

SENATE BILL No. 1011

July 16, 2014, Introduced by Senator CASWELL and referred to the Committee on Judiciary.

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~~**SECTIONS** 106a **AND 106B**, an
7 individual who meets all of the following conditions:

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

1 community health 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 and the department
8 of community health are subrogated to any right of recovery that a
9 patient may have for the cost of hospitalization, pharmaceutical
10 services, physician services, nursing services, and other medical
11 services not to exceed the amount of funds expended by the state
12 department or the department of community health for the care and
13 treatment of the patient. The patient or other person acting in the
14 patient's behalf shall execute and deliver an assignment of claim
15 or other authorizations as necessary to secure the right of
16 recovery to the department or the department of community health. A
17 payment may be withheld under this act for medical assistance for
18 an injury or disability for which the individual is entitled to
19 medical care or reimbursement for the cost of medical care under
20 sections 3101 to 3179 of the insurance code of 1956, 1956 PA 218,
21 MCL 500.3101 to 500.3179, or under another policy of insurance
22 providing medical or hospital benefits, or both, for the individual
23 unless the individual's entitlement to that medical care or
24 reimbursement is at issue. If a payment is made, the state
25 department or the department of community health, to enforce its
26 subrogation right, may do either of the following: (a) intervene or
27 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 the
19 department of community health, in enforcing its subrogation right,
20 shall not satisfy a judgment against the third person's property
21 that is exempt from levy and sale. The injured, diseased, or
22 disabled individual may proceed in his or her own name, collecting
23 the costs without the necessity of joining the state department,
24 the department of community health, or the state as a named party.
25 The injured, diseased, or disabled individual shall notify the
26 state department or the department of community health of the
27 action or proceeding entered into upon commencement of the action

1 or proceeding. An action taken by the state, the state department,
2 or the department of community health in connection with the right
3 of recovery afforded by this section does not deny the injured,
4 diseased, or disabled individual any part of the recovery beyond
5 the costs expended on the individual's behalf by the state
6 department or the department of community health. The costs of
7 legal action initiated by the state shall be paid by the state. A
8 payment shall not be made under this act for medical assistance for
9 an injury, disease, or disability for which the individual is
10 entitled to medical care or the cost of medical care under the
11 worker's disability compensation act of 1969, 1969 PA 317, MCL
12 418.101 to 418.941; except that payment may be made if an
13 appropriate application for medical care or the cost of the medical
14 care has been made under the worker's disability compensation act
15 of 1969, 1969 PA 317, MCL 418.101 to 418.941, entitlement has not
16 been finally determined, and an arrangement satisfactory to the
17 state department or the department of community health has been
18 made for reimbursement if the claim under the worker's disability
19 compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, is
20 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 be at least 100% of the payment standards
26 generally used to determine eligibility in the family independence
27 program. For families of 3 or more persons, the protected basic

1 maintenance level shall be at least 100% of the payment standard
2 generally used to determine eligibility in the family independence
3 program. These levels shall recognize regional variations and shall
4 not exceed 133-1/3% of the payment standard generally used to
5 determine eligibility in the family independence program.

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. For
25 individuals related to the title XVI program, the appropriate
26 resource levels and property exemptions specified in title XVI
27 shall be used.

1 (v) ~~The~~ **EXCEPT AS PROVIDED IN SECTION 106B, THE** individual is
2 not an inmate of a public institution except as a patient in a
3 medical institution.

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

13 (c) An individual is eligible under section
14 1396a(a)(10)(A)(i)(VIII) of title XIX. This subdivision does not
15 apply if either of the following occurs:

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

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

1 (2) As used in this act:

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

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

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

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

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

26 (4) If a legal action in which the state department, the
27 department of community health, a contracted health plan, or all 3

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

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

1 settlement or judgment.

