



# OMIG AUDIT PROTOCOL

## Early Intervention Program

(For Services 04/06/16 through 10/18/21)

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Audit protocols assist the Medicaid provider community in developing programs to evaluate compliance with Medicaid requirements under federal and state statutory and regulatory law. Audit protocols are intended solely as guidance in this effort. This guidance does not constitute rulemaking by the New York State Office of the Medicaid Inspector General (OMIG) and may not be relied on to create a substantive or procedural right or benefit enforceable, at law or in equity, by any person. Furthermore, nothing in the audit protocols alters any statutory or regulatory requirement and the absence of any statutory or regulatory requirement from a protocol does not preclude OMIG from enforcing the requirement. In the event of a conflict between statements in the protocols and either statutory or regulatory requirements, the requirements of the statutes and regulations govern.

A Medicaid provider's legal obligations are determined by the applicable federal and state statutory and regulatory law. Audit protocols do not encompass all the current requirements for payment of Medicaid claims for a particular category of service or provider type and, therefore, are not a substitute for a review of the statutory and regulatory law. OMIG cannot provide individual advice or counseling, whether medical, legal, or otherwise. If you are seeking specific advice or counseling, you should contact an attorney, a licensed practitioner or professional, a social services agency representative, or an organization in your local community.

Audit protocols are applied to a specific provider type or category of service in the course of an audit and involve OMIG's application of articulated Medicaid agency policy and the exercise of agency discretion. Audit protocols are used as a guide in the course of an audit to evaluate a provider's compliance with Medicaid requirements and to determine the propriety of Medicaid expended funds. In this effort, OMIG will review and consider any relevant contemporaneous documentation maintained and available in the provider's records to substantiate a claim.

OMIG, consistent with state and federal law, can pursue civil and administrative enforcement actions against any individual or entity that engages in fraud, abuse, or illegal or improper acts or unacceptable practices perpetrated within the medical assistance program. Furthermore, audit protocols do not limit or diminish OMIG's authority to recover improperly expended Medicaid funds and OMIG may amend audit protocols as necessary to address identified issues of non-compliance. Additional reasons for amending protocols include, but are not limited to, responding to a hearing decision, litigation decision, or statutory or regulatory change.

# OMIG AUDIT PROTOCOL

## Early Intervention Program

<b>1.</b>	<b>Missing Recipient Record</b>
<b>OMIG Audit Criteria</b>	If the record is not available for review, claims for all dates of service associated with the patient record will be disallowed.
<b>Regulatory References</b>	10 NYCRR § 69-4.26(b) 10 NYCRR § 69-4.26(e) 18 NYCRR § 504.3(a),(e),(h), and (i) 18 NYCRR § 540.7(a)(8) <b>For Services 12/05/18 through 10/18/21:</b> 10 NYCRR § 69-4.1(am) 10 NYCRR § 69-4.12(a) and (b) <b>For Services 06/02/10 through 12/04/18:</b> 10 NYCRR § 69-4.1(al) 10 NYCRR § 69-4.12(a)(3) and (4)

<b>2.</b>	<b>Missing Written Order / Authorization</b>
<b>OMIG Audit Criteria</b>	A qualified professional is a physician, registered nurse, nurse practitioner, physical therapist, occupational therapist, or speech pathologist. If no written order or recommendation is found covering the services and an order or recommendation is required, the claim will be disallowed.
<b>Regulatory References</b>	10 NYCRR § 69-4.11(a)(10)(ii) 10 NYCRR § 69-4.26(b)(1),(6),(8),(9) and (11) 18 NYCRR § 505.11(a) 18 NYCRR § 505.11(c)(1)(iv) Early Intervention Program Guidance Document, Individualized Family Service Plans, Revised: February 2017 Early Intervention Program Memorandum 2003-1, Early Intervention Program Records Early Intervention Memorandum 95-2 (reissued January 2000) <b>For Services 12/05/18-10/18/21:</b> 10 NYCRR § 69-4.12(a) and (b)(4)(i)

