STATE OF MICHIGAN
102ND LEGISLATURE
REGULAR SESSION OF 2023

Introduced by Reps. Snyder, Filler, Glanville, Liberati, Rheingans, McFall, Steckloff, Byrnes, Scott, Churches, Coleman, Hood, Fitzgerald, Tyrone Carter, Farhat, Paiz, McKinney, Rogers, Zorn and Aiyash

ENROLLED HOUSE BILL No. 4495

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 105d and 106 (MCL 400.105d and 400.106), section 105d as amended by 2018 PA 208 and section 106 as amended by 2018 PA 511; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 105d. (1) The department shall seek approval from the United States Department of Health and Human Services to do, without jeopardizing federal match dollars or otherwise incurring federal financial penalties, and upon approval shall do, all of the following:

(a) Enroll individuals eligible under section 1396a(a)(10)(A)(i)(VIII) of title XIX who meet the citizenship provisions of 42 CFR 435.406 and who are otherwise eligible for the medical assistance program under this act into a contracted health plan.

(b) Give enrollees described in subdivision (a) a choice in choosing among contracted health plans.

(c) Ensure that all enrollees described in subdivision (a) have access to a primary care practitioner who is licensed, registered, or otherwise authorized to engage in the primary care practitioner's health care profession in this state and to preventive services. The department shall require that all new enrollees be assigned and have scheduled an initial appointment with their primary care practitioner within 60 days of initial enrollment. The department shall monitor and track contracted health plans for compliance in this area and consider that compliance in any health plan incentive programs. The department shall ensure that the contracted health plans have procedures to ensure that the privacy of the enrollees' personal information is protected in accordance with the health insurance portability and accountability act of 1996, Public Law 104-191.

(d) Establish cost sharing requirements for enrollees described in subsection (1)(a) as approved by the United States Department of Health and Human Services.

(e) Implement a plan to encourage use of high-value services, while discouraging low-value services such as nonurgent emergency department use.

(f) Develop incentives for enrollees and providers who assist the department in detecting fraud and abuse in the medical assistance program. The department shall provide an annual report that includes the type of fraud detected, the amount saved, and the outcome of the investigation to the legislature.

(g) Allow for services provided by telemedicine from a practitioner who is licensed, registered, or otherwise authorized under section 16171 of the public health code, 1978 PA 368, MCL 333.16171, to engage in the practitioner's health care profession in the state where the patient is located.

(2) For services rendered to an uninsured individual, a hospital that participates in the medical assistance program under this act shall accept 115% of Medicare rates as payments in full from an uninsured individual with an annual income level up to 250% of the federal poverty guidelines.

(3) The department shall develop and implement a plan to enroll all existing fee-for-service enrollees into contracted health plans if allowable by law, if the medical assistance program is the primary payer and if that enrollment is cost-effective. This includes all newly eligible enrollees as described in subsection (1)(a). The department shall include contracted health plans as the mandatory delivery system in its waiver request. The department shall identify all remaining populations eligible for managed care, develop plans for their integration into managed care, and provide recommendations for a performance bonus incentive plan mechanism for long-term care managed care providers that are consistent with other managed care performance bonus incentive plans. The department shall make recommendations for a performance bonus incentive plan for long-term care managed care providers of up to 3% of their Medicaid capitation payments, consistent with other managed care performance bonus incentive plans. These payments shall comply with federal requirements and shall be based on measures that identify the appropriate use of long-term care services and that focus on consumer satisfaction, consumer choice, and other appropriate quality measures applicable to community-based and nursing home services.

(4) The department shall implement a pharmaceutical benefit to encourage the use of high-value, low-cost prescriptions, such as generic prescriptions when such an alternative exists for a branded product and 90-day prescription supplies, as recommended by the enrollee's prescribing provider and as is consistent with section 109h and sections 9701 to 9709 of the public health code, 1978 PA 368, MCL 333.9701 to 333.9709.

(5) The department in collaboration with the contracted health plans shall create financial incentives for enrollees who demonstrate improved health outcomes, practice healthy behaviors, or complete screenings or procedures that improve health outcomes.

(6) The performance bonus incentive pool for contracted health plans shall include targets established for at least 3 and no more than 5 objectives established by the department in collaboration with the contracted health plans. Targets should focus on key current health priorities, improve health equity, utilize established measurements to set a baseline for performance improvement, and be determined at least 6 months before the measurement period to support planning and execution necessary for achievement of desired outcomes.

(7) The department shall ensure that all capitated payments made to contracted health plans are actuarially sound. This subsection applies whether or not either or both of the waivers requested under this section are approved, the patient protection and affordable care act is repealed, or the state terminates or opts out of the program established under this section.

(8) The department shall withhold, at a minimum, 0.75% of payments to contracted health plans, except for specialty prepaid health plans, for the purpose of expanding the existing performance bonus incentive pool. Distribution of funds from the performance bonus incentive pool is contingent on the contracted health plan's completion of the required performance or compliance metrics.

(9) The department may measure contracted health plan or specialty prepaid health plan performance metrics, as applicable, on application of standards of care as that relates to appropriate treatment of substance use disorders and efforts to reduce substance use disorders.

(10) The department shall make available at least 3 years of state medical assistance program data, without charge, to any vendor considered qualified by the department who indicates interest in submitting proposals to contracted health plans in order to implement cost savings and population health improvement opportunities through the use of innovative information and data management technologies. Any program or proposal to the contracted health plans must be consistent with the state's goals of improving health, increasing the quality, reliability, availability, and continuity of care, and reducing the cost of care of the eligible population of enrollees described in subsection (1)(a). The use of the data described in this subsection for the purpose of assessing the potential opportunity and subsequent development and submission of formal proposals to contracted health plans is not a cost or contractual obligation to the department or the state.

(11) For the purposes of submitting reports and other information or data required under this section only, "legislature" means the senate majority leader, the speaker of the house of representatives, the chairs of the senate and house of representatives appropriations committees, the chairs of the senate and house of representatives appropriations subcommittees on the department budget, and the chairs of the senate and house of representatives standing committees on health policy.

(12) As used in this section:

(a) "Patient protection and affordable care act" means the patient protection and affordable care act, Public Law 111-148, as amended by the federal health care and education reconciliation act of 2010, Public Law 111-152.

(b) "Telemedicine" means that term as defined in section 3476 of the insurance code of 1956, 1956 PA 218, MCL 500.3476.

Sec. 106. (1) As used in this act, "medically indigent individual" means any of the following:

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

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

(*i*) The individual has applied in the manner the department prescribes.

(*ii*) The individual's need for the type of medical assistance available under this act for which the individual applied has been professionally established and payment for it is not available through the legal obligation of a public or private contractor to pay or provide for the care without regard to the income or resources of the patient. The department is subrogated to any right of recovery that a patient may have for the cost of hospitalization, pharmaceutical services, physician services, nursing services, and other medical services not to exceed the amount of money expended by the department for the care and treatment of the patient. The patient or other person acting on the patient's behalf shall execute and deliver an assignment of claim or other authorizations as necessary to secure the right of recovery to the department. A payment may be withheld under this act for medical assistance for an injury or disability for which the individual is entitled to medical care or reimbursement for the cost of medical care under chapter 31 of the insurance code of 1956, 1956 PA 218, MCL 500.3101 to 500.3179, or under another policy of insurance providing medical or hospital benefits, or both, for the individual unless the individual's entitlement to that medical care or reimbursement is at issue. If a payment is made, the department, to enforce its subrogation right, may do either of the following:

(a) intervene or join in an action or proceeding brought by the injured, diseased, or disabled individual, the individual's guardian, personal representative, estate, dependents, or survivors, against the third person who may be liable for the injury, disease, or disability, or against contractors, public or private, who may be liable to pay or provide medical care and services rendered to an injured, diseased, or disabled individual;

(b) institute and prosecute a legal proceeding against a third person who may be liable for the injury, disease, or disability, or against contractors, public or private, who may be liable to pay or provide medical care and services rendered to an injured, diseased, or disabled individual, in state or federal court, either alone or in conjunction with the injured, diseased, or disabled individual, the individual's guardian, personal representative, estate, dependents, or survivors. The department may institute the proceedings in its own name or in the name of the injured, diseased, or disabled individual, the individual's guardian, personal representative, estate, dependents, or survivors. As provided in section 6023 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6023, the department, in enforcing its subrogation right, shall not satisfy a judgment against the third person's property that is exempt from levy and sale. The injured, diseased, or disabled individual may proceed in the injured, diseased, or disabled individual's own name, collecting the costs without the necessity of joining the department or the state as a named party. The injured, diseased, or disabled individual shall notify the department of the action or proceeding entered into upon commencement of the action or proceeding. An action taken by the state or the department in connection with the right of recovery afforded by this section does not

deny the injured, diseased, or disabled individual any part of the recovery beyond the costs expended on the individual's behalf by the department. The costs of legal action initiated by the state must be paid by the state. A payment must not be made under this act for medical assistance for an injury, disease, or disability for which the individual is entitled to medical care or the cost of medical care under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941; except that payment may be made if an appropriate application for medical care or the cost of the medical care has been made under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, entitlement has not been finally determined, and an arrangement satisfactory to the department has been made for reimbursement if the claim under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, is finally sustained.

(*iii*) The individual has an annual income that is below, or subject to limitations imposed by the director and because of medical expenses falls below, the protected basic maintenance level. The protected basic maintenance level for 1-person and 2-person families must be not less than 100% of the payment standards generally used to determine eligibility in the family independence program. For families of 3 or more persons, the protected basic maintenance level must be not less than 100% of the payment standard generally used to determine eligibility in the family independence program. These levels must recognize regional variations and must not exceed 133-1/3% of the payment standard generally used to determine eligibility in the family independence program.

(*iv*) The individual, if a family independence program related individual and living alone, has liquid or marketable assets of not more than $2,000.00 in value, or, if a 2-person family, the family has liquid or marketable assets of not more than $3,000.00 in value. The department shall establish comparable liquid or marketable asset amounts for larger family groups. Excluded in making the determination of the value of liquid or marketable assets are the values of: the homestead; clothing; household effects; $1,000.00 of cash surrender value of life insurance, except that if the health of the insured makes continuance of the insurance desirable, the entire cash surrender value of life insurance is excluded from consideration, up to the maximum provided or allowed by federal regulations and in accordance with department rules; the fair market value of tangible personal property used in earning income; an amount paid as judgment or settlement for damages suffered as a result of exposure to Agent Orange as defined in section 5701 of the public health code, 1978 PA 368, MCL 333.5701; and a space or plot purchased for the purposes of burial for the person. For individuals related to the title XVI program, the appropriate resource levels and property exemptions specified in title XVI must be used.

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

(*vi*) The individual meets the eligibility standards for supplemental security income under title XVI or for state supplementation under the act, subject to limitations imposed by the director of the department according to title XIX; or meets the eligibility standards for family independence program benefits; or meets the eligibility standards for optional eligibility groups under title XIX, subject to limitations imposed by the director of the department according to title XIX.

(c) An individual who is eligible under section 1396a(a)(10)(A)(i)(VIII) of title XIX, also known as the Healthy Michigan plan.

(2) As used in this act:

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

(b) "Federal poverty guidelines" means the poverty guidelines published annually in the Federal Register by the United States Department of Health and Human Services under its authority to revise the poverty line under section 673(2) of subtitle B of title VI of the omnibus budget reconciliation act of 1981, 42 USC 9902.

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

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

(3) An individual receiving medical assistance under this act, the individual's representative, or the individual's legal counsel, or all 3, shall notify the department and, if the individual is enrolled in a contracted health plan, the contracted health plan if either of the following occurs:

(a) The individual, the individual's representative, or the individual's legal counsel, or all 3, file a complaint in which the department or the contracted health plan may have a right to recover expenses paid under this act.

(b) The individual, the individual's representative, or the individual's legal counsel, or all 3, seek to settle an action, without filing a complaint, in which the department or the contracted health plan may have a right to recover expenses paid under this act.

(4) The notice required under subsection (3)(a), along with a copy of the complaint and all documents filed with the complaint, must be provided to the department and, if applicable, the contracted health plan within 30 days after the complaint is filed with the court. The individual, the individual's representative, or the individual's legal counsel shall certify that notice and a copy of the complaint have been provided to the department and, if applicable, the contracted health plan on the summons and complaint form. This certification must be made in cases with the following case type codes: NF (no-fault automobile insurance), NH (medical malpractice), NI (personal injury, auto negligence), NO (other personal injury), and NP (product liability), and in any other case in which the department or the contracted health plan may have a right to recover expenses paid under this act. The state court administrator shall revise the summons and complaint form to allow certification under this subsection.

(5) The notice required under subsection (3)(b) must be provided in writing to the department and, if applicable, the contracted health plan before the action is settled and must include the proposed settlement terms, including the settlement amount, attorney costs, attorney fees, and Medicaid health plan or Medicare subrogation interest amounts, if applicable.

(6) If notice is not given as required by subsections (3) to (5), the department or the contracted health plan may file a legal action against the individual, the individual's representative, or the individual's legal counsel, or all 3, to recover expenses paid under this act. The attorney general or the contracted health plan shall recover any cost or attorney fees associated with a recovery under this subsection.

(7) An attorney who knowingly fails to timely notify the department or the contracted health plan as required by this section is subject, at the discretion of the department, to a $1,000.00 civil fine for each violation. The civil fine is payable to the department and must be deposited in the general fund. The money deposited in the general fund under this subsection may be used to offset the cost to this state for operating the Medicaid program.

(8) The department has first priority against the proceeds of the net recovery from the settlement or judgment in an action settled in which notice has been provided under subsection (3). A contracted health plan has priority immediately after the department in an action settled in which notice has been provided under subsection (3). The department and a contracted health plan shall recover the full cost of expenses paid under this act unless the department or the contracted health plan agrees to accept an amount less than the full amount. If the individual would recover less against the proceeds of the net recovery than the expenses paid under this act, the department or the contracted health plan, and the individual shall share equally in the proceeds of the net recovery. The department or a contracted health plan is not required to pay an attorney fee on the net recovery. As used in this subsection, "net recovery" means the total settlement or judgment less the costs and fees incurred by or on behalf of the individual who obtains the settlement or judgment.

(9) The individual, the individual's representative, or the individual's legal counsel shall not release the claims of the department or the contracted health plan against third parties or insurers without the consent of the department or the contracted health plan.

(10) All of the following apply with respect to the subrogation interest of the department or the contracted health plan, or both:

(a) Within 30 days of receiving the notice required under this act, the department and, if applicable, a contracted health plan shall provide to the individual, the individual's representative, or the individual's legal counsel, a written itemization of expenses paid under this act for which the third party may be liable.

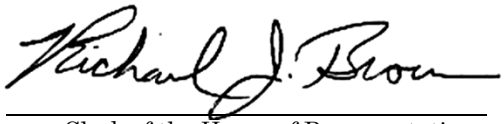
(b) If the department or a contracted health plan fails to provide the notice required by subdivision (a), the obligation of the individual, the individual's representative, or the individual's legal counsel, or all 3, to protect the subrogation interest of the department or the contracted health plan, or both if both failed to provide notice, is discharged. The department or the contracted health plan retains the right to pursue recovery through its own means.

(c) A reported subrogation amount is valid unless supplemented by the department or a contracted health plan.

(d) An individual, the individual's representative, or the individual's legal counsel, or all 3, satisfy the obligation to protect the subrogation interest of the department or a contracted health plan if a settlement agreement provides for reimbursement of the total amount of expenses in the last received written itemization from the department or the contracted health plan, reduced by any applicable fees and costs for which a reduction is allowed under statute or administrative rule.

Enacting section 1. Sections 105c and 105f of the social welfare act, 1939 PA 280, MCL 400.105c and 400.105f, are repealed.

This act is ordered to take immediate effect.



Clerk of the House of Representatives

Secretary of the Senate

Approved_____

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Governor