

**WAC 392-172A-07005 Students eligible for special education services who are covered by public benefits or insurance or private insurance.** (1) A school district may use the medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under Part B of the act, as permitted under the public benefits or insurance program, except as provided under subsection (2) of this section.

(2) With regard to services required to provide FAPE to an eligible student, the school district:

(a) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive FAPE under Part B of the act;

(b) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but may pay the cost that the parents otherwise would be required to pay;

(c) May not use a student's benefits under a public benefits or insurance program if that use would:

(i) Decrease available lifetime coverage or any other insured benefit;

(ii) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;

(iii) Increase premiums or lead to the discontinuation of benefits or insurance; or

(iv) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(d) Prior to accessing a student's or parent's public benefits or insurance for the first time, and after providing notification to the student's parents consistent with subsection (3) of this section, the school district must obtain written, parental consent that:

(i) Meets the requirements of 34 C.F.R. Sec. 99.30 and WAC 392-172A-05225, which consent must specify:

(A) The personally identifiable information that may be disclosed, such as records or information about the services that may be provided to a particular student;

(B) The purpose of the disclosure, such as billing for services under the act; and

(C) The agency to which the disclosure may be made such as the health care authority; and

(ii) Specifies that the parent understands and agrees that the public agency may access the parent's or student's public benefits or insurance to pay for services under the act.

(3) Prior to accessing a student's or parent's public benefits or insurance for the first time, and annually thereafter, the school district must provide written notification, consistent with WAC 392-172A-05010(3) to the student's parents, that includes:

(a) A statement of the parental consent provisions in subsection (2)(d)(i) of this section;

(b) A statement of the "no cost" provisions in subsection (2)(b) and (c) of this section;

(c) A statement that the parents have the right under 34 C.F.R. Part 99 and WAC 392-172A-05225 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the state's public benefits or insurance program at any time; and

(d) A statement that the withdrawal of consent or refusal to provide consent under 34 C.F.R. Part 99 and WAC 392-172A-05225 to disclose personally identifiable information to the agency responsible for the administration of the state's public benefits or insurance program does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

(4) With regard to services required to provide FAPE to an eligible student under this part, a school district may access the parents' private insurance proceeds only if the parents provide consent. Each time the public agency proposes to access the parents' private insurance proceeds, the school district must:

(a) Obtain parental consent; and

(b) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

(5)(a) If a school district is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service.

(b) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the school district may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance such as deductible or co-pay amounts.

(6) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 C.F.R. 80.25.

(7) If a school district spends reimbursements from federal funds such as medicaid, for services under this part, those funds will not be considered state or local funds for purposes of the maintenance of effort provisions.

(8) Nothing in this part should be construed to alter the requirements imposed on a state medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regulations or policy under Title XIX, or Title XXI of the Social Security Act, 42 U.S.C. Secs. 1396 through 1396v and 42 U.S.C. Secs. 1397aa through 1397jj, or any other public benefits or insurance program.

[Statutory Authority: RCW 28A.155.090. WSR 21-19-065, § 392-172A-07005, filed 9/14/21, effective 10/15/21. Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-07005, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-07005, filed 6/29/07, effective 7/30/07.]