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# OMIG AUDIT PROTOCOL

## Early Intervention Program

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<b>3.</b>	<b>Missing Multidisciplinary Evaluation</b>
<b>OMIG Audit Criteria</b>	A Multidisciplinary Evaluation is required to determine eligibility for the Early Intervention Program. If no MDE is found covering the services, the claim will be disallowed.
<b>Regulatory References</b>	10 NYCRR § 69-4.23(b)(1) and (2) 10 NYCRR § 69-4.26(b)(9) NY Public Health Law § 2541(9) NY Public Health Law § 2544(1)-(3) Early Intervention Program Memorandum 2005-02, II. Multidisciplinary Evaluation Procedures Early Intervention Program Memorandum 2005-02, IV. Reimbursement Mechanisms for Screening and Evaluation <b>For Services 12/05/18-10/18/21:</b> 10 NYCRR § 69-4.1(o) 10 NYCRR § 69-4.8(b) 10 NYCRR § 69-4.12(a) and (b)(4)(i) <b>For Services 06/02/10-12/04/18:</b> 10 NYCRR § 69-4.1(n) 10 NYCRR § 69-4.8(a)(2)(i)(b)

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# OMIG AUDIT PROTOCOL

## Early Intervention Program

<b>4.</b>	<b>Multidisciplinary Evaluation Does Not Meet Required Standards</b>
<b>OMIG Audit Criteria</b>	<p>When a Multidisciplinary Evaluation is billed and the MDE is missing required elements, the claim will be disallowed. The required information includes:</p> <ul style="list-style-type: none"> <li>• A parent interview about the family's resources, priorities, and concerns related to the child</li> <li>• A review of the child's related health records and medical history</li> <li>• An evaluation of the child's level of cognitive functioning</li> <li>• An evaluation of the child's level of physical functioning, including a health assessment</li> <li>• An evaluation of the child's level of vision and hearing functioning</li> <li>• An evaluation of the child's level of communication functioning</li> <li>• An evaluation of the child's level of social or emotional functioning</li> <li>• An evaluation of the child's level of adaptive functioning</li> <li>• A review of findings from current exams/evaluations/assessments</li> <li>• An assessment of the needs of the child in each developmental domain</li> <li>• Services needed to meet the needs of the child</li> <li>• An evaluation of transportation needs of the child</li> </ul>
<b>Regulatory References</b>	<p>10 NYCRR § 69-4.30(c)(2)(i) and (ii)  10 NYCRR § 69-4.30(c)(2)(iii)(a) and (b)  NY Public Health Law § 2544(3)-(7)  Early Intervention Program Memorandum 2005-02, II. Multidisciplinary Evaluation Procedures  Early Intervention Program Memorandum 2005-02, IV. Reimbursement Mechanisms for Screening and Evaluation  <b>For Services 12/05/18-10/18/21:</b>  10 NYCRR § 69-4.8(e) and (f)  <b>For Services 06/02/10-12/04/18:</b>  10 NYCRR § 69-4.8(a)(3) and (4)</p>

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# OMIG AUDIT PROTOCOL

## Early Intervention Program

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<b>5.</b>	<b>Missing Individualized Family Service Plan (IFSP)</b>
<b>OMIG Audit Criteria</b>	The review of the IFSP is conducted every six months or more frequently if conditions warrant. If services are provided prior to the beginning date of the IFSP, or after termination of the IFSP, the claim will be disallowed without written exception from the early intervention official.
<b>Regulatory References</b>	10 NYCRR § 69-4.11(a)(10)(v) and (v)(d) 10 NYCRR § 69-4.26(b) and (b)(5) NY Public Health Law § 2545(1) and (2) Early Intervention Program Memorandum 2003-1, Early Intervention Program Records Early Intervention Memorandum 95-2 (reissued January 2000) Early Intervention Program Memorandum 94-4, Service Coordination (reissued January 2000) Early Intervention Program Memorandum 1993-2, Medicaid Billing <b>For Services 12/05/18-10/18/21:</b> 10 NYCRR § 69-4.12(a), (b)(3), and (4)(i) <b>For Services 06/02/10-12/04/18:</b> 10 NYCRR § 69-4.12(a)(3) and (4)(i)

<b>6.</b>	<b>Services Rendered are Not Authorized on the IFSP</b>
<b>OMIG Audit Criteria</b>	If the service(s) duration was less than what was authorized in the IFSP without a documented valid reason or prior authorization, the claim will be disallowed. If the claim is for service(s) that were provided beyond the allowed amount of visits per day per discipline without obtaining prior authorization from the early intervention official, the claim will be disallowed.
<b>Regulatory References</b>	10 NYCRR § 69-4.9(g)(1), (2), and (5) 10 NYCRR § 69-4.11(a)(10)(v) NY Public Health Law § 2545(2)(d)-(f) Early Intervention Program Guidance Document, Individualized Family Services Plans, Revised: February 2017 Early Intervention Program Guidance Document, The Transition of Children from The New York State Department of Health Early Intervention Program to The State Education Department Preschool Special Education Program or Other Early Childhood Services, February 2005 Early Intervention Memorandum 95-2 (reissued January 2000)

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# OMIG AUDIT PROTOCOL

## Early Intervention Program

<b>7.</b>	<b>Missing Transition Plan</b>
<b>OMIG Audit Criteria</b>	If there is no documentation of a transition plan, the claim will be disallowed.
<b>Regulatory References</b>	NY Public Health Law § 2545(2)(j) NY Public Health Law § 2548 10 NYCRR § 69-4.20(a) Early Intervention Program Guidance Document, The Transition of Children from The New York State Department of Health Early Intervention Program to The State Education Department Preschool Special Education Program or Other Early Childhood Services, February 2005 <b>For Services 12/05/18-10/18/21:</b> 10 NYCRR § 69-4.12(a) and (b)(4)(i) <b>For Services 11/30/16-10/18/21</b> 10 NYCRR § 69-4.11(a)(10)(xiii)(a) <b>For Services 01/01/13-11/29/16</b> 10 NYCRR § 69-4.11(a)(10)(xii) and (xiii)(a)
<b>8.</b>	<b>Missing Parental Consent</b>
<b>OMIG Audit Criteria</b>	If a signed parental consent is missing, the claim will be disallowed.
<b>Regulatory References</b>	10 NYCRR § 69-4.9(f)(1) 10 NYCRR § 69-4.26(b)(2) and (3) Early Intervention Program Memorandum 2003-1 Early Intervention Program Records Early Intervention Memorandum 95-2 (reissued January 2000)
<b>9.</b>	<b>Missing Documentation of Service</b>
<b>OMIG Audit Criteria</b>	The service must be documented in the record. If there is no service documentation the claim will be disallowed.
<b>Regulatory References</b>	10 NYCRR § 69-4.26(b)(10) and (13) 10 NYCRR § 69-4.9(g)(6) and (7) Early Intervention Program Memorandum 2003-1 Early Intervention Program Records <b>For Services 12/05/18-10/18/21:</b> 10 NYCRR § 69-4.26(c)(1) and (3)-(5) <b>For Services 06/02/10 through 12/04/18:</b> 10 NYCRR § 69-4.26(c)

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# OMIG AUDIT PROTOCOL

## Early Intervention Program

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<b>10.</b>	<b>Documentation of Service Does Not Meet Required Standards</b>
<b>OMIG Audit Criteria</b>	<p>If the documentation is missing required information or is inaccurate, the claim will be disallowed. The required information includes:</p> <ul style="list-style-type: none"> <li>The session note completed by qualified personnel</li> <li>The name of the recipient (child/parent/caregiver)</li> <li>The date of service</li> <li>The type of service provided</li> <li>The duration (length) of the session</li> <li>The recipient's progress made by receiving the service during the session in a brief description (2-3 sentences) related to the outcome contained in the IFSP</li> <li>The name of the person delivering the service</li> <li>The title of the person delivering the service</li> <li>The signature of the person delivering the service</li> <li>The date the session note was created</li> </ul> <p>If the session note was pre-signed by the person delivering the service the claim will be disallowed.</p>
<b>Regulatory References</b>	<p>10 NYCRR § 69-4.26(b)(1),(4),(7),(9),(10) and (13)          Early Intervention Program Memorandum 2003-1 Early Intervention Program Records          Early Intervention Program Memorandum 1993-2, Medicaid Billing          10 NYCRR § 69-4.24(a)(14)          10 NYCRR § 69-4.26(b)(12)  <b>For Services 12/05/18 through 10/18/21:</b>          10 NYCRR § 69-4.26(c)(1)  <b>For Services 06/02/10 through 12/04/18:</b>          10 NYCRR § 69-4.26(c)</p>

