needed for the student to meet his or her annual academic and functional goals.<sup>38</sup> The team must meet at least annually to review and revise the IEP.<sup>39</sup>

Under Maryland law, a school-aged student with a disability is defined as a student aged 3 through 21 years<sup>40</sup> who, through the IEP evaluation process, is determined to have an impairment such as autism, emotional disability, hearing impairment, intellectual disability, speech or language impairment, or a traumatic brain injury, and requires special education and related services due to that impairment.<sup>41</sup> The special education and related services identified through the IEP evaluation process include developmental, corrective, and other supportive services as may be required to assist a student with a disability. Examples of services include: speech therapy, psychological services, physical and occupational therapy, counseling services, and medical services for diagnostic or evaluation purposes.<sup>42</sup>

### **Funding for Special Education Services**

Federal law requires the State's Medicaid agency to provide special education services, which precedes the financial responsibility of the local education agency or State agency responsible for developing the child's IEP.<sup>43</sup> This means that Medicaid will pay for IEP services, if the services qualify as a covered Medicaid benefit and if the parent consents. Under the IDEA, the federal government provides formula

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<sup>32</sup> 20 USC § 1414. More information available at: [http://uscode.house.gov/view.xhtml?req=\(title:20 section:1414 edition:prelim\) OR \(granuleid:USC-prelim-title20-section1414\)&f=treesort&edition=prelim&num=0&jumpTo=true](http://uscode.house.gov/view.xhtml?req=(title:20 section:1414 edition:prelim) OR (granuleid:USC-prelim-title20-section1414)&f=treesort&edition=prelim&num=0&jumpTo=true).

<sup>33</sup> 20 USC § 1414(d)(1)(A); 34 CFR § 300.320(a)(1). More information available at: [http://uscode.house.gov/view.xhtml?req=\(title:20 section:1414 edition:prelim\) OR \(granuleid:USC-prelim-title20-section1414\)&f=treesort&edition=prelim&num=0&jumpTo=true](http://uscode.house.gov/view.xhtml?req=(title:20 section:1414 edition:prelim) OR (granuleid:USC-prelim-title20-section1414)&f=treesort&edition=prelim&num=0&jumpTo=true); [https://www.ecfr.gov/cgi-bin/text-idx?SID=508d5b0294f9b00a11bfdbdcd5a477c9&mc=true&node=se34.2.300\\_1320&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=508d5b0294f9b00a11bfdbdcd5a477c9&mc=true&node=se34.2.300_1320&rgn=div8).

<sup>34</sup> COMAR 13A.05.01. More information available at: [http://www.dsd.state.md.us/COMAR/SubtitleSearch.aspx?search=13A.05.01.\\*](http://www.dsd.state.md.us/COMAR/SubtitleSearch.aspx?search=13A.05.01.*).

<sup>35</sup> COMAR 13A.05.01.04(A)(1). More information is available at: <http://www.dsd.state.md.us/comar/comarhtml/13a/13a.05.01.04.htm>.

<sup>36</sup> COMAR 13A.05.01.05. More information is available at: <http://www.dsd.state.md.us/comar/comarhtml/13a/13a.05.01.05.htm>.

<sup>37</sup> COMAR 13A.05.01.07(A)(1). More information is available at: <http://www.dsd.state.md.us/comar/comarhtml/13a/13a.05.01.07.htm>.

<sup>38</sup> COMAR 13A.05.01.06. More information is available at: <http://www.dsd.state.md.us/comar/comarhtml/13a/13a.05.01.06.htm>.

<sup>39</sup> COMAR 13A.05.01.08. More information is available at: <http://www.dsd.state.md.us/comar/comarhtml/13a/13a.05.01.08.htm>.

<sup>40</sup> Since the regulation specifies that the definition extends to the end of the school year in which the student turns 21 years old, a student with a disability could be as old as 22 years.

<sup>41</sup> COMAR 13A.05.01.03(78). Full list of disabilities is available at: <http://www.dsd.state.md.us/comar/comarhtml/13a/13a.05.01.03.htm>.

<sup>42</sup> COMAR 13A.05.01.03(65)(b). Full list of services is available at: <http://www.dsd.state.md.us/comar/comarhtml/13a/13a.05.01.03.htm>.

<sup>43</sup> 20 USC § 1412(a)(12)(A)(i). More information is available at: [http://uscode.house.gov/view.xhtml?req=\(title:20 section:1412 edition:prelim\) OR \(granuleid:USC-prelim-title20-section1412\)&f=treesort&edition=prelim&num=0&jumpTo=true](http://uscode.house.gov/view.xhtml?req=(title:20 section:1412 edition:prelim) OR (granuleid:USC-prelim-title20-section1412)&f=treesort&edition=prelim&num=0&jumpTo=true).



grants to assist states with the excess costs of providing special education and related services to children with disabilities. Funds are allocated to individual states based on a variety of factors outlined in a formula in federal statute.<sup>44</sup> States is allocated an amount equal to what it received for special education for fiscal year 1999.

