

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2131

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2131

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No: **SB 2131**

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: **January 17, 2007**

Recorder Job Number: **1321**

Committee Clerk Signature

Minutes:

Melissa Hauer – Dept. Human Services – In Favor

TESTIMONY # 1 [m :44 – 6:20]

Had 2 testimonies

Rod St. Aubyn – BCBS ND - In Favor

TESTIMONY #2

Ammendment, protects from liability due to release from information.

S Klein: Will it be in compliance with Federal Law?

R St. Aubyn: Yes, will be insured.

David Boeck – Protection & Advocacy - In Favor

TESTIMONY # 3

This is an admirable goal to provide privacy on an individual status. [covered the bill]

Page 2, line 22[see bill] “90 days is too long” [m 12:18]

Suggests amendment – want to make 30 days instead of 90. page 3, line 4 – leave out

“agree” should be – not “deny.”

In this form is not in favor – needs changes.

S Potter: page 1, section 2 – concern over privacy, don't see a problem. [covers wording m 1350]

David Boeck – TESTIMONY # 3 [m 14:40 explanation]

We're not worried about the department getting information, we're worried about department spreading information.

S Klein: You have created a good handle on privacy.

D Boeck: Yes. It's easy to put controls in the bill to be more comfortable.

S Klein: States have to comply with rules more stringent than SD. Do they comply or go beyond bounds?

D Boeck: Power is too broad. They make rules but don't know if it will work, this is our opportunity to fix it before we have a problem.

S Heitkamp: We're talking about medical assistance dollars coming from the Feds. Trying to meet the criteria that's set up by the Feds. Is your problem with the Feds, or the way the state is going to administer this?

D Boeck: My problem is the way the state is going to administer.

S Heitkamp: so there is a way to do this and still meet the criteria laid down by Fed. Gov.? Have you talked to Dept. of Human Services about that?

D Boeck: I have not.

Rod St. Aubyn: Regards to privacy issue, we're facing the bill right now. Under HIPA.
[explain m 19:07]

S Hacker: Could BC respond in 30 days?

R St. Aubyn: We're not going to stall for 90 days, just need some leeway.

S Potter: [Explanation m 22:30]

R St. Aubyn: [response 22:45]

Melissa Hauer

S Heitkamp: There's an educational process. Did you speak to protection & advocacy, did they have the opportunity to say, "Ok?"

M Hauer: No, but w/ Blue Cross and Blue Shield. We have a Federal Medicaid law where we can't give out information.

S Heitkamp: It is here, in front of us. Have you had a chance to digest some of his suggestions? Is it something it could be incorporated in the bill, or stand the way it is.

M Hauer: I would have to look at the language. I haven't had the opportunity to see the information.

S Heitkamp: It says, "Dept. Human Services or its agent" [m explanation 25:26]
Or it's agent meaning...what?

M Hauer: We do data matching;

S Heitkamp: So you have the power

M Hauer: Yes

S Potter: How is this going to happen? Are you going to send to every health insurance licensed in ND?

M Hauer: It is different to 3rd party liability, Ray Feist.

Ray Feist – administrator for Medicaid Program

Federal regulations we're allowed do data matches with any 3rd party insurer. It would not be cost-effective to do data matches with companies little or no business with us.

S Potter: So information is sent to BC/BS, WFS and other insurance notification?

R Feist: Yes

S Klein: You are doing it now?

R Feist: Yes Following federal regulations.

Page 4

Senate Industry, Business and Labor Committee

Bill/Resolution No. **2131**

Hearing Date: **January 17, 2007**

S Klein: So nothing changes, keeping it as private as we can.

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2131 B**

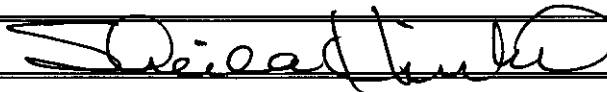
Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: **January 23, 2007**

Recorder Job Number: **1684**

Committee Clerk Signature



Minutes:

S Klein: Human services that dealt with following Federal guidelines.

Man here who had questions, department went back, drafted some amendments, amendments should be handed out to you. Seem to address most of the issues discussed.

Motion to Move Ammendment

Motion by S Andrist

Second by S Hacker

S Potter: What's the reason for moving the "individual or group action health" on line 15. Do we know?

S Klein: It had to do with Mr. Boeck Issues or whether or not it addresses the issues.

