

Act No. 308
Public Acts of 2014
Approved by the Governor
October 9, 2014
Filed with the Secretary of State
October 10, 2014
EFFECTIVE DATE: October 10, 2014

**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Senators Caswell, Nofs, Jones, Marleau and Pappageorge

ENROLLED SENATE BILL No. 890

AN ACT to amend 1939 PA 280, entitled "An act to protect the welfare of the people of this state; to provide general assistance, hospitalization, infirmary and medical care to poor or unfortunate persons; to provide for compliance by this state with the social security act; to provide protection, welfare and services to aged persons, dependent children, the blind, and the permanently and totally disabled; to administer programs and services for the prevention and treatment of delinquency, dependency and neglect of children; to create a state department of social services; to prescribe the powers and duties of the department; to provide for the interstate and intercounty transfer of dependents; to create county and district departments of social services; to create within certain county departments, bureaus of social aid and certain divisions and offices thereunder; to prescribe the powers and duties of the departments, bureaus and officers; to provide for appeals in certain cases; to prescribe the powers and duties of the state department with respect to county and district departments; to prescribe certain duties of certain other state departments, officers, and agencies; to make an appropriation; to prescribe penalties for the violation of the provisions of this act; and to repeal certain parts of this act on specific dates," by amending sections 115f, 115g, 115h, 115i, 115j, 115l, and 115m (MCL 400.115f, 400.115g, 400.115h, 400.115i, 400.115j, 400.115l, and 400.115m), section 115f as amended by 2004 PA 193, sections 115g and 115i as amended by 2009 PA 17, section 115h as added by 1994 PA 238, section 115j as amended by 2011 PA 230, and sections 115l and 115m as amended by 2002 PA 648, and by adding section 115t.

The People of the State of Michigan enact:

Sec. 115f. As used in this section and sections 115g to 115t:

- (a) "Adoptee" means the child who is to be adopted or who is adopted.
- (b) "Adoption assistance" means a support subsidy or a support subsidy with medical assistance.
- (c) "Adoption assistance agreement" means an agreement between the department and an adoptive parent regarding adoption assistance.
- (d) "Adoption code" means the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70.
- (e) "Adoptive parent" means the parent or parents who adopt a child under the adoption code.
- (f) "Certification" means a determination of eligibility by the department that an adoptee is eligible for a support subsidy or a medical subsidy, or both, or redetermined adoption assistance.
- (g) "Child with special needs" means an individual under the age of 18 years for whom the state has determined all of the following:
 - (i) There is a specific judicial finding that the child cannot or should not be returned to the home of the child's parents.

(ii) A specific factor or condition, or a combination of factors and conditions, exists before the adoption is finalized so that it is reasonable to conclude that the child cannot be placed with an adoptive parent without providing adoption assistance under this act. The factors or conditions to be considered may include ethnic or family background, age, membership in a minority or sibling group, medical condition, physical, mental, or emotional disability, or length of time the child has been waiting for an adoptive home.

(iii) A reasonable but unsuccessful effort was made to place the adoptee with an appropriate adoptive parent without providing adoption assistance under this act or a prospective placement is the only placement in the best interest of the child.

(h) "Compact" means the interstate compact on adoption and medical assistance as enacted in sections 115r and 115s.

(i) "Court" means the family division of circuit court.

(j) "Department" means the department of human services.

(k) "Determination of care rate" means a supplemental payment to the standard age appropriate foster care rate that may be justified when extraordinary care or expense is required. The supplemental payment shall be based on 1 or more of the following for which extraordinary care is required of the foster care provider or an extraordinary expense exists:

(i) A physically disabled child for whom the foster care provider must provide measurably greater supervision and care.

(ii) A child with special psychological or psychiatric needs that require extra time and a measurably greater amount of care and attention by the foster care provider.

(iii) A child requiring a special diet that is more expensive than a normal diet and that requires extra time and effort by the foster care provider to obtain and prepare.

(iv) A child whose severe acting out or antisocial behavior requires a measurably greater amount of care and attention of the foster care provider.

(v) Any other condition for which the department determines that extraordinary care is required of the foster care provider or an extraordinary expense exists.

(l) "Foster care" means placement of a child outside the child's parental home under the department's supervision by a court of competent jurisdiction.

(m) "Medical assistance" means the federally aided medical assistance program under title XIX.

(n) "Medical subsidy" means a reimbursement program that assists in paying for services for an adopted child who has an identified physical, mental, or emotional condition that existed, or the cause of which existed, before the adoption is finalized.

(o) "Medical subsidy agreement" means an agreement between the department and an adoptive parent regarding a medical subsidy.

(p) "Nonrecurring adoption expenses" means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses that are directly related to the legal adoption of a child with special needs. Nonrecurring adoption expenses do not include costs or expenses incurred in violation of state or federal law or that have been reimbursed from other sources or funds.

