

## **Qualified Personnel Requirements in the Early Intervention Program Questions & Answers**

The purpose of this document is to provide additional clarification regarding use of qualified personnel (QP) in the Early Intervention Program (EIP).

### **Services**

**Question #1: Early Intervention regulations and the current Medicaid State Plan Amendment (SPA) include additional qualified personnel (QP). When will the newly added QP be able to deliver Early Intervention Program (EIP) services?**

Answer: The approval and use of licensed behavior analysts (LBAs), certified behavior analyst assistants (CBAAAs), licensed mental health counselors, licensed marriage and family therapists, licensed psychoanalysts, and licensed creative arts therapists in the EIP was dependent on the launch of the State's new data system (EI Hub) and the adoption of amendments to 10 NYCRR Subpart 69-4 which added the additional four mental health practitioners.

NYS licensed mental health counselors, NYS licensed marriage and family therapists, NYS licensed psychoanalysts, and NYS licensed creative arts therapists can deliver psychological services, evaluations, family counseling, family training, family support, group developmental intervention, parent/child groups, family caregiver support groups, sibling support groups, and service coordination services within the Early Intervention Program. Services can be delivered in a home/community-based setting or at an approved facility-based setting.

NYS licensed behavior analysts and certified behavior analyst assistants (under the direction of an LBA) can deliver applied behavior analysis (ABA) services, group developmental intervention services, parent/child groups, and service coordination. Licensed behavior analysts will also be able to provide family training services and family caregiver support groups. Services can be delivered in a home/community-based setting or at an approved facility-based setting. Please note that at this time, Registered Behavior Technicians (RBT) are not qualified personnel and cannot deliver early intervention services in NYS.

**Question #2: Who can provide special instruction services in the Early Intervention Program (EIP)?**

Answer: Special Instruction services are provided by qualified individuals possessing the following certification issued by the New York State Education Department (SED) pursuant to State Regulations acting within their scope of practice of their professions:

- Special Education Teachers
- Teachers of Students with Disabilities (Birth to Grade 2)
- Teachers of the Blind and Partially Sighted
- Teachers of the Blind and Visually Handicapped
- Teachers of the Blind and Visually Impaired
- Teachers of the Deaf and Hard of Hearing
- Teachers of the Deaf and Hearing Impaired
- Teachers of the Speech and Hearing Handicapped (TSHH)

- Teachers of Students with Speech and Language Disabilities (TSSLD)

**Question #3: In the past most service types were able to provide special instruction services. Why are teachers identified in the Medicaid State Plan (SPA) and qualified personnel (QP) Matrix as the only QP that can provide special instruction services?**

Answer: Special instruction includes the design of environments and activities that extend the benefits of intervention into the child's daily routine and which promote the child's acquisition of skills in a variety of developmental areas, including motor development or social growth and development, sensory perception and information processing, behavioral interactions, cognitive processes, and social interactions. Special instruction also includes the provision of instruction, information, and support to parents and primary caregivers in assisting them in planning and maintaining a daily therapeutic regimen related to enhancing the child's developmental progress, including skills such as fine and gross motor, feeding, and other adaptive skills. Providers are required to provide services authorized by their professional scope of practice. Although many early intervention providers may work with children on these activities, only teachers should deliver special instruction services. Other QP would be working on these activities under the service type which aligns with their profession and professional scope of practice. For example, an occupational therapist working with a child on activities to promote the acquisition of their motor development would be providing an occupational therapy service.

**Question #4: Applied Behavior Analysis (ABA) services have been delivered by many different Qualified Personnel (QP) in the Early Intervention Program (EIP) in the past. Why are some EIP QP (teachers, speech therapists, etc.) now restricted from providing Applied Behavior Analysis (ABA) services?**

Answer: The current Medicaid State Plan Amendment (18-0039) specifies that ABA services, as a unique service type, are delivered by licensed behavior analysts (LBA) and certified behavior analyst assistants (CBAA) working under the direction of an LBA. Clinicians may use the technique of ABA during service delivery; however, only LBAs and CBAs (working under the direction of an LBA) may provide ABA services within the EIP. ABA as an intervention methodology or technique, can be utilized by some QP under the EIP, such as New York State certified special education teachers, licensed psychologists, licensed speech-language pathologists, licensed occupational therapists, etc., as long as they are acting within their scope of practice, are appropriately trained, and are competent to provide ABA. If, for example, a licensed psychologist was using the methodology or technique of ABA, the service would be listed in the individualized family service plan (IFSP) as a psychological service and the associated intervention method or technique would be listed as ABA. All EIP providers are required to practice within the scope of their profession and within the scope of their competency. Questions regarding what is in a professional's scope of practice should be directed to the NYS Office of Professions for their prospective profession.

