

Arizona

I. Government Funded Indigent Care

Arizona's unique system of indigent health care reflects the singular history of indigent health care within the state. Through the late 1970s, Arizona remained the only state that did not participate in the federal Medicaid system. Until October 1982, indigent health care remained a county responsibility. By 1980, the counties found themselves overwhelmed by this responsibility. The cost of indigent health care soared from \$59 million in 1975 to \$123 million in 1980, placing extraordinary pressure on county budgets.

To remedy this crisis, Governor Bruce Babbitt proposed that Arizona obtain a waiver of provisions of the federal Medicaid Act to allow the state to establish the first comprehensive, statewide Medicaid managed care program in the country, the Arizona Health Care Cost Containment System (AHCCCS). By combining state and federal Medicaid dollars with local contributions from the counties, AHCCCS provides a range of Medicaid services to groups ordinarily covered by Medicaid—families with children and the aged, blind and disabled—and to indigent patients formerly covered by only county programs. Many Arizona residents still lack coverage under AHCCCS. However, the AHCCCS system is a vast improvement over indigent health care in many states, where indigent patients who are not covered by Medicaid have extremely limited access to comprehensive health services.¹

I. Medically Indigent Program

Under Arizona statutes, counties may care for their indigent sick.² Arizona's courts have long construed these statutes to require counties to provide medical care to the poor.³ Under Arizona law, counties must appropriate funds for the care of indigent residents. In addition, counties must contribute additional amount funds to AHCCCS equal to half of what they were spending in indigent care before the creation of the AHCCCS program.⁴

Although primary responsibility for the indigent shifted to the state with the implementation of AHCCCS in October 1992, each county retains a residual responsibility to provide health care to any indigent patient who is not enrolled in AHCCCS.⁵

¹But see B. Kirkman-Liff, *Refusal of Care: Evidence From Arizona*, 4 HEALTH AFFAIRS at 15 (____ 1985) (contending that AHCCCS patients are refused care at a higher rate than other indigents).

²Ariz. Rev. Stat. §§ 11-251(5) and 11-291.

³Arnold v. Dep't of Health Services, 775 P.2d 521, 532 (Ariz. 1989).

⁴Ariz. Rev. Stat. § 11-292(B).

⁵*Walter O. Boswell Memorial Hospital, Inc. v. Yavapai County*, 714 P.2d 878, 879 (Ariz. App. 1986).

To be considered "medically indigent" for purposes of county aid, an applicant must be a citizen or meet Medicaid alien eligibility criteria.⁶ Recipients of county assistance must also meet income and eligibility criteria. Eligibility is calculated based upon the income and resources of all individuals in the applicant's household. To be eligible, an individual applicant must have an income of \$2,500 or less a year. An applicant who has a dependent or spouse must have a household income of \$3,225 or less a year. An additional \$425 a year is permitted in income for each additional dependent. Annual income is calculated for an entire year by multiplying income received during the three months preceding application by four.⁷

In addition, an applicant must have total resources, including a house and a care, of \$50,000 or less and liquid resources of \$5,000 or less. In calculating household resources, the first \$75,000 in separate resources held by the applicant's spouse are exempt. Individuals are disqualified from receiving benefits if they have given away any assets in the three years preceding application in order to qualify for benefits.

Medical expenses incurred during the twelve months preceding application are deducted from income in determining eligibility, but these same expenses are not deducted from resources.⁸ Resources are calculated based upon the gross amount possessed by an applicant, without any deduction for medical expenses.⁹

Counties have discretion about how they may discharge these duties. Counties may provide care for the indigent sick through county facilities or through reimbursement to private providers.¹⁰ Counties

⁶Ariz. Rev. Stat. § 11-297.B. Consistent with Medicaid standards, counties are potentially liable for the costs of emergency care provided to undocumented aliens. *St. Joseph's Hospital & Medical Center v. Maricopa County*, 688 P.2d 986 (Ariz. 1984).

⁷Ariz. Rev. Stat. § 11-297. This rule was adopted by the Arizona Department of Economic Security (DES), which was formerly vested with discretion to define eligibility criteria for indigent health care. In *McMullen v. Hargis*, 624 P.2d 339 (Ariz. App. 1980), the court struck down this method of calculating income as arbitrary, finding that DES had violated state statutes. By codifying this rule, the Legislature effectively overruled the *McMullen* decision.

⁸Ariz. Rev. Stat. § 11-297(E)(1).

⁹This rule also originated from the Arizona Department of Economic Security (DES). In *Walter O. Boswell Memorial Hospital, Inc. v. Yavapai County*, 714 P.2d 878 (Ariz. App. 1986), the court concluded that DES's failure to provide for a resource spend down violated state statutes. The court reasoned that "[a]n individual's qualifications for benefits should not depend upon the fortuitous circumstances of his being advised or being physically capable to make the actual expenditure [of resources towards medical expenses]." *Id.* at 983. By codifying DES interpretations of state law, the Legislature effectively overruled the *Boswell Memorial Hospital* decision.