(q) "Other expenses that are directly related to the legal adoption of a child with special needs" means adoption costs incurred by or on behalf of the adoptive parent and for which the adoptive parent carries the ultimate liability for payment, including the adoption study, health and psychological examinations, supervision of the placement before adoption, and transportation and reasonable costs of lodging and food for the child or adoptive parent if necessary to complete the adoption or placement process.

(r) "Party state" means a state that becomes a party to the interstate compact on adoption and medical assistance.

(s) "Placement" means a placement or commitment, including the necessity of removing the child from his or her parental home, as approved by the court under an order of disposition issued under section 2 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.

(t) "Redetermined adoption assistance" means a payment as determined by a certification that may be justified when extraordinary care or expense is required for a condition that existed or the cause of which existed before the adoption from foster care was finalized.

(u) "Redetermined adoption assistance agreement" means a written agreement regarding redetermined adoption assistance between the department and the adoptive parent of a child.

(v) "Residence state" means the state in which the child is a resident by virtue of the adoptive parent's residency.

(w) "Standard age appropriate foster care rate" means the approved maintenance payment rate that is paid for a child in foster family care.

(x) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of the United States.

(y) "Support subsidy" means payment for support of a child who has been placed for adoption from foster care.

Sec. 115g. (1) The department may pay a support subsidy to an adoptive parent of an adoptee who is placed in the home of the adoptive parent under the adoption code or under the adoption laws of another state or a tribal government, if all of the following requirements are met:

(a) The department has certified that the adoptee is a child with special needs.

(b) Certification is made before the adoptee's eighteenth birthday.

(c) Certification is made and the adoption assistance agreement is signed by the adoptive parent and the department before the adoption is finalized.

(2) The department shall determine eligibility for the support subsidy without regard to the income of the adoptive parent. The maximum amount shall be equal to the rate that the child received in the family foster care placement or the rate the child would have received if he or she had been in a family foster care placement at the time of adoption. This rate includes the determination of care rate that was paid or would have been paid for the adoptee in a family foster care placement, except that the amount shall be increased to reflect increases made in the standard age appropriate foster care rate paid by the department. The department shall not implement policy to limit the maximum amount at an amount less than the family foster care rate, including the determination of care rate, that was paid for the adoptee while the adoptee was in family foster care.

(3) The department shall, on a separate form, require an adoptive parent to sign that he or she either requests or does not request a support subsidy.

(4) The adoptive parent shall present to the department the first offer of the amount requested for the support subsidy. The department may accept the adoptive parent's offer or present a counteroffer to the adoptive parent for the support subsidy. The department shall consider the prospective adoptive parent's requested rate if that requested rate is consistent with the needs of the child being adopted and the prospective adoptive family's circumstances, unless the requested rate exceeds the maximum foster care rate the child is receiving or would receive if placed in a licensed family foster home.

(5) The department shall complete the certification process within 30 days after it receives a request for a support subsidy.

Sec. 115h. (1) Except as provided in subsection (2), the department may pay a medical subsidy as reimbursement for services either to a service provider or to the adoptive parent of an adoptee who is placed for adoption in the home of the adoptive parent under the adoption code or the laws of any other state or a tribal government, if all of the following requirements are met:

(a) The expenses to be covered by the medical subsidy are necessitated by a physical, mental, or emotional condition of the adoptee that existed or the cause of which existed before the adoption petition was filed or certification was established, whichever occurred first.

(b) The adoptee was in foster care at the time the petition for adoption was filed.

(c) Certification was made before the adoptee's eighteenth birthday.

(2) The department shall not pay a medical subsidy to an adoptive parent for providing treatment or services to his or her own adopted child.

(3) The department shall determine the amount of the medical subsidy without respect to the income of the adoptive parent or parents. The department shall not pay a medical subsidy until all other available public money and third party payments have been exhausted. For purposes of this subsection, third party payment is available if an adoptive parent has an option, at or after the time of certification, to obtain from the parent's employer health coverage for the child, with or without cost to the adoptive parent. The department may waive this subsection in cases of undue hardship.

(4) The adoptive parent may request a medical subsidy before or after the adoption is finalized. A medical subsidy requested after the adoptee is placed in adoption is effective the date the application request is received by the department if the necessary required documentation is received within 90 calendar days after the date the application is received. In allocating available funding for medical subsidies, the department shall not give preferential treatment to requests that are made before the adoption is finalized, but shall allocate funds based on a child's need for the subsidy.

(5) Payment of a medical subsidy for treatment of a mental or emotional condition is limited to outpatient treatment unless 1 or more of the following apply:

(a) Certification for the medical subsidy was made before the date the adoption was finalized.