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# OMIG AUDIT PROTOCOL

## Early Intervention Program

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<b>11.</b>	<b>Documentation of Service Coordination Does Not Meet Required Standards</b>
<b>OMIG Audit Criteria</b>	<p>If the service delivered was for a non billable service such as training and conferences, supervisory conferences, team meetings, and administrative activities related to service coordination, the claim will be disallowed. If the documentation of service is missing required elements, the claim will be disallowed. The required information includes:</p> <ul style="list-style-type: none"> <li>• The service coordination note</li> <li>• The recipients name</li> <li>• The date of service</li> <li>• A description of the specific service coordination activity performed</li> <li>• The name of the contact</li> <li>• The date of contact</li> <li>• The purpose of contact</li> <li>• The start and end time of each contact</li> <li>• The name, title, and signature of the service coordinator</li> </ul>
<b>Regulatory References</b>	<p>10 NYCRR § 69-4.26(b)(1)  10 NYCRR § 69-4.26(d)  10 NYCRR § 69-4.30(b)  10 NYCRR § 69-4.30(c)(3)  Early Intervention Program Memorandum 94-4, Service Coordination  10 NYCRR § 69-4.6(c)</p> <p><b>For Services 12/08/16 through 10/18/21:</b>  Early Intervention Program Guidance Document  Standards and Procedures for Service Coordination Under the Early Intervention Program Revised December 2016</p> <p><b>For Services 04/06/16 through 10/18/21:</b>  Early Intervention Program Guidance Document  Billing for Initial and Ongoing Service Coordination Activities in the Early Intervention Program Revised April 2016, December 2020</p> <p><b>For Services 12/29/20 through 10/18/21:</b>  Early Intervention Program Guidance Document  Billing for Initial and Ongoing Service Coordination Activities in the Early Intervention Program Revised December 2020</p>

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# OMIG AUDIT PROTOCOL

## Early Intervention Program

<b>12.</b>	<b>Missing Parental Signature from Service Delivery Log</b>
<b>OMIG Audit Criteria</b>	If a service delivery log is missing parental signature, the claim will be disallowed.
<b>Regulatory References</b>	10 NYCRR § 69-4.26(b)(12) <b>For Services 12/05/18 through 10/18/21:</b> 10 NYCRR § 69-4.26(c)(1) <b>For Services 06/02/10 through 12/04/18:</b> 10 NYCRR § 69-4.26(c)
<b>13.</b>	<b>Services Rendered to Ineligible Child(ren)</b>
<b>OMIG Audit Criteria</b>	If the child is ineligible for Early Intervention services due to age on the date of service, or if the child is over three and does not have documentation of eligibility for special education pre-school services in the transition plan, the claim will be disallowed.
<b>Regulatory References</b>	NY Public Health Law § 2548 NY Public Health Law § 2541(8) Early Intervention Program Guidance Document, The Transition of Children from The New York State Department of Health Early Intervention Program to The State Education Department Preschool Special Education Program or Other Early Childhood Services, February 2005 <b>For Services 12/05/18 through 10/18/21:</b> 10 NYCRR § 69-4.1(n)(1) and (2) <b>For Services 06/02/10 through 12/04/18:</b> 10 NYCRR § 69-4.1(m)(1) and (2)
<b>14.</b>	<b>Billed for Early Intervention Services While Receiving Special Education Pre-K (Under Section 4410 of Education Law)</b>
<b>OMIG Audit Criteria</b>	If the child is receiving any services under Section 4410 of Education law, they are not eligible for Early Intervention services.
<b>Regulatory References</b>	NY Public Health Law § 2541(8)(b) Early Intervention Program Guidance Document, The Transition of Children from The New York State Department of Health Early Intervention Program to The State Education Department Preschool Special Education Program or Other Early Childhood Services, February 2005 18 NYCRR § 518.1(c) 18 NYCRR § 504.3(e),(h) and (i) <b>For Services 12/05/18 through 10/18/21:</b> 10 NYCRR § 69-4.1(n)(1)(iii) <b>For Services 06/02/10 through 12/04/18:</b> 10 NYCRR § 69-4.1(m)(1)(iii)