¹⁰Ariz. Rev. Stat. § 11-297.01(A).

are liable for emergency care provided to indigent patients at private facilities.¹¹ County obligations to provide indigent care encompasses the obligation to provide care encompasses reimbursement for all emergency costs provided to indigent patients, not merely hospital care.¹² However, counties must only pay for indigent health care services at Medicare and Medicaid rates.

With a few notable exceptions, the scope of county funded medical care has not been spelled out by case law or statute. In upholding a county's right to provide abortion services to its indigent residents, one court concluded that apart from those services specifically mandated or prohibited by statute, the scope of care provided to the medically indigent is a matter of county discretion.¹³ Subsequent decisions suggest that the scope of this discretion is limited, although the exact nature of these limits are unclear.

In *Arnold v. Dep't of Health Services*, the Arizona Supreme Court held that the counties' general duty to provide care to the indigent includes a duty to provide community mental health services to chronically mentally ill patients.¹⁴

In *Arnold*, the Arizona Supreme Court found that the mere existence of a state funded mental health program did not supplant the counties traditional responsibility to relieve and support the indigent. The court concluded that county general assistance statutes, "when read together [with state mental health statutes] create complimentary duties of the state and county that are mutually supportive rather than inconsistent."¹⁵

In addition, state statutes require counties to provide indigent patients with nursing home and

¹¹*St. Joseph's Hospital & Medical Center v. Maricopa County*, 688 P.2d 986 (Ariz. 1984).

¹²*Perez v. Maricopa County*, 760 P.2d 1089 (Ariz. App. 1988).

¹³*Zaravsky v. Asta*, 569 P.2d 1371 (Ariz App. 1979).

¹⁴775 P.2d 521, 532 (Ariz. 1989). The Arizona Supreme Court acknowledged the bleak situation faced by the state's mentally ill, noting that "Arizona is last among the states of the union in caring for its mentally ill." *Id.* at 522. The court noted that less than one percent of all chronically mentally ill patients receive mental health services and that homeless mentally ill patients stayed in temporary shelters for extended periods of time due to lack of available treatment facilities. *Id.* at 526. The court found this situation unacceptable. Quoting Hubert Humphrey, the court noted that "'the moral test of government is how it treats those in the dawn of life, the children; those in the twilight of life, the aged; and those in shadows of life, the sick the needy, and the handicapped'...Arizona has imprisoned its mentally ill in the shadows of public apathy." *Id.* at 537.

¹⁵775 P.2d at 532. The *Arnold* decision stands in stark contrast to a California decision in *Board of Supervisors v. Superior Court (Comer)*, 207 Cal.App.3d 552, 254 Cal.Rptr. 905 (1989), where a state appellate court denied the existence of local entitlements to mental health services. In a decision that expressed little sympathy for the plight of mentally ill patients and great concern for local fiscal concerns, the California court rejected plaintiffs' claims that county obligations to relieve and support the indigent encompass vital mental health services. The *Comer* decision refused to impose any obligations on the county, based upon state involvement in mental health care.

adult foster care services.¹⁶ Counties also must provide adult foster care patients with all necessary home health and outpatient services.¹⁷

While Arizona law creates a duty on the part of counties to care for the indigent poor, patients cannot pursue damage claims against counties for injuries incurred as a result of eligibility determinations. Patients can only challenge county eligibility decisions through administrative appeals and subsequent judicial review.¹⁸

B. Medicaid Expansion

Through a waiver of federal Medicaid laws, Arizona's Medicaid managed care program, AHCCCS, has extended Medicaid eligibility to cover individuals who fall outside of traditional Medicaid eligibility criteria. In addition to individuals eligible for benefits under traditional Medicaid criteria, codified at 42 U.S.C. § 1396 *et seq.*, AHCCCS provides Medicaid benefits to medically indigent patients, described above.¹⁹

AHCCCS also covers a special category of individuals described as "medically needy" under Arizona's statutes, who meet basic criteria for eligibility as medically indigent patients, but who have incomes that are slightly higher than those allowed under county programs. Under this definition of the term "medically needy," an individual applicant is eligible for AHCCCS coverage if her income is more than the \$2,500 per year allowed for medically indigent patients, but less than \$3,200 per year.²⁰

In 1988, AHCCCS also expanded coverage to include indigent children age 13 or younger.²¹ Arizona financed the expansion of care to indigent children and the medically needy through the use of tobacco tax funds.²²

The state has attempted to broaden AHCCCS to encompass non-indigent populations. Public employees are eligible for AHCCCS. Employees of small businesses also may enroll in AHCCCS, if their

¹⁶Ariz. Rev. Stat. §§ 11-293 and 11-293.01. Counties must evaluate nursing home patients at least once a year and within eight days of a patient request to ensure placement in the least restrictive setting. Ariz. Rev. Stat. § 11-293(B).

¹⁷Ariz. Rev. Stat. § 11-293(E).

¹⁸*Guibault v. Pima County*, 778 P.2d 1342 (Ariz. App. 1989).

¹⁹Ariz. Rev. Stat. § 11-2901(4)(a).

²⁰Ariz. Rev. Stat. § 36-2905(B).

²¹Ariz. Rev. Stat. § 36-2905.3. In 1994, the state budgeted \$7.3 million to cover 2,300 children enrolled in this program. NATIONAL GOVERNOR'S ASSOCIATION, STATELINE, *Innovative State Health Initiatives for Children*, Table 2 (July 21, 1995).

²²Ariz. Rev. Stat. §§ 36-2421 and 42-1241.

employers choose to contract with the AHCCCS Program. There are several advantages to including these populations in AHCCCS. These efforts may provide a broader base of funding for AHCCCS and greater support for AHCCCS among the public at large. Expansion of AHCCCS to non-indigent populations may prompt a higher degree of accountability from AHCCCS contractors, who will have to respond to the concerns of middle class employees as well as indigent patients. Finally, this expansion offers the possibility of coverage for small employers that find it difficult to contract for insurance at affordable rates.

C. Mental Health Services

As noted above, county obligations to the medically indigent encompass mental health treatment for the chronically mentally ill. In addition, the state provides care to the mentally ill through state hospitals.²³ In addition, state statutes require the Department of Health Services to provide community based services to the mentally ill.²⁴ In *Arnold v. Dep't of Health Services*, the Arizona's Supreme Court construed this section to require the state to establish a community residential treatment system that coordinates all available treatment services and resources for chronically ill patients.²⁵ As a result of the decision in the *Arnold* case, the State of Arizona and Maricopa County have agreed to expand the amount of community based care available to chronically mentally ill patients.²⁶

D. Other Programs

Arizona has established a program of comprehensive medical and rehabilitative services for chronically ill and disabled children.²⁷ In addition, the state maintains programs that provide care for

²³Ariz. Rev. Stat. § 36-545.

²⁴Ariz. Rev. Stat. § 36-550.01 et seq.

²⁵755 P.2d at 531.

²⁶Joint Stipulation on Exit Criteria and Disengagement, *Arnold v. Arizona Dep't of Health Services*, Case No. C-422355 (Maricopa County Super. Ct., Nov. 13, 1995). Under the terms of this agreement, the state has agreed (1) to reduce the number of chronically mentally ill patients at Arizona State Hospital to no more than fifty five through placement of patients in community treatment; (2) to provide community based services to 300 chronically mentally ill patients; (3) to use its best efforts, within available resources, to provide community based services to hundreds of additional class members who currently reside in supervisory care homes; and (4) to provide \$4.3 million a year in funding for a crisis network designed to prevent unnecessary institutionalization of the mentally ill. For its part, the county has agreed (1) to provide treatment and discharge plans for chronically mentally ill patients incarcerated in the county jail; (2) to review the appropriateness and necessity for incarceration of chronically mentally ill patients in order to provide diversion in appropriate cases; and (3) to appropriate specified sums each year for the treatment of mental illness and substance abuse. A monitor has been appointed to review defendant's compliance with each of the terms of this stipulation.

²⁷Ariz. Rev. Stat. § 36-291 et seq.

cystic fibrosis,²⁸ treatment for substance abuse and alcoholism,²⁹ testing and treatment for sickle cell anemia,³⁰ funding for kidney dialysis centers,³¹ and public health testing and treatment for a variety of communicable diseases.³²

II. Efforts to Reduce the Number of Uninsured

Arizona has also attempted to reduce the number of uninsured by instituting small group market reforms. Under Arizona law, health insurers are required to offer standardized packages of benefits to all small employers that include coverage for employees, their spouses and dependents.³³

III. Privatization of Indigent Health Care

The state legislature has also embraced privatization as a solution to the problem of indigent care. Arizona law authorizes the Maricopa County to contract with non-profit organizations to run their health care systems.³⁴ This change is in the process of being of being implemented.

²⁸Ariz. Rev. Stat. § 36-143

²⁹Ariz. Rev. Stat. § 36-2001.

³⁰Ariz. Rev. Stat. § 36-2001.

³¹Ariz. Rev. Stat. § 36-2101.

³²Ariz. Rev. Stat. § 36-601 et seq.

³³Ariz Rev. Stat. § 20-2303.

³⁴Ariz Rev. Stat. § 20-2303.