

SENATE BILL No. 1537

September 29, 2010, Introduced by Senator BRATER and referred to the Committee on Families and Human Services.

A bill to amend 1939 PA 280, entitled
"The social welfare act,"
by amending section 106 (MCL 400.106), as amended by 2006 PA 144,
and by adding section 105c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 105C. (1) A RECIPIENT SHALL REMAIN ELIGIBLE AND AN
2 APPLICANT MAY BE DETERMINED ELIGIBLE FOR MEDICAL ASSISTANCE UNDER
3 THIS ACT DURING A PERIOD OF INCARCERATION OR DETENTION. MEDICAL
4 ASSISTANCE COVERAGE IS LIMITED TO OFF-SITE INPATIENT
5 HOSPITALIZATION ONLY.

6 (2) IF AN INDIVIDUAL WHO IS ELIGIBLE FOR MEDICAL ASSISTANCE
7 REMAINS INCARCERATED OR DETAINED FOR 1 YEAR OR MORE, THE DEPARTMENT
8 SHALL CONDUCT A MEDICAL ASSISTANCE ELIGIBILITY REDETERMINATION 1

1 TIME EACH YEAR THE INDIVIDUAL REMAINS INCARCERATED.

2 (3) A RECIPIENT IS CONSIDERED INCARCERATED OR DETAINED UNTIL
3 RELEASED ON BAIL, RELEASED AS NOT GUILTY, RELEASED ON PAROLE,
4 RELEASED ON PARDON, RELEASED UPON COMPLETING A SENTENCE, OR
5 RELEASED UNDER HOME DETENTION OR TETHER.

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

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

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

13 (i) The individual has applied in the manner the ~~family~~
14 ~~independence agency~~ **DEPARTMENT** prescribes.

15 (ii) The individual's need for the type of medical assistance
16 available under this act for which the individual applied has been
17 professionally established and payment for it is not available
18 through the legal obligation of a public or private contractor to
19 pay or provide for the care without regard to the income or
20 resources of the patient. The state department is subrogated to any
21 right of recovery that a patient may have for the cost of
22 hospitalization, pharmaceutical services, physician services,
23 nursing services, and other medical services not to exceed the
24 amount of funds expended by the state department for the care and
25 treatment of the patient. The patient or other person acting in the
26 patient's behalf shall execute and deliver an assignment of claim
27 or other authorizations as necessary to secure the right of

1 recovery to the department. A payment may be withheld under this
2 act for medical assistance for an injury or disability for which
3 the individual is entitled to medical care or reimbursement for the
4 cost of medical care under sections 3101 to 3179 of the insurance
5 code of 1956, 1956 PA 218, MCL 500.3101 to 500.3179, or under
6 another policy of insurance providing medical or hospital benefits,
7 or both, for the individual unless the individual's entitlement to
8 that medical care or reimbursement is at issue. If a payment is
9 made, the state department, to enforce its subrogation right, may
10 do either of the following: (a) intervene or join in an action or
11 proceeding brought by the injured, diseased, or disabled
12 individual, the individual's guardian, personal representative,
13 estate, dependents, or survivors, against the third person who may
14 be liable for the injury, disease, or disability, or against
15 contractors, public or private, who may be liable to pay or provide
16 medical care and services rendered to an injured, diseased, or
17 disabled individual; (b) institute and prosecute a legal proceeding
18 against a third person who may be liable for the injury, disease,
19 or disability, or against contractors, public or private, who may
20 be liable to pay or provide medical care and services rendered to
21 an injured, diseased, or disabled individual, in state or federal
22 court, either alone or in conjunction with the injured, diseased,
23 or disabled individual, the individual's guardian, personal
24 representative, estate, dependents, or survivors. The state
25 department may institute the proceedings in its own name or in the
26 name of the injured, diseased, or disabled individual, the
27 individual's guardian, personal representative, estate, dependents,

1 or survivors. As provided in section 6023 of the revised judicature
2 act of 1961, 1961 PA 236, MCL 600.6023, the state department, in
3 enforcing its subrogation right, shall not satisfy a judgment
4 against the third person's property that is exempt from levy and
5 sale. The injured, diseased, or disabled individual may proceed in
6 his or her own name, collecting the costs without the necessity of
7 joining the state department or the state as a named party. The
8 injured, diseased, or disabled individual shall notify the state
9 department of the action or proceeding entered into upon
10 commencement of the action or proceeding. An action taken by the
11 state or the state department in connection with the right of
12 recovery afforded by this section does not deny the injured,
13 diseased, or disabled individual any part of the recovery beyond
14 the costs expended on the individual's behalf by the state
15 department. The costs of legal action initiated by the state shall
16 be paid by the state. A payment shall not be made under this act
17 for medical assistance for an injury, disease, or disability for
18 which the individual is entitled to medical care or the cost of
19 medical care under the worker's disability compensation act of
20 1969, 1969 PA 317, MCL 418.101 to 418.941; except that payment may
21 be made if an appropriate application for medical care or the cost
22 of the medical care has been made under the worker's disability
23 compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941,
24 entitlement has not been finally determined, and an arrangement
25 satisfactory to the state department has been made for
26 reimbursement if the claim under the worker's disability
27 compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, is

1 finally sustained.

2 (iii) The individual has an annual income that is below, or
3 subject to limitations imposed by the director and because of
4 medical expenses falls below, the protected basic maintenance
5 level. The protected basic maintenance level for 1-person and 2-
6 person families shall be at least 100% of the payment standards
7 generally used to determine eligibility in the family independence
8 program. For families of 3 or more persons, the protected basic
9 maintenance level shall be at least 100% of the payment standard
10 generally used to determine eligibility in the family independence
11 program. These levels shall recognize regional variations and shall
12 not exceed 133-1/3% of the payment standard generally used to
13 determine eligibility in the family independence program.

14 (iv) The individual, if a family independence program related
15 individual and living alone, has liquid or marketable assets of not
16 more than \$2,000.00 in value, or, if a 2-person family, the family
17 has liquid or marketable assets of not more than \$3,000.00 in
18 value. The state department shall establish comparable liquid or
19 marketable asset amounts for larger family groups. Excluded in
20 making the determination of the value of liquid or marketable
21 assets are the values of: the homestead; clothing; household
22 effects; \$1,000.00 of cash surrender value of life insurance,
23 except that if the **INSURED'S** health ~~of the insured~~ makes
24 ~~continuance of~~ **CONTINUING** the insurance desirable, the entire cash
25 surrender value of life insurance is excluded from consideration,
26 up to the maximum provided or allowed by federal regulations and in
27 accordance with state department rules; the fair market value of

1 tangible personal property used in earning income; an amount paid
2 as judgment or settlement for damages suffered as a result of
3 exposure to agent orange, as defined in section 5701 of the public
4 health code, 1978 PA 368, MCL 333.5701; and a space or plot
5 purchased for the purposes of burial for the person. For
6 individuals related to the title XVI program, the appropriate
7 resource levels and property exemptions specified in title XVI
8 shall be used.

9 (v) ~~The~~**EXCEPT AS PROVIDED IN SECTION 105C, THE** individual is
10 not an inmate of a public institution except as a patient in a
11 medical institution.

12 (vi) The individual meets the eligibility standards for
13 supplemental security income under title XVI or for state
14 supplementation under the act, subject to limitations imposed by
15 the director according to title XIX; or meets the eligibility
16 standards for family independence program benefits; or meets the
17 eligibility standards for optional eligibility groups under title
18 XIX, subject to limitations imposed by the director according to
19 title XIX.

20 (2) As used in this act:

21 (a) "Medicaid contracted health plan" means a managed care
22 organization with whom the state department contracts to provide or
23 arrange for the delivery of comprehensive health care services as
24 authorized under this act.

25 (b) "Medical institution" means a state licensed or approved
26 hospital, nursing home, medical care facility, psychiatric
27 hospital, or other facility or identifiable unit of a listed

1 institution certified as meeting established standards for a
2 nursing home or hospital in accordance with the laws of this state.

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

5 (3) An individual receiving medical assistance under this act
6 or his or her legal counsel shall notify the state department when
7 filing an action in which the state department may have a right to
8 recover expenses paid under this act. If the individual is enrolled
9 in a medicaid contracted health plan, the individual or his or her
10 legal counsel shall provide notice to the medicaid contracted
11 health plan in addition to providing notice to the state
12 department.

13 (4) If a legal action in which the state department, a
14 medicaid contracted health plan, or both has a right to recover
15 expenses paid under this act is filed and settled after November
16 29, 2004 without notice to the state department or the medicaid
17 contracted health plan, the state department or the medicaid
18 contracted health plan may file a legal action against the
19 individual or his or her legal counsel, or both, to recover
20 expenses paid under this act. The attorney general shall recover
21 any cost or attorney fees associated with a recovery under this
22 subsection.

23 (5) The state department has first priority against the
24 proceeds of the net recovery from the settlement or judgment in an
25 action settled in which notice has been provided under subsection
26 (3). A medicaid contracted health plan has priority immediately
27 after the state department in an action settled in which notice has

1 been provided under subsection (3). The state department and a
2 medicaid contracted health plan shall recover the full cost of
3 expenses paid under this act unless the state department or the
4 medicaid contracted health plan agrees to accept an amount less
5 than the full amount. If the individual would recover less against
6 the proceeds of the net recovery than the expenses paid under this
7 act, the state department or medicaid contracted health plan, and
8 the individual shall share equally in the proceeds of the net
9 recovery. As used in this subsection, "net recovery" means the
10 total settlement or judgment less the costs and fees incurred by or
11 on behalf of the individual who obtains the settlement or judgment.