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# OMIG AUDIT PROTOCOL

## Early Intervention Program

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<b>15.</b>	<b>Incorrect Rate Code Billed</b>
<b>OMIG Audit Criteria</b>	If the incorrect rate code is billed, the claim will be disallowed.
<b>Regulatory References</b>	10 NYCRR § 69-4.30(c)(2)(i) and (ii) 10 NYCRR § 69-4.30(c)(2)(iii)(a) and (b) 10 NYCRR § 69-4.30(c)(5)-(12),(14) and (d)-(f) Early Intervention Program Guidance Document Billing for Initial and Ongoing Service Coordination Activities in the Early Intervention Program Revised April 2016, December 2020 BEI Guidance Letter on Co-Visits, March 31, 2006 Early Intervention Program Memorandum 2005-02 IV. Reimbursement Mechanisms for Screening and Evaluation 10 NYCRR § 69-4.30(c)(1) 10 NYCRR § 69-4.30(c)(3)
<b>16.</b>	<b>Missing Documentation of The Statewide Central Register of Child Abuse and Maltreatment (SCR) Personnel Verification</b>
<b>OMIG Audit Criteria</b>	If documentation of the Statewide Central Register of Child Abuse and Maltreatment (SCR) Personnel Verification is missing, the claim will be disallowed.
<b>Regulatory References</b>	10 NYCRR § 69-4.9(d)(1) and (3)(i) NY Social Services Law § 495(2) and (3) Early Intervention Program Memorandum 2001-1 <b>For Services 12/05/18-10/18/21:</b> 10 NYCRR § 69-4.12(a) and (b)(iii)

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# OMIG AUDIT PROTOCOL

## Early Intervention Program

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<b>17.</b>	<b>Services Provided by Unqualified Practitioner</b>
<b>OMIG Audit Criteria</b>	If the rendering provider did not meet the qualifications to provide the service, the claim will be disallowed. The qualified rendering provider must be a DOH approved Individual Billing Provider/Provider of Record or associated with a DOH approved Agency Billing Provider/Provider of Record as an employee, a contractor, or an employee of a subcontracting agency.
<b>Regulatory References</b>	10 NYCRR § 69-4.9(d)(2) 10 NYCRR § 69-4.26(b)(12) 18 NYCRR § 504.1(b) and (c) NY Public Health Law § 2541(15) Dear Colleague Letter – Clarification of Existing Policy for Contracted Early Intervention Providers, June 23, 2009 10 NYCRR § 69-4.5(f) <b>For Services 12/05/18 through 10/18/21:</b> 10 NYCRR § 69-4.1(a) 10 NYCRR § 69-4.12(a) and (b) <b>For Services 06/02/10 through 12/04/18:</b> 10 NYCRR § 69-4.1(ak) 10 NYCRR § 69-4.12(a)(3) and (4)
<b>18.</b>	<b>Services Provided by an Excluded Individual</b>
<b>OMIG Audit Criteria</b>	If the rendering provider is an excluded individual, the claim will be disallowed.
<b>Regulatory References</b>	18 NYCRR § 504.1(b) 18 NYCRR § 504.7(d)(1) 18 NYCRR § 515.5(a)-(c) and (e) NYS DOH Medicaid Update, April 2010 Vol. 26, No. 6

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