

HOUSE BILL No. 4034

January 15, 2015, Introduced by Reps. Heise and Poleski 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 2013 PA 107, 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 department of
9 community health prescribes.

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

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

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

1 of recovery afforded by this section does not deny the injured,
2 diseased, or disabled individual any part of the recovery beyond
3 the costs expended on the individual's behalf by the state
4 department or the department of community health. The costs of
5 legal action initiated by the state shall be paid by the state. A
6 payment shall not be made under this act for medical assistance for
7 an injury, disease, or disability for which the individual is
8 entitled to medical care or the cost of medical care under the
9 worker's disability compensation act of 1969, 1969 PA 317, MCL
10 418.101 to 418.941; except that payment may be made if an
11 appropriate application for medical care or the cost of the medical
12 care has been made under the worker's disability compensation act
13 of 1969, 1969 PA 317, MCL 418.101 to 418.941, entitlement has not
14 been finally determined, and an arrangement satisfactory to the
15 state department or the department of community health has been
16 made for 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 subject to limitations imposed by the director and because of
21 medical expenses falls below, the protected basic maintenance
22 level. The protected basic maintenance level for 1-person and 2-
23 person families shall be at least 100% of the payment standards
24 generally used to determine eligibility in the family independence
25 program. For families of 3 or more persons, the protected basic
26 maintenance level shall be at least 100% of the payment standard
27 generally used to determine eligibility in the family independence

1 program. These levels shall recognize regional variations and shall
2 not exceed 133-1/3% of the payment standard generally used to
3 determine eligibility in the family independence program. **FOR**
4 **PURPOSES OF THIS SUBPARAGRAPH, ANNUAL INCOME DOES NOT INCLUDE**
5 **INCOME ASSIGNED TO A POOLED TRUST DESCRIBED IN SECTION 106B.**

6 (iv) The individual, if a family independence program related
7 individual and living alone, has liquid or marketable assets of not
8 more than \$2,000.00 in value, or, if a 2-person family, the family
9 has liquid or marketable assets of not more than \$3,000.00 in
10 value. The department of community health shall establish
11 comparable liquid or marketable asset amounts for larger family
12 groups. Excluded in making the determination of the value of liquid
13 or marketable assets are the values of: the homestead; clothing;
14 household effects; \$1,000.00 of cash surrender value of life
15 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 department of community health rules; the fair
20 market value of tangible personal property used in earning income;
21 an amount paid as judgment or settlement for damages suffered as a
22 result of exposure to agent orange, as defined in section 5701 of
23 the public health code, 1978 PA 368, MCL 333.5701; ~~and~~ a space or
24 plot purchased for the purposes of burial for the person; **AND**
25 **ASSETS, WITHOUT REGARD TO VALUE, HELD BY, OR TRANSFERRED TO, A**
26 **TRUSTEE OF A POOLED TRUST AS DESCRIBED IN SECTION 106B FOR THE**
27 **BENEFIT OF THE INDIVIDUAL.** For individuals related to the title XVI

1 program, the appropriate resource levels and property exemptions
2 specified in title XVI shall be used.

3 (v) The individual is not an inmate of a public institution
4 except as a patient in a medical 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 is eligible under section
15 1396a(a)(10)(A)(i)(VIII) of title XIX. This subdivision does not
16 apply if either of the following occurs:

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

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

1 savings shall be submitted to the legislature.

2 (2) As used in this act:

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

7 (b) "Federal poverty guidelines" means the poverty guidelines
8 published annually in the federal register by the United States
9 department of health and human services under its authority to
10 revise the poverty line under section 673(2) of subtitle B of title
11 VI of the omnibus budget reconciliation act of 1981, 42 USC 9902.

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

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

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

27 (4) If a legal action in which the state department, the

1 department of community health, a contracted health plan, or all 3
2 have a right to recover expenses paid under this act is filed and
3 settled after November 29, 2004 without notice to the state
4 department, the department of community health, or the contracted
5 health plan, the state department, the department of community
6 health, or the contracted health plan may file a legal action
7 against the individual or his or her legal counsel, or both, to
8 recover expenses paid under this act. The attorney general shall
9 recover any cost or attorney fees associated with a recovery under
10 this subsection.