**Question #5: What are the requirements for supervising Certified Behavior Analyst Assistants (CBAs)?**

Answer: The New York State Education Department (SED) Office of the Profession's website ([Certification Requirements for Certified Behavior Analyst Assistants | Office of the Professions](#))

identifies the following requirements for the supervision of CBAA's. Education Law and Regulations of the Commissioner of Education require that CBAA's receive direct supervision. CBAA's must work under the supervision of a licensed behavior analyst (LBA) and must meet all under the direction of requirements for EIP and SED. An LBA cannot supervise more than six CBAA's at a time. CBAA's should receive supervision in all aspects of their work, including but not limited to, carrying out initial assessments, treatment, and assessments to terminate services. The LBA supervisor must meet with and observe the CBAA supervisee on a regular basis to review the implementation of treatment plans and to foster the CBAA supervisee's professional development. The amount and type of supervision provided should be based on the ability level and clinical experience of the CBAA and the setting in which they are providing the services. In addition, the supervisor should periodically assess each patient's/client's progress, and review and sign treatment notes and reports prepared by the CBAA. Please access the website identified above for additional information related to supervision requirements.

**Question #6: What qualified personnel (QP) can provide speech-language pathology services in the Early Intervention Program (EIP)?**

Answer: At this time, speech-language pathology services are provided by NYS licensed and registered speech-language pathologist; who are acting within their scope of practice of their profession.

Although the Medicaid State Plan Amendment #18-0039 includes the use of Teacher of the Speech and Hearing Handicapped (TSHH) and Teacher of Students with Speech and Language Disabilities (TSSLD) to deliver speech services under the direction of a licensed speech-language pathologist, this practice is currently prohibited by NYS Education Law.

Teachers who hold the certification of TSHH and TSSLD can currently provide special instruction services, evaluations, screenings, non-physician supplemental evals – special instruction. See QP Matrix for specific services.

**Question #7: How does an agency determine if an individual is qualified to provide service coordination (SC) services?**

Answer: Per EI regulation 69-4.4, to become a service coordinator, at least one of the following education or service coordination experience qualifications listed below must be met:

- Two years' experience in service coordination activities as delineated in the Early Intervention Program (EIP) regulations (voluntary or part-time experience which can be verified will be accepted on a pro rata basis); or
- One year of service coordination experience and an additional year of experience in a service setting with infants and toddlers with developmental delays or disabilities; or
- One year of service coordination experience and an associate degree in a health or human service field;
- A bachelor's degree in a health or human service field; or
- A license, certification, or registration in one of the professions listed in section 69-4.1(al).

In addition to the above, the candidate must also have demonstrated knowledge and understanding in the following areas:

- Infants and toddlers who are eligible for early intervention services;
- State and federal laws and regulations pertaining to the Early Intervention Program
- Principles of family-centered services;
- The nature and scope of services available under the Early Intervention Program and the system of payments for services in the State; and
- Other pertinent information.

It is the responsibility of the hiring agency to ensure that adequate documentation of the individual's experience, education, and knowledge is present and that the individual meets the criteria outlined in EIP regulation. In reviewing the applicant's resume, you should find that the potential employee meets at least one of the education requirements and has the required knowledge and understanding in the areas outlined below in early intervention (EI) regulation. While the applicant may have a bachelor's degree in a health field, they must also demonstrate knowledge and understanding of the EIP, children with special needs, and advocacy or service coordination activities. This can include having experience providing service coordination, being the parent of a child who participated in the EIP or having experience advocating for children with special needs.

The potential employer should verify all experience listed on the resume and ensure that the individual can handle potentially large caseloads and efficiently and effectively work directly with families, some of whom may require significantly high levels of assistance. The Department anticipates a range in caseloads from 25 to 60 families per one full-time equivalent service coordinator with an average caseload of about 35.

The Department has developed a document titled *Qualifications of Early Intervention Program Service Coordinators* to assist agencies with the collection of education and experience information for a service coordinator candidate. Agencies must retain documentation which demonstrates that the individual hired meets the regulatory criteria as a service coordinator. This document (if completed) along with any supporting documentation must be retained by the agency and made available for any monitoring activities.

**Question #8: If Licensed Clinical Social Workers (LCSWs) or Licensed Master Social Workers (LMSWs), under the supervision, are conducting a supplemental evaluation, how is it authorized in the EI-Hub?**

Answer: Supplemental evaluations conducted by a LCSW or LMSW, under supervision, can be authorized as non-physician supplemental social work or non-physician supplemental psych. See QP MATRIX for exact service model and service types/method combinations.

**Under the Direction of (UDO) / Under the Supervision of (USO):**

**Question #9: Are there restrictions to the services a physical therapy assistant (PTA) can provide in the Early Intervention Program (EIP)?**

Answer: At this time, a PTA can only provide services while directly employed by an approved early intervention agency under agreement with the Department and are limited to delivering services where on-site supervision can be provided by a physical therapist licensed in New York by the State Education Department. This means that a PTA cannot provide EIP services in a child's home or in a community setting. According to Education Law, the duties of a PTA cannot include evaluation, testing, interpretation, planning or modification of patient programs (IFSPs). Additional information about PTA supervision requirements can be found here:  
<https://www.op.nysed.gov/professions/physical-therapist-assistants/practice-alerts/supervision-of-physical-therapist-assistant>.

**Question #10: Are there specific requirements for supervisors of occupational therapy assistants (OTAs)?**

Answer: The early intervention (EI) agency is responsible for the EI supervision of the OTA; the supervising occupational therapist (OT) must be a direct employee of the EI agency and cannot be a contractor for the agency. When providing occupational therapy services utilizing an OTA the agency must comply with NYS Education Law, Rules, and Regulations §76.8, Supervision of occupational therapy assistant. This section also requires a limit on the number of OTAs which an OT may supervise. This section states "In no event shall the occupational therapist or licensed physician supervise more than five occupational therapy assistants, or its full time equivalent, provided that the total number of occupational therapy assistants being supervised by a single occupational therapist or licensed physician shall not exceed ten." NYS Education Law, Rules and Regulations §76.8, Supervision of occupational therapy assistant and additional information related to supervision requirements can be found at the New York State Education Department (NYSED) Office of Professions website at [NYS Occupational Therapy: Practice Guidelines \(nysed.gov\)](https://www.op.nysed.gov/professions/occupational-therapists/practice-alerts/supervision-of-occupational-therapist)

**Question #11: In the Early Intervention Program (EIP), occupational therapy assistants (OTAs), physical therapy assistants (PTAs), certified behavior analyst assistants (CBAAAs), and licensed practical nurses (LPNs) may deliver services under the direction of appropriately licensed qualified professional. What requirements must be met when qualified personnel (QP) is working Under the Direction Of (UDO) a licensed professional?**

Answer: "Under the Direction of" means that the qualified therapist:

- Sees the participant at the beginning of and periodically during the course of treatment.
- Is familiar with the treatment plan as recommended by the referring physician or other licensed practitioner of the healing arts practicing under State law.
- Has continued involvement in the care provided and reviews the need for continued services throughout treatment.
- Assumes professional responsibility for the services provided under his or her direction and monitors the need for continued services.
- Spends as much time as necessary directly supervising services to ensure beneficiaries are receiving services in a safe and efficient manner in accordance with acceptable standards and practice.

- Ensures that individuals working under his or her direction have contact information to permit him or her direct contact with the supervising therapist as necessary during the course of treatment.
- Keeps documentation supporting the supervision of services and ongoing involvement in the treatment.

**Question #12: In the Early Intervention Program (EIP), Licensed Master Social Workers (LMSWs) may provide clinical social work services “under the supervision of” (USO) a Licensed Clinical Social Worker (LCSW), Licensed Psychologist, and Licensed Psychiatrist. What does the supervision of the clinical social work services provided by a LMSW consist of?**

Answer: The supervision of the clinical social work services provided by a LMSW consists of contact between the LMSW and supervisor during which;

- The LMSW apprises the supervisor of the diagnosis and treatment of each client.
- The LMSW’s cases are discussed.
- The supervisor provides the LMSW with oversight and guidance in diagnosing and treating clients.
- The supervisor regularly reviews and evaluates the professional work of the LMSW.
- The supervisor provides at least two (2) hours per month of in-person individual or group clinical supervision. Face-to-face supervision may utilize technology acceptable to the Department, including secure video conferencing to protect confidentiality.

Supervision requirements can be located at: <https://www.op.nysed.gov/professions/social-work/using-and-providing-supervision>

The EIP billing provider must be able to produce evidence of having met supervision requirements at the time of monitoring and/or audit.

**Question #13: Who can act in the supervisor role for a Licensed Master Social Worker (LMSW) who is providing clinical social work services?**

Answer: The supervision shall be provided by a New York State licensed and registered psychiatrist, psychologist, or Licensed Clinical Social Worker (LCSW). The supervisor is responsible for maintaining records of the client contact hours in diagnosis, psychotherapy and assessment-based treatment planning and supervision hours provided to the qualified individual.

**Question #14: Can individuals completing their 36 weeks of supervised experience as required for licensure in New York State (NYS) and for certification by the American Speech-Language-Hearing Association (ASHA) provide Early Intervention (EI) services?**

Answer: Yes, the New York State Department of Health and the New York State Education Department (NYSED) Office of the Professions have determined that it is appropriate to recognize individuals who are completing their 36 weeks of supervised experience requirement

for NYS licensure in speech-language pathology, as qualified early EI personnel for a limited period under certain conditions.

