

**THE SOCIAL WELFARE ACT (EXCERPT)**  
**Act 280 of 1939**

\*\*\*\*\* 400.106.amended. THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT  
OF THE 2013 REGULAR SESSION SINE DIE \*\*\*\*\*

**400.106.amended Medically indigent individual; definitions; notice of legal action; recovery of expenses by state department, department of community health, or contracted health plan; priority against proceeds.**

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

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

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

(i) The individual has applied in the manner the department of community health prescribes.

(ii) The individual's need for the type of medical assistance available under this act for which the individual applied has been professionally established and payment for it is not available through the legal obligation of a public or private contractor to pay or provide for the care without regard to the income or resources of the patient. The state department and the department of community health are subrogated to any right of recovery that a patient may have for the cost of hospitalization, pharmaceutical services, physician services, nursing services, and other medical services not to exceed the amount of funds expended by the state department or the department of community health for the care and treatment of the patient. The patient or other person acting in the patient's behalf shall execute and deliver an assignment of claim or other authorizations as necessary to secure the right of recovery to the department or the department of community health. A payment may be withheld under this act for medical assistance for an injury or disability for which the individual is entitled to medical care or reimbursement for the cost of medical care under sections 3101 to 3179 of the insurance code of 1956, 1956 PA 218, MCL 500.3101 to 500.3179, or under another policy of insurance providing medical or hospital benefits, or both, for the individual unless the individual's entitlement to that medical care or reimbursement is at issue. If a payment is made, the state department or the department of community health, to enforce its subrogation right, may do either of the following: (a) intervene or join in an action or proceeding brought by the injured, diseased, or disabled individual, the individual's guardian, personal representative, estate, dependents, or survivors, against the third person who may be liable for the injury, disease, or disability, or against contractors, public or private, who may be liable to pay or provide medical care and services rendered to an injured, diseased, or disabled individual; (b) institute and prosecute a legal proceeding against a third person who may be liable for the injury, disease, or disability, or against contractors, public or private, who may be liable to pay or provide medical care and services rendered to an injured, diseased, or disabled individual, in state or federal court, either alone or in conjunction with the injured, diseased, or disabled individual, the individual's guardian, personal representative, estate, dependents, or survivors. The state department may institute the proceedings in its own name or in the name of the injured, diseased, or disabled individual, the individual's guardian, personal representative, estate, dependents, or survivors. As provided in section 6023 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6023, the state department or the department of community health, in enforcing its subrogation right, shall not satisfy a judgment against the third person's property that is exempt from levy and sale. The injured, diseased, or disabled individual may proceed in his or her own name, collecting the costs without the necessity of joining the state department, the department of community health, or the state as a named party. The injured, diseased, or disabled individual shall notify the state department or the department of community health of the action or proceeding entered into upon commencement of the action or proceeding. An action taken by the state, the state department, or the department of community health in connection with the right of recovery afforded by this section does not deny the injured, diseased, or disabled individual any part of the recovery beyond the costs expended on the individual's behalf by the state department or the department of community health. The costs of legal action initiated by the state shall be paid by the state. A payment shall not be made under this act for medical assistance for an injury, disease, or disability for which the individual is entitled to medical care or the cost of medical care under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941; except that payment may be made if an appropriate application for medical care or the cost of the medical care has been made under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, entitlement has not been finally determined, and an arrangement satisfactory to the state department or the department of community health has been made for reimbursement if the claim under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, is finally

sustained.

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

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

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

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

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

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

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

(2) As used in this act:

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

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

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

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

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

(4) If a legal action in which the state department, the department of community health, a contracted health plan, or all 3 have a right to recover expenses paid under this act is filed and settled after November 29, 2004 without notice to the state department, the department of community health, or the contracted health plan, the state department, the department of community health, or the contracted health plan may file a legal action

against the individual or his or her legal 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.

(5) The state department or the department of community health has first priority against the proceeds of the net recovery from the settlement or judgment in an action settled in which notice has been provided under subsection (3). A contracted health plan has priority immediately after the state department or the department of community health in an action settled in which notice has been provided under subsection (3). The state department, the department of community health, and a contracted health plan shall recover the full cost of expenses paid under this act unless the state department, the department of community health, or the contracted health plan agrees to accept an amount less 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, the department of community health, or 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.

**History:** Add. 1966, Act 321, Eff. Oct. 1, 1966;—Am. 1967, Act 289, Imd. Eff. Aug. 1, 1967;—Am. 1970, Act 160, Imd. Eff. Aug. 2, 1970;—Am. 1973, Act 189, Imd. Eff. Jan. 8, 1974;—Am. 1976, Act 284, Imd. Eff. Oct. 20, 1976;—Am. 1978, Act 623, Imd. Eff. Jan. 6, 1979;—Am. 1982, Act 405, Eff. Mar. 30, 1983;—Am. 1990, Act 145, Imd. Eff. June 27, 1990;—Am. 2003, Act 33, Imd. Eff. July 2, 2003;—Am. 2004, Act 409, Imd. Eff. Nov. 29, 2004;—Am. 2006, Act 144, Imd. Eff. May 22, 2006;—Am. 2013, Act 107, Eff. (sine die)

**Compiler's note:** For transfer of powers and duties of the home help program and the physical disabilities program from the family independence agency to the director of the department of community health, see E.R.O. No. 1997-5, compiled at MCL 400.224 of the Michigan Compiled Laws.

Enacting section 1 of Act 107 of 2013 provides:

"Enacting section 1. This amendatory act does not do either of the following:

"(a) Authorize the establishment or operation of a state-created American health benefit exchange in this state related to the patient protection and affordable care act, Public Law 111-148, as amended by the federal health care and education reconciliation act of 2010, Public Law 111-152.

"(b) Convey any additional statutory, administrative, rule-making, or other power to this state or an agency of this state that did not exist before the effective date of the amendatory act that added section 105d to the social welfare act, 1939 PA 280, MCL 400.105d, that would authorize, establish, or operate a state-created American health benefit exchange."

**Popular name:** Act 280