(b) The adoptee was placed in foster care by the court before the petition for adoption was filed.

(c) The adoptee was certified for a support subsidy or redetermined adoption assistance.

Sec. 115i. (1) If adoption assistance is to be paid, the department and the adoptive parent shall enter into an adoption assistance agreement that includes all of the following:

(a) The duration of the adoption assistance to be paid.

(b) Notice of potential eligibility for redetermined adoption assistance.

(c) The amount to be paid and, if appropriate, eligibility for medical assistance.

(d) Conditions for continued payment of the adoption assistance as established by statute.

(e) Any services and other assistance to be provided under the adoption assistance agreement.

(f) Provisions to protect the interests of the child in cases in which the adoptive parent moves to another state while the adoption assistance agreement is in effect.

(2) If it is determined that a child is eligible for redetermined adoption assistance under this act, the department and the adoptive parent shall enter into a redetermined adoption assistance agreement that includes all of the following:

(a) The duration of the redetermined adoption assistance to be paid.

(b) The amount of redetermined adoption assistance to be paid.

(c) If appropriate, eligibility for medical assistance.

(d) Conditions for continued payment of the redetermined adoption assistance. Conditions shall be the same as for adoption assistance as established by law.

(e) Any services and other assistance to be provided under the redetermined adoption assistance agreement.

(f) Provisions to protect the interests of the child in cases in which the adoptive parent moves to another state while the redetermined adoption assistance agreement is in effect.

(3) If medical subsidy eligibility is certified, the department and the adoptive parent shall enter into a medical subsidy agreement covering all of the following:

(a) Identification of the physical, mental, or emotional condition covered by the medical subsidy.

(b) The duration of the medical subsidy agreement.

(c) Conditions for continued eligibility for the medical subsidy as established by statute.

(4) The department shall give a copy of the adoption assistance agreement, the redetermined adoption assistance agreement, or medical subsidy agreement to the adoptive parent.

(5) Unless the medical condition of the adoptee no longer exists, or an event described in section 115j has occurred, as indicated in a report filed under subsection (7) or as otherwise determined by the department, the department shall not modify or discontinue a medical subsidy.

(6) An adoption assistance agreement, redetermined adoption assistance agreement, or medical subsidy agreement does not affect the legal status of the adoptee or the legal rights and responsibilities of the adoptive parent.

(7) The adoptive parent shall file a report with the department at least once each year as to the location of the adoptee and other matters relating to the continuing eligibility of the adoptee for adoption assistance, redetermined adoption assistance, or a medical subsidy.

Sec. 115j. (1) Except as provided in subsections (2) to (5) and section 115t, adoption assistance, a medical subsidy, or redetermined adoption assistance shall continue until 1 of the following occurs:

(a) The adoptee becomes 18 years of age.

(b) The adoptee is emancipated.

(c) The adoptee dies.

(d) The adoption is terminated.

(e) A determination of ineligibility is made by the department.

(2) If sufficient funds are appropriated by the legislature in the department's annual budget, adoption assistance agreements, redetermined adoption assistance agreements, or medical subsidy agreements, may be extended through state funding for an adoptee under 21 years of age if all of the following criteria are met:

(a) The adoptee has not completed high school or a GED program.

(b) The adoptee is regularly attending high school or a GED program or a program for children with disabilities on a full-time basis and is progressing toward achieving a high school diploma, certificate of completion, or GED.

(c) The adoptee is not eligible for supplemental security income.

(3) Adoption assistance agreements may be extended through title IV-E funding for an eligible adoptee up to 21 years of age if the department determines that the child has a mental or physical disability that warrants continuation of adoption assistance and the child was adopted before 16 years of age.

(4) If sufficient funds are appropriated by the legislature in the department's annual budget, redetermined adoption assistance agreements may be extended through state funding for an eligible adoptee up to 21 years of age if the department determines that the child has a mental or physical disability that warrants continuation of adoption assistance and the child was adopted before 16 years of age.

(5) Adoption assistance agreements or redetermined adoption assistance agreements may be extended for a child adopted on or after his or her sixteenth birthday if the department determines that the eligible adoptee meets the requirements set forth in the young adult voluntary foster care act, 2011 PA 225, MCL 400.641 to 400.671.

(6) Adoption assistance, redetermined adoption assistance, and a medical subsidy shall continue even if the adoptive parent or the adoptee leaves the state.

(7) Support subsidy or redetermined adoption assistance shall continue during a period in which the adoptee is removed for delinquency from his or her home as a temporary court ward based on proceedings under section 18 of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.18.

(8) Upon the death of the adoptive parent, the department shall continue making support subsidy, redetermined adoption assistance payments, or continue medical subsidy eligibility, through state funding to the guardian of the adoptee if a guardian is appointed as provided in section 5202 or 5204 of the estates and protected individuals code, 1998 PA 386, MCL 700.5202 and 700.5204.