Has to do with making it consistent with the deficit reduction act. Getting the AOK from Mr. Almer.

Motion to DO PASS AS AMMENDED

Motion by S Potter

Second by S Hacker

Carrier S Potter

S Andrist: There was also some discussion on line 22, page 2, whether 90 days was necessary time, I think I'd suggest, there is no reason it shouldn't be reduced to 30.

S Klein: "The amendment will not change the suggest..." It will not change that, it is NOT in our amendment. That was something that we couldn't work through.

S Potter: The email discussions that we've all seen back and forth, came out with that 90 days is what they'll need at BC/BS.

MOVE TO DO PASS AS AMMENDED

Motion by S Potter

Second by S Hacker

Carrier – S Potter.

January 23, 2007

JB
1-23-07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2131

Page 1, line 13, remove "individual or group accident and health insurers,"

Page 1, line 15, remove "as a condition of doing"

Page 1, line 16, remove "business in the state"

Page 2, line 27, replace "the" with "a"

Page 3, after line 12, insert:

- "4. A health insurer is prohibited, in enrolling an individual or on the individual's behalf, from taking into account that the individual is eligible for or is provided medical assistance.
5. The department may not use or disclose any information provided by the insurer other than as permitted or required by law. The insurer may not be held liable for the release of insurance information to the department or a department agent if the release is authorized under this section.

Renumber accordingly

Date: 1-23-07

Roll Call Vote : 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2131

Senate INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Motion on Amendment

Action Taken move Amendment.

Motion Made By Andrist Seconded By Hacker

Senators	Yes	No	Senators	Yes	No
Chairman Klein, Jerry	✓		Senator Behm, Arthur	✓	
Senator Hacker, Nick VC	✓		Senator Heitkamp, Joel	✓	
Senator Andrist, John	✓		Senator Potter, Tracy	✓	
Senator Wanzek, Terry		✓			

Total Yes 45 6 No 0

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 1-23-07

Roll Call Vote : 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2131

Senate INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken D.P.A.A.

Motion Made By Patten Seconded By Hacker

Senators	Yes	No	Senators	Yes	No
Chairman Klein, Jerry	✓		Senator Behm, Arthur	✓	
Senator Hacker, Nick VC	✓		Senator Heitkamp, Joel	✓	
Senator Andrist, John	✓		Senator Potter, Tracy	✓	
Senator Wanzek, Terry	—				

Total Yes ~~5~~ 6 No 0

Absent _____

Floor Assignment Patten

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2131: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2131 was placed on the Sixth order on the calendar.

Page 1, line 13, remove "individual or group accident and health insurers."

Page 1, line 15, remove "as a condition of doing"

Page 1, line 16, remove "business in the state"

Page 2, line 27, replace "the" with "a"

Page 3, after line 12, insert:

- "4. A health insurer is prohibited, in enrolling an individual or on the individual's behalf, from taking into account that the individual is eligible for or is provided medical assistance.
5. The department may not use or disclose any information provided by the insurer other than as permitted or required by law. The insurer may not be held liable for the release of insurance information to the department or a department agent if the release is authorized under this section.

Renumber accordingly

2007 HOUSE JUDICIARY

SB 2131

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2131

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/26/07

Recorder Job Number: 3799

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2131.

Melissa Hauer, Department of Human Services, attorney: (see attached testimony). The language in this bill is taken directly from the Deficit Reduction Act and it says that health insurers have to give us information, the DHS, so we can cross reference that with information we have to see if a Medicaid recipient has covered, under an employer's sponsored health insurance, worker's compensation, etc. where that other insurance might cover that person's medical costs and so Medicaid doesn't have to. This bill is required by the federal government. As a condition of doing business in this state, health insurers have to provide the department, upon our request, with information about that health insurance coverage, so we can determine who's covered.

Chairman DeKrey: What is the potential loss of federal dollars if we don't pass the bill.

Melissa Hauer: The potential would be that we wouldn't be eligible for any federal financial participation. It also requires the insurer to accept our assignment of the right to payment. For instance, if Medicaid paid first, because we didn't know if there was a third party liable, we didn't know there was insurance coverage out there, the insurer could pay us directly. The insurers have to respond to any requests that we make within 3 years of the health care

service being provided. There were some amendments on the Senate side, BC/BS requested an amendment, you see that in the engrossed bill and Protection and Advocacy had some concerns. Some of the amendments were from the Protection and Advocacy concerns. Some of their other concerns were not addressed in the amendment.

Rep. Koppelman: You talked about the amendments that BC wanted.

Melissa Hauer: The Protection and Advocacy amendments: 1) was a repetition of a phrase, and so we took that out. It didn't affect the substance. The other was a typo, "the" and should have been "a".

Rep. Koppelman: What were the substantive changes.

Melissa Hauer: There were some other requested amendments that were not made. One of the things that Protection and Advocacy asked for, you see where in the bill that the insurer has 90 days to respond to the Dept. I believe Protection and Advocacy wanted that shortened to something like 30 days and as we were negotiating that they went to 45 days, and my understanding is that BC/BS had a concern about that. They think they can respond quite quickly, possibly within 30 days, but if something unusual is requested, they wanted to have the extra time. We were okay with that.

Rep. Koppelman: Where is that change.

Melissa Hauer: Page 2, line 21, that the insurer has to respond with information within 90 days.

Rep. Koppelman: What other changes.

Melissa Hauer: The Protection and Advocacy changes were not substantive.

Rep. Koppelman: BC/BS requested amendments.

Melissa Hauer: They did. They requested what you see on page 3, line 13, that whole new subsection 5, and that just says that the when the insurer discloses information to DHS, they aren't violating any confidentiality laws and that they couldn't be held liable.

Chairman DeKrey: Is that three year period, on page 3, is that a normal insurance standard.

Melissa Hauer: I'm not sure about the insurer's standard, it is required by the Deficit Reduction Act.

Rep. Charging: This is 100% federal changes.

Melissa Hauer: The vast majority of the language comes directly from the Deficit Reduction Act, but the amendment requested by BC/BS, for instance, new subsection 5, is something the DRA just doesn't address. That would be an addition to the language.

Chairman DeKrey: Thank you. Further testimony in support.

Norbert Mayer, ND Association of Insurance and Financial Advisors: We support this bill. We think it is important that we come into compliance with the DRA.

Chairman DeKrey: Thank you. Further testimony in support.

Rod St. Aubyn, BC/BS: We are in support of this bill. In regard to the last part talking about the liability issue with the insurer, page 3, lines 13-16 is what we offered. This is basically the same language that is offered in the SD bill and as indicated, this bill was required based on the DRA. We don't have any concerns. We feel that everything has been properly addressed.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2131

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/26/07

Recorder Job Number: 3870

Committee Clerk Signature *Denise*

Minutes:

Chairman DeKrey: We will take a look at SB 2131. What are the committee's wishes.

Rep. Griffin: I move a Do Pass.

Rep. Dahl: Second.

12 YES 0 NO 2 ABSENT

DO PASS

CARRIER: Rep. Wolf

Date: 2/26/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2131

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Griffin

Seconded By Rep. Dahl

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning			Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman					
Rep. Kretschmar	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Wolf

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 26, 2007 3:14 p.m.

Module No: HR-36-3925
Carrier: Wolf
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2131, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2131 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2131

Testimony
Senate Bill Number 2131 – Department Of Human Services
Senate Industry, Business and Labor Committee
Senator Jerry Klein, Chairman
January 17, 2007

Chairman Klein, members of the Senate Industry, Business and Labor Committee, I am Melissa Hauer, an attorney with the Department of Human Services. I am here today to testify in support of Senate Bill number 2131.

This bill is designed to meet the mandate of the Deficit Reduction Act of 2005¹ (DRA) which requires states to enhance third party identification and payment in the Medicaid program. Third-party liability (TPL) refers to the legal obligation of third parties – individuals, entities, or programs – to pay all or part of the costs for medical assistance furnished under a Medicaid state plan. In general, the Medicaid program is designed to be the payor of last resort, meaning that all other available third parties must meet their legal obligation to pay before the Medicaid program pays for the care of a recipient. Examples of third parties which may be liable to pay for health care services include employment-related health insurance, court-ordered medical support (including health insurance) from noncustodial parents, workers' compensation, long-term care insurance, and other state and federal programs.

States are required to take all reasonable measures to ascertain the legal liability of third parties to pay for services available under the Medicaid state plan. To this end, they must: collect health insurance information from individuals applying for or receiving Medicaid; match data provided by Medicaid recipients to certain files maintained by government agencies

¹ Public Law No. 109-171

(e.g., state wage and income, Social Security Administration, state workers' compensation); and identify claims with diagnosis codes that would indicate a third party may be liable for payment. State Medicaid agencies must then follow up on TPL leads identified through these information-gathering activities.

The DRA amended the list of third parties in the Social Security Act for which states must take all reasonable measures to ascertain the legal liability of third parties to include health insurers, including self-insured plans, group health plans, service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service. The DRA also amended the law to include these entities in the list of health insurers that states must prohibit from taking an individual's Medicaid status into account when enrolling the individual or making payments for benefits to or on behalf of the individual.

As a condition of participating in the Medicaid program, the DRA requires States to provide assurances satisfactory to the federal government that the State has laws in effect requiring health insurers, as a condition of doing business, to:

1. Provide, upon the request of the State, information to determine during what period Medicaid recipients or their spouses and dependents may be (or may have been) covered by a health insurer and the nature of the coverage that is or was provided by the health insurer;

2. Accept an individual's or other entity's assignment of rights (i.e., rights to payment from the parties) to the state;
3. Respond to any inquiry by the State regarding a claim for payment for any health care item or service that is submitted not later than 3 years after the date of the provision of such health care item or service; and
4. Agree not to deny a claim submitted by the State solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim, if the claim is submitted by the State within the 3-year period beginning on the date on which the item or service was furnished; and any action by the State to enforce its rights with respect to such claim is commenced within 6 years of the State's submission of such claim.

The language of the bill was taken directly from the DRA itself.² Again, this bill is designed to ensure that the state's Medicaid program complies with the requirements of the DRA regarding enhancing third party identification and payment so that the Medicaid program is the payor of last resort. This concludes my testimony. I will be happy to respond to any questions you may have. Thank you.

² 42 U.S.C. 1396a(a)

PROPOSED AMENDMENTS TO SENATE BILL NO. 2131

Page 3, after line 12, insert:

- "4. Health insurers are prohibited, in enrolling an individual or making any payments for benefits to the individual or on the individual's behalf, from taking into account that the individual is eligible for or is provided medical assistance."

Renumber accordingly

2131
#1
A

Testimony on SB 2131
Senate Industry Business and Labor Committee
January 17, 2007

Mister Chairman and committee members, for the record I am Rod St. Aubyn, representing Blue Cross Blue Shield of ND. We support the bill, but would ask that the attached amendment be approved. We worked with the department in the development of the original bill and had included the immunity language in that draft. Much of that bill was similar to legislation passed in South Dakota. This was in response to the Deficit Reduction Act. Since the Deficit Reduction Act (DRA) did not specifically require the immunity language (attached amendment), the Department elected not to include it in their bill draft. They only wanted to include language specifically required by the DRA, but they indicated that they did not object to it as a separate amendment. The immunity amendment was included as well in the SD law.

This amendment is similar to the amendment adopted by the Senate Judiciary Committee on SB 2129 which involved a similar data match, but for Child Support. The amendment simply protects the insurer from liability in case the Department or its contracted agent should inappropriately disclose personal health information. I would ask for your support in adopting this amendment and give the bill a Do Pass as Amended. I would be willing to answer any questions the committee may have. Thank you.

2131
#2

**Proposed Amendment
SB 2131**

Submitted by Rod St. Aubyn, Blue Cross Blue Shield of ND

Page 3, line 12, after the period add "4. The department may not use or disclose any information provided by the insurer other than as permitted or required by law. The insurer may not be held liable for the release of insurance information to the department or a department agent by any party when done so under the authority of this section."

#2
2131

Senate Industry, Business, and Labor Committee
Fifty-ninth Legislative Assembly of North Dakota
Senate Bill No. 2117
March 7, 2005

Good afternoon, Chairman Klein and Members of the Senate Industry, Business, and Labor Committee. I am David Boeck, a State employee and lawyer for the Protection & Advocacy Project. The Protection & Advocacy Project advocates on behalf of people with disabilities.

This bill has an admirable goal. But the bill needs to provide for the privacy of Medical Assistance recipients. This privacy includes both an individual's status as a recipient and an individual's individually identifiable health information.

On page 1, line 20, the bill mentions the Department of Human Services' "request" and the "manner prescribed" by the Department of Human Services. The bill would not require the Department of Human Services to have a factual basis for making a request; the bill would not require the Department to minimize any disclosure of individually identifiable health information.

The bill would allow the Department to exercise a very broad new power without specifically defining the new power or placing limits on it. The Legislature needs some control over any new administrative power it creates for the executive branch.

2131
#3

This bill does not acknowledge that it would create new authority for the Department of Human Services. The Legislature needs to deal with the issue of granting more administrative power to the Department.

As to the mechanics of the bill, page 2, line 22 would allow the health insurer 90 days to respond to the Department. This is too long. During this 90-day period, the Department would continue to pay numerous medical bills, some of which might be very large, and the reimbursement problem would become more complex. Every health insurer stores its coverage and payment information electronically. The response to a request about an individual medial assistance recipient would be available instantly. It would be more efficient to require a response to a request about an individual to be within 30 days.

On page 2, line 26, the bill language would be clearer if the "right of recovery" were "from the health insurer."

On page 2, line 27-28, "the liable third party" probably should be "a liable third party."

On page 3, line 4, "agree not to deny" is rather indirect and would better be replaced with "not deny." It does not matter whether the health insurer agrees. This is a mandate.

I will draft amendments to accompany this testimony. Thank you for the opportunity to testify on SB 2131.

2131
#3

Testimony
Engrossed Senate Bill Number 2131 – Department Of Human
Services
House Judiciary Committee
Representative Duane DeKrey, Chairman
February 26, 2007

Chairman DeKrey, members of the House Judiciary Committee, I am Melissa Hauer, an attorney with the Department of Human Services. I am here to testify in support of engrossed Senate Bill number 2131.

This bill is designed to meet the mandate of the Deficit Reduction Act of 2005¹ (also known as the DRA) which requires states to enhance third party identification and payment in the Medicaid program. Third-party liability (TPL) refers to the legal obligation of third parties – individuals, entities, or programs – to pay all or part of the costs for medical assistance furnished under a Medicaid state plan. The Medicaid program is designed to be the payor of last resort, meaning that all other available third parties must meet their legal obligation to pay before the Medicaid program pays for the care of a recipient. Examples of third parties which may be liable to pay for health care services include employment-related health insurance, court-ordered medical support (including health insurance) from noncustodial parents, workers' compensation, long-term care insurance, and other state and federal programs.

States are required to take all reasonable measures to ascertain the legal liability of third parties to pay for services available under the Medicaid state plan. To this end, they must: collect health insurance information from individuals applying for or receiving Medicaid; match data provided by Medicaid recipients to certain files maintained by government agencies (e.g., state wage and income, Social Security Administration, state

¹ Public Law No. 109-171

workers' compensation); and identify claims with diagnosis codes that would indicate a third party may be liable for payment. State Medicaid agencies must then follow up on third party liability leads identified through these information-gathering activities.

The Deficit Reduction Act amended the list of third parties in the Social Security Act for which states must take all reasonable measures to ascertain the legal liability of third parties to include health insurers, including self-insured plans, group health plans, service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service. The Deficit Reduction Act also amended the law to include these entities in the list of health insurers that states must prohibit from taking an individual's Medicaid status into account when enrolling the individual or making payments for benefits to or on behalf of the individual.

As a condition of participating in the Medicaid program, the Deficit Reduction Act requires States to provide assurances satisfactory to the federal government that the State has laws in effect requiring health insurers, as a condition of doing business, to:

1. Provide, upon the request of the State, information to determine during what period Medicaid recipients or their spouses and dependents may be (or may have been) covered by a health insurer and the nature of the coverage that is or was provided by the health insurer;

2. Accept an individual's or other entity's assignment of rights (i.e., rights to payment from the parties) to the state;
3. Respond to any inquiry by the State regarding a claim for payment for any health care item or service that is submitted not later than 3 years after the date of the provision of such health care item or service; and
4. Agree not to deny a claim submitted by the State solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim, if the claim is submitted by the State within the 3-year period beginning on the date on which the item or service was furnished; and any action by the State to enforce its rights with respect to such claim is commenced within 6 years of the State's submission of such claim.

The language of the bill was taken from the Deficit Reduction Act itself.² Again, this bill is designed to ensure that the state's Medicaid program complies with the requirements of the Deficit Reduction Act regarding enhancing third party identification and payment so that the Medicaid program is the payor of last resort.

This concludes my testimony. I will be happy to respond to any questions you may have. Thank you.

² 42 U.S.C. 1396a(a)