

HOUSE BILL No. 5646

December 3, 2009, Introduced by Reps. Constan, Clemente, Polidori, Lahti, Gonzales and Spade and referred to the Committee on Government Operations.

A bill to amend 1939 PA 280, entitled
"The social welfare act,"
by amending section 106 (MCL 400.106), as amended by 2006 PA 144.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 106. (1) A medically indigent individual is defined as:

2 (a) An individual receiving family independence program
3 benefits or an individual receiving supplemental security income
4 under title XVI or state supplementation under title XVI subject to
5 limitations imposed by the director according to title XIX.

6 (b) Except as provided in section 106a, an individual who
7 meets all of the following conditions:

8 (i) The individual has applied in the manner the ~~family~~
9 ~~independence agency~~ **DEPARTMENT** prescribes.

10 (ii) The individual's need for the type of medical assistance

1 available under this act for which the individual applied has been
2 professionally established and payment for it is not available
3 through the legal obligation of a public or private contractor to
4 pay or provide for the care without regard to the income or
5 resources of the patient. The state department is subrogated to any
6 right of recovery that a patient may have for the cost of
7 hospitalization, pharmaceutical services, physician services,
8 nursing services, and other medical services not to exceed the
9 amount of funds expended by the state department for the care and
10 treatment of the patient. The patient or other person acting in the
11 patient's behalf shall execute and deliver an assignment of claim
12 or other authorizations as necessary to secure the right of
13 recovery to the department. A payment may be withheld under this
14 act for medical assistance for an injury or disability for which
15 the individual is entitled to medical care or reimbursement for the
16 cost of medical care under sections 3101 to 3179 of the insurance
17 code of 1956, 1956 PA 218, MCL 500.3101 to 500.3179, or under
18 another policy of insurance providing medical or hospital benefits,
19 or both, for the individual unless the individual's entitlement to
20 that medical care or reimbursement is at issue. If a payment is
21 made, the state department, to enforce its subrogation right, may
22 do either of the following: (a) intervene or join in an action or
23 proceeding brought by the injured, diseased, or disabled
24 individual, the individual's guardian, personal representative,
25 estate, dependents, or survivors, against the third person who may
26 be liable for the injury, disease, or disability, or against
27 contractors, public or private, who may be liable to pay or provide

1 medical care and services rendered to an injured, diseased, or
2 disabled individual; (b) institute and prosecute a legal proceeding
3 against a third person who may be liable for the injury, disease,
4 or disability, or against contractors, public or private, who may
5 be liable to pay or provide medical care and services rendered to
6 an injured, diseased, or disabled individual, in state or federal
7 court, either alone or in conjunction with the injured, diseased,
8 or disabled individual, the individual's guardian, personal
9 representative, estate, dependents, or survivors. The state
10 department may institute the proceedings in its own name or in the
11 name of the injured, diseased, or disabled individual, the
12 individual's guardian, personal representative, estate, dependents,
13 or survivors. As provided in section 6023 of the revised judicature
14 act of 1961, 1961 PA 236, MCL 600.6023, the state department, in
15 enforcing its subrogation right, shall not satisfy a judgment
16 against the third person's property that is exempt from levy and
17 sale. The injured, diseased, or disabled individual may proceed in
18 his or her own name, collecting the costs without the necessity of
19 joining the state department or the state as a named party. The
20 injured, diseased, or disabled individual shall notify the state
21 department of the action or proceeding entered into upon
22 commencement of the action or proceeding. An action taken by the
23 state or the state department in connection with the right of
24 recovery afforded by this section does not deny the injured,
25 diseased, or disabled individual any part of the recovery beyond
26 the costs expended on the individual's behalf by the state
27 department. The costs of legal action initiated by the state shall

1 be paid by the state. A payment shall not be made under this act
2 for medical assistance for an injury, disease, or disability for
3 which the individual is entitled to medical care or the cost of
4 medical care under the worker's disability compensation act of
5 1969, 1969 PA 317, MCL 418.101 to 418.941; except that payment may
6 be made if an appropriate application for medical care or the cost
7 of the medical care has been made under the worker's disability
8 compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941,
9 entitlement has not been finally determined, and an arrangement
10 satisfactory to the state department has been made for
11 reimbursement if the claim under the worker's disability
12 compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, is
13 finally sustained.

14 (iii) The individual has an annual income that is below, or
15 subject to limitations imposed by the director and because of
16 medical expenses falls below, the protected basic maintenance
17 level. The protected basic maintenance level for 1-person and 2-
18 person families shall be at least 100% of the payment standards
19 generally used to determine eligibility in the family independence
20 program. For families of 3 or more persons, the protected basic
21 maintenance level shall be at least 100% of the payment standard
22 generally used to determine eligibility in the family independence
23 program. These levels shall recognize regional variations and shall
24 not exceed 133-1/3% of the payment standard generally used to
25 determine eligibility in the family independence program.

