

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)