

HOUSE BILL No. 6361

September 25, 2018, Introduced by Rep. Canfield and referred to the Committee on Appropriations.

A bill to amend 1939 PA 280, entitled
"The social welfare act,"
by amending section 106 (MCL 400.106), as amended by 2014 PA 452.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 106. (1) ~~A medically indigent individual is defined as:~~
2 **AS USED IN THIS ACT, "MEDICALLY INDIGENT INDIVIDUAL" MEANS ANY OF**
3 **THE FOLLOWING:**

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

8 (b) Except as provided in sections 106a and 106b, an

1 individual who meets all of the following conditions:

2 (i) The individual has applied in the manner the department ~~of~~
3 ~~community health~~ prescribes.

4 (ii) The individual's need for the type of medical assistance
5 available under this act for which the individual applied has been
6 professionally established and payment for it is not available
7 through the legal obligation of a public or private contractor to
8 pay or provide for the care without regard to the income or
9 resources of the patient. The ~~state department and the department~~
10 ~~of community health are~~ **IS** subrogated to any right of recovery that
11 a patient may have for the cost of hospitalization, pharmaceutical
12 services, physician services, nursing services, and other medical
13 services not to exceed the amount of ~~funds~~ **MONEY** expended by the
14 ~~state department or the department of community health~~ for the care
15 and treatment of the patient. The patient or other person acting ~~in~~
16 **ON** the patient's behalf shall execute and deliver an assignment of
17 claim or other authorizations as necessary to secure the right of
18 recovery to the department. ~~or the department of community health.~~
19 A payment may be withheld under this act for medical assistance for
20 an injury or disability for which the individual is entitled to
21 medical care or reimbursement for the cost of medical care under
22 ~~sections 3101 to 3179~~ **CHAPTER 31** of the insurance code of 1956,
23 1956 PA 218, MCL 500.3101 to 500.3179, or under another policy of
24 insurance providing medical or hospital benefits, or both, for the
25 individual unless the individual's entitlement to that medical care
26 or reimbursement is at issue. If a payment is made, the ~~state~~
27 department, ~~or the department of community health,~~ to enforce its

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

1 notify the ~~state department or the department of community health~~
2 of the action or proceeding entered into upon commencement of the
3 action or proceeding. An action taken by the state ~~, the state~~
4 ~~department, or the department of community health~~ in connection
5 with the right of recovery afforded by this section does not deny
6 the injured, diseased, or disabled individual any part of the
7 recovery beyond the costs expended on the individual's behalf by
8 the ~~state department. or the department of community health.~~ The
9 costs of legal action initiated by the state ~~shall~~ **MUST** be paid by
10 the state. A payment ~~shall~~ **MUST** not be made under this act for
11 medical assistance for an injury, disease, or disability for which
12 the individual is entitled to medical care or the cost of medical
13 care under the worker's disability compensation act of 1969, 1969
14 PA 317, MCL 418.101 to 418.941; except that payment may be made if
15 an appropriate application for medical care or the cost of the
16 medical care has been made under the worker's disability
17 compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941,
18 entitlement has not been finally determined, and an arrangement
19 satisfactory to the ~~state department or the department of community~~
20 ~~health~~ has been made for reimbursement if the claim under the
21 worker's disability compensation act of 1969, 1969 PA 317, MCL
22 418.101 to 418.941, is finally sustained.

23 (iii) The individual has an annual income that is below, or
24 subject to limitations imposed by the director and because of
25 medical expenses falls below, the protected basic maintenance
26 level. The protected basic maintenance level for 1-person and 2-
27 person families ~~shall~~ **MUST** be at least **NOT LESS THAN** 100% of the

1 payment standards generally used to determine eligibility in the
2 family independence program. For families of 3 or more persons, the
3 protected basic maintenance level ~~shall~~ **MUST** be ~~at least~~ **NOT LESS**
4 **THAN** 100% of the payment standard generally used to determine
5 eligibility in the family independence program. These levels ~~shall~~
6 **MUST** recognize regional variations and ~~shall~~ **MUST** not exceed 133-
7 1/3% of the payment standard generally used to determine
8 eligibility in the family independence program.

9 (iv) The individual, if a family independence program related
10 individual and living alone, has liquid or marketable assets of not
11 more than \$2,000.00 in value, or, if a 2-person family, the family
12 has liquid or marketable assets of not more than \$3,000.00 in
13 value. The department ~~of community health~~ shall establish
14 comparable liquid or marketable asset amounts for larger family
15 groups. Excluded in making the determination of the value of liquid
16 or marketable assets are the values of: the homestead; clothing;
17 household effects; \$1,000.00 of cash surrender value of life
18 insurance, except that if the health of the insured makes
19 continuance of the insurance desirable, the entire cash surrender
20 value of life insurance is excluded from consideration, up to the
21 maximum provided or allowed by federal regulations and in
22 accordance with department ~~of community health~~ rules; the fair
23 market value of tangible personal property used in earning income;
24 an amount paid as judgment or settlement for damages suffered as a
25 result of exposure to ~~agent orange~~, **AGENT ORANGE** as defined in
26 section 5701 of the public health code, 1978 PA 368, MCL 333.5701;
27 and a space or plot purchased for the purposes of burial for the

1 person. For individuals related to the title XVI program, the
2 appropriate resource levels and property exemptions specified in
3 title XVI ~~shall~~**MUST** be used.

