

**STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2006**

Introduced by Rep. Hummel

ENROLLED HOUSE BILL No. 6661

AN ACT to amend 1939 PA 280, entitled "An act to protect the welfare of the people of this state; to provide general assistance, hospitalization, infirmary and medical care to poor or unfortunate persons; to provide for compliance by this state with the social security act; to provide protection, welfare and services to aged persons, dependent children, the blind, and the permanently and totally disabled; to administer programs and services for the prevention and treatment of delinquency, dependency and neglect of children; to create a state department of social services; to prescribe the powers and duties of the department; to provide for the interstate and intercounty transfer of dependents; to create county and district departments of social services; to create within certain county departments, bureaus of social aid and certain divisions and offices thereunder; to prescribe the powers and duties of the departments, bureaus and officers; to provide for appeals in certain cases; to prescribe the powers and duties of the state department with respect to county and district departments; to prescribe certain duties of certain other state departments, officers, and agencies; to make an appropriation; to prescribe penalties for the violation of the provisions of this act; and to repeal certain parts of this act on specific dates," by amending sections 115f, 115g, 115h, 115i, 115j, 115k, 115l, and 115m (MCL 400.115f, 400.115g, 400.115h, 400.115i, 400.115j, 400.115k, 400.115l, and 400.115m), sections 115f and 115g as amended by 2004 PA 193, sections 115h and 115k as added by 1994 PA 238, and sections 115i, 115j, 115l, and 115m as amended by 2002 PA 648, and by adding sections 115t and 115u.

The People of the State of Michigan enact:

Sec. 115f. As used in this section and sections 115g to 115u:

- (a) "Adoptee" means the child who is to be adopted or who is adopted.
- (b) "Adoption assistance" means payment for support of a child with special needs who has been placed for adoption.
- (c) "Adoption assistance agreement" means an agreement between the department and an adoptive parent regarding adoption assistance.
- (d) "Adoption code" means the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70.
- (e) "Adoptive parent" means the parent or parents who adopt a child under the adoption code.
- (f) "Certification" means a determination of eligibility by the department that an adoptee is eligible for adoption assistance or medical assistance or both.
- (g) "Child placing agency" means that term as defined in section 1 of 1973 PA 116, MCL 722.111.
- (h) "Child with special needs" means an individual under the age of 18 years for whom the state has determined all of the following:
 - (i) There is a specific judicial finding that the child cannot or should not be returned to the home of the child's parents.
 - (ii) A specific factor or condition, or a combination of factors and conditions, exists with respect to the child so that it is reasonable to conclude that the child cannot be placed with an adoptive parent without providing adoption

assistance, or medical assistance, or both under this act. The factors or conditions to be considered shall include, but are not limited to, all of the following:

(A) Ethnic or family background.

(B) Age.

(C) Membership in a minority or sibling group.

(D) Diagnosed medical, physical, or emotional condition, or other clinically diagnosed disability that is documented by a licensed physician or a licensed mental health professional.

(E) Length of time the child has been waiting for an adoptive home.

(F) The child is at high risk based on history of abuse or neglect.

(iii) Unless there are significant emotional ties with the prospective adoptive parent or parents while the child is in the care of the prospective adoptive parent or parents as a foster child, a reasonable but unsuccessful effort was made to place the adoptee with an appropriate adoptive parent without providing adoption assistance under this act or a prospective placement is the only placement in the best interest of the child.

(i) "Compact" means the interstate compact on adoption and medical assistance as enacted in sections 115r and 115s.

(j) "Court" means the family division of circuit court.

(k) "Deferred adoption assistance or medical assistance agreement" means an agreement signed by the adoptive parent or parents and the department at the time the child is placed for adoption to preserve future eligibility for adoption assistance or medical assistance eligibility.

(l) "Department" means the department of human services.

(m) "Foster care" means placement of a child outside the child's parental home by and under the supervision of a child placing agency, the court, the department, or the department of community health.

(n) "Medicaid" means the federally aided medical assistance program under title XIX.

