

THE SOCIAL WELFARE ACT (EXCERPT)
Act 280 of 1939

400.111c Duties of director in carrying out authority conferred by MCL 400.111a(7)(d).

Sec. 111c. (1) To carry out the authority conferred by section 111a(7)(d), the director shall do 1 or more of the following:

(a) Accept an assurance of repayment of amounts alleged to be due to the state department. The assurance shall not constitute an admission of guilt nor be introduced in any other civil or criminal proceeding. The assurance may include a stipulation for either of the following:

(i) The voluntary payment to the state department by the provider of the amount alleged to be due to the state department.

(ii) The voluntary payment, to an aggrieved medically indigent individual specified by the director, by the provider of the amount alleged to be due to the medically indigent individual.

(b) Hold or institute a hearing in conformity with chapter 4 and chapter 6 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.271 to 24.287 and 24.301 to 24.306 of the Michigan Compiled Laws. The presiding officer at a hearing shall determine if an amount is due the state and shall include the determination in his or her proposal for decision. Except as provided in section 111f(4), the director shall not delegate the authority to make a final decision in a contested case under this subdivision. A hearing shall be concluded not later than 90 days after being commenced, unless otherwise agreed upon by the department and the provider or providers. The proposal for decision shall be rendered not later than 45 days after the hearing is concluded. Exceptions may be filed not later than 10 days after the date of mailing the proposal for decision. The director shall render a final decision not later than 15 days after the date of closure for the filing of exceptions. The final decision in a contested case under this subdivision may contain an order directing payment of an amount found to be due the state. The final decision may order immediate payment of the entire amount or may allow the provider a period of time which is reasonable under the circumstances to pay the state. The order shall specify the period of time allowed and a rate of interest, equal to the current rate being earned by the state treasurer's common cash fund, to be paid by the provider during that time regardless of the method of payment. The interest shall be computed from the date of the overpayment notice, but shall not be applied to medicaid interim payment overpayments. Upon the provider's failure to comply with the order in a timely manner, the director shall request the department of attorney general to petition a court of competent jurisdiction to enforce the order. Failure to appeal the final order within 30 days after receipt of a copy of the order shall foreclose the provider from collateral attack against the order or any underlying determination.

(c) Hold an informal meeting, as provided in this section, with the provider or authorized representative of the provider, after giving written notice to the provider. The purpose of an informal meeting is to offer the provider the opportunity to be heard and to negotiate a withholding of an amount, pending an administrative hearing and final decision on the merits pursuant to chapters 4 and 6 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 and 24.301 to 24.306 of the Michigan Compiled Laws. The amount withheld shall not be more than the ratio of overpayment to the total paid volume from present and future medical assistance payments based on billings submitted by the provider, and shall be deposited into an interest-bearing escrow account. If the provider and the state department are unable to reach a negotiated withheld amount by the commencement of the hearing on the merits pursuant to subsection (1)(a)(i), the state department shall withhold an amount equal to not more than 25% of the present and future payments. This subdivision shall not be applied with respect to a nursing home or a hospital. The agreement shall not constitute an admission of guilt nor be introduced in any other civil or criminal proceeding. If both parties agree as to a disposition of the state department's claim, the state department shall cancel the scheduled administrative hearing. The following procedure shall be complied with regardless of any agreement on the amount to be withheld pending the outcome of the hearing:

(i) The dates of an informal meeting and of the administrative hearing shall be set forth in the notification to the provider that alleges excess payments have been received. That notification shall be in the form of registered mail, receipted by the addressee, or by proof of service to the provider or representative of the provider.

(ii) An informal meeting shall be concluded not later than 35 calendar days after the date of notification to the provider, and the administrative hearing shall be scheduled for the forty-fifth calendar day from the date of notification. The director shall have the administrative hearing convened on the forty-fifth day regardless of the cause on the part of either party for delay in concluding the informal meeting within 36 calendar days.

(iii) If the withholding of an amount has not been agreed upon by the time of the start of an administrative hearing on the merits, the state department may seek a withholding from present and future payment from

billings submitted by the provider of not more than 25% of such payments. The withholding shall be in effect for the pendency of the hearing on the merits and until a decision on the merits. The provider shall have the opportunity to respond to the state department's withholding request. The state department's showing and the decision of the administrative law judge shall be based on all of the following criteria, with each reason stated individually in the opinion:

(A) A showing based upon specific stated facts that probable cause exists that reimbursement in excess of the reimbursement to which provider is entitled has occurred.

(B) A showing that the reimbursement cited in subparagraph (iii)(A) amounts to a specific percentage of payments made, as characterized by a statistically valid audit.

(C) A showing that 1 or more services of the same type included in the case, for which the state department is seeking a withholding of funds, has occurred at least once during the most recent 2 calendar quarters prior to the date of notice to the provider.

(iv) Any finding of an administrative law judge providing for withholding shall be in effect unless modified by the administrative law judge until the director's final decision on the case. If the administrative law judge rules that an amount shall be withheld from the provider, those funds shall be placed in an interest bearing escrow account. If the final ruling by the administrative law judge determines an amount is due to the state department, and that amount is less than the amount withheld, the provider shall be awarded the difference and proportionate interest of the funds held in escrow.

(v) The hearing shall be on the merits of the claim of the state department or provider, or both, and shall be concluded not later than 90 days after being commenced unless otherwise agreed upon by the department and the provider or providers. The administrative law judge shall render a proposal for decision on the merits of the department's claim not later than 90 days after conclusion of the hearing, and shall advise both parties that exceptions may be filed with the administrative law judge not later than 15 days after the date of mailing the proposal for decision.

(vi) The director shall make a final decision not later than 15 days after the date of closure for the filing of exceptions, and shall not delegate authority to make a final decision in a contested case under this section. The final decision in a contested case under this section shall contain an order directing payment of an amount found to be due to the state or the provider. The final decision may order immediate payment of the entire amount or may allow the provider a period of time which is reasonable under the circumstances to pay the state. The order shall specify the manner of payment, including the period of time allowed and a rate of interest equal to the current rate being earned by the state treasurer's common cash fund to be paid by the provider on all repayments other than the interest bearing withheld amount, to be computed from the date of the notification issued pursuant to this section. Upon the provider's failure to timely comply with the order, the director shall request the attorney general to petition a court of competent jurisdiction to enforce the order. Failure to appeal the final order within 30 days after receipt of a copy of the order shall foreclose the provider from collateral attack against the order or any underlying determination.

(vii) If the foregoing means are not adequate to secure recovery of payments, the director shall do 1 or more of the following:

(A) File as a creditor in insolvency proceedings.

(B) Initiate emergency action pursuant to section 111f.

(C) Bring an action for other legal or equitable relief in a court of competent jurisdiction, including, but not limited to, an order to increase, for cause, the 25% withholding limit, an injunction to prevent the removal of attachable assets, an order to sequester assets, or an order for the appointment of a receiver to take possession of attachable assets.

(2) For purposes of this section, "provider" includes an employer who has executed an agreement conforming to section 111(b)(27).

History: Add. 1980, Act 321, Imd. Eff. Dec. 12, 1980;—Am. 1982, Act 461, Imd. Eff. Dec. 30, 1982;—Am. 1986, Act 227, Eff. Nov. 1, 1986.

Popular name: Act 280