

**SUBSTITUTE FOR
HOUSE BILL NO. 6361**

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
9 individual who meets all of the following conditions:

10 (i) The individual has applied in the manner the department ~~of~~

~~community health~~ 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 ~~state department and the department of community health are~~ **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 ~~funds~~ **MONEY** expended by the ~~state department or the department of community health~~ for the care and treatment of the patient. The patient or other person acting ~~in~~ **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. ~~or the department of community health.~~

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 ~~sections 3101 to 3179~~ **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 ~~state department, or the department of community health,~~ 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,

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

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

21 (iii) The individual has an annual income that is below, or
22 subject to limitations imposed by the director and because of
23 medical expenses falls below, the protected basic maintenance
24 level. The protected basic maintenance level for 1-person and 2-
25 person families ~~shall~~ **MUST** be ~~at least~~ **NOT LESS THAN** 100% of the
26 payment standards generally used to determine eligibility in the
27 family independence program. For families of 3 or more persons, the

protected basic maintenance level ~~shall~~ **MUST** be ~~at least~~ **NOT LESS THAN** 100% of the payment standard generally used to determine eligibility in the family independence program. These levels ~~shall~~ **MUST** recognize regional variations and ~~shall~~ **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 ~~of community health~~ 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 ~~of community health~~ 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~~, **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

1 title XVI ~~shall~~**MUST** be used.

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

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

14 (c) An individual **WHO** is eligible under section
15 1396a(a)(10)(A)(i)(VIII) of title XIX, **ALSO KNOWN AS THE HEALTHY**
16 **MICHIGAN PLAN**. This subdivision does not apply if either of the
17 following occurs:

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

20 (ii) If federal government matching funds for the program
21 described in section 105d are reduced below 100% and annual state
22 savings and other nonfederal net savings associated with the
23 implementation of that program are not sufficient to cover the
24 reduced federal match. The department ~~of community health~~ shall
25 determine and the state budget office shall approve how annual
26 state savings and other nonfederal net savings ~~shall~~**MUST** be
27 calculated by June 1, 2014. By September 1, 2014, the calculations

1 and methodology used to determine the state and other nonfederal
 2 net savings ~~shall~~ **MUST** be submitted to the legislature.

3 (2) As used in this act:

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

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

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

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

~~provide notice to the contracted health plan in addition to~~
~~providing notice to the state 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, HIS OR HER REPRESENTATIVE, OR HIS OR HER
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, HIS OR HER REPRESENTATIVE, OR HIS OR HER
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, HIS OR HER REPRESENTATIVE, OR HIS
OR HER 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

1 CERTIFICATION UNDER THIS SUBSECTION.

2 (5) THE NOTICE REQUIRED UNDER SUBSECTION (3) (B) MUST BE
3 PROVIDED IN WRITING TO THE DEPARTMENT AND, IF APPLICABLE, THE
4 CONTRACTED HEALTH PLAN BEFORE THE ACTION IS SETTLED AND MUST
5 INCLUDE THE PROPOSED SETTLEMENT TERMS, INCLUDING THE SETTLEMENT
6 AMOUNT, ATTORNEY COSTS, ATTORNEY FEES, AND MEDICAID HEALTH PLAN OR
7 MEDICARE SUBROGATION INTEREST AMOUNTS, IF APPLICABLE.

8 (6) ~~(4) If a legal action in which the state department, the~~
9 ~~department of community health, a contracted health plan, or all 3~~
10 ~~have a right to recover expenses paid under this act is filed and~~
11 ~~settled after November 29, 2004 without notice to the state~~
12 ~~department, the department of community health, or the contracted~~
13 ~~health plan, NOTICE IS NOT GIVEN AS REQUIRED BY SUBSECTIONS (3)~~
14 ~~THROUGH (5), the state department, the department of community~~
15 ~~health, or the contracted health plan may file a legal action~~
16 ~~against the individual, HIS OR HER REPRESENTATIVE, or his or her~~
17 ~~legal counsel, or both, ALL 3, to recover expenses paid under this~~
18 ~~act. The attorney general OR THE CONTRACTED HEALTH PLAN shall~~
19 ~~recover any cost or attorney fees associated with a recovery under~~
20 ~~this subsection.~~

21 (7) AN ATTORNEY WHO KNOWINGLY FAILS TO TIMELY NOTIFY THE
22 DEPARTMENT OR THE CONTRACTED HEALTH PLAN AS REQUIRED BY THIS
23 SECTION IS SUBJECT, AT THE DISCRETION OF THE DEPARTMENT, TO A
24 \$1,000.00 CIVIL FINE FOR EACH VIOLATION. THE CIVIL FINE IS PAYABLE
25 TO THE DEPARTMENT AND MUST BE DEPOSITED IN THE GENERAL FUND. THE
26 MONEY DEPOSITED IN THE GENERAL FUND UNDER THIS SUBSECTION MAY BE
27 USED TO OFFSET THE COST TO THIS STATE FOR OPERATING THE MEDICAID

1 **PROGRAM.**

2 **(8)** ~~(5) The state department or the department of community~~
3 ~~health~~ has first priority against the proceeds of the net recovery
4 from the settlement or judgment in an action settled in which
5 notice has been provided under subsection (3). A contracted health
6 plan has priority immediately after the ~~state department or the~~
7 ~~department of community health~~ in an action settled in which notice
8 has been provided under subsection (3). The ~~state department , the~~
9 ~~department of community health,~~ and a contracted health plan shall
10 recover the full cost of expenses paid under this act unless the
11 ~~state department , the department of community health,~~ or the
12 contracted health plan agrees to accept an amount less than the
13 full amount. If the individual would recover less against the
14 proceeds of the net recovery than the expenses paid under this act,
15 the ~~state department , the department of community health,~~ or **THE**
16 contracted health plan, and the individual shall share equally in
17 the proceeds of the net recovery. **THE DEPARTMENT OR A CONTRACTED**
18 **HEALTH PLAN IS NOT REQUIRED TO PAY AN ATTORNEY FEE ON THE NET**
19 **RECOVERY.** As used in this subsection, "net recovery" means the
20 total settlement or judgment less the costs and fees incurred by or
21 on behalf of the individual who obtains the settlement or judgment.

22 **(9) THE INDIVIDUAL, HIS OR HER REPRESENTATIVE, OR HIS OR HER**
23 **LEGAL COUNSEL SHALL NOT RELEASE THE CLAIMS OF THE DEPARTMENT OR THE**
24 **CONTRACTED HEALTH PLAN AGAINST THIRD PARTIES OR INSURERS WITHOUT**
25 **THE CONSENT OF THE DEPARTMENT OR THE CONTRACTED HEALTH PLAN.**

26 **(10) ALL OF THE FOLLOWING APPLY WITH RESPECT TO THE**
27 **SUBROGATION INTEREST OF THE DEPARTMENT OR THE CONTRACTED HEALTH**

1 PLAN, OR BOTH:

2 (A) WITHIN 30 DAYS OF RECEIVING THE NOTICE REQUIRED UNDER THIS
3 ACT, THE DEPARTMENT AND, IF APPLICABLE, A CONTRACTED HEALTH PLAN
4 SHALL PROVIDE TO THE INDIVIDUAL, HIS OR HER REPRESENTATIVE, OR HIS
5 OR HER LEGAL COUNSEL, A WRITTEN ITEMIZATION OF EXPENSES PAID UNDER
6 THIS ACT FOR WHICH THE THIRD PARTY MAY BE LIABLE.

7 (B) IF THE DEPARTMENT OR A CONTRACTED HEALTH PLAN FAILS TO
8 PROVIDE THE NOTICE REQUIRED BY SUBDIVISION (A), THE OBLIGATION OF
9 THE INDIVIDUAL, HIS OR HER REPRESENTATIVE, OR HIS OR HER LEGAL
10 COUNSEL, OR ALL 3, TO PROTECT THE SUBROGATION INTEREST OF THE
11 DEPARTMENT OR THE CONTRACTED HEALTH PLAN, OR BOTH IF BOTH FAILED TO
12 PROVIDE NOTICE, IS DISCHARGED. THE DEPARTMENT OR THE CONTRACTED
13 HEALTH PLAN RETAINS THE RIGHT TO PURSUE RECOVERY THROUGH ITS OWN
14 MEANS.

15 (C) A REPORTED SUBROGATION AMOUNT IS VALID UNLESS SUPPLEMENTED
16 BY THE DEPARTMENT OR A CONTRACTED HEALTH PLAN.

17 (D) AN INDIVIDUAL, HIS OR HER REPRESENTATIVE, OR HIS OR HER
18 LEGAL COUNSEL, OR ALL 3, SATISFY THE OBLIGATION TO PROTECT THE
19 SUBROGATION INTEREST OF THE DEPARTMENT OR A CONTRACTED HEALTH PLAN
20 IF A SETTLEMENT AGREEMENT PROVIDES FOR REIMBURSEMENT OF THE TOTAL
21 AMOUNT OF EXPENSES IN THE LAST RECEIVED WRITTEN ITEMIZATION FROM
22 THE DEPARTMENT OR THE CONTRACTED HEALTH PLAN, REDUCED BY ANY
23 APPLICABLE FEES AND COSTS FOR WHICH A REDUCTION IS ALLOWED UNDER
24 STATUTE OR ADMINISTRATIVE RULE.