2 SEC. 106B. (1) THE STATE MEDICAID PLAN SHALL REQUIRE THE
3 DEPARTMENT OF COMMUNITY HEALTH TO SUSPEND RATHER THAN TERMINATE THE
4 MEDICAL ASSISTANCE OF AN INDIVIDUAL WITH A SERIOUS MENTAL ILLNESS
5 OR A SERIOUS EMOTIONAL DISTURBANCE WHEN EITHER OF THE FOLLOWING
6 APPLIES:

7 (A) THE INDIVIDUAL BECOMES AN INMATE RESIDING IN A PUBLIC
8 INSTITUTION BUT OTHERWISE REMAINS ELIGIBLE FOR MEDICAL ASSISTANCE.

9 (B) AN INMATE WAS NOT ELIGIBLE FOR MEDICAL ASSISTANCE WHEN HE
10 OR SHE ENTERED THE PUBLIC INSTITUTION BUT IS SUBSEQUENTLY
11 DETERMINED TO BE ELIGIBLE FOR MEDICAL ASSISTANCE WHILE IN THE
12 PUBLIC INSTITUTION.

13 (2) THE DEPARTMENT OF COMMUNITY HEALTH SHALL REDETERMINE THE
14 MEDICAL ASSISTANCE ELIGIBILITY OF THE INDIVIDUAL.

15 (3) UPON NOTIFICATION THAT AN INDIVIDUAL DESCRIBED IN
16 SUBSECTION (1) IS NO LONGER AN INMATE RESIDING IN A PUBLIC
17 INSTITUTION, THE DEPARTMENT OF COMMUNITY HEALTH SHALL REINSTATE THE
18 INDIVIDUAL'S MEDICAL ASSISTANCE IF THE INDIVIDUAL IS OTHERWISE
19 ELIGIBLE FOR MEDICAL ASSISTANCE.

20 (4) THIS SECTION DOES NOT EXTEND MEDICAL ASSISTANCE
21 ELIGIBILITY TO AN OTHERWISE INELIGIBLE INDIVIDUAL OR EXTEND MEDICAL
22 ASSISTANCE TO AN INDIVIDUAL IF MATCHING FEDERAL FUNDS ARE NOT
23 AVAILABLE TO PAY FOR THE MEDICAL ASSISTANCE.

24 (5) THIS SECTION APPLIES TO THE DEPARTMENT OF COMMUNITY
25 HEALTH, A STATE AGENCY TO WHICH THE DEPARTMENT OF COMMUNITY HEALTH
26 HAS DELEGATED THESE FUNCTIONS AS PROVIDED UNDER SECTION 105C, OR A
27 PRIVATE OR NONPROFIT ENTITY WITH WHICH THE DEPARTMENT OF COMMUNITY

1 HEALTH HAS CONTRACTED TO PERFORM THESE FUNCTIONS AS PROVIDED UNDER
2 SECTION 105C.

3 (6) AS USED IN THIS SECTION:

4 (A) "PUBLIC INSTITUTION" MEANS 1 OF THE FOLLOWING:

5 (i) AN INPATIENT PROGRAM OPERATED BY THE DEPARTMENT OF
6 COMMUNITY HEALTH FOR TREATMENT OF INDIVIDUALS WITH SERIOUS
7 EMOTIONAL DISTURBANCE OR SERIOUS MENTAL ILLNESS.

8 (ii) A LOCAL CORRECTIONAL FACILITY AS THAT TERM IS DEFINED IN
9 SECTION 2 OF THE LOCAL CORRECTIONS OFFICERS TRAINING ACT, 2003 PA
10 125, MCL 791.532.

11 (iii) A CORRECTIONAL FACILITY AS THAT TERM IS DEFINED IN SECTION
12 15 OF THE CORRECTIONS CODE OF 1953, 1953 PA 232, MCL 791.215.

13 (iv) A YOUTH CORRECTIONAL FACILITY OPERATED BY THE DEPARTMENT
14 OF CORRECTIONS OR A PRIVATE VENDOR UNDER SECTION 20G OF THE
15 CORRECTIONS CODE OF 1953, 1953 PA 232, MCL 791.220G.

16 (B) "SERIOUS EMOTIONAL DISTURBANCE" AND "SERIOUS MENTAL
17 ILLNESS" MEAN THOSE TERMS AS DEFINED IN SECTION 100D OF THE MENTAL
18 HEALTH CODE, 1974 PA 258, MCL 330.1100D.