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**OAG 08-004**

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*Subject:* Eligibility of persons certified by the Education Professional Standards Board to qualify for Medicaid reimbursement for speech pathology services provided in public schools

*Requested by:* Anne E. Keating, Esq.  
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*Syllabus:* To be eligible for Medicaid reimbursement for speech pathology services under federal regulations, a provider must either be or work under the direction of a speech pathologist. A speech pathologist under federal regulations must have ASHA certification or its equivalent or have a master's degree in speech-language pathology and be in the process of acquiring the necessary work experience for such certification. The application of this standard to persons certified by the EPSB must be determined on a case-by-case basis.

*Statutes construed:* KRS 157.200(1), KRS 334A.020(4), KRS 334A.035

*Regulations construed:* 16 KAR 2:050, 201 KAR 17:027, 42 C.F.R. § 440.110

*OAG's cited:* OAG 74-384, OAG 87-34



### *Opinion of the Attorney General*

KRS 334A.030 mandates that persons engaged in the practice of speech-language pathology in the Commonwealth of Kentucky be licensed by the Kentucky Board of Speech Language Pathology and Audiology unless they are entitled to exemption from licensure under KRS 334A.040. OAG 74-384. In 1987, we opined that speech-language pathologists practicing exclusively in Kentucky's public schools were subject to this state licensure requirement under a 1986 enactment. OAG 87-34. This was changed in 1988, when the General Assembly enacted KRS 334A.035, subsection (3) of which provides that "any speech-language pathologist employed by the public schools shall apply for and maintain appropriate licensure." That provision, by its nonspecific language and in conjunction with KRS Chapter 161, allows for speech-language pathologists to be "licensed" for public-school-only practice by the Education Professional Standards Board ("EPSB").

The statutes governing the EPSB in this regard are written in terms of the certification (rather than "licensure") of "teachers of exceptional children/communication disorders." "Exceptional children" under KRS 157.200(1) includes, *inter alios*, persons under 21 years of age who require special educational programs or services due to speech or language impairment. "Speech or language impairment" is further defined in KRS 157.200(1)(c) as "a communication disorder ... that adversely affects educational performance." Teachers providing specially designed instruction for such pupils would be practicing speech pathology under the broad definition in KRS 334A.020(4):

"The practice of speech pathology" means the application of principles, methods, and procedures for the measurement, testing, audiometric screening, identification, appraisal, determination of prognosis, evaluation, consultation, remediation, counseling, *instruction*, and research related to the development and disorders of speech, voice, verbal and written language, cognition/ communication, or oral and pharyngeal sensori-motor competencies for the purpose of designing and implementing programs for the amelioration of these disorders and conditions.

(Emphasis added.)

Prior to January 1, 2001, EPSB regulations provided for the issuance of a "standard certificate for teachers of exceptional children and youth-communication disorders" ("standard certificate"), which authorized persons to teach in this capacity in the public schools with a master's degree in either "communication or speech language pathology." See 16 KAR 2:050, Section 1(4). Those regulations were modified in 2000 following the enactment of KRS 161.053. Subsection (2) of KRS 161.053 states:

The Education Professional Standards Board shall issue two (2) levels of certification for teachers of exceptional children/communication disorders:

(a) Baccalaureate level certification shall be issued to a person who has:

1. Completed an approved program of preparation leading to a bachelor's degree in speech-language pathology;
2. Been granted licensure as a speech-language pathology assistant from the Kentucky Board of Speech-Language Pathology and Audiology, under KRS Chapter 334A; and
3. Completed the other requirements set forth in subsection (1) of this section; and

(b) Master's level certification shall be issued to a person who has:

1. Completed an approved program of preparation leading to a master's degree in speech-language pathology; and
2. Completed the other requirements specified in subsection (1) of this section.

Under the EPSB's revised version of 16 KAR 2:050, effective in 2001, new applicants may receive one of two types of certificates, the "professional certificate for teachers of exceptional children/communication disorders" ("professional certificate") or the "professional certificate for exceptional children/communication disorders/SLPA only" ("SLPA certificate"). 16 KAR 2:050 provides, in pertinent part:

Section 1. A student who meets the deadlines established in subsection (5) of this section shall meet the requirements established in this section for a standard certificate.

(1) The standard certificate for teachers of exceptional children and youth-communication disorders shall be issued in accordance with the pertinent Kentucky statutes and Education Professional Standards Board administrative regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in 16 KAR 5:010.