26 (iv) The individual, if a family independence program related
27 individual and living alone, has liquid or marketable assets of not

1 more than \$2,000.00 in value, or, if a 2-person family, the family
2 has liquid or marketable assets of not more than \$3,000.00 in
3 value. The state department shall establish comparable liquid or
4 marketable asset amounts for larger family groups. Excluded in
5 making the determination of the value of liquid or marketable
6 assets are the values of: the homestead; clothing; household
7 effects; \$1,000.00 of cash surrender value of life insurance,
8 except that if the **INSURED'S** health ~~of the insured~~ makes
9 ~~continuance of~~ **CONTINUING** the insurance desirable, the entire cash
10 surrender value of life insurance is excluded from consideration,
11 up to the maximum provided or allowed by federal regulations and in
12 accordance with state department rules; the fair market value of
13 tangible personal property used in earning income; an amount paid
14 as judgment or settlement for damages suffered as a result of
15 exposure to agent orange, as defined in section 5701 of the public
16 health code, 1978 PA 368, MCL 333.5701; and a space or plot
17 purchased for the purposes of burial for the person. For
18 individuals related to the title XVI program, the appropriate
19 resource levels and property exemptions specified in title XVI
20 shall be used.

21 (v) The individual is not an inmate of a public institution
22 except as a patient in a medical institution.

23 (vi) The individual meets the eligibility standards for
24 supplemental security income under title XVI or for state
25 supplementation under the act, subject to limitations imposed by
26 the director according to title XIX; or meets the eligibility
27 standards for family independence program benefits; or meets the

1 eligibility standards for optional eligibility groups under title
 2 XIX, subject to limitations imposed by the director according to
 3 title XIX.

4 (2) As used in this act:

5 (a) "Medicaid contracted health plan" means a managed care
 6 organization with whom the state department contracts to provide or
 7 arrange for the delivery of comprehensive health care services as
 8 authorized under this act.

9 (b) "Medical institution" means a state licensed or approved
 10 hospital, nursing home, medical care facility, psychiatric
 11 hospital, or other facility or identifiable unit of a listed
 12 institution certified as meeting established standards for a
 13 nursing home or hospital in accordance with the laws of this state.

14 (c) "Title XVI" means title XVI of the social security act, 42
 15 USC 1381 to 1382j and 1383 to 1383f.

16 (3) ~~An IF AN~~ individual receiving medical assistance under
 17 this act ~~or his or her legal counsel shall notify the state~~
 18 ~~department when filing an action~~ **FILES A COMPLAINT** in which the
 19 state department may have a right to recover expenses paid under
 20 this act, **THE INDIVIDUAL, HIS OR HER REPRESENTATIVE, OR HIS OR HER**
 21 **LEGAL COUNSEL MUST NOTIFY THE STATE DEPARTMENT AND SERVE A COPY OF**
 22 **THE COMPLAINT ON THE STATE DEPARTMENT NOT LATER THAN 7 DAYS AFTER**
 23 **THE COMPLAINT HAS BEEN FILED WITH THE COURT.** If the individual is
 24 enrolled in a medicaid contracted health plan, the individual, ~~or~~
 25 **HIS OR HER REPRESENTATIVE, OR his or her legal counsel shall MUST**
 26 provide notice to the medicaid contracted health plan in addition
 27 to providing notice to the state department **NOT LATER THAN 7 DAYS**

1 AFTER THE COMPLAINT HAS BEEN FILED WITH THE COURT.

2 ~~—— (4) If a legal action in which the state department, a~~
3 ~~medicaid contracted health plan, or both has a right to recover~~
4 ~~expenses paid under this act is filed and settled after November~~
5 ~~29, 2004 without notice to the state department or the medicaid~~
6 ~~contracted health plan, the state department or the medicaid~~
7 ~~contracted health plan may file a legal action against the~~
8 ~~individual or his or her legal counsel, or both, to recover~~
9 ~~expenses paid under this act. The attorney general shall recover~~
10 ~~any cost or attorney fees associated with a recovery under this~~
11 ~~subsection.~~

12 (4) EXCEPT AS PROVIDED IN SUBSECTION (6), THE INDIVIDUAL OR
13 HIS OR HER REPRESENTATIVE MUST CERTIFY THAT HE OR SHE HAS PROVIDED
14 NOTICE AND A COPY OF THE COMPLAINT TO THE STATE DEPARTMENT, ON THE
15 SUMMONS AND COMPLAINT FORM, IN A MANNER TO BE DETERMINED BY THE
16 STATE COURT ADMINISTRATOR.

17 (5) EXCEPT AS PROVIDED IN SUBSECTION (6), IF AN INDIVIDUAL OR
18 HIS OR HER REPRESENTATIVE SEEKS TO SETTLE AN ACTION IN WHICH THE
19 STATE DEPARTMENT MAY HAVE A RIGHT TO RECOVER EXPENSES PAID UNDER
20 THIS ACT WITHOUT FILING A COMPLAINT, THE INDIVIDUAL OR HIS OR HER
21 REPRESENTATIVE MUST NOTIFY THE STATE DEPARTMENT IN WRITING BEFORE
22 BEGINNING SETTLEMENT DISCUSSIONS. THE PARTIES TO THE SETTLEMENT
23 DISCUSSIONS MUST ALLOW THE DEPARTMENT OR ITS REPRESENTATIVE AN
24 OPPORTUNITY TO PARTICIPATE IN THOSE SETTLEMENT DISCUSSIONS. IF THE
25 INDIVIDUAL IS ENROLLED IN A MEDICAID CONTRACTED HEALTH PLAN, THE
26 INDIVIDUAL OR HIS OR HER REPRESENTATIVE MUST NOTIFY THE MEDICAID
27 CONTRACTED HEALTH PLAN IN WRITING AND ALLOW THE MEDICAID CONTRACTED

1 HEALTH PLAN OR ITS REPRESENTATIVE AN OPPORTUNITY TO PARTICIPATE IN
2 THE SETTLEMENT DISCUSSIONS IN ADDITION TO PROVIDING NOTICE TO THE
3 STATE DEPARTMENT BEFORE THE MATTER IS SETTLED.

4 (6) IF THE INDIVIDUAL IS REPRESENTED BY LEGAL COUNSEL, THE
5 LEGAL COUNSEL AND NOT THE INDIVIDUAL OR HIS OR HER REPRESENTATIVE
6 MUST DO ALL OF THE FOLLOWING:

7 (A) CERTIFY THAT HE OR SHE HAS PROVIDED NOTICE AND A COPY OF
8 THE COMPLAINT TO THE STATE DEPARTMENT, ON THE SUMMONS AND COMPLAINT
9 FORM, IN A MANNER TO BE DETERMINED BY THE STATE COURT
10 ADMINISTRATOR. THIS CERTIFICATION MUST BE MADE ON ALL CASES THAT
11 ARE NO-FAULT AUTOMOBILE INSURANCE CASES, MEDICAL MALPRACTICE CASES,
12 PERSONAL INJURY-AUTOMOBILE NEGLIGENCE CASES, OTHER PERSONAL INJURY
13 CASES, OR ANY OTHER CASE IN WHICH THE STATE DEPARTMENT MAY HAVE A
14 RIGHT TO RECOVER EXPENSES PAID UNDER THIS ACT.

15 (B) NOTIFY THE STATE DEPARTMENT IN WRITING BEFORE BEGINNING
16 SETTLEMENT DISCUSSIONS. THE PARTIES TO THE DISCUSSIONS MUST ALLOW
17 THE DEPARTMENT OR ITS REPRESENTATIVE AN OPPORTUNITY TO PARTICIPATE
18 IN THOSE SETTLEMENT DISCUSSIONS.

19 (C) NOTIFY THE MEDICAID CONTRACTED HEALTH PLAN IN WRITING IN
20 ADDITION TO PROVIDING NOTICE TO THE STATE DEPARTMENT BEFORE THE
21 MATTER IS SETTLED.

22 (7) IF NOTICE WAS NOT GIVEN AS REQUIRED IN SUBSECTION (3) OR
23 (5), THE STATE DEPARTMENT OR THE MEDICAID CONTRACTED HEALTH PLAN IS
24 ENTITLED TO RECOVER FROM THE INDIVIDUAL ALL OF THE MEDICAL EXPENSES
25 PAID UNDER THIS ACT AND ATTORNEY FEES AND COSTS ASSOCIATED WITH
26 RECOVERING THE MEDICAL EXPENSES PAID UNDER THIS ACT.

27 (8) IF NO COMPLAINT HAS BEEN FILED, BUT THE CLAIM WAS SETTLED

1 AND NOTICE OF THE SETTLEMENT WAS NOT GIVEN AS REQUIRED IN
2 SUBSECTION (3) OR (5), THE STATE DEPARTMENT IS ENTITLED TO RECOVER
3 FROM THE INDIVIDUAL ALL OF THE MEDICAL EXPENSES PAID UNDER THIS ACT
4 AND ATTORNEY FEES AND COSTS ASSOCIATED WITH RECOVERING THE MEDICAL
5 EXPENSES PAID UNDER THIS ACT.

6 (9) ~~(5)~~—The state department has first priority against the
7 proceeds of the net recovery from the settlement or judgment in an
8 action settled in which notice has been provided under subsection
9 (3) OR (5). A medicaid contracted health plan has priority
10 immediately after the state department in an action settled in
11 which notice has been provided under subsection (3) OR (5). The
12 state department and a medicaid contracted health plan shall
13 recover the full cost of expenses paid under this act unless the
14 state department or the medicaid contracted health plan agrees to
15 accept an amount less than the full amount. If the individual would
16 recover less against the proceeds of the net recovery than the
17 expenses paid under this act, the state department or medicaid
18 contracted health plan, and the individual shall share equally in
19 the proceeds of the net recovery. As used in this subsection, "net
20 recovery" means the total settlement or judgment less the costs and
21 fees incurred by or on behalf of the individual who obtains the
22 settlement or judgment.