While Medicaid covers IEP services if they are a Medicaid covered benefit, it does not currently reimburse for IEP services provided via telehealth, as providers may not be reimbursed by Medicaid for services rendered by mail or telephone when the participant is not present.<sup>45</sup> This does not prevent schools from providing IEP services through telehealth; however, the school will not receive Medicaid reimbursement for the IEP services. Telehealth also requires specific consent for telehealth services, prior to rendering therapy.<sup>46</sup>

Maryland private insurers do not cover IEP services. While insurers are required to provide habilitative services for children (defined as services and devices, including occupational, physical, and speech therapies, that help a child keep, learn, or improve skills and functioning for daily living),<sup>47</sup> they are not required to reimburse habilitative services that are delivered through early intervention or school services.<sup>48</sup> Maryland insurers provide the required coverage for habilitative services that are similar to services in an IEP, but explicitly state that services delivered through schools are excluded.

## Privacy and Security Requirements

Providers and schools must comply with both the Family Educational Rights and Privacy Act<sup>49</sup> (FERPA) and HIPAA<sup>50</sup> when delivering telehealth services to students. FERPA protects the privacy of student education records including IEPs, and HIPAA protects the confidentiality of health information. Under FERPA, education records generally may not be released to third parties without parental consent, and FERPA applies to all students receiving special education and related services through IEPs. Telehealth providers and schools must use HIPAA-compliant audio-video transmissions<sup>51</sup>, as well as keep the student's health records confidential in a manner compliant with FERPA.

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<sup>44</sup> 20 USC § 1411(a). More information is available at: [http://uscode.house.gov/view.xhtml?req=\(title:20\\_section:1411\\_edition:prelim\) OR \(granuleid:USC-prelim-title20-section1411\)&f=treesort&edition=prelim&num=0&jumpTo=true](http://uscode.house.gov/view.xhtml?req=(title:20_section:1411_edition:prelim) OR (granuleid:USC-prelim-title20-section1411)&f=treesort&edition=prelim&num=0&jumpTo=true).

<sup>45</sup> COMAR 10.09.50.07(B)(1). More information is available at: <http://www.dsd.state.md.us/comar/comarhtml/10/10.09.49.07.htm>.

<sup>46</sup> COMAR 10.09.49.06(B). More information is available at: <http://www.dsd.state.md.us/comar/comarhtml/10/10.09.49.06.htm>.

<sup>47</sup> Ins. Art. § 15-835(a)(2), Ann. Code of MD. More information is available at: <http://mgaleg.maryland.gov/webmgafirmStatutesText.aspx?article=gin&section=15-835&ext=html&session=2019RS&tab=subject5>.

<sup>48</sup> *Ibid.*

<sup>49</sup> 20 U.S.C. §1232g; 34 CFR Part 99. More information is available at: [http://uscode.house.gov/view.xhtml?req=\(title:20\\_section:1232g\\_edition:prelim\) OR \(granuleid:USC-prelim-title20-section1232g\)&f=treesort&edition=prelim&num=0&jumpTo=true](http://uscode.house.gov/view.xhtml?req=(title:20_section:1232g_edition:prelim) OR (granuleid:USC-prelim-title20-section1232g)&f=treesort&edition=prelim&num=0&jumpTo=true); [https://www.ecfr.gov/cgi-bin/text-idx?SID=508d5b0294f9b00a11bfdbdcd5a477c9&mc=true&tpl=/ecfrbrowse/Title34/34cfr99\\_main\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?SID=508d5b0294f9b00a11bfdbdcd5a477c9&mc=true&tpl=/ecfrbrowse/Title34/34cfr99_main_02.tpl).

<sup>50</sup> 45 CFR Part 160(A); 45 CFR Part 164(E). More information is available at: <https://www.ecfr.gov/cgi-bin/text-idx?SID=58542bd6be129f38e90e0979f4b4d909&mc=true&node=sp45.1.160.a&rgn=div6>; <https://www.ecfr.gov/cgi-bin/text-idx?SID=58542bd6be129f38e90e0979f4b4d909&mc=true&node=sp45.1.164.e&rgn=div6>.

<sup>51</sup> Federal tools, guidance documents, and educational materials regarding HIPAA security are available at: <https://www.healthit.gov/topic/privacy-security-and-hipaa/health-it-privacy-and-security-resources-providers>.