(o) "Medical assistance" means payment for medical, surgical, hospital, and related expenses necessitated by a specified physical, mental, or emotional condition of a child with special needs who has been placed for adoption.

(p) "Medical assistance agreement" means an agreement between the department and an adoptive parent regarding medical assistance.

(q) "Nonrecurring adoption assistance" means reasonable and necessary adoption fees, court costs, attorney fees, home study fees, costs for replacement of birth certificates, expenses for travel for visits to the adoptee, adoption costs incurred by or on behalf of the adoptive parent or parents and for which the adoptive parent or parents carry the ultimate liability for payment, including the adoption study, health and psychological examinations, supervision of the placement before adoption, and transportation and reasonable costs of lodging and food for the child or adoptive parent or parents if necessary to complete the adoption or placement process and other expenses that are directly related to the legal adoption of a child with special needs. Nonrecurring adoption expenses do not include costs or expenses incurred in violation of state or federal law or that have been reimbursed from other sources or funds.

(r) "Party state" means a state that becomes a party to the interstate compact on adoption and medical assistance.

(s) "Placement" means a placement or commitment, including the necessity of removing the child from his or her parental home, as approved by the court under an order of disposition issued under section 18(1)(c) or (d) of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.18.

(t) "Residence state" means the state in which the child is a resident by virtue of the adoptive parent's residency.

(u) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of the United States.

(v) "Support subsidy" means payment for support of a child who has been placed for adoption.

Sec. 115g. (1) The department shall pay adoption assistance, medical assistance, or both to an adoptive parent of an adoptee who is placed in the home of the adoptive parent under the adoption code or under the adoption laws of another state or a tribal government unless otherwise directed by the adoptive parent or parents through a signed written agreement, if all of the following requirements are met:

(a) The adoptee is a child with special needs.

(b) The adoptee meets the definition of a child with special needs before the adoptee's eighteenth birthday.

(c) The adoptee meets the definition of a child with special needs before the adoption is finalized.

(d) The adoptive parent requests adoption assistance, medical assistance, or both not later than the date the adoption is finalized.

(2) The department shall determine eligibility for adoption assistance, medical assistance, or both without regard to the income of the adoptive parent or parents. The amount shall be equal to the family foster care rate, including the

difficulty of care rate, that was paid for the adoptee while the adoptee was in family foster care, except that the amount shall be increased to reflect increases made in the standard age appropriate foster care rate paid by the department.

(3) The department shall determine eligibility for adoption assistance, medical assistance, or both within 30 days after it receives a request.

Sec. 115h. (1) The department shall pay medical assistance to the adoptive parent or parents of an adoptee who is placed for adoption in the home of the adoptive parent or parents under the adoption code or the laws of any other state or a tribal government, if the expenses to be covered by the medical assistance are necessitated by a physical, mental, or emotional condition of the adoptee that existed or the cause of which existed before the adoption petition was filed or eligibility was determined.

(2) The department shall first seek all other available public money and third party payment when paying medical assistance. For purposes of this subsection, third party payment is available if an adoptive parent has an option, at or after the time of certification, to obtain from the parent's employer health coverage for the child, with or without cost to the adoptive parent. The department may waive this subsection in cases of undue hardship.

(3) The adoptive parent or parents may request medical assistance before or after the confirmation of the adoption. Medical assistance requested after the adoptee is placed in adoption is effective the date the request is received by the department if the necessary documentation for certification is received within 90 days after the request is made. In allocating available funding for medical assistance, the department shall not give preferential treatment to requests that are made before the confirmation of an adoption, but shall allocate funds based on a child's need for the assistance.

(4) Payment of medical assistance for treatment of a mental or emotional condition is limited to outpatient treatment unless 1 or more of the following apply:

(a) Certification for the medical assistance was made before the adoption confirmation date.

(b) The adoptee was placed in foster care by the court under section 18(1)(d) or (e) of chapter XIAA of the probate code of 1939, 1939 PA 288, MCL 712A.18, before the petition for adoption was filed.

