

# North Carolina

Article XI, Section 4 of the North Carolina Constitution calls on the General Assembly, the state's legislative body, to establish and provide for a board of public welfare that cares for the poor and unfortunate.<sup>1</sup> The Supreme Court of North Carolina has held that this constitutional provision places on the state the obligation to pay for indigent medical care.<sup>2</sup> The state may, in turn, delegate this duty to the counties as long as the duty extends only to matters within a county's territorial boundaries.<sup>3</sup> While the state government has delegated some responsibilities for social services to county and municipal governments, there is no explicit delegation of the responsibility for providing health care to the indigent.

## County and Municipal Responsibility for Indigent Health Care

North Carolina state law directs county governments to provide certain social services programs as directed by the legislature and to support any other social service programs that benefit the health and welfare of county residents.<sup>4</sup> To that end, the state government has bestowed upon county governments a number of powers.

Specific statutory provisions empower county governments to regulate the public health; to establish programs regarding mental health, mental retardation and substance abuse;<sup>5</sup> and to appropriate funds for facilities for the mentally retarded, sheltered workshops for the mentally or physically handicapped, orthopedic hospitals, and training centers for the physically or mentally

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<sup>1</sup> North Carolina Constitution Article XI, Section 4. Welfare policy; board of public welfare. "Beneficent provision for the poor, the unfortunate, and the orphan is one of the first duties of a civilized and a Christian state. Therefore the General Assembly shall provide for and define the duties of a board of public welfare."

<sup>2</sup> *Board of Managers v. City of Wilmington*, 237 N.C. 179, 74 S.E. 2d 749 (1953)

<sup>3</sup> *Martin v. Board of Commissioners*, 208 N.C. 354, 180 S.E. 777 (1935)

<sup>4</sup> N.C. Gen. Stat. § 153A-255. Authority to provide social service programs. "Each county shall provide social service programs pursuant to Chapter 108A and Chapter 111 (aid to blind) and may otherwise undertake, sponsor, organize, engage in, and support other social service programs intended to further the health, welfare, education, safety, comfort, and convenience of its citizens." For more information regarding residency requirements for social services purposes, refer to N.C. Gen. Stat. § 153A-257. Legal residence for social service purposes.

<sup>5</sup> N.C. Gen. Stat. § 153A-247. Provision for Public health and mental health. "A county may provide for and regulate the public health pursuant to chapter 130A of the Gen. Stat. And any other law authorizing local public health activities and may provide mental health, mental retardation, and substance abuse programs pursuant to Chap. 122C of the General Statute."

handicapped.<sup>6</sup>

County governments are also authorized to provide and support hospital services,<sup>7</sup> as well as establish, construct, acquire, or operate county homes for the aged and infirm.<sup>8</sup> Alternatively, counties may contract with other entities, including government agencies, individuals, organizations, and corporations, to provide health and social services.<sup>9</sup>

Each county in North Carolina has a board of social services that establishes county policies for a variety of social services programs,<sup>10</sup> including aid to families with dependent children, the food stamp program, and the medical assistance program.<sup>11</sup> Each county must also operate a county health department, join with other counties to create a district health department, or contract with the state to provide public health services.<sup>12</sup>

**Public Hospitals.** Chapter 131E of the North Carolina general statutes deals with health care facilities. While there is no provision that deals exclusively with indigent health care, the issue does arise sporadically throughout the chapter.<sup>13</sup> For example, one law authorizes municipalities to establish public hospitals that provide health care services to residents of North Carolina.<sup>14</sup> Among the powers granted to municipalities to facilitate the process of creating a hospital is the ability to establish fee schedules for services rendered by the hospital, and to “make services available regardless of ability to pay.”<sup>15</sup> It is important to note that this provision does not necessarily require hospitals to offer free health care services to indigents, but merely allows hospitals to admit patients who are unable to pay.

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<sup>6</sup> N.C. Gen. Stat. § 153A-248 Health Related appropriations

<sup>7</sup> N.C. Gen. Stat. § 153A-249 Hospital Services. “A county may provide and support hospital services pursuant to Chapters 122C, 131 and 131E of the Gen Statutes.”

<sup>8</sup> N.C. Gen. Stat. § 153A-256 County Home.

<sup>9</sup> N.C. Gen. Stat. § 153A-259. Counties authorized to contract with other entities for health and social services.

<sup>10</sup> N.C. Gen. Stat. § 108A-1

<sup>11</sup> N.C. Gen. Stat. § 108A-25. Statutory provisions regarding the Medical Assistance Program (Medicaid) can be found in N.C. Gen. Stat. §§ 108A-54 to 108A-70.5

<sup>12</sup> N.C. Gen. Stat. § 130A-34. Provision of Local Public Health Services.

<sup>13</sup> For a dated, but still helpful discussion of municipal responsibility for indigent health care, *see* “The Obligation of North Carolina Municipalities and Hospital Authorities to Provide Uncompensated Hospital Care to the Medically Indigent,” 20 Wake Forest L. Rev. 317 (1984).

<sup>14</sup> N.C. Gen. Stat. § 131E-5. “‘Municipality’ means any county, city, or other political subdivision of this State, or any hospital district created under Part C of this Article.” N.C. Gen. Stat. § 131E-6(5)

<sup>15</sup> N.C. Gen. Stat. § 131E-7(6)

Another example involves a statute regarding the sale or lease of hospital facilities to a for-profit corporation.<sup>16</sup> While the medically indigent are mentioned more prominently in this statute, the protections offered to them are by no means comprehensive. For example, the statute calls upon the acquiring corporation to ensure that indigent care is available to the hospital's service area "at levels related to need, as previously demonstrated and determined mutually by the municipality or hospital authority and the corporation."<sup>17</sup> Such vague statutory language does not facilitate a process by which adequate health care for indigent populations is secured. To the contrary, this ambiguously phrased statute leaves the topic of indigent care at the mercy of the bargaining process between the public hospital and acquiring entity.

The same statute also requires the for-profit corporation not to establish admissions policies that deny "essential medical services" based upon the patient's "immediate inability to pay for the services or treatment."<sup>18</sup> Although this provision may be stronger than the one that applies to municipal public hospitals mentioned above, it nevertheless contains ambiguities that undercut its effectiveness. The for-profit hospital could, under this statute, deny "non-essential" medical services to patients unable to pay.<sup>19</sup> The fact that the statutes do not define what medical services are "essential" leaves open the possibility that a for-profit hospital could interpret the phrase "essential medical services" very narrowly, and deny needed services to patients unable to pay.

### **State Responsibility for Indigent Health Care**

While the state has delegated some duties to the county governments as outlined above, there are certain programs that the state has chosen to operate. State agencies involved include the Department of Human Resources (DHR), which runs the medical assistance program, and the Department of Environment, Health and Natural Resources (DEHNR), which runs a number of illness-specific health programs.

**Sickle Cell Syndrome.** One of the illness-specific programs run by the state is the Sickle Cell Program. This program is administered by DEHNR and offers education, voluntary testing, counseling and medical reimbursement services for sickle cell syndrome.<sup>20</sup> The program directs local health departments to provide testing and counseling services free of charge to anyone requesting these services.<sup>21</sup>

**Immunizations.** Every child in North Carolina is required to undergo immunization against diphtheria,

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<sup>16</sup> N.C. Gen. Stat. § 131E-13

<sup>17</sup> N.C. Gen. Stat. § 131E-13(a)(2)

<sup>18</sup> N.C. Gen. Stat. § 131E-13(a)(3) "The corporation shall not enact financial admission policies that have the effect of denying essential medical services or treatment solely because of a patient's immediate inability to pay for the services or treatment."

<sup>19</sup> The term "essential medical services" is not defined in the statutes, leaving corporations great latitude in designing admissions policies that may not be favorable to indigents seeking health care.

<sup>20</sup> N.C. Gen. Stat. § 130A-129. Department to Establish Program.

<sup>21</sup> N.C. Gen. Stat. § 130A-130. Duties of Local Health Departments.

tetanus, whooping cough, poliomyelitis, red measles and rubella.<sup>22</sup> Local health departments are required to administer these vaccinations at no cost, using vaccines supplied by the state.<sup>23</sup>

Cancer. State law requires DEHNR to establish a program designed to prevent and detect cancer, as well as care for and treat persons that have cancer.<sup>24</sup> The state must provide financial assistance for diagnosis and treatment to indigent citizens of North Carolina who have, or are suspected of having, cancer.<sup>25</sup>

Chronic Renal Disease. The department must establish and administer a program that detects and prevents chronic renal disease in the general public, and cares for and treats persons already afflicted.<sup>26</sup> One statutory provision calls on DEHNR to provide financial assistance to needy persons for the diagnosis and treatment of chronic renal disease.<sup>27</sup>

Glaucoma and Diabetes. State law authorizes the creation of a program that detects and prevents glaucoma and diabetes, and provides for the care and treatment of persons that have either condition. While there is no explicit mention of free services to indigent patients, the statute does authorize the program to provide supplies, equipment and medication.<sup>28</sup> The statute was amended in the 1997 legislative session to read that the program “may be established” instead of “shall be established,” which may indicate that the program will not be funded.<sup>29</sup>

Arthritis. DEHNR must create a program for the detection, prevention and treatment of arthritis. This multi-faceted program is designed to engage in health education activities, provide detection and treatment services, and conduct epidemiological studies.<sup>30</sup>

Adult Health. State law also calls on DEHNR to create and administer a program to prevent diseases, disabilities and accidents that contribute significantly to mortality in adults. The program is also authorized to provide care and treatment to persons with these diseases or disabilities.<sup>31</sup>

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<sup>22</sup> N.C. Gen. Stat. § 130A-152

<sup>23</sup> N.C. Gen. Stat. § 130A-153

<sup>24</sup> N.C. Gen. Stat. § 130A-205. Administration of Program; rules.

<sup>25</sup> N.C. Gen. Stat. § 130A-206.

<sup>26</sup> N.C. Gen. Stat. § 130A-220

<sup>27</sup> N.C. Gen. Stat. § 130A-220 (a)(3)

<sup>28</sup> N.C. Gen. Stat. § 130A-221

<sup>29</sup> N.C. Ch. Session Law 97-0137

<sup>30</sup> N.C. Gen. Stat. § 130A-222

<sup>31</sup> N.C. Gen. Stat. § 130A-223

Mental Health, Developmental Disabilities, and Substance Abuse Act. Here, state law calls for the creation of a program that seeks to maximize the effectiveness of services by creating a unified service delivery system for the areas of mental health, developmental disabilities and substance abuse.<sup>32</sup> While all responsible authorities and agencies are required to create fee schedules for the services offered, no persons may be denied services because of an inability to pay for them.<sup>33</sup>

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<sup>32</sup> N.C. Gen. Stat. § 122C-1 et seq.

<sup>33</sup> N.C. Gen. Stat. § 122C-146