

HOUSE BILL No. 5414

January 21, 2004, Introduced by Rep. Shulman 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 2003 PA 33.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 106. (1) A medically indigent individual is defined
2 as:

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

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

9 (i) The individual has applied in the manner the family
10 independence agency prescribes.

11 (ii) The individual's need for the type of medical assistance

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

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

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

19 (iii) The individual has an annual income that is below, or
20 because of medical expenses falls below, the protected basic
21 maintenance level. The protected basic maintenance level for
22 1-person and 2-person families shall be at least 100% of the
23 higher of the payment standards generally used to determine
24 eligibility in the family independence program and the
25 supplemental security income program under title XVI, including
26 state supplementation. For families of 3 or more persons, the
27 protected basic maintenance level shall be at least 100% of the

1 payment standard generally used to determine eligibility in the
2 family independence program. These levels shall recognize
3 regional variations and shall not exceed 133-1/3% of the payment
4 standard generally used to determine eligibility in the family
5 independence program.

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

1 (v) The individual is not an inmate of a public institution
2 except as a patient in a medical institution.

3 (vi) The individual meets the eligibility standards for
4 supplemental security income under title XVI or for state
5 supplementation under the act, subject to limitations imposed by
6 the director according to title XIX; or meets the eligibility
7 standards for family independence program benefits, except for
8 income or income and resources; or is a child from 18 to 21 years
9 of age and his or her adult caretaker would be eligible for
10 family independence program benefits except for age, income, or
11 income and resources; or is a child under 21 years of age and is
12 from a family whose income is below the basic maintenance level.

13 (2) As used in this act:

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

18 (b) ~~-(a)-~~ "Medical institution" means a state licensed or
19 approved hospital, nursing home, medical care facility,
20 psychiatric hospital, or other facility or identifiable unit of a
21 listed institution certified as meeting established standards for
22 a nursing home or hospital in accordance with the laws of this
23 state.

24 (c) ~~-(b)-~~ "Title XVI" means title XVI of the social security
25 act, ~~chapter 531, 49 Stat. 620, 42 U.S.C.~~ **42 USC** 1381 to 1382j
26 and 1383 to 1383f.

27 (3) **An individual receiving medical assistance under this act**

House Bill No. 5414 as amended September 9, 2004
as amended September 28, 2004

1 or his or her legal counsel shall notify the state department
2 when filing an action in which the state department may have a
3 right to recover expenses paid under this act. If the individual
4 is enrolled in a medicaid contracted health plan, the individual
5 or his or her legal counsel shall provide notice to the
6 contracted health plan in addition to providing notice to the
7 state department.

8 (4) If a legal action in which the state department, a
9 medicaid contracted health plan, or both has a right to recover
10 expenses paid under this act is filed and settled after the date
11 of the amendatory act that added this subsection without notice
12 to the state department or the medicaid contracted health plan,
13 the state department or the medicaid contracted health plan may
14 file a legal action against the individual or his or her legal
15 counsel, or both, to recover expenses paid under this act. <<The
attorney general shall recover any cost or attorney fees associated with
a recovery under this subsection.>>

16 (5) The state department has first priority [against the proceeds of
the net recovery from the settlement or judgment] in an action
17 settled in which notice has been provided under subsection (3).
18 A medicaid contracted health plan has priority immediately after
19 the state department in an action settled in which notice has
20 been provided under subsection (3). The state department and a
21 medicaid contracted health plan shall recover the full cost of
22 expenses paid under this act unless the state department or the
23 medicaid contracted health plan agrees to accept an amount less
24 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
state department or medicaid contracted health plan, <<and the individual
shall share equally in the proceeds>> of 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.]