

SENATE BILL No. 838

October 25, 2005, Introduced by Senator EMERSON and referred to the Committee on Appropriations.

A bill to amend 1939 PA 280, entitled
"The social welfare act,"
by amending sections 106 and 107 (MCL 400.106 and 400.107), section
106 as amended by 2004 PA 409.

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 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 expended by the state department for the care and
12 treatment of the patient. The patient or other person acting in the
13 patient's behalf shall execute and deliver an assignment of claim
14 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 third person who may

1 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 state as a named party. The
22 injured, diseased, or disabled individual shall notify the state
23 department of the action or proceeding entered into upon
24 commencement of the action or proceeding. An action taken by the
25 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 state shall
3 be paid by the state. A payment shall not be made under this act
4 for medical assistance for an injury, disease, or disability for
5 which the individual is entitled to medical care or the cost of
6 medical care under the worker's disability compensation act of
7 1969, 1969 PA 317, MCL 418.101 to 418.941; except that payment may
8 be made if an appropriate application for medical care or the cost
9 of the medical care has been made under the worker's disability
10 compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941,
11 entitlement has not been finally determined, and an arrangement
12 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 ~~higher of the~~
21 payment standards generally used to determine eligibility in the
22 family independence program. ~~and the supplemental security income~~
23 ~~program under title XVI, including state supplementation.~~ For
24 families of 3 or more persons, the protected basic maintenance
25 level shall be at least 100% of the payment standard generally used
26 to determine eligibility in the family independence program. These
27 levels shall recognize regional variations and shall not exceed

1 133-1/3% of the payment standard generally used to determine
2 eligibility in the family independence program.

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 ~~family independence agency~~ **STATE DEPARTMENT** shall
8 establish comparable liquid or marketable asset amounts for larger
9 family groups. Excluded in making the determination of the value of
10 liquid or marketable assets are the values of: the homestead;
11 clothing; household effects; \$1,000.00 of cash surrender value of
12 life insurance, except that if the health of the insured makes
13 continuance of the insurance desirable, the entire cash surrender
14 value of life insurance is excluded from consideration, up to the
15 maximum provided or allowed by federal regulations and in
16 accordance with ~~the~~ **STATE DEPARTMENT** rules; ~~of the family~~
17 ~~independence agency;~~ the fair market value of tangible personal
18 property used in earning income; an amount paid as judgment or
19 settlement for damages suffered as a result of exposure to agent
20 orange, as defined in section 5701 of the public health code, 1978
21 PA 368, MCL 333.5701; and a space or plot purchased for the
22 purposes of burial for the person. For individuals related to the
23 title XVI program, the appropriate resource levels and property
24 exemptions specified in title XVI shall be used.

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

27 (vi) The individual meets the eligibility standards for

1 supplemental security income under title XVI or for state
2 supplementation under the act, subject to limitations imposed by
3 the director according to title XIX; or meets the eligibility
4 standards for family independence program benefits; ~~—, except for~~
5 ~~income or income and resources, or is a child from 18 to 21 years~~
6 ~~of age and his or her adult caretaker would be eligible for family~~
7 ~~independence program benefits except for age, income, or income and~~
8 ~~resources, or is a child under 21 years of age and is from a family~~
9 ~~whose income is below the basic maintenance level~~ **OR MEETS THE**
10 **ELIGIBILITY STANDARDS FOR OPTIONAL ELIGIBILITY GROUPS UNDER TITLE**
11 **XIX, SUBJECT TO LIMITATIONS IMPOSED BY THE DIRECTOR ACCORDING TO**
12 **TITLE XIX.**

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 or
16 arrange for the delivery of comprehensive health care services as
17 authorized under this act.

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

23 (c) "Title XVI" means title XVI of the social security act, 42
24 USC 1381 to 1382j and 1383 to 1383f.

25 (3) An individual receiving medical assistance under this act
26 or his or her legal counsel shall notify the state department when
27 filing an action in which the state department may have a right to

1 recover expenses paid under this act. If the individual is enrolled
2 in a medicaid contracted health plan, the individual or his or her
3 legal counsel shall provide notice to the **MEDICAID** contracted
4 health plan in addition to providing notice to the state
5 department.

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

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

1 the individual shall share equally in the proceeds of the net
2 recovery. As used in this subsection, "net recovery" means the
3 total settlement or judgment less the costs and fees incurred by or
4 on behalf of the individual who obtains the settlement or judgment.

5 Sec. 107. In establishing financial eligibility for the
6 medically indigent as defined in section ~~106(2)~~ **106**, income
7 shall be disregarded in accordance with standards established for
8 the related categorical assistance program. ~~Additional income~~
9 ~~shall be applied against: (i) the cost of medical care not~~
10 ~~authorized under this act, and (ii) the cost of services authorized~~
11 ~~under this act, in excess of the basic amount.~~ For medical
12 assistance only, income shall include the amount of contribution
13 ~~which~~ **THAT** an estranged spouse or parent for a minor child is
14 making to the applicant according to the standards of the state
15 department, or ~~pursuant~~ **ACCORDING** to a court determination, if
16 there is ~~such~~ a **COURT** determination. Nothing in this section
17 ~~shall eliminate~~ **ELIMINATES** the responsibility of support
18 established in section 76 for cash assistance received under this
19 act.