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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

HAWAII DISABILITY RIGHTS CENTER, in a representative capacity on behalf of its constituents,

Plaintiff,

vs.

CHRISTINA KISHIMOTO, in her official capacity as Superintendent of the State of Hawaii, Department of Education; PANKAJ BHANOT, in his official capacity as Director of the State of Hawaii, Department of Human Services,

Defendants.

Civil No. 18-00465 LEK-WRP

DEFENDANT RYAN YAMANE'S, in his official capacity, REPLY MEMORANDUM IN SUPPORT OF HIS MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS, filed November 14, 2025 [Dkt. 190]; CERTIFICATE OF SERVICE

HEARING
Date: January 14, 2026
Time: 9:30 a.m.
Judge: Hon. Leslie E. Kobayashi

Trial: November 2, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

DEFENDANT RYAN YAMANE's, in his official capacity, REPLY MEMORANDUM IN SUPPORT OF HIS MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS, filed November 14, 2025 [Dkt. 190]

Defendant Ryan Yamane ("Defendant"), in his official capacity, by and through his attorneys, Anne E. Lopez, Attorney General of the State of Hawaii, and Skyler G. Cruz, Elaine T. Chow, and Issac H. Ickes, Deputy Attorneys General, hereby submits this Reply Memorandum in Support of his Motion ("Motion") for Partial Judgment on the Pleadings, filed November 14, 2025 [Dkt. 190].

I. INTRODUCTION

Defendant moved for judgment on the pleadings on the Medicaid Act claim (Count III) on the basis that the Early and Periodic Screening, Diagnostic, and Treatment ("EPSDT") provisions lack the "rights-creating" language necessary to authorize Plaintiff Hawaii Disability Rights Center ("Plaintiff") to sue under 42 U.S.C. § 1983 ("section 1983"). The EPSDT provisions do not clear the demanding bar required pursuant to the recent U.S. Supreme Court decision, Medina v. Planned Parenthood South Atlantic, 606 U.S. 357 (2025). Applying Medina, there is nothing in the relevant provisions of the Medicaid Act indicating that Congress intended to create individual rights enforceable under section 1983 for violating the EPSDT provisions. Those provisions do not clearly and unambiguously confer federal rights. The EPSDT provisions are not the "atypical" exceptions, i.e. provisions that unambiguously confer individual rights. The EPSDT provisions are merely a

portion of the more than 80 separate conditions that the State must satisfy in order to receive federal funding. Defendant's Motion should be granted, and Plaintiff's Medicaid Act (Count III) must be dismissed with prejudice.

II. ARGUMENT

A. The EPSDT Provisions Do Not Clearly And Unambiguously Confer Individual Rights Pursuant to Medina

"Though it is rare enough for any statute to confer an enforceable right, spending-power statutes like Medicaid are *especially unlikely to do so*." Medina, at 606 U.S. at 369 (emphasis added). "Spending-power legislation . . . cannot provide the basis for a § 1983 enforcement suit unless Congress speaks with a clear voice, and manifests an unambiguous intent to confer individual rights." Id. at 374 (citing Gonzaga University v. Doe, 536 U.S. 273, 280 (2002)). "[S]tatutory provisions must [clearly] and *unambiguously* confer individual federal rights" in order for a 1983 action to proceed. Medina, 606 U.S. at 375 (emphasis in original) (citing Health and Hosp. Corp. of Marion Cty. v. Talevski, 599 U.S. 166, 180 (2023)). That standard is a "**demanding bar** and a **significant hurdle** that will be cleared only in the **atypical** case." Medina, 606 U.S. at 375 (emphasis added) (quotation marks omitted). The "typical remedy for noncompliance with a federal statute enacted pursuant to the Spending Clause is not a private cause of action for noncompliance but rather termination of funds to the State." Talevski, 599 U.S. at 183.