Sec. 115l. (1) The department shall enter into an agreement with the adoptive parent of a child with special needs under this section for the payment of nonrecurring adoption expenses incurred by or on behalf of the adoptive parent. The agreement may be a separate document or part of an adoption assistance agreement under section 115i. The agreement under this section shall indicate the nature and amount of nonrecurring adoption expenses to be paid by the department, which shall not exceed \$2,000.00 for each adoptive placement meeting the requirements of this section. The department shall make payment as provided in the agreement.

(2) An agreement under this section shall be signed at or before entry of an order of adoption under the adoption code. Claims for payment shall be filed with the department within 2 years after entry of the order of adoption.

(3) The department shall take all actions necessary and appropriate to notify potential claimants under this section, including compliance with federal regulations.

Sec. 115m. (1) The department shall prepare and distribute to adoption facilitators and other interested persons information describing the adoption process and the adoption assistance and medical subsidy programs established under sections 115f to 115s. The state department shall provide the information to each prospective adoptive parent before placing a child with that parent.

(2) The description of the adoption process required under subsection (1) shall include at least all of the following:

(a) The steps that must be taken under the adoption code to complete an adoption, and a description of all of the options available during the process.

(b) A description of the services that are typically available from each type of adoption facilitator.

(c) Recommended questions for a biological parent or prospective adoptive parent to ask an adoption facilitator before engaging that adoption facilitator's services.

(d) A list of the rights and responsibilities of biological parents and prospective adoptive parents.

(e) A description of the information services available to biological and prospective adoptive parents including, but not limited to, all of the following:

(i) The registry of adoptive homes established and maintained by the department under section 8 of the foster care and adoption services act, 1994 PA 203, MCL 722.958.

(ii) The directory of children that is produced under section 8 of the foster care and adoption services act, 1994 PA 203, MCL 722.958.

(iii) The public information forms maintained by the department according to section 14d of 1973 PA 116, MCL 722.124d.

(f) A statement about the existence of the children's ombudsman and its authority as an investigative body.

(g) A statement about the importance and availability of counseling for all parties to an adoption and that a prospective adoptive parent must pay for counseling for a birth parent or guardian unless the birth parent or guardian waives the counseling.

Sec. 115t. (1) If sufficient funds are appropriated in the department's annual budget and subject to subsection (4), beginning January 1, 2015, the department shall pay redetermined adoption assistance to an adoptive parent of an adoptee who is placed in the adoptive parent's home under the adoption code or under the adoption laws of another state or a tribal government, if the adoptive parent requests redetermined adoption assistance and both of the following requirements are met:

(a) The department has certified that the adoptee requires extraordinary care or expense due to a condition the cause of which existed before the adoption was finalized.

(b) Certification is made before the adoptee's eighteenth birthday.

(2) If the department denies or the adoptive parent disagrees with the certification, the adoptive parent may request a hearing through an administrative law judge in a manner consistent with the rules promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(3) Redetermined adoption assistance does not affect or duplicate any original adoption assistance agreement that may be in place at the time that redetermined adoption assistance eligibility is requested. Redetermined adoption assistance shall be determined without regard to the income of the adoptive parent and shall be based on 1 or more of the following for which extraordinary care is required of the adoptive parent or an extraordinary expense exists in excess of a support subsidy:

(a) A physically disabled child for whom the adoptive parent must provide measurably greater supervision and care.

(b) A child with special psychological or psychiatric needs that require extra time and a measurably greater amount of care and attention by the adoptive parent.

(c) A child requiring a special diet that is more expensive than a normal diet and that requires extra time and effort by the adoptive parent to obtain and prepare.

(d) A child whose severe acting out or antisocial behavior requires a measurably greater amount of care and attention of the adoptive parent.

(e) Any other condition for which the department determines that extraordinary care is required of the adoptive parent or an extraordinary expense exists.

(4) An adoptive parent who has an adoption assistance agreement signed and in effect before January 1, 2015 may request redetermined adoption assistance under this section in the same manner as provided in this section beginning January 1, 2015 but not after March 31, 2015.

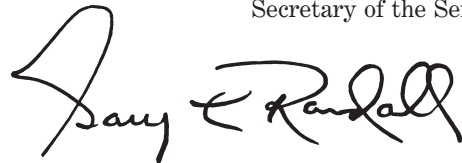
(5) An adoptive parent may only request 1 redetermined adoption assistance certification to be made under subsection (1) or (4) per adoptee placed in the adoptive parent's home.

(6) An adoptive parent of an adoptee who was adopted from foster care between the ages of 0 and 18 and whose adoption was finalized after January 1, 2015 may request redetermined adoption assistance under this section.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor