

Illinois

During the past decade, Illinois has drastically curtailed state health care coverage for the indigent. In 1991, the state legislature repealed the Aid to the Medically Indigent Program, which provided a comprehensive range of health services to the state's poor.¹

The remaining state mandated health care entitlement for the poor, general assistance, is quite restrictive. State general assistance laws only require state and local officials to extend medical care to pregnant women, families with children, and disabled individuals awaiting approval for SSI benefits.² In contrast, Illinois law does not mandate the provision of comprehensive health services to single indigent non-disabled adults.

State statutes do not establish minimum financial eligibility criteria or mandate a specific level of services for general assistance recipients. Accordingly, general assistance standards and the scope of available services may vary from township to township.

The status of this entitlement is even more tenuous, in light of the legislature's tendency to grant state officials the power to terminate services in the event of budget shortfalls.³ In 1982, when the legislature gave Governor James Thompson this power, his administration suspended the operation of the Aid for the Medically Indigent Program and temporarily eliminated hospital services for general assistance recipients. The Illinois Supreme Court upheld these decisions as a valid exercise of the Governor's emergency powers under the Emergency Budget Act.⁴

I. Government Funded Care

A. General Assistance

Illinois has two separate systems of general assistance. The Illinois Department of Public Aid runs the general assistance program in cities, villages and incorporated towns with populations that exceed 500,000 inhabitants.⁵ Other townships around the state administer their own general assistance programs, funded through property taxes of no more than .10 % of the assessed value of property within

¹Former 305 Ill. Comp. Stat. Ann. § 5/7-1 *et seq.* Individuals who qualified for benefits under this program were eligible for state funded Medicaid benefits. 305 Ill. Comp. Stat. Ann. § 5/5-2(3).

²305 Ill. Comp. Stat. Ann. §§ 5/6-11 and 5/6-12.

³*See e.g.*, 30 Ill. Comp. Stat. Ann. § 185/11-1 *et seq.* (granting state officials emergency powers to cut programs in 1992); *Warrior v. Thompson*, 449 N.E.2d 53 (Ill. 1983) (describing emergency budget act enacted for 1983).

⁴*Id.*

⁵305 Ill. Comp. Stat. Ann. § 5/6-1.

the township.⁶

1. Eligibility Requirements

General assistance is a program of last resort. Only individuals determined to be ineligible for Medicaid, TANF and SSI are eligible for general assistance benefits.⁷ Residents of public institutions for the treatment of mental illness, tuberculosis or other illness or disability, and inmates of penal institutions are also ineligible for benefits.⁸

Both state and local officials must provide aid to two groups. Families with minor children are eligible for aid under the State Family and Child Assistance Program or under parallel local programs.⁹ Individuals who are disabled and have applied for SSI are eligible for Transitional Assistance while their applications are pending.¹⁰

To be eligible for Family and Child Assistance, a family unit must be ineligible for TANF or SSI benefits and it must contain a child who (1) is under the age of 18, or (2) is 18 years of age, is in secondary school or a vocational or technical training program, and is reasonably expected to graduate before turning 19.¹¹ Pregnant women with verified pregnancies also are potentially eligible for Family and Child Assistance benefits.

To be eligible for Transitional Assistance, an individual must be over 18 years of age or married and living with a spouse.¹² The individual must have applied for SSI benefits based upon disability and that application must be pending. The Illinois Department of Public Aid must have made a determination that the individual meets SSI disability criteria. An individual loses eligibility for Transitional Assistance: (1) if she is found to be not disabled by the Social Security Administration and has failed to appeal that ruling, or (2) if she is found not to be disabled by an Administrative Law Judge or at a higher level of the Social Security appeals process.¹³ An individual is precluded from receiving Transitional Assistance for the twelve months following such a finding, unless she can establish that there has been a substantial

⁶65 Ill. Comp. Stat. Ann. §§ 5/11-43-1 and 70/0.01.

⁷305 Ill. Comp. Stat. Ann. § 5/6-1.3. The state has sought to avoid the burden of caring for individuals disqualified from Medicaid based upon their transfer of assets. Under state general assistance laws, individuals may be rendered ineligible for state or locally funded nursing home care for up to thirty months if they transfer property for less than fair market value. 305 Ill. Comp. Stat. Ann. § 5/6-1.10.

⁸305 Ill. Comp. Stat. Ann. § 5/6-1.3a.

⁹305 Ill. Comp. Stat. Ann. §§ 5/6-11(b) and (d) and 5/6-12.

¹⁰305 Ill. Comp. Stat. Ann. §§ 5/6-11(b) and (c).

¹¹305 Ill. Comp. Stat. Ann. § 5/6-11(d)(1).

¹²305 Ill. Comp. Stat. Ann. § 5/6-11(c)(1).

¹³305 Ill. Comp. Stat. Ann. § 5/6-11(c)(2)(B).

change in her medical condition following the decision, or a substantial change in some other factor (such as age) that might change the determination of disability.

Non-disabled general assistance recipients are required to participate in work, education and training programs as a condition of receiving assistance.¹⁴ 305 Ill. Comp. Stat. Ann. § 5/6-11(c)(4).¹⁵ In addition, for both of these groups, state officials are directed to establish additional eligibility criteria including, but not limited to, residence, need and the level of assistance.¹⁶ Illinois courts have recognized that state statutes grant officials broad discretion to establish eligibility rules. Based upon this fact, state courts have upheld lump sum regulations that may disqualify recipients from benefits for periods of months or years based upon their one time receipt of non-recurring income.¹⁷

While state and local officials may extend general assistance benefits to additional groups of needy individuals, they are not required to do so under state law.¹⁸ State law expressly exempts townships from any obligation to provide general assistance benefits to non-residents.¹⁹ In addition, localities may provide emergency assistance to individuals who are ineligible for general assistance to alleviate life-threatening emergencies. However, counties are prohibited from using state funds for this purpose.²⁰

Not surprisingly, because state law limits benefits to these two narrow categories of the indigent poor, many indigent residents lack access to any health care coverage. In one recent reported decision, an appellate court upheld the denial of medical benefits under the Transitional Assistance Program to an

¹⁴Because of the existence of numerous overlapping and potentially conflicting requirements on this issue, the exact nature of this obligation is far from clear. Some statutes require state and local authorities to put non-disabled general relief recipients to work and to place recipients in education or training programs. 305 Ill. Comp. Stat. Ann. §§ 5/6-1.4, 5/6-1.5, 5/6-1.6, 5/6-1/7, 5/6-3, 5/6-20, 5/9-5, 5/9-6, and 5/11-20. Other statutes direct state officials to determine which categories of general assistance recipients shall be subject to education, training and employment programs and the penalties that may be imposed for failure to cooperate in those programs.

¹⁵305 Ill. Comp. Stat. Ann. §§ 5/6-8 and 5/6-11(c)(4).

¹⁶305 Ill. Comp. Stat. Ann. § 5/6-11(c)(5) and (d)(5).

¹⁷*Rivera v. Illinois Dep't of Public Aid*, 476 N.E.2d 1143 (Ill. App. 1985). In *Rivera*, the court imposed a disqualification period of six months on a claimant based upon his receipt of an award of Social Security benefits, notwithstanding the fact that he spent the award before the department advised him of the lump sum rule. The court rejected plaintiff's argument that the department should have been estopped from imposing the penalty based upon its failure to inform him of the rule. But see *Sipiora v. Dep't of Illinois Dep't of Public Aid*, 548 N.E.2d 459 (Ill. App. 1989) (Department's failure to advise plaintiff of his right to "spend down" resources on medical expenses resulted in improper denial of Medicaid benefits).

¹⁸305 Ill. Comp. Stat. Ann. §§ 5/6-11(c)(2)(C) and 5/6-12.

¹⁹305 Ill. Comp. Stat. Ann. § 5/6-7.

²⁰305 Ill. Comp. Stat. Ann. §§ 5/6-10.

unemployed, indigent 58 year old woman who suffered from obesity and deep venous thrombosis based upon its conclusion that plaintiff's disability was not likely to last more than 12 months.²¹

2. Scope of Services

General assistance programs must provide financial assistance and necessary treatment, care and supplies required because of illness or disability.²² Apart from these general requirements, the amount of aid and services available under general assistance is left up to the discretion of state and local officials, although abortion services are specifically excluded from coverage unless necessary to save the life of the mother.²³

State statutes expressly disclaim any intention to mandate the provision of specific medical services.²⁴ Not surprisingly, state's courts have given state and local officials broad latitude in defining the range of services available under state law. In *Miller v. Illinois Dep't of Public Aid*,²⁵ an Illinois appeals court concluded that the department could exclude coverage for optical and non-emergency dental care. The court concluded that the state's general assistance laws do not require "that all required medical needs of recipients be provided through the GA program," but instead gives local and state authorities broad discretion "to determine the extent and types of assistance to be forthcoming under the GA program."²⁶

However, it appears that some care must be provided to eligible groups, notwithstanding claims by state and local officials that they lack the funds to do so. Illinois courts have held that local overseers of the poor have a duty to provide medical services to general assistance recipients, "even if there is no money in the treasury or no tax in the course of collection."²⁷ Illinois courts have long recognized that

The necessities of the unfortunate class designed to be relieved by the law do not...admit of delay. Pain and suffering must be relieved; food clothing and shelter must be provided and the dead must

²¹*Parker v. Wright*, 635 N.E.2d 138 (Ill.App. 1994). The court also noted that plaintiff had not shown that she suffered from a condition that is considered automatically disabling under Social Security listings.

²²305 Ill. Comp. Stat. Ann. §§ 5/6-1 and 5/6-2.

²³305 Ill. Comp. Stat. Ann. § 5/6-1.

²⁴*See e.g.*, 305 Ill. Comp. Stat. Ann. § 5/6-11(c)(3) and (d)(4) ("nothing in this paragraph....shall be construed to require the coverage of any particular medical service"). In contrast, Illinois statutes place substantive limits on official discretion to set and alter the amount of cash grants provided to general assistance recipients. *See* 305 Ill. Comp. Stat. Ann. §§ 5/6-2 and 5/12-4.11 (standard of aid must take into account actual costs of meeting basic needs for food, clothing and shelter, subject to amounts appropriated).

²⁵418 N.E.2d 178 (Ill. App. 1981).

²⁶*Id.* at 185-86.

²⁷*St. Johns Hosp. v. Town of Capitol*, 220 N.E.2d 333 (Ill. App. 1966)

be buried. Prompt relief is imperative and the overseer of the poor....as the representative of the town, must care for those who are so unfortunate as to be entitled to assistance from the public.²⁸

States and localities may provide different benefits to recipients of Transitional Assistance and recipients of Family and Child Assistance, including different medical benefits.²⁹ The Illinois Department of Public Aid has established different levels of medical benefits for these two groups. Under both programs, recipients may receive (1) clinic visits, (2) physicians services, (3) pharmacy services and medical supplies and equipment needed to prevent life threatening situations, (4) family planning services, (5) laboratory and x-ray services, (6) transportation to secure medical services, (7) prosthetics and orthotics necessary to secure employment or for hospital discharge, (8) home health visits for documented terminal conditions, (9) hospice services, and (10) group care services, with prior approval.³⁰ Recipients of Family and Child Assistance also may receive (1) inpatient hospital services, (2) physical rehabilitation services and psychiatric services for children under 18, (3) hospital outpatient and clinic services for surgical procedures, renal dialysis or cancer therapy, and (4) hospital emergency room visits for the alleviation of sever pain or for the treatment of conditions and illnesses that may lead to disability or death in the absence of immediate care.³¹

B. Services for Indigent Pregnant Women

Illinois provides medical services to pregnant women who are not receiving Medicaid benefits.³² To qualify for this program, recipients must have family incomes at or below a threshold level set by the Illinois Department of Public Health, which may not be less than 100 percent of the Federal Poverty Level. The program provides (1) screening and treatment of sexually transmitted diseases, (2) prenatal visits to doctors and clinics, (3) lab, pharmacy, and radiological services, (4) physician and nurse services related to delivery, (5) one postnatal visit within 60 days following delivery, (6) two EPSDT equivalent screenings of the newborn within 90 days of delivery, (7) social and support services, (8) nutrition services, and (9) case management.³³ Hospital inpatient services, anesthesiology and radiology services during inpatient care, and physician visits during hospital stays are excluded from coverage.

C. Public Hospitals

Counties and municipalities are authorized to establish and maintain hospitals to promote the general health of their citizens.³⁴ Counties and municipalities that intend to sell, lease or transfer these

²⁸Id. at 334, *quoting* Town of Kanakee v. McGrew, 52 N.E.2d 893, 895 (Ill. 1899).

²⁹305 Ill. Comp. Stat. Ann. § 5/6-11(c)(3) and (d)(4).

³⁰89 Ill. Adm. Code § 140.5(a).

³¹89 Ill. Adm. Code § 140.5(b).

³²410 Ill. Comp. Stat. Ann. § 225/1 *et seq.*

³³410 Ill. Comp. Stat. Ann. § 225/6.

³⁴65 Ill. Comp. Stat. Ann. § 5/5-1005 and 65 Ill. Comp. Stat. Ann. § 5/11-22-1.

facilities must schedule public hearings on the proposed transaction and provide ten days notice of the hearing.³⁵

D. Optional County Services

Illinois law contains a number of older statutes that authorize counties to levy property taxes with the approval of the voters, to provide various types of health care services. Counties may establish and maintain sanitariums for the treatment of tuberculosis through property tax levies of up to .075%.³⁶ Once established, these sanitariums must provide free care to all county inhabitants inflicted with tuberculosis.

Counties may establish and maintain rest homes for the chronically ill and infirm through property tax levies of up to .10%. Once established, these homes are required to admit chronically ill residents who are unable to purchase care and may admit non-resident indigent patients at the expense of the patient's county of residence.³⁷ With voter approval, counties may also establish programs for the treatment of cancer patients who lack the ability to pay for their treatment.³⁸

E. Public Health Services

The Illinois Department of Public Health administers a variety of programs that provide care to the state's indigent residents. The Department is authorized to (1) provide comprehensive care to adults and children suffering from rheumatic fever and to acquire and distribute medicines for the prevention of rheumatic fever for medically indigent patients;³⁹ (2) extend financial assistance to individuals suffering from chronic renal disease in purchasing needed medical services and dialysis equipment;⁴⁰ (3) provide hemophilia treatment to those unable to afford it;⁴¹ (4) fund testing and follow up treatment for newborns with metabolic disorders;⁴² (5) fund hearing and vision tests for schoolchildren;⁴³ (6) fund lead poisoning

³⁵55 Ill. Comp. Stat. Ann. § 5/5-1040 and 65 Ill. Comp. Stat. Ann. § 5/11-22-2.

³⁶55 Ill. Comp. Stat. Ann. § 5/5-23001 *et seq.*

³⁷55 Ill. Comp. Stat. Ann. § 5/5-21000 *et seq.*

³⁸55 Ill. Comp. Stat. Ann. § 5/5-24001 *et seq.* However, financial limits contained in this statute render it obsolete. Individuals applying for benefits must be examined by a physician appointed by the county, who may receive payment of no more than \$5 for her services. If the physician certifies that the patient is eligible, a court will hold a hearing to determine eligibility and may order payment of up to \$40 per month for the costs of treatment.

³⁹410 Ill. Comp. Stat. Ann. §§ 440/1 and 435/5.

⁴⁰410 Ill. Comp. Stat. Ann. § 430/3.

⁴¹410 Ill. Comp. Stat. Ann. § 420/1.

⁴²410 Ill. Comp. Stat. Ann. § 240/2.

⁴³410 Ill. Comp. Stat. Ann. § 105/1.

screening, treatment and abatement;⁴⁴ and (7) provide grants for (a) non-profit agencies that treat AIDS patients⁴⁵ and Alzheimer's patients,⁴⁶ (b) perinatal centers that provide services to pregnant women with high risk pregnancies and their newborns,⁴⁷ and (c) rural health centers that deliver services to underserved populations.⁴⁸

III. Government Imposed Obligations to Provide Care

A. Emergency Care

Every hospital licensed by the state is required to furnish emergency service to any patient who applies for service suffering from an injury or acute illness liable to cause death, severe illness or serious injury.⁴⁹ Hospitals are not required to have emergency departments themselves if they participate in community or area-wide emergency service plans that provide such services.

Illinois law prohibits hospitals, dentists or other providers of health care to refuse to provide emergency treatment to any person whose life would be threatened in the absence of such treatment, based upon their inability to pay.⁵⁰ Licensed hospitals are also prohibited from refusing treatment to women in active labor whose life or safety would be threatened in the absence of treatment based upon inability to pay or lack of insurance.⁵¹

⁴⁴410 Ill. Comp. Stat. Ann. § 45/7.2

⁴⁵410 Ill. Comp. Stat. Ann. § 315/2b.

⁴⁶410 Ill. Comp. Stat. Ann. § 405/4.

⁴⁷410 Ill. Comp. Stat. Ann. § 250/1.

⁴⁸410 Ill. Comp. Stat. Ann. § 65/1.

⁴⁹210 Ill. Comp. Stat. Ann. § 80/1.

⁵⁰210 Ill. Comp. Stat. Ann. § 70/1.

⁵¹210 Ill. Comp. Stat. Ann. § 85/11.1.