In the Complaint, Plaintiff generally alleges that Defendant "has violated, and is continuing to violate, the EPSDT mandate of the Medicaid Act" without identifying the specific provisions. Dkt. 1 at PageID.20. Plaintiff's Opposition now identifies sections 1396a(a)(10)(A), 1396a(a)(8), 1396a(a)(43), 1396d(r), 1396d(a)(13) as the EPSDT provisions at issue.[1] Dkt. 194 at PageID.2385-88. Plaintiff argues that the language in these EPSDT provisions is individually focused and framed in mandatory terms. Id. at PageID.2388. And as a result, Plaintiff claims, the EPSDT provisions meet the Gonzaga/Talevski test reaffirmed by Medina. Plaintiff's argument fails because the EPSDT provisions do not meet the "demanding bar" required by Medina as they do not clearly and unambiguously contain rights-creating language.

In support of its argument, Plaintiff relies on a strained interpretation of language within certain provisions located in the "Contents" and "Definitions" sections of the Medicaid Act. As discussed in Defendant's Motion, section 1396a

[1] Although Defendant did not move for dismissal on this ground, Plaintiff's failure to specify the provisions of the Medicaid Act in its Complaint would serve as an additional basis for dismissal. See Baham v. Ass'n of Apartment Owners of Opua Hale Patio Homes, Civ. No. 13-00669 HG-BMK, 2014 WL 2761744, at *15 (D. Haw. June 18, 2014) (dismissing with leave to amend "Plaintiff's claim for violations of Haw.Rev.Stat. Ch. 514A and 514B, alleged in Count V of the Amended Complaint" because "Plaintiff must allege the specific statutory provisions that the AOAO has violated and the factual basis for the alleged violations.").

establishes the contents of a state plan for medical assistance. This includes setting out to whom a state plan must make medical assistance available, see, e.g., Section 1396a(a)(10)(A), providing that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so; Section 1396a(a)(43), providing that the state plan must inform all eligible persons under the age of 21 of the availability of EPSDT services as described in section 1396d(r)). Section 1396d is merely a definitions section that includes definitions for the terms "medical assistance" (Section 1396d(a)) and "Early and periodic screening, diagnostic, and treatment services" (Section 1396d(r)) among many others. But none of the EPSDT provisions in the Medicaid Act that Plaintiff cites, whether read separately or together, can be understood to create individual rights. See Medina, 606 U.S. at 365 ("[F]ederal statutes do not confer 'rights' enforceable under § 1983 'as a matter of course. . .This is particularly true of statutes, like Medicaid, enacted pursuant to Congress's spending power."). Instead, these provisions very clearly set out what a state must do to receive federal funds; nothing more, nothing less.

This Court should follow Medina's guidance. Medina first concluded that the language of the any-qualified provider provider, Section 1396a(a)(23)(A), does not contain anything like FNHRA's clear and ambiguous rights-creating language. Medina, 606 U.S. at 377. Rather, it "speaks to what a State must do to participate in Medicaid, and a State that fails to fulfill its duty might lose federal funding." Id.

Only *after* reaching this conclusion did Medina find "notable" the placement of Section 1396a(a)(23)(A) under "Contents" of the Medicaid Act. Medina explained that while Congress can set its rights-creating provisions apart from others like that of Talevski, it did not do so with the any qualified-provider provision because Congress listed the provision under contents of the Medicaid Act, i.e. conditions to a state receiving funding. Id. at 380-381. Medina's analysis of the location of the any-qualified provision under "Contents" was an additional *justification* for why the court's decision was correct.

This Court should apply the same analysis here. Plaintiff is misconstruing Defendant's argument by claiming that Defendant is relying on this observation by Medina. Defendant is not merely relying on the placement of the EPSDT provisions. Rather, Defendant's position is that the Court should consider Medina's additional justification that the location of the provisions under contents as evidence of Congress's intent.

Specifically, Sections 1396a(a)(10)(A), 1396a(a)(8), 1396a(a)(43) are all placed under "Contents," which set forth more than 80 separate obligations on the states. Since Congress knew how to set its rights-creating provisions from others, it would have done so with the EPSDT provisions like how it did with the FNHRA provisions in Talevski. But Congress did not give that "**unmistakable** notice" with the EPSDT provisions. Thus, the placement of the EPSDT provisions is a strong

indication that Congress did not intend for those provisions to confer individual enforceable rights under section 1983.

Plaintiff further relies on the "Suter-fix" to argue that the provisions are not unenforceable simply because they are included in the section listing the required contents of a State plan. Dkt. 194 at PageID.2384-85. The "Suter-fix" is irrelevant. 42 USC § 1320a-2 states:

> In an action brought to enforce a provision of this chapter, such provision is not to be deemed unenforceable because of its inclusion in a section of this chapter requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S.Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in Suter v. Artist M. that section 671(a)(15) of this title is not enforceable in a private right of action.

As stated above, it is not the Defendant's position that *because* the EPSDT provisions are located under "Contents" the EPSDT are therefore unenforceable. Rather, the location of the EPSDT provisions under "Contents" bolsters Congress's intent for the EPSDT provisions to only serve as the State's federal funding obligations. Accordingly, Plaintiff's attempt to distance this case from Medina by minimizing Medina's analysis as to the any qualified-provider provision's "Contents" placement is unavailing.

Plaintiff also relies on Justice Jackson's dissent, arguing that the use of the word "right" is not dispositive. Id. at PageID.2392. To begin with, it was a dissent, not the majority of the court. Further, while the presence of the word "right" in a provision may not be required under Medina, such a presence would certainly confirm Congress's clear intent for creating provisions that confer individual rights. Congress did not create explicit right-creating language here like that of FNHRA, which "offers an example almost perfectly on point." Medina, 606 U.S. at 377 (citing Talevski where the FNHRA provisions in that case set forth a specific section dedicated to the nursing home residents' right to choose a person attending physician). The individually focused terminology of Titles VI and IX ("No person . . . shall be subjected to discrimination") is another clear-cut example that is not present with the EPSDT provisions. See Gonzaga, 536 U.S. at 287. As a result, the EPSDT provisions do not contain rights-creating language and do not clearly or unambiguously confer individual federal rights.

Defendant does not dispute the standard set forth in Gonzaga and Talevski. However, accepting Plaintiff's general approach that the language of the EPSDT provisions have an "unmistakable focus" on individuals "framed in mandatory terms" approach, which tracks the dissent in Medina, would essentially mean that "other provisions (in Medicaid and elsewhere) previously thought to confer only benefits would suddenly create rights instead." Medina, 606 U.S. at 383. The

majority in Medina rejected this approach taken by the dissent. The dissent believed that Section 1396a(a)(23)(A) creates an enforceable right because it contains "compulsory" and "individual-centric terminology" and an "iffy analogy to the Bill of Rights." The majority observed however:

> [W]hat it would mean if § 1396a(a)(23)(A) did create an individually enforceable right. Many other Medicaid plan requirements would likely do the same. And instead of remaining "atypical" exceptions, as our cases have said they are, rights-creating provisions might more nearly become the rule. Talevski, 599 U.S. at 183, 143 S.Ct. 1444.

Medina, 606 U.S. at 380.

The EPSDT provisions only provide benefits to the recipients not rights. The majority's approach in Medina is binding and this Court should find that the EPSDT provisions are mandatory for the State's administrative purpose of satisfying its federal funding requirements and that the provisions only confer benefits not rights.

Plaintiff then argues that "[u]nlike §1396a(a)(23)(A), EPSDT does not pair an asserted individual guarantee with carve-outs that leave its scope to state control." Dkt. 194 at PageID.2389. This is simply not the case. As set forth in §1396a(a)(10)(A), "A State plan for medical assistance must (10) provide—(A) for making medical assistance available, including at least the care and services listed in paragraphs (1) through (5), (13)(B), (17), (21), (28), (29), and (30) of section 1396d(a) of this title, to—(i) all individuals" who would fall under all any of the

listed categories. In addition, the last paragraph of Section 1396a(a)(10) is a carve-out that begins with the words "except that" and expressly references Section 1396d(a)(4), which pertains to, among other things, EPSDT services as defined in Section 1396d(r). Moreover, Medina's analysis of the carve-out in Section 1396a(a)(23)(A) was an observation that "only serve[d] to ***confirm*** [the court's] conclusion." Medina, 606 U.S. at 378 (emphasis added). Like the "Contents" analysis, the carve-out observation was not, by itself, the basis for the court's conclusion. This is apparent when read in conjunction with the paragraph that follows, in which the court explained that expanding its "view beyond § 1396a(a)(23) to the surrounding statutory context yields similar clues." Id. at 379. As such, Plaintiff's focus on Medina's discussion of the "carve-out" is both incomplete and too narrowly focused. All of the reasons presented above confirm Congress's intent not to create individually enforceable rights under section 1983 for violating the EPSDT provisions.

B. Pre-Medina Cases Do Not Govern

Plaintiff contends that the District Court in J.E. v. Wong, 125 F.Supp.3d 1099 (D. Haw. 2015), the Ninth Circuit in Watson v. Weeks, 436 F.3d 1152 (9th Cir. 2006), as well as other federal circuit courts and district courts have already found that Section 1396a(a)(10)(A) creates a private right of action enforceable by Section

1983. Dkt. 194 at PageID.2380, 2395-96. However, all the cases Plaintiff relies upon are irreconcilable with Medina.

Plaintiff argues that Watson remains binding precedent because the court in that case already found that section 1396a(a)(10) creates a private right of action enforceable by section 1983. Dkt. 194 at PageID.2380. Watson is pre-Medina and therefore not applicable to this Court's analysis. Watson concluded that section 1396a(a)(10) creates a 1983 private right of action because the language directed "to all individuals" is "unmistakably focused on the specific individuals benefitted." Watson, 436 F.3d at 1160. Watson heavily focused on the *benefits* to the individuals covered under the statute. Medina clarifies that a benefit does not rise to the level of an enforceable right. Section 1983 "provides a cause of action only for the deprivation of **rights**, privileges, or immunities, **not** benefits or interests." Medina, 606 U.S. at 368 (emphasis added) (quotation marks omitted). "To prove that a statute secures an enforceable right, privilege, or immunity, and does not just provide a benefit or protect an interest, a plaintiff must show that the law in question clearly and unambiguously uses rights-creating terms." Id. (quotation marks and brackets omitted) (citing Gonzaga, 536 U.S. at 284, 290).

Watson was convinced by the Third Circuit's analysis in Sabree ex rel. Sabree v. Richman, 367 F.3d 180 (3d Cir. 2004), when it noted that that it is "difficult, if not impossible" to distinguish the import of Medical Act language "A State plan must

provide" from the "No person shall" language of Titles VI and IX." Watson, 436 F.3d at 1160. And Plaintiff relies on the Third Circuit case as well. Medina, however, did not rule that the entire Medicaid Act authorized individual enforceable rights under section 1983. In fact, section 1396a(a)(23)(A) falls under the "A State plan must provide," and Medina held that section did **not** confer individual enforceable rights under section 1983. Thus, Plaintiff's reliance on Watson and Sabree fails.

J.E. Wong relies on the analysis of Watson to conclude that section 1396a(a)(10)(A) creates a private right of action. Because this Court should not rely on the Watson analysis, J.E. Wong's conclusion that section 1396a(a)(10)(A) confers rights does not apply to this case. EPSDT provisions at issue focus on individual benefits and do not confer individual enforceable *rights*.

The other cases from other federal circuits and other federal district courts that Plaintiff relies upon are not binding upon this court.

C. Cases Applying Medina in Other Non-Medicaid Statutes Are Relevant

Plaintiff argues that the cases cited by Defendant should be disregarded because they "address different statutes or cut the other way." Yet, at the same time, Plaintiff relies on Gonzaga, a non-Medicaid case. In any case, Plaintiff's argument wholly misses the mark. All these cases are relevant for the purpose of showing how courts have applied Medina, just as Plaintiff argues that other pre-Medina cases are

relevant to show how courts have applied Gonzaga. Thus, this Court should not exclude post-Medina cases simply because they do not address EPSDT Medicaid Act provisions.

An independent review of the Medicaid Act is appropriate. See Smith v. Mich. Dep't of Corrections, No. 24-1439, 2025 WL 3251117 (Nov. 21, 2025). In Smith, the Sixth Circuit ruled—as a matter of first impression—that there is no private cause of action for retaliation under Section 504 of the Rehabilitation Act, and relied on Medina in reaching that conclusion. Smith analyzed that courts have the "independent power to identify and apply the proper construction of governing law." Id., 2025 WL 3251117 at *4. Smith adhered to Medina's principle that a state's consent to private enforcement suits "cannot be fairly inferred" unless Congress speaks "with a clear voice." Id. at *8. The Sixth Circuit then stated that Congress knew explicitly how to create retaliation claims and did so in a "straightforward fashion" by separating the anti-retaliation provision from any prohibited discrimination provision in federal statutes such as Title VIII of the Civil Rights Act, the Age Discrimination in Employment Act and the American Disabilities Act, Fair Labor Standards Act, Occupational Safety and Health Act. Id. However, Section 504 is silent as to retaliation and therefore Congress did not intend to authorize retaliation claims under the Rehabilitation Act. Id. at *9.

The same analysis applies here. This Court is not limited to what other circuits or other district courts did; the U.S. Supreme Court provides the controlling governing rule of law. See James v. City of Boise, Idaho, 577 U.S. 306, 307 (2016) ("It is [the U.S. Supreme Court's] responsibility to say what a [federal] statute means, and once the [U.S. Supreme] Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law."). Congress knows how to explicitly authorize a private right of action and it it did not do so with the EPSDT provisions.

The other cases cited by Defendant are applicable because they apply Medina in evaluating whether certain provisions of federal statutes clear the "demanding bar" required by Gonzaga and Talevski. See Dkt. 190 at PageID.2352-54. Plaintiff was incorrect to state that N.G. by & through V.G. v. Ohio Department of Developmental Disabilities, No. 2:24-CV-2027, 2025 WL 28880203 (S.D. Ohio Oct. 9, 2025), found that §1396a(23)(A) did create a private claim; N.G. reached the same conclusion as Medina—the section does *not* confer individual enforceable rights under 1983. Plaintiff cited the portion of Indiana Protection & Advocacy Services Commission v. Indiana Family & Soc Services Administration, 149 F.4th 917 (7th Cir. 2025), in dicta, where it stated that "*some* provisions of section 1396a(a) may yet satisfy" the demanding bar even though Medina "may well have undermined the availability of section 1983 to enforce" sections 1396a(a)(8), (a)(10)(A), or

(a)(43)(C). Dkt. 194 at PageID.2395 (emphasis added). Indiana did not state that sections 1396a(a)(8), (a)(10)(A), or (a)(43)(C) may satisfy the standard, rather that "some provision" may do so. This does not foreclose the impact of Medina nor does it undermine Medina's reasoning that the EPSDT provisions must meet the demanding bar. And they do not.

D. Ninth Circuit in HDRC v. Kishimoto Merely Confirmed the State's Obligatory Duties

As Plaintiff itself states, the Ninth Circuit's Decision in Hawaii Disability Rights Center v. Kishimoto, 122 F.4th 353 (9th Cir. 2024), confirms the State's obligation to comply with the requirements for the federal spending statute. See Dkt. 194 at PageID.2393 ("the Ninth Circuit squarely recognized DHS's duty under EPSDT to provide medically necessary ABA[.]"). The Ninth Circuit in Kishimoto did *not* hold that Plaintiff was authorized to sue under section 1983.

E. Dismissal of Count III Must Be With Prejudice

"Dismissal with prejudice and without leave to amend is not appropriate unless it is clear on de novo review that the complaint could not be saved by amendment." Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003). While Plaintiff characterizes judgment without leave to amend as "harsh," it would be futile to permit amendment. Any additional facts Plaintiff may add would not assist the Court in answering whether the Medicaid Act permits Plaintiff's cause of action. This is unlike Ryan v. Salisbury, 382 F.Supp.3d 1031

(D. Haw. 2019), which Plaintiff relies on for granting leave to amend. This Motion involves a pure question of law that cannot be resolved by simply pleading additional facts. Count III should be dismissed with prejudice.

III. CONCLUSION

For the foregoing reasons, the Motion should be granted.

DATED: Honolulu, Hawaii, December 16, 2025.

STATE OF HAWAII

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CERTIFICATE OF SERVICE

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DATED: Honolulu, Hawaii, December 16, 2025.

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