**24:05:14:01.03.  Children with disabilities covered by public benefits or insurance.** A public agency may use the Medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under this article as permitted under the public benefits or insurance program, except as provided in this section. With regard to services required to provide FAPE to an eligible student under this article the public agency:

(1)  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 IDEA;

(2)  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 article, but pursuant to § 24:05:14:01.06, may pay the cost that the parent otherwise would be required to pay;

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

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

(b)  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;

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

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

(4)  Must provide written notification to the student's parents pursuant to § 24:05:14:01.04; and

(5)  Must obtain written parental consent consistent with § 24:05:29:13 before accessing a student's or parent's public benefits or insurance for the first time specifying:

(a)  Personally identifiable information, as defined in § 24:05:29:02(12), that may be disclosed (e.g., records or information about the services that may be provided to a particular student);

(b)  The purpose of the disclosure (e.g., billing for services under this article);

(c)  That disclosure will be made to the state Medicaid agency; and

(d)  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 this article.

**Source:** 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007; 40 SDR 40, effective September 11, 2013.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.