(c) The adoptee was certified for adoption assistance.

Sec. 115i. (1) The department shall notify the prospective adoptive parent or parents regarding the availability of adoption assistance, medical assistance, and nonrecurring adoption assistance. Notification shall be given in writing at the time of placement or at least 14 days before finalization of adoption.

(2) If adoption assistance is to be paid, the department and the adoptive parent or parents shall enter into an adoption assistance agreement covering all of the following:

(a) The duration of the adoption assistance to be paid.

(b) The amount to be paid and, if appropriate, eligibility for medicaid.

(c) Conditions for continued payment of the adoption assistance as established by statute.

(3) If medical assistance eligibility is certified, the department and the adoptive parent shall enter into a medical assistance agreement covering all of the following:

(a) Identification of the physical, mental, or emotional condition covered by the medical assistance.

(b) The amount to be paid.

(c) The nature and all types of services and assistance.

(d) Any preapproval or reimbursement procedures to be followed by the parties.

(4) The department shall give a copy of the adoption assistance agreement or medical assistance agreement, or both, to the adoptive parent or parents at least 14 days before signing the adoption assistance agreement or medical assistance agreement with recommendation that the adoptive parent or parents seek legal counsel before signing the adoption assistance agreement or medical assistance agreement.

(5) Unless the medical condition of the adoptee no longer exists, or an event described in section 115j has occurred, as indicated in a report filed under subsection (7), the department shall not modify or discontinue medical assistance unless the adoptive parent or parents submit a signed written request to the department to modify or discontinue the medical assistance.

(6) An adoption assistance agreement or medical assistance agreement does not affect the legal status of the adoptee or the legal rights and responsibilities of the adoptive parent or parents.

(7) The adoptive parent or parents shall file a verified report with the department at least once every 2 years to the location of the adoptee and other matters relating to the continuing eligibility of the adoptee for adoption assistance or a medical assistance, or both.

Sec. 115j. (1) Adoption assistance or medical assistance, or both, shall continue until 1 of the following occurs:

(a) The adoptee dies.

- (b) The adoptee becomes 18 years of age.
- (c) The adoptee marries.
- (d) The adoptee enters military service.
- (e) The department determines that the adoptive parent or parents are no longer legally responsible for support of the adoptee.
- (f) The department determines that the adoptive parent or parents are no longer providing any support to the adoptee.

(2) The department shall continue adoption assistance or medical assistance, or both, for an adoptee under 21 years of age if the department determines that the adoptee is a student regularly attending a high school, college, university, or vocational school in pursuance of a course of study leading to a high school diploma, college degree, or gainful employment.

(3) Adoption assistance, medical assistance, or both shall continue even if the adoptive parent or parents leave the state.

(4) Adoption assistance, medical assistance, or both shall continue during a period in which the adoptee is removed for delinquency from his or her home as a temporary court ward based on proceedings under section 2(a) of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.

(5) Upon the death of the adoptive parent, the department shall continue making adoption assistance payments, medical assistance payments, or both to the guardian of the adoptee if a guardian is appointed as provided in section 5202 or 5204 of the estates and protected individuals code, 1998 PA 386, MCL 700.5202 and 700.5204.

Sec. 115k. (1) An adoptee, the adoptee's guardian, or the adoptive parent or parents may appeal a determination of the department made under this act in 1 of the following ways:

(a) An appeal may be filed in the appropriate state court.

(b) An appeal may be conducted under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. An appeal brought under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, shall be heard as follows:

(i) In the case of an adoptee residing in this state, by the probate court for the county in which the petition for adoption was filed or the county in which the adoptee is found.

(ii) In the case of an adoptee not residing in this state, by the probate court for the county in which the petition for adoption was filed.

(2) The department shall notify the adoptee and the adoptive parent or parents of their rights of appeal under this section.

