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APPROPRIATIONS: Governor's power to reduce appropriations.
SOCIAL SERVICES, STATE DEPARTMENT OF: Medicaid Program.
MEDICAID PROGRAM: Appropriations for.
CONSTITUTIONAL LAW: Separation of Powers.

The Governor does not have authority to limit or delay benefits under a program established by the legislature for current implementation, for which current appropriation has been made. The legislature has constitutional authority to take necessary action.

No. 4576

February 3, 1967.

Senator Roger E. Craig
The Capitol
Lansing, Michigan

You ask whether the recent action of the Governor taken as evidenced by the statement¹ in which he directed the Department of Social Services

¹ "Executive Office

December 15, 1966

"Governor Romney Thursday issued the following statement of Michigan's Medicaid program:

"Earlier this year Michigan established a Medicaid program under Title XIX of the federal medicare act by the passage of Public Act 321.

"This program was established in three phases. Phase One, which went into effect October 1, provides care in nursing homes and hospitals for recipients of public assistance and those persons determined to be medically indigent under the state act's definition. Phase Two provides doctor and drug services. Phase Three is to provide dental and other services.

"To implement this program in the current fiscal year the 1966 State Legislature appropriated \$21 million. Accompanying the appropriation was a declaration of legislative intent that Phase Two of the program would fully commence 'on or after January 1, 1967,' and Phase Three would fully commence 'on or after April 1, 1967.'

"Experience with the program in the first two months of operation indicates that actual costs for the current fiscal year will be \$62 million, or nearly three times the legislative appropriation.

"Because of the severe financial problem which will be created if Phases Two and Three are fully implemented at the earliest date indicated, and because flexibility was provided in the declaration of legislative intent, I am today directing the Department of Social Services to withhold full implementation at this time.

"Under present plans a part of Phase Two, to provide its services for public assistance recipients only, will commence on January 1. This, together with Phase One, is expected to bring the current year's costs to \$39 million, or a deficit of approximately \$18 million. Supplemental funds will be required to carry out this modified program.

"As I said in my message to the Michigan Legislature on December 7, Michigan's problems of the late 1950's arose from the appropriation of substantial budget increases without also providing adequate revenue to finance their costs. We are not going to repeat that error.'

"It is for this basic reason and the fact that the current legislature made no revenue provision to cover the future cost of this and other new programs that I have taken this action."

to withhold full implementation of the Michigan Medicaid program by withholding doctor, drug and dental services from the medically indigent, is legal.

Enrolled House Bill No. 4003, which became Act 321, P.A. 1966, was thereby made effective September 1, 1966, but its effective date was postponed to October 1, 1966, by Act 332, P.A. 1966, effective August 31, 1966. Section 3 of this act provides that "Notwithstanding the provisions of section 4 of Act No. 321 of the Public Acts of 1966, that act shall become effective October 1, 1966." It is doubtful that the legislature may postpone the effective date of a statute by subsequent enactment of another statute in which the title does not reflect the postponement. Article IV, Section 24, Constitution of 1963. Inasmuch as these dates are past however, the question is moot. Act 321 amends the Michigan Social Welfare Act² to eliminate former Section 11,³ which provided an irrevocable medical assistance account for the receipt of state and federal funds available for categorical assistance, and to add several sections establishing the Medicaid program for categorical assistance clients and for the medically indigent in addition thereto.

Act 321, P.A. 1966, added sections providing medical assistance for the medically indigent (that is, those not eligible for relief but financially unable to pay for needed medical care) as distinguished from medical and related assistance to those eligible for categorical assistance (that is, those already qualified for public assistance).

The language establishing the new program occurs in new Section 105, as added to the Michigan Social Welfare Act by Act 321, P.A. 1966, as follows:

"The state department [of social services] shall establish and administer a program for medical assistance for the medically indigent under title XIX of the federal social security act, as amended by Public Law No. 97 of the 89th congress, and shall be responsible for determining eligibility under this act. Medical assistance includes medical, dental and ancillary services. Medical assistance shall be granted to any recipient of old age assistance, aid to dependent children, aid to the blind or aid to the permanently and totally disabled, to any individual who would be eligible for 1 of such programs except that he does not meet the residence requirement for the program, children 18 to 21 who would be eligible for aid to dependent children except for their age, and the adult caretakers living with such children, and to any child up to 21 years of age although not receiving aid to dependent children who meets the means test under the aid to dependent children program."
[M.S.A. Cur. Mat. §16.490(15)]

² Act 280, P.A. 1939, as amended, found at C.L. and C.L.S. 1961 §§ 400.1 *et seq.*; M.S.A. 1960 Rev. Vol. and Supps. §§ 16.401 *et seq.*

³ Section 11 was found at C.L.S. 1961 § 400.11; M.S.A. 1960 Rev. Vol. § 16.411. The categories to which the federal government contributes matched funds under the federal social security act (42 U.S.C. § 1396 *et seq.*) are: old age assistance, aid to dependent children, aid to the blind, aid to the permanently and totally disabled. Provision was made, prior to Medicare and Medicaid, for hospital care, nursing home care and, to some extent, for payment of medical and drug bills, for categorical assistance recipients.

The eligibility of the medically indigent as distinguished from the categorical assistance client is clarified by Section 106, added by Act No. 321, P.A. 1966, to the Michigan Social Welfare Act, which provides in pertinent part as follows:

"In addition to those persons identified in section 105, an individual meeting all of the following conditions is eligible:

". . .

"(b) His need for the type of medical assistance available under this act . . . has been professionally established and no payment for it is available through the legal obligation of a contractor . . . to pay or provide for such care without regard to the income or resources of the patient. . . .

"(c) He has an annual income which is below or because of medical expenses falls below the protected basic maintenance level. . . .

". . .

"(f) He meets the eligibility standards for old age assistance, aid to dependent children, aid to the blind or aid to the permanently and totally disabled except for residence, income or income and resources, or a child 18 to 21 and his adult caretaker who would be eligible for aid to dependent children except for age, residence, income or income and resources, or he is a child under 21 from a family whose income is below the basic maintenance level." [M.S.A. Cur. Mat. §16.490(16)]

Section 108, added to the Michigan Social Welfare Act by Act 321, P.A. 1966, provides in pertinent part that

"A person eligible for medical assistance is entitled to the services enumerated in this act. Medical services shall be rendered upon certification by the attending licensed physician and dental services shall be rendered upon certification of the attending licensed dentist. . ." [M.S.A. Cur. Mat. §16.490(18)]

Section 109, added by Act 321, P.A. 1966, enumerates the medical services which "shall be provided." These include physician services, dental services, pharmaceutical services, and "other medical and health services as authorized by the state department." [M.S.A. Cur. Mat. §16.490(19)] Section 111, added by Act 321, P.A. 1966, provides, *inter alia*, that the state department (of social services) is responsible for the proper handling of each medical case.

It is notable that Act 321, P.A. 1966, also contains a section providing that after August 31, 1966, no medical or dental service shall be commenced under Act 2 of the Public Acts of the First Extra Session of 1960, as amended, found at C.L. '48 §§ 400.361-71; M.S.A. 1960 Rev. Vol. §§ 16.521-31, or under Section 66a of Act 280, P.A. 1939, as amended, found at C.L. '48 § 400.66a; M.S.A. 1960 Rev. Vol. § 16.466(1), for recipients of old age assistance, aid to dependent children, aid to the blind or aid to the permanently and totally disabled. This date was extended to and including September 30, 1966, "but not thereafter," by Section 2 of Act 332, P.A. 1966, effective August 31, 1966. Thus, previously existing authority under which medical assistance was available to the aged and to categorical assist-

ance clients by direct vendor payments, was terminated by the 1966 legislature, which established the Medicaid program as above set forth and which clearly instructed the Department of Social Services to carry out the programs beginning "not later than" October 1, 1966.⁴

There is nothing in the Social Welfare Act, in Act 321, P.A. 1966, or elsewhere, which would relieve or postpone the responsibility of the Department of Social Services to carry out the mandate of the legislature as set forth in Act 321, P.A. 1966, including the mandate to provide physician, drug, dental and other services, as set forth therein.

Consideration should also be given to Article V, Section 20 of the Michigan Constitution of 1963, providing in pertinent part as follows:

"No appropriation shall be a mandate to spend. The governor, with the approval of the appropriating committees of the house and senate, shall reduce expenditures authorized by appropriations whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period were based. Reductions in expenditures shall be made in accordance with procedures prescribed by law. . . ."

The action of the Governor was taken subsequent to the termination of the 1966 legislative session. The approval of the appropriations committees of the legislature has not been sought, nor could it have validly been obtained, since there was no showing that actual revenues will fall below estimated revenues as is required by that constitutional provision.

No procedure has been prescribed by law for reduction in the expenditures required for Medicaid, from funds provided therefor by appropriation.

Article V, Section 20, thus furnishes no basis of authority for the cutback ordered by the Governor.

In his statement on December 15, 1966, in which he announced he had directed the Social Services Department to withhold implementation of phases two and three as applied to the medically indigent, the Governor refers to a "declaration of legislative intent" which "accompanied the appropriation."

Senate Journal No. 105, June 24, 1966, contains at page 2290 the following:

"DECLARATION OF LEGISLATIVE INTENT"

"The conferees of the House and Senate on House Bill No. 4046, 1966 session of the Legislature, hereby agree to a schedule of effective dates for the elimination of ceilings on categorical benefits and for the commencement of benefits stipulated in House Bill No. 4003 dealing with Title XIX of the Medicare Act to read as follows:

"On or after October 1, 1966 Ceilings will be fully removed on old age assistance, aid to the blind and aid to the disabled grants,

⁴ M.S.A. Cur. Mat. § 16.490(15).

- On or after October 1, 1966 Ceilings will be raised on aid to dependent children grants to the extent permitted by a monthly rate of increased appropriations of \$620,000.
- On or after January 1, 1967 Ceilings will be removed on aid to dependent children grants.
- On or after October 1, 1966 Title XIX benefits will be commenced for services which the department of social services has considered to be hospital services and physician services in the hospital as well as hospital outpatient services.
- On or after January 1, 1967 Title XIX benefits will be commenced for home and office physician services and for authorized charges for pharmaceutical services.
- On or after April 1, 1967 Title XIX benefits will be commenced for dental services and for the remainder of the Title XIX benefits specified in House Bill No. 4003 such as prosthetics, eye glasses, ambulance service, etc.

“Effective with the October, 1966, foster care grants, the state will supplement the existing foster care formula by providing 25 per cent state matching for any county expenditure up to the basic amount. County expenditures for care of children at Michigan children’s institute, boys’ training school and girls’ training school are not eligible for state matching under this provision.

“/s/ Garland Lane
Jerome T. Hart
Charles O. Zollar
Conferees on the part
of the Senate.

/s/ William A. Ryan
George F. Montgomery
James S. Farnsworth
Conferees on the part of the
House of Representatives”

House Bill No. 4046 referred to in this “Declaration” which became Act No. 278, P.A. 1966, is entitled

“An Act to make appropriations for the department of social services and for various state institutions, departments, commissions, boards, agencies and certain state purposes related to public welfare services for the fiscal year ending June 30, 1967; to provide for the expenditure of such appropriations; and to provide for the disposition of fees and other income received by the various state agencies.”

This appropriation act was approved on July 12, 1966, and ordered to take immediate effect. It contains an appropriation of \$197,126,904.00 for

“Public welfare, foster care, aid to dependent children, old age assistance, medical assistance for the aged, categorical hospitalization,

old age assistance burials, aid to the blind, aid to permanently and totally disabled, and medical assistance and afflicted children.”

From this portion of the appropriation, the Office of the Budget has currently allocated the sum of \$41,000,000 for the Medicaid program.

It is notable that the appropriating act itself contains no qualification or contingency respecting the date of effectuation of the Medicaid program, which the Department of Social Services is directed to establish and implement as of October, 1966.

We come, then, to consideration of the effect of the “Declaration of Intent,” appearing in the Senate Journal of June 24, 1966, which indicates that the conferees agreed that certain Title XIX benefits for home and office physician and pharmaceutical services be commenced “on or after January 1, 1967,” and certain benefits; namely, dental, prosthetic, eye glasses, ambulance and other services specified in House Bill No. 4003, be commenced on or after April 1, 1967.

Title XIX benefits are available to both categorical assistance clients and the medically indigent; however, the delay in commencing services affects only the medically indigent, because pending the effectuation of Title XIX services under Act 321, such services could be made available by inclusion in grants made to categorical assistance clients, rather than by direct vendor payments.

Thus, the question as to the rights of eligible medically indigent persons to benefits established by Act 321, included in the appropriation act, and directed by the Governor to be delayed, is whether such eligibility remains despite the “Declaration of Intent.”

The “Declaration,” although it accompanied the appropriation act, is not made a part thereof. Neither the appropriation act nor Act 321 contains authority to delay implementation of all or any part of the program directed by Act 321 to be implemented commencing September 1, which date was postponed by Act 332 to October 1.

Here, though the senate and house conferees expressed their intent by agreeing to a schedule delaying certain benefits, the legislature as a whole did not incorporate this intent into Act 321, Act 332, or into the appropriation act.

Article IV, Section 22, of the Michigan Constitution of 1963, requires that all legislation shall be by bill. The counterpart of this requirement, in Article V, Section 19 of the 1908 Constitution, has been held to be mandatory and exclusive.⁵ The “Declaration” is not law, because it has not been enacted in the form required for a law. Rather it expresses the agreement of the conferees, mindful of the administrative problems involved in implementing Act 321, P.A. 1966, as to the schedule which the Director of the Department of Social Services then planned to follow in changing over to accommodate the new federal Medicare and Medicaid programs, and implementing Act 321, P.A. 1966. It has been held that construction by individual legislators, independent of the enactment of the legislative body,

⁵ *Becker v. Detroit Savings Bank*, 269 Mich 432.

has no legal effect,⁶ and it has been held that a legislative resolution declaring the intent of an enactment is not law.⁷

The "Declaration" is entitled to be considered in determining the intent of the Senate in passing the appropriation act. But where the meaning of a statute is clear, it is not open to construction.⁸ A legislative intent not expressed in an appropriate manner has no legal existence.⁹

The language of the controlling statutes is clear and unambiguous. Therefore, the "Declaration" being not a part of the statute, has no effect upon construction of Act 321, P.A. 1966, nor upon the appropriation therefor, of which it was not a part. It contains no basis upon which the implementation of the program mandated by Act 321, P.A. 1966, can be delayed.

It is my opinion and I advise you that Act 321, P.A. 1966, establishes a program for categorical assistance clients and for the medically indigent, which program includes physicians' services, pharmaceutical services, dental services, and other services as set forth in the statute, which are thereby directed to be made available to those who qualify. The obligation of the Department of Social Services to carry out the mandate of the legislature as set forth in Act 321, P.A. 1966, is in no wise altered or affected by the Governor's direction, which is without legal effect as beyond his authority and because it violates Article III, Section 2 of the Michigan Constitution of 1963.¹⁰

I am advised that the Governor in taking this action was responding to an urgent plea in a report from the Director of Social Services which stated that implementation of the program is much more expensive than had been originally anticipated and that its cost may exceed the current appropriation.

Under these circumstances, if it be deemed appropriate, these facts may be brought to the attention of the legislature, which does have the constitutional authority to take necessary action.

FRANK J. KELLEY,
Attorney General.

⁶ *Board of Education of Presque Isle Township School District No. 8 v. Presque Isle County Board of Education*, 364 Mich. 605 (1961), 611-612.

⁷ *Boyer-Campbell Co. v. Fry*, 271 Mich. 282, 296, collating the authorities, and *Becker v. Detroit Savings Bank*, *supra*.

⁸ See, for example, *Satterley v. City of Flint*, 373 Mich. 102; *City of Lansing v. Township of Lansing*, 356 Mich. 641; *Jones v. Grand Ledge Public Schools*, 349 Mich. 1, 9, citing authorities.

⁹ See, for example, *People v. Lowell*, 250 Mich. 349.

¹⁰ "The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution."