

# HOUSE BILL No. 4013

January 22, 2013, Introduced by Rep. Heise and referred to the Committee on Financial Liability Reform.

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,  
and by adding section 106b.

## 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.

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

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

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

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

1 **INCOME ASSIGNED TO A POOLED TRUST DESCRIBED IN SECTION 106B.**

2 (iv) The individual, if a family independence program related  
3 individual and living alone, has liquid or marketable assets of not  
4 more than \$2,000.00 in value, or, if a 2-person family, the family  
5 has liquid or marketable assets of not more than \$3,000.00 in  
6 value. The state department shall establish comparable liquid or  
7 marketable asset amounts for larger family groups. Excluded in  
8 making the determination of the value of liquid or marketable  
9 assets are the values of: the homestead; clothing; household  
10 effects; \$1,000.00 of cash surrender value of life insurance,  
11 except that if the **INSURED'S** health ~~of the insured~~ makes  
12 ~~continuance of~~ **CONTINUING** the insurance desirable, the entire cash  
13 surrender value of life insurance is excluded from consideration,  
14 up to the maximum provided or allowed by federal regulations and in  
15 accordance with state department rules; the fair market value of  
16 tangible personal property used in earning income; an amount paid  
17 as judgment or settlement for damages suffered as a result of  
18 exposure to agent orange, as defined in section 5701 of the public  
19 health code, 1978 PA 368, MCL 333.5701; ~~and a~~ space or plot  
20 purchased for the purposes of burial for the person; **AND ASSETS,**  
21 **WITHOUT REGARD TO VALUE, HELD BY, OR TRANSFERRED TO, A TRUSTEE OF A**  
22 **POOLED TRUST AS DESCRIBED IN SECTION 106B FOR THE BENEFIT OF THE**  
23 **INDIVIDUAL.** For individuals related to the title XVI program, the  
24 appropriate resource levels and property exemptions specified in  
25 title XVI shall be used.

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

1           (vi) The individual meets the eligibility standards for  
2 supplemental security income under title XVI or for state  
3 supplementation under the act, subject to limitations imposed by  
4 the director according to title XIX; or meets the eligibility  
5 standards for family independence program benefits; or meets the  
6 eligibility standards for optional eligibility groups under title  
7 XIX, subject to limitations imposed by the director according to  
8 title XIX.

9           (2) As used in this act:

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

14           (b) "Medical institution" means a state licensed or approved  
15 hospital, nursing home, medical care facility, psychiatric  
16 hospital, or other facility or identifiable unit of a listed  
17 institution certified as meeting established standards for a  
18 nursing home or hospital in accordance with the laws of this state.

19           (c) "Title XVI" means title XVI of the social security act, 42  
20 USC 1381 to ~~1382j~~ and ~~1383~~ to ~~1383f~~. **1385.**

21           (3) An individual receiving medical assistance under this act  
22 or his or her legal counsel shall notify the state department when  
23 filing an action in which the state department may have a right to  
24 recover expenses paid under this act. If the individual is enrolled  
25 in a medicaid contracted health plan, the individual or his or her  
26 legal counsel shall provide notice to the medicaid contracted  
27 health plan in addition to providing notice to the state

1 department.

2 (4) If a legal action in which the state department, a  
3 medicaid contracted health plan, or both ~~has~~**HAVE** a right to  
4 recover expenses paid under this act is filed and settled after  
5 November 29, 2004 without notice to the state department or the  
6 medicaid contracted health plan, the state department or the  
7 medicaid 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 (5) The state department has first priority against the  
13 proceeds of the net recovery from the settlement or judgment in an  
14 action settled in which notice has been provided under subsection  
15 (3). A medicaid contracted health plan has priority immediately  
16 after the state department in an action settled in which notice has  
17 been provided under subsection (3). The state department and a  
18 medicaid contracted health plan shall recover the full cost of  
19 expenses paid under this act unless the state department or the  
20 medicaid contracted health plan agrees to accept an amount less  
21 than the full amount. If the individual would recover less against  
22 the proceeds of the net recovery than the expenses paid under this  
23 act, the state department or medicaid contracted health plan, and  
24 the individual shall share equally in the proceeds of the net  
25 recovery. As used in this subsection, "net recovery" means the  
26 total settlement or judgment less the costs and fees incurred by or  
27 on behalf of the individual who obtains the settlement or judgment.

1           SEC. 106B. (1) THE STATE DEPARTMENT SHALL ESTABLISH RULES,  
2 REGULATIONS, AND POLICIES THAT ARE IN COMPLIANCE WITH, AND NOT MORE  
3 RESTRICTIVE THAN, EXISTING FEDERAL LAW, REGULATIONS, AND POLICIES  
4 WITH REGARD TO THE TREATMENT OF A POOLED TRUST DESCRIBED IN THIS  
5 SECTION.