....

(3) The standard certificate for teachers of exceptional children and youth-communication disorders shall be valid at all age levels for the instruction of exceptional children and youth with communication disorders.

(4) The standard certificate for teachers of exceptional children and youth-communication disorders shall be issued to an applicant who has completed a master's degree in communication or speech language pathology.

(5) A student enrolled in an approved preparation program leading to the standard certificate for teachers of exceptional children and youth communication disorders shall complete all required coursework by September 1, 2000 and apply for certification by December 31, 2000. A student failing to meet these deadlines shall complete the preparation and certification requirements established in Section 2 of this administrative regulation.

Section 2. A student who does not meet the deadlines established in Section 1(5) of this administrative regulation shall meet the requirements established in this section for a professional certificate.

(1) The professional certificate for teachers of exceptional children/communication disorders shall be issued in accordance with the pertinent Kentucky statutes and Education Professional Standards Board administrative regulations to an applicant who has completed the approved program of preparation which corre-

sponds to the certificate at a teacher education institution approved under the standards and procedures included in 16 KAR 5:010.

....

(3) The professional certificate for teachers of exceptional children/communication disorders shall be valid at all age levels for the instruction of exceptional children with communication disorders.

(4) The professional certificate for teachers of exceptional children/communication disorders shall be issued to an applicant who has completed a master's degree in speech language pathology.

Section 3. (1) Beginning July 14, 2000, the Education Professional Standards Board shall certify teachers of exceptional children/communication disorders who hold licensure as a speech-language pathology assistant issued by the Kentucky Board of Speech Language Pathology and Audiology under KRS Chapter 334A who meet the qualifications established in this section of this administrative regulation.

(2)(a) Applicants who possess a valid license for speech language pathology assistant issued under KRS Chapter 334A who have at least one (1) year of successful experience in Kentucky's public schools in this position shall be issued the "professional certificate for exceptional children/communication disorders/SLPA only" valid for five (5) years and shall be renewed for subsequent five (5) year periods upon completion of the renewal requirements established KAR Title. [sic]

....

(5) A teacher certified under this section of this administrative regulation shall remain a speech language pathology assistant requiring supervision under KRS Chapter 334A until the teacher:

(a) Completes the master's degree in speech language pathology; and

(b) Gains the professional certificate for exceptional children/communication disorders established in Section 2 of this administrative regulation.

The question presented is whether, and under what circumstances, a person holding one of the certificates issued by the EPSB pursuant to 16 KAR 2:050 is entitled to obtain Medicaid reimbursement for speech-language pathology services rendered to students.

Medicaid reimbursement eligibility is governed by regulations promulgated by the Department of Health and Human Services. 42 C.F.R. § 440.110(c) states, in part, as follows:

(1) *Services for individuals with speech, hearing, and language disorders* means diagnostic, screening, preventive, or corrective services provided by or under the direction of a speech pathologist or audiologist, for which a patient is referred by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under State law. It includes any necessary supplies and equipment.

(2) A "speech pathologist" is an individual who meets one of the following conditions:

(i) Has a certificate of clinical competence from the American Speech and Hearing Association.

(ii) Has completed the equivalent educational requirements and work experience necessary for the certificate.

(iii) Has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

Speech pathology services submitted for Medicaid reimbursement must qualify under the definition in subsection (1) of § 440.110(c). Services provided by or under the direction of audiologists are outside the scope of the question with which we have been presented, so that we need only address services provided by or under the direction of a speech pathologist.

Unquestionably, any person operating in the public schools who holds a certificate as a speech pathologist from the American Speech and Hearing Association (ASHA) would qualify as a speech pathologist under subsection (2)(i). The question arises when non-ASHA-certified individuals are providing services

to students pursuant to one of the EPSB-issued certificates.<sup>1</sup> Such a provider would have to be a speech pathologist as defined in 42 C.F.R. § 440.110(c)(2), or else must provide services “under the direction of a speech pathologist” within the meaning of 42 C.F.R. § 440.110(c)(1).

### **The “professional certificate”**

In the case of the professional certificate (Section 2 of the EPSB regulation, 16 KAR 2:050), it is noteworthy that the service provider may or may not be a person with a completed master’s degree in speech-language pathology. Section 2(4) provides that the professional certificate “shall be issued to an applicant who has completed a master’s degree in speech language pathology,” but Section 2(1) also provides that it “shall be issued in accordance with the pertinent Kentucky statutes and [EPSB] regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in 16 KAR 5:010.”<sup>2</sup>

In cases where the certificate is issued pursuant to 16 KAR 2:050, Section 2(4), this would seem in most cases to fulfill the “equivalent educational requirements” prong of 42 C.F.R. § 440.110(c)(2)(ii), since the 2005 ASHA standards<sup>3</sup> specify that an applicable graduate study program must be accredited in speech-language pathology by the Council on Academic Accreditation in Audiology and Speech-Language Pathology. If the certificate is issued under 16 KAR 2:050, Section 2(1), on the other hand, the holder of that certificate must actually have a master’s degree in speech-language pathology in order to qualify under the ASHA standards referenced in the federal regulation.

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<sup>1</sup> We have not been asked for an opinion on whether the standards for licensure by the Kentucky Board of Speech Language Pathology and Audiology under KRS Chapter 334A are “equivalent” to the ASHA standards, and accordingly do not address that issue.

<sup>2</sup> We assume, for purposes of this opinion, that the language of KRS 161.053 authorizes the EPSB to issue a professional certificate to a person who has not completed a master’s degree in speech-language pathology.

<sup>3</sup> Specifically, standard IV-D, found at:

[http://www.asha.org/about/membership-certification/handbooks/slp/slp\\_standards.htm](http://www.asha.org/about/membership-certification/handbooks/slp/slp_standards.htm)

Whether the “work experience” prong of 42 C.F.R. § 440.110(c)(2)(ii) is fulfilled by a professional-certificate holder must depend on each individual’s circumstances. The ASHA standards<sup>4</sup> specify a minimum of 400 clock hours, including 25 hours spent in clinical observation and 375 hours in direct contact with clients.

We note, however, that even a professional-certificate holder who fails to meet the “educational” or “work experience” requirements of the federal regulation can still provide some Medicaid-reimbursable services, as long as those services are rendered “under the direction of” another person who does meet all the federal qualifications for a speech pathologist. 42 C.F.R. § 440.110(c)(1); 440.110(c)(2)(iii).

### **The “SLPA certificate”**

Turning to the SLPA certificate (Section 3 of 16 KAR 2:050), we note that this section of the EPSB regulation expressly applies to speech pathology assistants, who are required by KRS 334A.033 to be licensed by the Kentucky Board of Speech Language Pathology and Audiology, to practice in the public schools exclusively, and to work “under the supervision of an appropriately qualified supervisor.” Pursuant to 201 KAR 17:027, Section 3(1), an appropriately qualified supervisor can be either a licensed speech-language pathologist or “a ‘certified’ speech-language pathologist as defined by the Education Professional Standards Board” (*i.e.*, a person holding the EPSB professional certificate).

An assistant with the SLPA certificate could seek Medicaid reimbursement for services provided “under the direction of” a speech pathologist pursuant to 42 C.F.R. § 440.110(c)(1). The SLPA-certificate holder’s services, however, are reimbursable only if the speech pathologist directing those services is qualified for reimbursement under the federal regulation’s definition of “speech pathologist,” as discussed above.

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<sup>4</sup> *Id.*, standard IV-C.

**The "standard certificate"**

Somewhat more problematic is the pre-2001 standard certificate (Section 1 of 16 KAR 2:050), since the EPSB regulation expressly states that this certificate could be issued to a person with a master's degree in either "communication or speech language pathology." The ASHA standards, referenced by the federal regulation, treat speech-language pathology as the only recognized program of graduate study. Services rendered by a person with a communication degree acting as a speech-language pathologist under the standard certificate would not be reimbursable by Medicaid. If, however, such a person were working "under the direction of" a speech pathologist qualifying under the 42 C.F.R. § 440.110(c)(2) definition, those services would be reimbursable.

Holders of the standard certificate who have graduate degrees in speech-language pathology, if they otherwise qualify as speech pathologists under the federal regulation, should be potentially eligible for Medicaid reimbursement. The analysis in such cases would be same as discussed above for holders of the professional certificate.

In short, then, it is not possible to state categorically whether all services provided under any type of certificate under 16 KAR 2:050 are reimbursable by Medicaid or not. The answer is likely to vary depending on the qualifications of each individual and the capacity (*i.e.*, speech pathologist or assistant) in which those services are rendered.

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