To be licensed as a speech-language pathologist in New York State, a candidate must complete 36 weeks of supervised work experience. The same supervised work experience is required to obtain a Certificate of Clinical Competence issued by the AHSA. This supervised work experience is also known as a Clinical Fellowship Year (CFY). Certification by ASHA is not a requirement for licensure as a speech-language pathologist (SLP) in New York State, nor is it a requirement to provide EI services. However, it is quite common for an individual to simultaneously complete the requirements for both state licensure and ASHA certification. General information about Certification by ASHA can be found at: <https://www.asha.org/certification/aboutcertificationgeninfo/>.

The EIP's requirements for supervision of individuals who are completing their supervised experience for licensure as an SLP are in accordance with NYSED regulations and practice guidelines. Information regarding the supervision of individuals completing their experience requirement can be found on the NYSED, Office of the Professions website at: [Supervision of Individuals Completing their Experience Requirement | Office of the Professions \(nysed.gov\)](https://www.nysed.gov/office-of-the-professions/supervision-of-individuals-completing-their-experience-requirement). You can also contact the State Board for Speech-Language Pathology at (518) 474-3817 (extension 100), or [speechbd@nysed.gov](mailto:speechbd@nysed.gov). Information about AHSA Clinical Fellow Mentor qualifications and mentoring responsibilities can be found on the ASHA website at: <https://www.asha.org/certification/clinical-fellowship/>.

Individuals who are in the process of completing their 36 weeks of supervised experience may provide speech-language pathology services in the EIP as an employee only. They cannot work as independent contractors. These individuals must be supervised by a NYS licensed speech language pathologist. The individual can provide services in the home without the presence of the supervising speech-language pathologist if their agreed upon supervision plan is being followed.

#### Documentation Requirements:

An individual in the process of completing the 36 weeks of supervised experience to satisfy the requirements as a New York State licensed speech-language pathologist must provide a Notice of Approval (or "Form 6") issued by the State Board for Speech Pathology as verification to the employer. A Form 6 is issued to the individual after NYSED received documentation that the candidate has met educational requirements and the proposed supervisory plan has been approved by NYSED's State Board for Speech Language Pathology. The individual should maintain a copy of the Form 6, documentation identifying the NYS licensed speech-language pathologist who will provide their supervision, and the supervisory plan approved by the NY State Board for Speech-Language Pathology.

For the purposes of the EIP, all supervision and documentation requirements must be met, and the supervising licensed speech-language pathologist must cosign the "supervisee's" evaluation reports and session notes.

When an individual completing their supervised experience requirement for licensure or ASHA certification is providing services as a SLP, the child's IFSP should detail the speech-language pathology services necessary to meet the unique strengths and needs of the child. The IFSP

must include the name and license number of the supervising licensed SLP in addition to the provider rendering the EIP service.

The agency should refer to their Provider Agreement with the Department of Health, section IV. L. for additional requirements.

**Question #15: How would the individualized family service plan (IFSP) document reflect services provided by someone who works “under the direction/under the supervision of”?**

Answer: To avoid confusion or future disagreement, when supervision is required for an individual providing certain early intervention (EI) services the IFSP must include the name and license number of the supervising practitioner and identity of the physical therapy assistance (PTA), occupational therapy assistant (OTA), certified behavior analyst assistant (CBAA), or Speech Language Pathology (CFY) who delivers the services.

### **Internships in the Early Intervention Program (EIP)**

**Question #16: Are interns allowed to deliver services in the Early Intervention Program (EIP)?**

Answer: A student/intern may engage in the supervised practice of the licensed profession as part of an internship for:

- Physical therapy
- Occupational therapy
- Speech-language pathology
- Audiology
- Psychology
- Social Work
- Mental Health Practitioners
- Applied Behavior Analysis (LBA or CBAA)
- Teachers with internship, supplementary, or conditional initial certifications

The following criteria must be met to utilize interns:

1. The EIP agency is legally authorized to provide the professional services.
2. There is an affiliation agreement between the EIP agency and the education program that is registered by State Education Department and authorized to award a bachelor's or master's degree for the profession.
3. The student/intern is enrolled in the registered program and the internship is part of the required field work component of the education program.
4. The student is supervised by an individual who is licensed and authorized to practice the profession, and who is responsible for all services provided by the student.

Supervision of a student/intern includes at minimum the following:

1. Supervising practitioners must ensure that individuals working under their direction have contact information to permit them direct contact with the supervising practitioner as necessary, during the course of treatment.

2. Supervising practitioners must assume professional responsibility for the services provided under his or her direction and monitor the need for continued services.
3. Professional responsibility implicitly supports face-to-face contact by the qualified practitioner; thus, practitioners must spend as much time as necessary directly; supervising services to ensure beneficiaries are receiving services in a safe & efficient manner in accordance with accepted standards of practice.
4. Employment terms should provide supervisory ratios that are reasonable and ethical and in keeping with professional practice acts to permit the supervising practitioner to adequately fulfill supervisory obligations and ensure quality care.
5. Supervising practitioners must review and co-sign daily notes, periodic progress reports, and evaluation reports required by the EIP.

Note: The intern, supervisor, and agency who is utilizing the intern must be knowledgeable about the Educational Program's requirements for supervision and comply with these requirements. There may be requirements that are in addition to the above.

Additional early intervention program responsibilities:

1. EIP agency must notify the municipality, service coordinator, and parent that the agency intends to have a student/intern provide EIP services under the supervision of a licensed practitioner.
2. EIP agency must provide the municipality, service coordinator, and parent written documentation of how the supervising practitioner will assume professional responsibility for the services provided under his or her direction and how the need for continued services will be monitored.
3. EIP agency must receive an affirmative response from all parties (municipality, service coordinator and parent) prior to the provision of services by a student/intern.
4. Municipality must ensure that the IFSP include the name and license number of the supervising practitioner and identity of the student/intern.
5. The student/intern must obtain an appropriate national provider identification (NPI) number.

**Question #17: Are there additional requirements for social work interns?**

Answer: NYS Medicaid has additional requirements for reimbursement of services delivered by a social work intern. The Medicaid Reimbursement is available when individual or group therapy is being provided under the direct, face-to-face supervision of a NYS licensed and currently registered practitioner acting within their scope of practice. To be Medicaid reimbursable, a session involving a student intern must be conducted with the licensed clinician in continuous attendance with the student intern and the member receiving the service. In addition, the qualified practitioner must be guiding the student intern in service delivery and cannot be engaged in treating another member, supervising another student intern, or doing other tasks at the same time. The qualified practitioner is responsible for the services that are furnished to the member, including writing a session note that reflects the service that was delivered, and signing all documentation. It is permissible, but not necessary, for the student intern to sign the session note. A separate note may be written by the student intern for educational purposes. The Early Intervention Program (EIP) must comply with Medicaid billing requirements for social work interns working within the EIP.

**Question #18: Are there specific requirements for teachers to intern in the Early Intervention Program (EIP)?**

Answer: The Department and the New York State Education Department (SED) have determined that only those State-approved EI agency providers that are also approved by NYSED under Section 4410 of the Education Law can employ individuals with either internship, supplementary, or conditional initial certificates to provide EIP services. Early Intervention (EI) agencies must permit supervising teachers to adequately fulfill their supervisory obligations and ensure quality care; the agency must allow for supervisory ratios that are in keeping with recognized teaching practices and allow the time required to appropriately supervise candidates who have not yet met the requirements for initial teaching certificates.

The following conditions also apply:

- Corporate entity must own and operate both the early intervention provider agency and the 4410 program.
- EI agency and 4410 entity must be identified by the same employer tax identification number.
- Teachers can provide EIP services on-site at the school operated by the 4410 entity where the individual is supervised by a certified teacher while providing these services, as approved by SED.
- Teachers can provide EIP services in a home-based setting where the individual is under the direct, on-site supervision and oversight of a certified teacher.
- Supervising teachers must meet the definition of qualified personnel in the EIP.
- Supervising teachers must assume professional responsibility for the services provided under his or her direction and monitor the need for continued services.
- Supervising teachers must spend as much time as necessary directly supervising services to ensure children/families are receiving services in a safe and efficient manner, in accordance with accepted standards of practice.
- Supervising teachers must review and co-sign daily notes, periodic progress reports, and evaluation reports required by the EIP.

**Question #19: Can an approved individual with an appendix agreement have interns providing Early Intervention Program (EIP) services under their individual approval?**

Answer: An 'individual/independent' provider cannot have another individual render/provide Early Intervention (EI) services on their behalf. Therefore, the individual/independent provider cannot have anyone including an intern/student provide the EI services on behalf of the individual/independent provider or under the supervision of the licensed/certified professional.

An individual completing a field practicum can observe/shadow a licensed/certified rendering provider as they deliver services, interact with the children/families/other providers, and attend the IFSP (with a family's permission)/team meetings. The individuals/independents who will have or might have intern/students observing should fully inform parents and obtain their consent prior to including the intern/student as observers of EI services. An amendment to the IFSP is not required.

Students/interns can render services to EIP children if they are completing their internship through an EIP approved agency. A student interested in completing their internship in the EIP can locate agencies in the area that they would like to work by utilizing the Central Directory of Early Intervention Services and Resources located on the NYS Department of Health Early Intervention Program website

([https://www.health.ny.gov/community/infants\\_children/early\\_intervention/service\\_providers/](https://www.health.ny.gov/community/infants_children/early_intervention/service_providers/)).

This directory will provide the student with the contact information of approved agencies, the service areas that the agency provides services in, and the professional discipline/qualified personnel that they have on staff.

### **General Supervision**

**Question #20: How would an Early Intervention Program (EIP) agency know what supervision is needed for each profession?**

Answer: EIP agencies who are utilizing individuals who require supervision are required to ensure that they are knowledgeable about supervision requirements for each profession and that they are providing the required supervision. Agencies should verify the appropriate supervision requirements with the SED/Office of Professions or Teaching Initiatives Office. In addition, the provider must maintain documentation identifying the appropriately certified or licensed qualified personnel who is providing the supervision, as well as the terms of supervision. The provider should also notify the municipality, service coordinator, and parent that the EIP services are being provided under supervision of a licensed or certified professional.

### **Limited Permits and Restrictions of Licenses**

**Question #21: Can individuals with a NYS issued limited permit provide Early Intervention Program (EIP) services?**

Answer: No, individuals with limited permits are not considered QP under the current Early and Periodic Screening, Diagnosis and Treatment (EPSDT) EI Medicaid State Plan amendment (SPA) #18-0039 and cannot provide EIP services. The most common limited permits are found in the fields of nursing, physical therapy, social work, and occupational therapy. EI provider agencies must monitor to ensure that individuals that have a “limited permit” are not working in the EIP.

**Question #22: Can an individual who has a “stayed” professional license provide Early Intervention Program (EIP) services.**

Answer: Approved EIP providers are required to notify the Department within two (2) days of any action taken against their license. Agencies must ensure their employees’ licenses are valid. If an individual has an action taken against their professional license, the individual must notify their employer. Additionally, the billing provider is responsible for notifying the Department (Provider Approval, Due Process, and Monitoring Unit) of any action taken against the license of their employee or contractor.

In New York State, professional misconduct in all professions – except that by physicians, physician assistants and specialist assistants, which is investigated and prosecuted by the Office of Professional Medical Conduct (OPMC) of the Department of Health – is investigated and prosecuted by the New York State Education Department's Office of the Professions. The Board of Regents, which also has responsibility for licensure in all the professions, is responsible for the final disposition of all disciplinary matters except those handled by OPMC. Summary information of disciplinary actions taken against licensees by the Board of Regents in New York State since January 1, 1994, can be found at <https://www.op.nysed.gov/enforcement/enforcement-actions>.

### **Scope of Practice**

**Question #23: What should I do if I identify that an individual is practicing beyond the scope permitted by law, practicing outside of their area of competence, or without appropriate supervision when supervision is required?**

Answer: All Early Intervention Program (EIP) providers are required to practice within the scope of their profession and within the scope of their competency. Questions regarding what is in a professional's scope of practice should be directed to the NYS Office of Professions for their prospective profession. If an individual is practicing beyond the scope permitted by law, practicing outside of their area of competence, or without appropriate supervision when supervision is required should be reported to the appropriate office responsible for oversight of that profession. The NYS Office of Professions website (<http://www.op.nysed.gov/prof/>) includes the contact information for each licensed profession where questions or concerns about a provider can be directed.

**Question #24: Can an Occupational Therapy Assistant (OTA) perform evaluations?**

Answer: OTAs are only allowed to provide evaluations if competent to do so and under the direction of a licensed occupational therapist. Competence is based on the application of knowledge, performance skills, interpersonal abilities, critical reasoning skills and ethical reasoning skills, as demonstrated in the performance of one's professional role(s). It is the responsibility of the professional to limit their practice to areas in which they have been trained and educated, and with which they are familiar and competent. A professional's scope of competence changes over time. They may, in fact, lose some areas of competence as they acquire others. It is the professional and ethical responsibility of each professional to know and respect their limits. Ongoing training and education will allow one to expand the depth and breadth of their practice, within the statutory confines of the definition of the profession. The NYS Office of Professions website (<https://www.op.nysed.gov/professions/occupational-therapy-assistants/frequently-asked-questions>) includes frequently asked questions of occupational therapy assistants.

### **Quality Assurance Plans and Quality Assurance Professionals**

**Question #25: Who is qualified to serve as a Quality Assurance Professional for an Early Intervention (EI) agency?**

Answer: Approved EIP providers must ensure that they are providing quality EIP services which meet all federal and state laws, regulatory requirements, and EIP developed standards and guidance. Approved EIP agency providers are required to have a comprehensive quality assurance plan that is approved by the Department for all services offered by the agency, including evaluations, early intervention services, and service coordination. Agencies differ in organizational structure, staffing, size, and service delivery. Each agency's quality assurance plan must be appropriate to the agency, implementable, and available for review upon monitoring. The quality assurance plan shall include, but not be limited to, ensuring qualified personnel have appropriate and current licensure, registration, and certification as applicable; ensuring continuing education and training requirements are met; and addressing how the agency will ensure that all documentation requirements to support billing and claiming for early intervention services are met.

#### Quality Assurance Plan Oversight

EIP approved agencies must employ a full-time agency program director who meets qualifications identified in 10 NYCRR § 69-4.5. The agency program director shall be responsible for developing a quality assurance plan that is approved by the Department, for implementing such plan, and for monitoring that quality assurance requirements are met.

### **Employees vs. Contractors**

**Question #26: How does an agency know if it can contract with an individual qualified personnel (QP) for Early Intervention Program (EIP) services?**

Answer: Agencies may only contract (report income using Internal Revenue Service Form 1099) with individuals who are approved (have a State ID) and have a current (unexpired) Agreement with the Department. If an individual does not have Department approval or their Agreement with the Department has expired, the individual must be employed by the EIP agency. If a contractor has a change in their approval and/or agreement status, the agency must be informed by the contractor immediately. An agency can utilize the NYS Central Directory of Early Intervention Services and Resources to determine if an individual is approved by the Department and has a current Agreement. To avoid billing issues, agencies should monitor their contractor's approval to ensure there is not a change in their status. Additionally, provider agencies should periodically (monthly) review and update their agency roster of employees/contractors to ensure the roster and EIP data system has the most current license/certification and employee status.

### **Documentation Requirements in the Early Intervention Program**

**Question #27: What are the documentation requirements in the Early Intervention Program (EIP)?**

Answer: The New York State Department of Health, in its capacity as lead agency for the Early Intervention Program, is responsible for the general administration and supervision of municipalities and early intervention service providers, including the monitoring of all activities

necessary to implement all requirements under the federal Individuals with Disabilities Education Act (IDEA) and Title II-A of Article 25 of New York State Public Health Law (PHL). Comprehensive early intervention records are necessary to document requirements that apply to municipalities and early intervention service providers are met and to support payment for services by third party payors, localities, and the State. In addition, parents participating in the EIP have the right to access and amend early intervention records pertaining to their child and family. Documentation should be up-to-date and readily available at any time for review by the parent and appropriate federal, state, or local public agencies responsible for oversight of the EIP. Documentation requirements can be found in the following documents and resources:

- 10 NYCRR Subpart 69-4
- Early Intervention Program Memorandum 2003-1 Early Intervention Program Records
- NYS DOH Early Intervention Provider Agreement
- Early Intervention Qualified Providers and Required Documentation

The NYS Department of Health sponsored training titled “Early Intervention Program Records” is available online. Access the location of this training through NYS DOH EIP website at: [https://www.health.ny.gov/community/infants\\_children/early\\_intervention/index.htm](https://www.health.ny.gov/community/infants_children/early_intervention/index.htm).

**Question #28: What must be included in a session note?**

Answer: The following items must be included in an EIP session note:

- Recipient’s Name (child/parent/caregiver):
- Service Type Provided:
- Individual or Group (Group Size: \_\_\_\_\_):
- Setting Service Rendered:
- Date of Service:
- Session Start Time:
- Session End Time:
- Brief description (2-3 sentences) of recipient’s progress made by receiving the service during the session as related to outcome(s) contained in the Individualized Family Service Plan (IFSP):
- Rendering Provider Name:
- Rendering Provider Signature:
- Rendering Provider Title:
- Rendering Provider Credentials:
- Date Session Note Created:
- Supervising Clinician Signature (as applicable):
- Supervising Clinician Credentials:
- Date of Supervisor’s Signature:

Note: Supervising Clinician Signature and credentials (signature date must be within 45 days of the date of service)

**Question #29: What must be included in a service coordination note?**

Answer: the following items would be included in a service coordination note:

- Recipient's Name:
- Date of Service:
- Description of specific service coordination activity performed:
- Date of Contact:
- Contact Name:
- Start Time of Contact:
- End Time of Contact:
- Purpose of contact for providers or others contacted on behalf of the child and family as necessary to implement the IFSP:
- Service Coordinator Name:
- Service Coordinator Signature:
- Title (ISC or OSC):
- Date Note Created:

Note: All service coordination activities must be documented whether billable or not billable. If service coordination activity includes interactions on behalf of the child or family the above, contact information must be completed.

**Question #30: What documentation is needed to support Medicaid reimbursement for skilled nursing services and what information must be included in a Medication Administration Record (MAR)?**

Answer: In addition to documentation required for any Medicaid-covered service (e.g., written orders), session notes and/or Medication Administration Records are also needed to support Medicaid reimbursement for skilled nursing services.

The medication administration record (MAR) must include:

- Child's name
- Date of birth
- Medication name, dosage, and route and frequency or time of administration, and any instructions or conditions under which the medication is to be administered required for a prn medication
- Order start date
- Order expiration date
- Prescriber's name/telephone number
- Parent's name/telephone number is not required on an MAR as that information is in the student's cumulative health record
- Date, time, and dosage of medication administered
- Signature and title of the person administering medication along with initials since that is what will be in each box to confirm it was given if using paper.

Nursing personnel should maintain accurate records of the medication administered, any special circumstances related to the procedure, and the student's reactions/responses.

**Question #31: What must be included in a written order or recommendation for Early Intervention Program (EIP) services? Who is required to obtain and retain the written order for services?**

Answer: Where services require a physician's or nurse practitioner's order/script/prescription or a speech-language pathologist's recommendation in the case of speech-language therapy services, providers are required to have script to deliver those services. Providers must ensure that the script is in accordance with the written order or the recommendation for the service, and the frequency and duration, including any allowable make-ups, reflects what was agreed upon and written in the Individualized Family Service Plan (IFSP). There are no restrictions on who requests the written order/prescription but the providers (agency or individuals) who will be delivering the services to the child are responsible for ensuring that a written order/prescription or written recommendation, as applicable, is obtained prior to rendering the service, for any service that requires a written order. If the providers are from various agencies, or if agency and individual providers will be rendering services to a child, it is the responsibility of each of the providers to make sure they have a current written order in hand prior to rendering services to the child.

**Other:**

**Question #32: Can individuals who hold the Teachers of Students with Disabilities (SWD) (All Grades), provide services in the Early Intervention Program (EIP)?**

Answer: The New York State Early Intervention Program (EIP) does not recognize the new Students with Disabilities (All Grades) certificate. The New York State Education Department has stated that this certificate is only valid for pre-kindergarten through grade 12 and does not include Early Intervention. The Students with Disabilities (All Grades) certificate does not include ages 0-2 years due to the specialized knowledge and skills that are needed to teach this age group. This information was verified for accuracy with the New York State Education Department on October 15, 2024. In their response to this request, the New York State Education Department stated "In order to work with students Birth-grade 2, the teacher must have the Students with Disabilities B-2 certificate. The SWD All Grades certificate covers PreK-12."

**Question #33: Can an individual who is working in the United States on a H-1B visa deliver Early Intervention Program (EIP) services?**

Answer: H-1B visas are nonimmigrant classifications used by individuals who will be employed temporarily in specialty occupations. Federal immigration law requires that individuals in the U.S. on H-1B visas be employed by the U.S. employers that petitioned the federal government for approval to hire the individuals and only in the H-1B activities described in the petition. If an EIP agency meets this requirement, their employee may deliver EIP services. The Department is not able to issue individual approvals to individuals who are in the U.S. on an H-1B visa.

**Question #34: Why does a service coordinator or certified teacher need a National Provider Identifier (NPI)?**

Answer: All NYS licensed providers, certified providers, service coordinators, and Early Intervention (EI) agencies are required to obtain a NPI to identify themselves. Claiming to Medicaid and the State must include NPI numbers for the agency, rendering therapist/service coordinator, and supervisor's NPI (if supervisor required).

An NPI is obtained by applying on-line at: <https://nppes.cms.hhs.gov>. Additional information can be found at the National Plan & Provider Enumeration System website, <https://nppes.cms.hhs.gov>.

Suggested Provider Taxonomy:

Profession	Individual Provider Type Code	Classification Name – Area of Specialization
Service Coordinators	17 Other Service Providers	171M00000X – Case Manager/Care Coordinator
Teachers	17 Other Service Providers	174400000X – Specialist
Other Licensed/Certified Providers	Select appropriate code	Select appropriate Specialization

For individuals – If a person has more than one license/certification: After selecting first Individual Provider Type Code and Classification Name – Area of Specialization click Save & Add Another to associate additional codes to the same NPI.

**Question #35: Can an agency employ or contract with any qualified personnel (QP) that they want?**

Answer: The addition of NYS licensed professions depends on the business structure of the agency. All early intervention (EI) agencies must comply with SED rules and regulations for the practice of the licensed professions. When providing EI services, agencies proposing to utilize the services of professionals licensed through the State Education Department Office of Professions (SED OP) must either already meet the corporate practice of the professions requirements or be eligible to apply for a SED waiver of corporate practice restrictions. Section 6503-b of the Education Law authorizes the State Education Department to issue waivers to special education schools and early intervention agencies to enable them to employ licensed professionals or contract with licensees or professional business entities to provide certain professional services to children in need of their services. Education law sets the requirements to be met by a qualified entity to receive a waiver. Information regarding Waivers from Corporate Practice can be found at the following website:

<https://www.op.nysed.gov/waivers/application-waiver> . Additional questions and answers related to the waiver process at <https://www.op.nysed.gov/waivers/faqs-waivers>. Questions specific to this process should be sent to [6503ABWAIVERS@nysed.gov](mailto:6503ABWAIVERS@nysed.gov).