6           (2) THE STATE DEPARTMENT SHALL NOT IMPOSE A PENALTY ON AN  
7 INDIVIDUAL, OR DELAY ELIGIBILITY FOR MEDICAL ASSISTANCE, FOR  
8 ENTERING INTO A JOINDER AGREEMENT, TRANSFERRING ASSETS TO A POOLED  
9 TRUST, OR BOTH.

10          (3) A JOINDER AGREEMENT MAY BE ENTERED INTO BY A DISABLED  
11 INDIVIDUAL OF ANY AGE, OR ON BEHALF OF A DISABLED INDIVIDUAL, BY  
12 ANY OF THE FOLLOWING:

13           (A) WITH THE PERMISSION OR CONSENT, OR BOTH, OF THE DISABLED  
14 INDIVIDUAL, A PARENT.

15           (B) WITH THE PERMISSION OR CONSENT, OR BOTH, OF THE DISABLED  
16 INDIVIDUAL, A GRANDPARENT.

17           (C) A GUARDIAN.

18           (D) A CONSERVATOR.

19           (E) A COURT.

20           (F) A PERSON NAMED AS ATTORNEY-IN-FACT THROUGH A DURABLE POWER  
21 OF ATTORNEY THAT AUTHORIZES THE ATTORNEY-IN-FACT TO ENTER INTO A  
22 JOINDER AGREEMENT OR SIMILAR AGREEMENT.

23          (4) AS USED IN THIS SECTION:

24           (A) "BENEFICIARY" MEANS A DISABLED INDIVIDUAL WHO HAS THE  
25 RIGHT TO RECEIVE SERVICES AND BENEFITS OF A POOLED TRUST.

26           (B) "DISABILITY" MEANS A PHYSICAL OR MENTAL IMPAIRMENT AS  
27 DESCRIBED IN SECTION 1614 OF THE SOCIAL SECURITY ACT, 42 USC 1382C.



1 (C) "DISABLED INDIVIDUAL" MEANS AN INDIVIDUAL WITH A  
2 DISABILITY.

3 (D) "JOINDER AGREEMENT" MEANS AN AGREEMENT BETWEEN A TRUSTEE  
4 AND A BENEFICIARY THAT CONTAINS THE TERMS AND CONDITIONS OF THE  
5 RELATIONSHIP BETWEEN THE TRUSTEE AND THE BENEFICIARY.

6 (E) "POOLED TRUST" MEANS A TRUST THAT MEETS ALL OF THE  
7 FOLLOWING CRITERIA:

8 (i) THE TRUSTEE MAINTAINS AN ACCOUNT FOR EACH BENEFICIARY.

9 (ii) THE TRUSTEE POOLS ACCOUNTS FOR PURPOSES OF INVESTMENT AND  
10 MANAGEMENT OF FUNDS.

11 (iii) THE TRUSTEE USES FUNDS IN THE BENEFICIARY'S ACCOUNT FOR  
12 THE SOLE BENEFIT OF THE BENEFICIARY.

13 (iv) UPON THE DEATH OF A BENEFICIARY, THE TRUSTEE MAY RETAIN  
14 ASSETS THAT REMAIN IN THE BENEFICIARY'S ACCOUNT, WITHOUT LIMIT TO  
15 DOLLAR AMOUNT, IN THE POOLED TRUST. WITH RESPECT TO ASSETS THAT  
16 REMAIN IN THE BENEFICIARY'S ACCOUNT AND THAT ARE NOT RETAINED BY  
17 THE TRUST, THE TRUSTEE SHALL REIMBURSE THIS STATE IN AN AMOUNT  
18 EQUAL TO THE TOTAL AMOUNT OF MEDICAL ASSISTANCE PAID BY THIS STATE  
19 ON BEHALF OF THE BENEFICIARY BEFORE DISTRIBUTING THOSE ASSETS TO  
20 OTHER INDIVIDUALS OR USING THOSE ASSETS FOR ANY OTHER PURPOSE.

21 (F) "TRUSTEE" MEANS A NONPROFIT ORGANIZATION THAT MANAGES A  
22 POOLED TRUST. A DETERMINATION OF THE INTERNAL REVENUE SERVICE, THE  
23 DEPARTMENT OF TREASURY, OR BOTH, REGARDING THE NONPROFIT STATUS OF  
24 AN ORGANIZATION OPERATING A POOLED TRUST IS SUFFICIENT TO SATISFY  
25 THE NONPROFIT REQUIREMENT OF 42 USC 1396P(D) (4) (C).