

281—120.82(34CFR303) Use of insurance. Parents shall not be required to sign up for or enroll in a public insurance program in order for their child to receive early intervention services.

120.82(1) Use of public insurance. Medicaid and other public insurance benefits in which a child participates may be used to provide or pay for early intervention services, as permitted under the public insurance program, except that:

a. The state shall not require parents to incur an out-of-pocket expense such as the payment of a deductible or copayment amount incurred in filing a public insurance claim for services provided under Early ACCESS. The state must pay the cost that a parent otherwise would be required to pay.

b. The state shall not use a child's benefits under a public insurance program without obtaining parental consent, if that use would:

- (1) Decrease available lifetime coverage or any other insured benefit;
- (2) Result in the family's paying for services that would otherwise be covered by the public insurance program if not for the provision of services under Early ACCESS;
- (3) Increase premiums or lead to the discontinuation of insurance; or
- (4) Risk loss of eligibility for, or decrease in benefits under, home- and community-based waivers, based on aggregate health-related expenditures.

c. If any of the above circumstances apply, the state may use the child's benefits if it obtains a parent's written consent.

d. If the family's public insurance program requires access to the family's private insurance as a precondition:

- (1) Families shall not be required to use their private insurance as a precondition;
- (2) The state may access the private insurance if parents give consent or choose to use private insurance;
- (3) The family's public insurance may not be billed for an amount greater than the cost of the service after subtracting any applicable fee amount owed or paid by the family; and
- (4) Parents must be given the option of using their private insurance, if any, or paying the applicable fee for each service.

120.82(2) Use of private insurance. The state may access a parent's private insurance only if a parent provides informed consent. For each service in the initial IFSP and each subsequent change to a service, including a change in the frequency and intensity of delivering the service, in order to access a family's private insurance to fund that service, the state must:

- a.* Obtain parental consent; and
- b.* Inform a parent that refusal to permit the state to access the family's private insurance does not relieve the state of its responsibility to ensure that all required services are provided at no cost to a parent.

120.82(3) Use of Part C funds. If parental consent to use a parent's private insurance to pay for a service under Early ACCESS, or public insurance if a parent would incur a cost for the service, cannot be obtained, Part C funds may be used to pay for the service. Part C funds may also be used to pay the cost a parent otherwise would have to pay to use the parent's public or private insurance, such as the deductible or copayment amounts, in order to avoid financial cost to a parent.