

HOUSE BILL No. 5984

November 8, 2012, Introduced by Rep. Heise and referred to the Committee on Families, Children, and Seniors.

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~~

1 ~~independence agency~~ **DEPARTMENT** prescribes.

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

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

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

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

1 **PURPOSES OF THIS SUBPARAGRAPH, ANNUAL INCOME DOES NOT INCLUDE**
2 **INCOME ASSIGNED TO A POOLED TRUST DESCRIBED IN SECTION 106B.**

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

27 (v) The individual is not an inmate of a public institution

1 except as a patient in a medical institution.

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

10 (2) As used in this act:

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

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

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

1 health plan in addition to providing notice to the state
2 department.

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

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

1 on behalf of the individual who obtains the settlement or judgment.

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

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

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

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

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

18 (C) A GUARDIAN.

19 (D) A CONSERVATOR.

20 (E) A COURT.

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

24 (4) AS USED IN THIS SECTION:

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

27 (B) "DISABILITY" MEANS A PHYSICAL OR MENTAL IMPAIRMENT AS

1 DESCRIBED IN SECTION 1614 OF THE SOCIAL SECURITY ACT, 42 USC 1382C.

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

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

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

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

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

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

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

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