



Frequently Asked Questions

Please refer to Article 167 of the Education Laws for Behavior Analysis:
<https://www.op.nysed.gov/title8/education-law/article-167>

Note: These FAQs were last reviewed on 6/18/2024. There may have been updates to the NYSED Website between then and now.

- 1) Do we only need to report for those who do not have an autism diagnosis?**
No, the annual report is for all individuals receiving ABA services pursuant to a diagnosis and prescription.
<https://www.counsel.nysed.gov/rules/indices-fulltext/2023/02>
- 2) Do you have a template available for the summary document we can share with prescribers?**
Yes, please visit the NYSABA website: <https://www.nysaba.org/public-policy>
- 3) Can this take the place of annual/bi-annual insurance reports as well?**
This report does not take the place of the authorization reports required by insurance companies. This report was developed to help ABA providers streamline the New York State legal requirements to submit annual reports to prescribers of ABA. Please use this template to give the appropriate and helpful information to prescribers, many of whom are not familiar with ABA.
- 4) Do we need to have written consent from parents to send this information to the prescribing provider?**
Yes, ABA providers should have written consent from parents to share confidential information about clients. It is recommended that providers update their initial consent forms to make clients and their families aware of the requirement to report to the prescriber and obtain consent at the outset of ABA services.
- 5) What should the ABA provider do when the parent has opted not to give the provider consent to share information with other professionals?**
The ABA provider should inform clients and their caregivers of the requirement to report to the prescriber annually and that ABA services cannot be delivered without a prescription or order or without the annual report.
- 6) Do you think this is a step in the direction of insurance companies covering ABA for individuals with diagnoses other than autism?**
The change in the scope of practice of behavior analysts to work with any individual with a DSM-V diagnosis does not change the requirements of payors to pay for diagnoses other than autism. The NY autism insurance law requires coverage for ABA for individuals with a diagnosis of autism.
- 7) Would this be something ABA Agencies (when providing services through insurance) would need to incorporate for each case?**
Yes



8) Would the annual report come from the agency or the individual ABA provider to be shared?

According to 8801(1) of the Education Law for licensed behavior analysts, it is considered unprofessional conduct if the LBA fails to report annually to the prescriber. Therefore, the LBA should ensure that they are practicing according to the laws that govern their profession. It is recommended that the LBA ensure that the report is submitted, which means either submitting it themselves or ensuring delivery by their employer to the prescribing professional.

9) What if the prescriber is prescribing ABA every 2-3 years?

The LBA is required to report to the prescriber annually.

10) If a prescriber asks for ABA but there is not an ASD diagnosis, how are parents to pay for the ABA service?

The scope expansion did not change any payor's requirements to cover diagnoses other than ASD. Some clients may contact their insurance company, school district, or other payor and request that ABA services be paid for. In addition, some clients, if they are able to, may choose to pay privately for ABA services.

11) If the prescription is 3-4 years old and the child no longer sees the original prescriber, who do we send the form to?

The LBA should contact the prescriber to inquire about where to send the form to provide the annual report of the client's progress. If the original prescriber and the ABA client no longer have a monitoring/therapeutic relationship, then the LBA should advise the client that they need to acquire a new prescription/order from an authorized prescriber whom they have an active monitoring/therapeutic relationship in order to continue treatment.

In addition, according to the NYS Medicaid Manual "Referrals for ABA services are valid for no more than two years..." (page 5). Therefore, if the client has Medicaid, a referral is required at least every two years.

https://www.emedny.org/ProviderManuals/ABA/PDFS/ABA_Policy.pdf

12) Is a diagnostic report by a qualified professional (as defined by NYS) that includes recommendations for ABA services equivalent to a "prescription" for ABA? Or is the state now requiring a prescription by a medical physician (i.e., child's pediatrician or primary care doctor) in order to provide ABA services?

Yes, a prescription or order can come from a qualified professional as described in section 8802 of the Education Law.

13) In other words, who do we submit the annual progress report to if there is only a diagnosing provider (i.e., psychologist)?

In this case, the annual progress report would be sent to the licensed psychologist who wrote the order and has an active monitoring/therapeutic relationship. If the psychologist does not have an active monitoring/therapeutic relationship, the LBA should request a prescription/order from a qualified provider who has an active monitoring/therapeutic relationship (e.g. pediatrician, primary health provider) with the client.