4 (v) Except as provided in section 106b, the individual is not
5 an inmate of a public institution except as a patient in a medical
6 institution.

7 (vi) The individual meets the eligibility standards for
8 supplemental security income under title XVI or for state
9 supplementation under the act, subject to limitations imposed by
10 the director of the department ~~of community health~~ according to
11 title XIX; or meets the eligibility standards for family
12 independence program benefits; or meets the eligibility standards
13 for optional eligibility groups under title XIX, subject to
14 limitations imposed by the director of the department ~~of community~~
15 ~~health~~ according to title XIX.

16 (c) An individual **WHO** is eligible under section
17 1396a(a)(10)(A)(i)(VIII) of title XIX. This subdivision does not
18 apply if either of the following occurs:

19 (i) If the department ~~of community health~~ is unable to obtain
20 a federal waiver as provided in section 105d(1) or (20).

21 (ii) If federal government matching funds for the program
22 described in section 105d are reduced below 100% and annual state
23 savings and other nonfederal net savings associated with the
24 implementation of that program are not sufficient to cover the
25 reduced federal match. The department ~~of community health~~ shall
26 determine and the state budget office shall approve how annual
27 state savings and other nonfederal net savings ~~shall~~**MUST** be

1 calculated by June 1, 2014. By September 1, 2014, the calculations
 2 and methodology used to determine the state and other nonfederal
 3 net savings ~~shall~~ **MUST** be submitted to the legislature.

4 (2) As used in this act:

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

9 (b) "Federal poverty guidelines" means the poverty guidelines
 10 published annually in the ~~federal register~~ **FEDERAL REGISTER** by the
 11 United States ~~department of health and human services~~ **DEPARTMENT OF**
 12 **HEALTH AND HUMAN SERVICES** under its authority to revise the poverty
 13 line under section 673(2) of subtitle B of title VI of the omnibus
 14 budget reconciliation act of 1981, 42 USC 9902.

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

20 (d) "Title XVI" means title XVI of the social security act, 42
 21 USC 1381 to 1383f.

22 (3) An individual receiving medical assistance under this act,
 23 **HIS OR HER REPRESENTATIVE**, or his or her legal counsel, **OR ALL 3**,
 24 shall notify the ~~state department or the department of community~~
 25 ~~health when filing an action in which the state department or the~~
 26 ~~department of community health may have a right to recover expenses~~
 27 ~~paid under this act. If the individual is enrolled in a contracted~~

1 ~~health plan, the individual or his or her legal counsel shall~~
2 ~~provide notice to the contracted health plan in addition to~~
3 ~~providing notice to the state department.~~ **IF EITHER OF THE FOLLOWING**
4 **OCCURS:**

5 (A) THE INDIVIDUAL, HIS OR HER REPRESENTATIVE, OR HIS OR HER
6 LEGAL COUNSEL, OR ALL 3, FILE A COMPLAINT IN WHICH THE DEPARTMENT
7 MAY HAVE A RIGHT TO RECOVER EXPENSES PAID UNDER THIS ACT.

8 (B) THE INDIVIDUAL, HIS OR HER REPRESENTATIVE, OR HIS OR HER
9 LEGAL COUNSEL, OR ALL 3, SEEK TO SETTLE AN ACTION, WITHOUT FILING A
10 COMPLAINT, IN WHICH THE DEPARTMENT MAY HAVE A RIGHT TO RECOVER
11 EXPENSES PAID UNDER THIS ACT.

12 (4) THE NOTICE REQUIRED UNDER SUBSECTION (3) (A) , ALONG WITH A
13 COPY OF THE COMPLAINT, MUST BE PROVIDED TO THE DEPARTMENT WITHIN 7
14 DAYS AFTER THE COMPLAINT IS FILED WITH THE COURT. THE INDIVIDUAL,
15 HIS OR HER REPRESENTATIVE, OR HIS OR HER LEGAL COUNSEL SHALL
16 CERTIFY THAT NOTICE AND A COPY OF THE COMPLAINT HAVE BEEN PROVIDED
17 TO THE DEPARTMENT ON THE SUMMONS AND COMPLAINT FORM. THIS
18 CERTIFICATION MUST BE MADE IN CASES WITH THE FOLLOWING CASE TYPE
19 CODES: NF (NO-FAULT AUTOMOBILE INSURANCE) , NH (MEDICAL
20 MALPRACTICE) , NI (PERSONAL INJURY, AUTO NEGLIGENCE) , AND NO (OTHER
21 PERSONAL INJURY) , AND IN ANY OTHER CASE IN WHICH THE DEPARTMENT MAY
22 HAVE A RIGHT TO RECOVER EXPENSES PAID UNDER THIS ACT. THE STATE
23 COURT ADMINISTRATOR SHALL REVISE THE SUMMONS AND COMPLAINT FORM TO
24 ALLOW CERTIFICATION UNDER THIS SUBSECTION.

25 (5) THE NOTICE REQUIRED UNDER SUBSECTION (3) (B) MUST BE
26 PROVIDED IN WRITING TO THE DEPARTMENT BEFORE THE ACTION IS SETTLED
27 AND MUST INCLUDE THE SETTLEMENT TERMS AND AMOUNT.

1 (6) IF THE INDIVIDUAL IS ENROLLED IN A CONTRACTED HEALTH PLAN,
2 IN ADDITION TO PROVIDING NOTICE TO THE DEPARTMENT UNDER SUBSECTION
3 (3), THE INDIVIDUAL, HIS OR HER REPRESENTATIVE, OR HIS OR HER LEGAL
4 COUNSEL, OR ALL 3, SHALL PROVIDE NOTICE TO THE CONTRACTED HEALTH
5 PLAN IN WRITING WITHIN 7 DAYS AFTER THE COMPLAINT IS FILED WITH THE
6 COURT OR, IF NO COMPLAINT IS FILED, BEFORE THE ACTION IS SETTLED.

7 (7) ~~(4) If a legal action in which the state department, the~~
8 ~~department of community health, a contracted health plan, or all 3~~
9 ~~have a right to recover expenses paid under this act is filed and~~
10 ~~settled after November 29, 2004 without notice to the state~~
11 ~~department, the department of community health, or the contracted~~
12 ~~health plan, NOTICE IS NOT GIVEN AS REQUIRED BY SUBSECTIONS (3)~~
13 **THROUGH (6),** the state department, ~~the department of community~~
14 ~~health,~~ or the contracted health plan may file a legal action
15 against the individual, **HIS OR HER REPRESENTATIVE,** or his or her
16 legal counsel, or ~~both,~~ **ALL 3,** to recover expenses paid under this
17 act. The attorney general shall recover any cost or attorney fees
18 associated with a recovery under this subsection.

19 (8) A THIRD PARTY LIABILITY INSURER WHO IS POTENTIALLY LIABLE
20 IN AN ACTION REFERENCED IN SUBSECTION (3) AND WHO IS AWARE OF THE
21 ACTION MUST PROVIDE NOTICE UNDER THIS SECTION IN THE SAME MANNER AS
22 NOTICE IS PROVIDED BY AN INDIVIDUAL. IF A THIRD PARTY LIABILITY
23 INSURER SETTLES AN ACTION WITHOUT PROVIDING NOTICE UNDER THIS
24 SECTION, THE DEPARTMENT OR THE CONTRACTED HEALTH PLAN MAY FILE A
25 LEGAL ACTION AGAINST THE THIRD PARTY LIABILITY INSURER TO RECOVER
26 EXPENSES PAID UNDER THIS ACT. THE ATTORNEY GENERAL SHALL RECOVER
27 ANY COST OR ATTORNEY FEES ASSOCIATED WITH A RECOVERY UNDER THIS

1 **SUBSECTION.**

2 **(9) AN ATTORNEY WHO KNOWINGLY FAILS TO TIMELY NOTIFY THE**
3 **DEPARTMENT AS REQUIRED BY THIS SECTION MUST BE REPORTED TO THIS**
4 **STATE'S ATTORNEY GRIEVANCE COMMISSION.**

5 **(10)** ~~(5) The state department or the department of community~~
6 ~~health~~ has first priority against the proceeds of the net recovery
7 from the settlement or judgment in an action settled in which
8 notice has been provided under subsection (3). A contracted health
9 plan has priority immediately after the ~~state department or the~~
10 ~~department of community health~~ in an action settled in which notice
11 has been provided under subsection ~~(3).~~ **(6).** The ~~state department ,~~
12 ~~the department of community health,~~ and a contracted health plan
13 shall recover the full cost of expenses paid under this act unless
14 the ~~state department , the department of community health,~~ or the
15 contracted health plan agrees to accept an amount less than the
16 full amount. **THE DEPARTMENT SHALL NOT REDUCE ITS CLAIM BECAUSE OF**
17 **ATTORNEY FEES OR COSTS INCURRED BY OR ON BEHALF OF THE INDIVIDUAL**
18 **REGARDLESS OF ANY INDIRECT BENEFIT THAT THE DEPARTMENT RECEIVES**
19 **FROM THE ACTION.** If the individual would recover less against the
20 proceeds of the net recovery than the expenses paid under this act,
21 the ~~state department , the department of community health,~~ or **THE**
22 contracted health plan, and the individual shall share equally in
23 the proceeds of the net recovery. As used in this subsection, "net
24 recovery" means the total settlement or judgment less the costs and
25 fees incurred by or on behalf of the individual who obtains the
26 settlement or judgment.

27 **(11) THE INDIVIDUAL, HIS OR HER REPRESENTATIVE, OR HIS OR HER**

1 LEGAL COUNSEL SHALL NOT SETTLE OR RELEASE THE CLAIMS OF THE
2 DEPARTMENT AGAINST THIRD PARTIES OR INSURERS WITHOUT THE CONSENT OF
3 THE DEPARTMENT.