Sec. 115l. (1) The department shall enter into an agreement with the adoptive parent or parents of a child with special needs under this section for the payment of nonrecurring adoption assistance incurred by or on behalf of the adoptive parent or parents. The agreement shall be a separate document from the adoption assistance agreement under section 115i. The agreement under this section shall indicate the nature and amount of nonrecurring adoption assistance to be paid by the department, which shall not exceed \$2,000.00 for each adoptive placement. The department shall make payment as provided in the agreement.

(2) An agreement under this section shall be signed at or before entry of an order of adoption under the adoption code. The department shall provide the adoptive parent or parents with a form that has clear instructions on how to submit a claim for nonrecurring adoption assistance. Claims for payment shall be filed with the department within 2 years after entry of the order of adoption.

(3) The department shall take all actions necessary and appropriate to notify potential claimants under this section, including compliance with federal regulations.

Sec. 115m. (1) The department shall prepare and distribute to adoption facilitators and other interested persons a pamphlet describing the adoption process and the adoption assistance and medical assistance programs established under sections 115f to 115s. The state department shall provide a copy of the pamphlet to each prospective adoptive parent before placing a child with that parent.

(2) The description of the adoption process required under subsection (1) shall include at least all of the following:

(a) The steps that must be taken under the adoption code to complete an adoption, and a description of all of the options available during the process.

(b) A description of the services that are typically available from each type of adoption facilitator.

(c) Recommended questions for a biological parent or prospective adoptive parent to ask an adoption facilitator before engaging that adoption facilitator's services.

(d) A list of the rights and responsibilities of biological parents and prospective adoptive parents.

(e) A description of the information services available to biological and prospective adoptive parents including, but not limited to, all of the following:

(i) The registry of adoptive homes established and maintained by the department under section 8 of the foster care and adoption services act, 1994 PA 203, MCL 722.958.

(ii) The directory of children produced under section 8 of the foster care and adoption services act, 1994 PA 203, MCL 722.958.

(iii) The public information forms maintained by the department under section 14d of 1973 PA 116, MCL 722.124d.

(f) A statement about the existence of the children’s ombudsman and its authority as an investigative body.

(g) A statement about the importance and availability of counseling for all parties to an adoption and that a prospective adoptive parent must pay for counseling for a birth parent or guardian unless the birth parent or guardian waives the counseling.

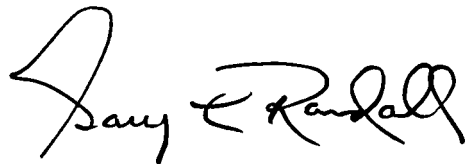
(h) A statement about the importance of seeking legal counsel before signing an agreement dealing with adoption assistance or medical assistance.

(i) A statement that coercive behavior by use of threats or promises from department staff or an employee of a child placing agency is not protected by governmental immunity and should be reported to law enforcement officials.

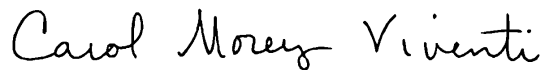
Sec. 115t. If the adoptive parent or parents choose not to receive adoption assistance or medical assistance at the time of placement in the adoptive parent’s or parents’ home, they shall be encouraged to sign a deferred adoption assistance or medical assistance agreement with a payment amount of \$0.00 listed in that agreement. Establishing a deferred adoption assistance or medical assistance agreement preserves future recurring adoption assistance eligibility, medical assistance eligibility, or both for the adoptee in the event that the adoptive parent or parents need assistance in meeting the adoptee’s needs.

Sec. 115u. An adoption assistance agreement shall be negotiated and signed before the child’s adoption is finalized. In some cases, a child may be eligible to receive adoption assistance after the child’s adoption is legally finalized. An adoptive parent or parents may request an application for adoption assistance be made on the child’s behalf and shall receive an administrative hearing to determine the child’s eligibility for state or federally funded assistance. If the child is found eligible for the program, an adoption assistance agreement shall be negotiated on behalf of the child and shall be effective beginning on the date that the child’s special needs became apparent, as documented by a licensed physician.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor