

## Florida

Over the past decade, the Florida state government has struggled with the question of how to provide health care for the state's uninsured residents. During the 1980s, Florida faced a health insurance crisis of substantial proportions. In 1985, 25 percent of Floridians under age 65 had no health insurance. The percentage of state residents who lacked insurance was the third highest in the nation.<sup>1</sup>

During the late 1980s, concerns over the number of uninsured in the state prompted a brief flurry of legislative initiatives. To improve coverage and care for the state's uninsured residents, the state expanded Medicaid coverage to embrace optional categories of recipients formerly excluded from coverage,<sup>2</sup> imposed provider taxes to fund indigent care, and adopted new programs to provide government funded care for indigent patients who fall outside Medicaid eligibility criteria.

The state even considered mandating employer-based coverage. In the end, however, state officials embraced market based reforms as the primary solution to the health needs of the uninsured. By creating expanded opportunities for uninsured patients to purchase coverage, state officials hoped to decrease the percentage of uninsured Floridians.

In the past few years, the state's efforts to provide coverage to the indigent have largely collapsed. For the past five years, the state has failed to fund the state's medically indigent program. The MedAccess Program, which was supposed to provide an opportunity for indigent patient's to purchase private insurance, has never been implemented. A Medicaid buy-in program, which was supposed to provide sliding scale coverage based upon ability to pay, has been approved by the federal Health Care Financing Administration but remains dormant due to lack of funding.

### I. State and Locally Financed Indigent Care

Florida has no statewide mechanism for funding care provided to indigent patients. In 1973, Florida repealed a statute that provided state funding for hospital care for the poor.<sup>3</sup> While some counties choose to provide indigent care, many others do not.<sup>4</sup> In *Dade County v. American Hospital*

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<sup>1</sup>Catherine Jones, *The Florida Health Care Access Act: A Blended Regulatory/Competitive Approach to the Indigent Health Care Problem*, 14 J. OF HEALTH POLITICS, POLICY & L. 261, 263-64 (1989). Only Arkansas and Oklahoma had higher rates of uninsured residents. *Id.* at 264.

<sup>2</sup>Florida created a medically needy program to provide Medicaid coverage for low income families and aged blind and disabled people who meet the basic eligibility criteria for the SSI and AFDC programs and are unable to pay for the costs of their medical care, but whose incomes exceeded eligibility criteria under these two programs. The state also expanded Medicaid to cover unemployed as well as single parent families, married pregnant women, and children under 21 living in intact families.

<sup>3</sup>Former Fla. Stat. Ann. § 401.01 *et seq.*

<sup>4</sup>Jones, *supra* note 1, at 264. In 1983, 17 counties provided no indigent care apart from mandatory contributions to Medicaid and to the state's Public Health Trust Fund. The counties in question did not

*Corp. of Miami*,<sup>5</sup> the Florida Supreme Court rejected the argument by a private hospital that the county had a duty to accept indigent patients at county facilities after their conditions had stabilized. The court held that county decisions to deny or withhold indigent care were entirely a matter of county discretion. In reaching this conclusion, the court found that “no existing legislation imposes a financial or legal duty on the counties of this state to provide their indigent residents with post-emergency medical care.”<sup>6</sup>

A. The Florida Health Care Responsibility Act.

Ironically, while counties have no responsibility to provide their indigent residents with care within their borders, Florida law has long required counties to pay for care provided to their residents in other counties. The Florida Health Care Responsibility Act requires counties to provide reimbursement for care rendered to their residents in out-of-county hospitals.<sup>7</sup> Counties are liable for emergency medical care rendered to their indigent residents and for non-emergency hospital services that are not available within their borders. Counties are liable for up to 12 days per admission and up to 45 days per year per patient at 100 percent of Medicaid rates.<sup>8</sup>

While counties may set their own income eligibility criteria for reimbursement, state law provides a minimum standard for such criteria. Patients with incomes at or below 100 percent of the Federal Poverty Level are eligible for county reimbursement. Individuals with incomes of between 100 and 150 percent of the Federal Poverty Level must be permitted to “spend down” their income based upon incurred medical expenses in order to qualify.<sup>9</sup>

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support any county hospitals and did not provide county funds for the delivery of inpatient or outpatient services to indigent patients not covered by Medicaid. In contrast, Dade County accounted for half of county indigent care expenses statewide and fifteen percent of the counties accounted for ninety percent of these expenditures. *Id.*

<sup>5</sup>502 So.2d 1230 (Fla. 1987).

<sup>6</sup>*Id.* at 1234. The state supreme court reversed an appellate court decision that had required the county to provide indigent care based upon a former provision of the Florida Constitution that stated that counties “shall provide in the manner prescribed by law, for those inhabitants who by reason of age, infirmity or misfortune, may have claims upon the aid and sympathy of society.” The state supreme court concluded that this former provision of the Florida Constitution no longer had any force and effect. In reaching this conclusion, the court expressed a general reluctance to interfere with the operations of government that is quite familiar to advocates for the poor. In this regard, the court noted, “Even if courts had the authority, they are ill-equipped to investigate and evaluate changing public needs in this area. Post-emergency, indigent health care is a problem for legislative solution.” *Id.* at 1234.

<sup>7</sup>Fla. Stat. Ann. § 154.301 *et seq.* In *Dade County v. American Hospital Corp. of Miami*, the Florida Supreme Court relied upon the very limited duties imposed on counties by the Florida Health Care Responsibility Act as evidence of the fact that the legislature did not intend to impose a general duty upon counties to treat their own residents. 502 So.2d at 1234.

<sup>8</sup>Fla. Stat. Ann. § 154.306(1).

<sup>9</sup>Fla. Stat. Ann. § 154.308(6).

In addition, hospitals must meet certain criteria to qualify for reimbursement. Hospitals may only seek reimbursement if they provide at least two percent of their inpatient services as uncompensated, charity care services. In addition, hospitals may only seek reimbursement if they provide at least two and a half percent of these uncompensated services to out of county residents.

Florida's courts have broadly construed county obligations under this act. In *Shands Teaching Hospital v. Council of City of Jacksonville*,<sup>10</sup> the court concluded that local officials erred in denying payment for surgery for the removal of a brain tumor by an out of county hospital, notwithstanding the fact that the county's facilities had the capacity to provide the same services. In reaching this conclusion, the court accepted the hospital's argument that the patient required immediate treatment and that her condition would have deteriorated had the hospital failed to provide such treatment.

#### B. The Public Medical Assistance Trust Fund

At one time, Florida's Public Medical Assistance Trust Fund (PMATF) financed health care for Florida's uninsured indigent population. In 1984, the state legislature established the PMATF, which consists of revenues raised through a 1.5% assessment on net hospital operating revenues and a \$30 million annual appropriation from the state's general revenues.<sup>11</sup> For the first decade of its existence, the state used this fund to establish primary care programs for low-income people through county health departments, to fund the state's share of indigent health care services through a newly created Medically Indigent Program, and to fund expansion of Medicaid to additional groups. Since 1996, the Legislature has used these funds solely to pay for in-patient hospital services for Medicaid patients.

#### C. Medically Indigent Program

In 1988, the Florida Legislature established a new health care program to provide care to the indigent, in recognition of the shared duty of state and local government "to participate in the provision of health care services to low income individuals who do not qualify for Medicaid."<sup>12</sup> This program, which has not been funded since 1991, provided inpatient hospital care to the indigent and, at county option, provides outpatient care and physician specialty services for hospital care. Counties were not required to provide more than 12 inpatient days per admission or more than 45 days to any patient in any calendar year.<sup>13</sup>

The program covered single adults up to age 65 and childless couples with incomes of up to 100 percent of the Federal Poverty Level who did not qualify for Medicaid or any other state or federally funded health care program. Patients were required to participate in primary care case management as a

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<sup>10</sup>398 So.2d 907 (Fla.App. 1981).

<sup>11</sup>Fla. Stat. Ann. §§ 409.918 and 395.701. The state levies similar assessments on laboratories, outpatient surgery centers, and x-ray, ultrasound and magnetic resonance imaging centers. Fla. Stat. Ann. § 395.701.5.

<sup>12</sup>Fla. Stat. Ann. § 409.2673(1).

<sup>13</sup>Fla. Stat. Ann. § 409.2673(10)(b).

condition of eligibility.<sup>14</sup>

As a general matter, counties were required to bear 35 percent—and the state 65 percent—of the costs of this program. However, those counties that did not fund hospital treatment as of January 1, 1988 and had exhausted available revenues sources, could obtain 100 percent state funding for this program.<sup>15</sup> The state funded its share of this program through Florida's<sup>16</sup> Public Medical Assistance Trust Fund. State and county obligations were limited by the amount of state appropriations. When state funds ran out for the year, the program ceased operation for the remainder of the year.<sup>17</sup>

To obtain reimbursement under this program, hospitals were required to agree to provide 2.5 percent of their services as uncompensated charity care. Public hospitals and hospital districts were required to make a similar commitment not to reduce the percent of funds that they devote to health care for the indigent.<sup>18</sup>

Since the abolition of funding for this short-lived program, Florida has had no statewide program of care available for its indigent poor.

#### D. County Hospitals

State law authorizes counties to establish county hospitals through bonds financed by property taxes with voter approval, or through other means without voter approval.<sup>19</sup> Counties may maintain county hospitals through property tax levies of up to 5 mills.

County hospitals are for the benefit of all county residents. Individuals other than paupers must pay for care received at county facilities. These statutes do not create a duty to upon counties to accept the transfer of indigent patients stabilized at private hospitals.<sup>20</sup>

#### E. Special Indigent Health Care Districts

State law authorizes counties to establish special funding districts for indigent health care and to levy local ad valorem taxes to fund such care.<sup>21</sup> Counties must obtain majority approval from the voters

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<sup>14</sup>Fla. Stat. Ann. § 409.2673(10)(c).

<sup>15</sup>Fla. Stat. Ann. § 409.2673(4)(a).

<sup>16</sup>Fla. Stat. Ann. § 409.2673(6)(c).

<sup>17</sup>Fla. Stat. Ann. § 409.2673(6).

<sup>18</sup>Fla. Stat. Ann. § 409.2673(10)(e).

<sup>19</sup>Fla. Stat. Ann. § 155.04 *et seq.*

<sup>20</sup>*Dade County v. American Hospital Corp. of Miami*, 502 So.2d 1230 (Fla. 1987).

<sup>21</sup>Fla. Stat. Ann. § 154.331.

before implementing these districts. Once established, the district may establish and maintain clinics, purchase institutional services for indigent patients and fund county health services. These districts may be dissolved by statute or by majority vote of the county's voters.

#### F. County Public Health Units

County Public Health Units are a very important source of care for the state's indigent residents. Florida Law authorizes the creation of public health units in each of the state's 67 counties.<sup>22</sup> These public health units contract with the Florida Department of Health Services to provide (1) communicable disease control, including epidemiology, immunization, and the detection and control of tuberculosis and sexually transmitted disease, and (2) primary care services, including acute and preventive services, to individuals who are unable to obtain such services due to lack of income or other circumstances that are beyond their control. The Department is directed to develop plans to deliver a range of primary care services through county public health units, including first contact acute care services, chronic disease detection and treatment, maternal and child health services, WIC supplemental food assistance services, school health services, home health care and dental services.<sup>23</sup>

Public health units must provide free services to individuals with family incomes of 100 percent or less of the Federal Poverty Level, and must provide sliding scale services to individuals with incomes above 100 percent of poverty. Public health units must also (1) provide a comprehensive mix of preventive and illness care services, (2) be easily accessible regardless of income, physical status or geographical location, (3) provide 24 hour telephone access and evening and weekend clinic services, (4) provide EPSDT services to Medicaid eligible children and (5) ensure continuity of care for eligible patients.<sup>24</sup>

#### F. Mental Health

State law authorizes in-patient and community based mental health treatment, including but not limited to, comprehensive health, social, educational, and rehabilitative services to persons requiring short term and continued treatment.<sup>25</sup> The legislature has stated its intent that patients be treated in the community whenever possible and that treatment be provided in a manner that is least restrictive of patient's liberty.<sup>26</sup> The legislature has also stated that it is the policy of the state that the Department of Health and Rehabilitative Services "shall not deny treatment for mental illness to any person, and that no

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<sup>22</sup>Fla Stat. Ann. §§ 154.01 and 154.011.

<sup>23</sup>Fla Stat. Ann. § 154.011.

<sup>24</sup>Fla Stat. Ann. § 154.011(c)(1).

<sup>25</sup>Fla. Stat. Ann. §§ 394.453(1)(a).

<sup>26</sup>*Id.*

services shall be delayed or denied because of inability to pay.”<sup>27</sup> Under state law, counties are required to provide a 25 percent match for state funds devoted to community mental health services.<sup>28</sup> County efforts to challenge these provisions as an infringement on local taxing authority have not been successful.<sup>29</sup>

#### G. Other Services

The state funds a children’s medical services program that provides treatment to children suffering from organic diseases, defects or conditions that may hinder their growth and development, as well as care to pregnant women and girls under age 21 undergoing high risk pregnancies.<sup>30</sup> To receive these services, families must meet financial eligibility standards set by the Department of Health and Rehabilitative Services.

The state funds maternal and child health programs,<sup>31</sup> tuberculosis diagnosis and treatment for individuals with active cases of tuberculosis,<sup>32</sup> substance abuse and alcoholism treatment,<sup>33</sup> and services for individuals with developmental disabilities.<sup>34</sup> In addition, the Department of Health and Rehabilitative Services is charged with responsibility for conducting a primary and preventive health program that include children’s health services, school based health services, dental health services, nutrition services, chronic disease prevention, family planning, childhood immunization and health education and promotion.<sup>35</sup>

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<sup>27</sup>Fla. Stat. Ann. §§ 394.459(2)(a). The sweeping language contained in these statutes offers an argument for broad treatment rights for Floridians suffering from mental illness. While some state courts have been reluctant to require state and local officials to ensure indigent patients access to mental health services, other courts have taken a broad view of official responsibilities under these laws. *Compare Board of Supervisors v. Superior Court (Comer)*, 207 Cal.App.3d 552, 254 Cal.Rptr. 905 (1989) (narrowly construing local mental health treatment obligations under state law) *with Arnold v. Dep’t of Health Services*, 775 P.2d 521 (Ariz. 1989) (broadly construing state and local mental health obligations). Florida’s courts may be persuaded to adopt a broad view of state responsibilities in this area, given the fact that the legislature has stated its intention to ensure access to mental health services in strongly affirmative language.

<sup>28</sup>Fla. Stat. Ann. §§ 394.76(9) and 394.451.

<sup>29</sup>*See Sandegren v. State*, 397 So.2d 657 (1981).

<sup>30</sup>Fla. Stat. Ann. § 391.01 *et seq.*

<sup>31</sup>Fla. Stat. Ann. § 383.011 *et seq.*

<sup>32</sup>Fla. Stat. Ann. § 392.51 *et seq.*

<sup>33</sup>Fla. Stat. Ann. §§ 396.022 *et seq.* and 397.301 *et seq.*

<sup>34</sup>Fla. Stat. Ann. § 393.002 *et seq.*

<sup>35</sup>Fla. Stat. Ann. § 381.005.

In addition, under the Florida's Healthy Kids Program, the state has established a non-profit corporation that administers public and private funds to provide health insurance coverage to schoolchildren at eighteen different sites.<sup>36</sup>

## II. State Efforts to Expand Coverage or Care for the Uninsured.

### A. The Florida Health Care Reform Act

In 1992, the Florida legislature enacted the Florida Health Care Reform Act, to solve “the crisis of reduced access for the poor and uninsured.”<sup>37</sup> Under this Act, state and local officials were charged with ensuring that all unemployed, low income citizens in Florida had access to a basic health benefit package by December 31, 1994.<sup>38</sup> State officials were required to develop and implement strategies to increase access to care, contain costs, regulate the delivery of health care, and reform health insurance. To the extent state health reforms failed to achieve health care coverage for employees and their dependents at a level deemed acceptable by the legislature by December 31, 1994, employers were to be mandated to provide such coverage.<sup>39</sup> However, these mandates never went into effect. Instead, the Florida legislature primarily enacted market based reforms.

#### 1. MedAccess

To expand coverage for low income individuals, the Legislature enacted legislation authorizing the creation of the MedAccess Program, which was designed to provide basic, affordable health insurance to Floridians who lack access to the private market.<sup>40</sup> While legislation authorizing the program remains on the books, the MedAccess program has never been implemented.

The MedAccess Program was to be open to individuals and families who had incomes at 250 percent or less of the federal poverty level, who had been without health insurance for the preceding twelve months, and who were not enrolled in Medicare or Medicaid. The program was to be restricted to U.S. citizens and permanent residents who had resided in the State of Florida for at least six months.<sup>41</sup>

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<sup>36</sup>Fla. Stat. Ann. § 624.91 *et seq.* In 1994, this program provided coverage to 15,500 Florida schoolchildren at a cost of \$8 million. NATIONAL GOVERNOR'S ASSOCIATION, STATELINE, *Innovative State Health Initiatives for Children*, Table 2 (July 21, 1995). The services covered include dental care, diagnostic care, prescription medicines, immunizations, mental health care, emergency care, hospitalization, outpatient surgery, physical therapy, substance abuse treatment, vision care, well child visits, home health services and transplants. *Id.*, Appendix. In 1996, the Legislature expanded this program from ten to eighteen sites. Chap. 96-337, Laws of Florida.

<sup>37</sup>Fla. Stat. Ann. § 408.004 *et seq.*

<sup>38</sup>Fla. Stat. Ann. § 408.006(1)b.1.

<sup>39</sup>Fla. Stat. Ann. § 408.006(1)b.2.

<sup>40</sup>Fla. Stat. Ann. § 408.90 *et seq.*

<sup>41</sup>Fla. Stat. Ann. § 408.903(1).

Covered services were to include a maximum of twelve physician appointments a year, a maximum of ten in-patient hospital days per year, a maximum of \$1,000 in out-patient services per year, laboratory and x-ray services, routine physical exams, family planning, well-baby and well-child screening and diagnosis, immunizations, nurse practitioner services, and five outpatient mental health or substance abuse visits per year.<sup>42</sup> Cosmetic surgery, prescription drugs, nursing home care, eyeglasses and dental care were to be excluded from this package of benefits. In addition, the MedAccess Program was to exclude coverage of preexisting conditions for twelve months and was supposed to have a lifetime cap of \$500,000 in coverage.

However, the state proposed to provide no funding for the MedAccess program. Instead, the state proposed to collect premiums from MedAccess enrollees, and all direct and indirect costs were to be funded from patient premiums.<sup>43</sup>

## 2. Medicaid Buy-In

In the early 1990s, the state legislature also announced its intention to implement a Medicaid buy-in program.<sup>44</sup> Under this program, the state proposed to subsidize health insurance for individuals and families whose incomes are too high to meet Medicaid eligibility criteria, but who lacked sufficient funds to purchase private health insurance. Enrollees in this program were to pay a part, but not all, of the costs of their health insurance. Enrollee contributions were to be scaled based upon ability to pay. While the state obtained permission to implement this program from the federal government as part of its waiver request under Section 1115 of the Social Security Act, the state legislature never authorized the implementation of this program or appropriated funding for it.

## 3. Healthy Communities/Healthy People

Health reforms enacted to provide coverage to the non-indigent uninsured fared better than the initiatives proposed to provide coverage for the poor. As part of its health reform effort, the state has implemented the Healthy Communities/Healthy People Program, which allows small employers to join one of eleven Community Health Purchasing Alliances (CHPAs) statewide to purchase standardized packages of benefits from managed care plans and health insurers.<sup>45</sup> The state also may also choose to

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<sup>42</sup>Fla. Stat. Ann. § 408.904.

<sup>43</sup>Fla. Stat. Ann. § 408.908(7). Perhaps as a result of this fact, the MedAccess program is not open-ended: it is subject to eligibility and fiscal limits. Fla. Stat. Ann. § 408.903(9).

<sup>44</sup>Fla Stat. Ann. § 408.902(2).

<sup>45</sup>Fla. Stat. Ann. § 408.70 *et seq.* Through these alliances, the legislature intends to “promote the polling of purchaser and consumer buying power; ensure informed cost-conscious consumer choices of managed care plans; reward providers of high quality, economical care; increase access to care for uninsured persons; and control the rate of inflation in health care costs. Fla. Stat. Ann. § 408.70(2).

enroll state employees and Med-Access recipients in CHPAs.<sup>46</sup> State officials anticipate that these alliances will be able to offer low cost policies and obtain volume discounts for their members based upon their size.<sup>47</sup>

## II. Government imposed obligations for provider financed care

### A. Emergency Care

Florida statutes provide that “in no event shall the provision of emergency services or care...be based upon...insurance status, economic status, or ability to pay for medical care.”<sup>48</sup> Florida’s anti-dumping statute requires hospitals that have emergency facilities to render emergency care without first questioning the patient or any other person about the patient’s ability to pay. Violation of this statute may be punished as a misdemeanor and through civil fines of up to \$10,000. Patients injured by violations of this statute are entitled to damages and attorneys fees.

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<sup>46</sup>Fla. Stat. Ann. § 408.701(4). If the state receives federal permission, the state also may enroll Medicaid patients and participants under the proposed Medicaid buy-in program. However, the claims experience, rates and charges for Medicaid, Med-Access and Medicaid buy in members will be determined separately from those of other CHPA members. Fla. Stat. Ann. § 408.7042(2).

<sup>47</sup>Bruce Piatt, *A Summary of the Health Care and Insurance Reform Act of 1993: Florida Blazes the Trail*, 21 FLA. ST. L. REV. 483, 486 (1993)

<sup>48</sup>Fla. Stat. Ann. § 395.1041(3)(f). However, a hospital may request and collect insurance and financial information from a patient, in accordance with federal law, if emergency services and care are not delayed. Fla. Stat. Ann. § 395.1041(h).