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

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

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

8 (2) THE TRANSFER OF ASSETS TO A POOLED TRUST IS SUBJECT TO THE
9 IMPOSITION OF A PENALTY UNDER THE TRANSFER OF ASSETS PROVISIONS OF
10 42 USC 1396P(C) UNLESS THE POOLED TRUST AGREEMENT MEETS THE
11 REQUIREMENTS UNDER SUBSECTION (4) (E). THE DEPARTMENT MAY REQUIRE
12 VERIFICATION THAT THE REQUIREMENTS OF SUBSECTION (4) (E) ARE MET AT
13 A PERIODIC REDETERMINATION OF THE BENEFICIARY'S ELIGIBILITY FOR
14 MEDICAL ASSISTANCE.

15 (3) A JOINDER AGREEMENT MAY BE ENTERED INTO BY ANY OF THE
16 FOLLOWING:

17 (A) A COMPETENT INDIVIDUAL 65 YEARS OF AGE OR OLDER.

18 (B) A COMPETENT DISABLED INDIVIDUAL OF ANY AGE.

19 (C) ON BEHALF OF AN INDIVIDUAL 65 YEARS OF AGE OR OLDER OR A
20 DISABLED INDIVIDUAL OF ANY AGE, ANY OF THE FOLLOWING:

21 (i) A PARENT.

22 (ii) A GRANDPARENT.

23 (iii) A GUARDIAN.

24 (iv) A CONSERVATOR.

25 (v) A COURT.

26 (vi) A PERSON NAMED AS ATTORNEY-IN-FACT THROUGH A DURABLE POWER
27 OF ATTORNEY THAT AUTHORIZES THE ATTORNEY-IN-FACT TO ENTER INTO A

1 JOINDER AGREEMENT OR SIMILAR AGREEMENT.

2 (4) AS USED IN THIS SECTION:

3 (A) "BENEFICIARY" MEANS A DISABLED INDIVIDUAL OR AN INDIVIDUAL
4 65 YEARS OF AGE OR OLDER WHO HAS ENTERED INTO A JOINDER AGREEMENT.

5 (B) "DISABILITY" MEANS A PHYSICAL OR MENTAL IMPAIRMENT AS
6 DESCRIBED IN SECTION 1614 OF THE SOCIAL SECURITY ACT, 42 USC 1382C.

7 (C) "DISABLED INDIVIDUAL" MEANS AN INDIVIDUAL WITH A
8 DISABILITY, INCLUDING AN INDIVIDUAL WHO HAS SATISFIED THE MICHIGAN
9 MEDICAID NURSING FACILITY LEVEL OF CARE REQUIREMENTS ESTABLISHED BY
10 THE DEPARTMENT OF COMMUNITY HEALTH.

11 (D) "JOINDER AGREEMENT" MEANS AN AGREEMENT BETWEEN A TRUSTEE
12 AND A BENEFICIARY THAT CONTAINS THE TERMS AND CONDITIONS OF THE
13 RELATIONSHIP BETWEEN THE TRUSTEE AND THE BENEFICIARY.

14 (E) "POOLED TRUST" MEANS A TRUST THAT MEETS ALL OF THE
15 FOLLOWING REQUIREMENTS:

16 (i) THE TRUST MEETS THE REQUIREMENTS UNDER 42 USC
17 1396P(D) (4) (C) .

18 (ii) THE TRUSTEE MAINTAINS AN ACCOUNT FOR EACH BENEFICIARY.

19 (iii) THE TRUSTEE POOLS ACCOUNTS FOR PURPOSES OF INVESTMENT AND
20 MANAGEMENT OF FUNDS.

21 (iv) THE TRUSTEE USES FUNDS IN THE BENEFICIARY'S ACCOUNT FOR
22 THE SOLE BENEFIT OF THE BENEFICIARY.

23 (v) UPON THE DEATH OF A BENEFICIARY, THE TRUSTEE MAY RETAIN
24 ASSETS THAT REMAIN IN THE BENEFICIARY'S ACCOUNT, WITHOUT LIMIT TO
25 DOLLAR AMOUNT, IN THE POOLED TRUST. WITH RESPECT TO ASSETS THAT
26 REMAIN IN THE BENEFICIARY'S ACCOUNT AND THAT ARE NOT RETAINED BY
27 THE TRUST, THE TRUSTEE SHALL REIMBURSE THIS STATE IN AN AMOUNT

1 EQUAL TO THE TOTAL AMOUNT OF MEDICAL ASSISTANCE PAID BY THIS STATE
2 ON BEHALF OF THE BENEFICIARY BEFORE DISTRIBUTING THOSE ASSETS TO
3 OTHER INDIVIDUALS OR USING THOSE ASSETS FOR ANY OTHER PURPOSE.

4 (vi) THE TRUSTEE PURCHASES ITEMS AND SERVICES FOR THE
5 BENEFICIARY AT FAIR MARKET VALUE.

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