

South Dakota

County Obligation to Provide for Indigents

Every county has a duty to support indigents residing within its boundaries.¹ Courts have repeatedly held that the counties' duty to provide for the poor includes the provision of hospital and medical care and treatment.² Hospitals may be paid for medical expenses by the indigent's county of residence if the hospital complies with procedural requirements.³

Eligibility

Indigent county residents⁴ may be eligible for financial assistance under the general relief program.⁵ An indigent person is defined as one who lacks the money, credit, or property to be self-supporting; who is unable to turn to one who is legally required to provide him or her support, or; who is vocationally incapacitated due to illness or injury.⁶ Each county is allowed to establish its own economic eligibility guidelines, but is instructed to balance an applicant's income and resources against his or her needs.⁷

Persons qualifying for general relief may also receive medical benefits from the county comparable to the scope of benefits available under the Medicaid program. Persons whose incomes and resources may not be sufficiently low to qualify for general relief may nevertheless qualify as a medical indigent if their

¹*Appeal of Presentation Sisters, Inc.*, 471 N.W.2d 169 (S.D. 1991); SDCL § 28-13-1 (Michie 1992), SDCL § 28-13-16 (Michie 1997 Supp).

²*Jerauld County vs. St. Paul Mercury Indem. Co.* (1955) 76 SD 1, 71 N.W.2d 571; *Appeal of Presentation Sisters, Inc.* (1991) 471 N.W.2d 169; SDCL §§ 28-13-32.3, 28-13-33, 28-13-34.1 (Michie 1997 Supp).

³*Appeal of Presentation Sisters, Inc.* (1991) 471 N.W.2d 169; SDCL §§ 28-13-27 *et seq.* (Michie 1997 Supp).

⁴Residency is established by personal presence in a "fixed and permanent abode," with the intention to remain. SDCL § 28-13-3 (Michie 1992). A child's residence is that of its parents or legal guardians. SDCL § 28-13-5 (Michie 1992). Transient workers must take affirmative steps which would indicate some intention to reside in the county permanently. *Sioux Valley Hospital Ass'n. v. Kingsbury County* (1987) 414 N.W.2d 816.

⁵"Medical Indigence," which is described below, is required for hospital services. However, the statutes are silent whether non-hospital based medical care also requires medical indigence.

⁶SDCL § 28-13-1.1 (Michie 1997 Supp).

⁷SDCL § 28-13-1.2 (Michie 1992).

medical bills outstrip their ability to pay for the services over time.⁸

A medically indigent person: (1) requires medically necessary hospital services⁹ for which no third-party coverage, public or private, is available; (2) is largely unable to pay for his/her hospitalization costs; (3) has not transferred control or ownership of assets for the purposes of establishing eligibility; (4) is not indigent by design;¹⁰ and (5) was neither a veteran nor a member of a Native American tribe eligible for, respectively, Veteran's Administration assistance or Indian Health Services at the time of hospitalization.¹¹

Medical indigence is to be determined in light of the facts that exist upon hospital admission and at the time the bill is due.¹² Until 1997 the statutes placed considerable discretion with the counties to develop financial eligibility details. The courts would sometimes review and reverse the county's findings of non-eligibility, even where the applicant's income clearly exceeded the county's income limits.¹³

In 1997 the legislature added considerably more detail to the statutes concerning medical indigence, outlining in considerable detail the structure by which counties shall determine financial eligibility.¹⁴ It may be the case that the courts will now be more reluctant to override the county's determination.

Generally, in order to be eligible a person must not earn more than approximately 300 percent of the general assistance income limits. In Minnehaha county, a fairly representative county, medical indigence income limit in 1996 was \$1655 for an individual, \$2785 for a family of three.

To say that a person is eligible under the medically indigent program is not to say that his or her medical bills will be taken care of by the county, however. After calculating what a person's discretionary income might be, the counties determine the applicant's ability to pay off the hospital bill over the course of sixty months.¹⁵ The county will pay that portion of a person's bill which would not be able to be paid off over sixty months out of the person's discretionary income.

⁸SDCL § 28-13-32.3 (Michie 1997 Supp).

⁹Defined at SDCL § 28-13-27.1 (Michie 1997 Supp).

¹⁰Defined at SDCL § 27-13-27(6) (Michie 1997 Supp).

¹¹SDCL § 28-13-1.3 (Michie 1997 Supp).

¹²*Sioux Valley Hosp. Ass'n v. Lake County*, 553 N.W.2d 161, 163 (S.D. 1995) citing *Sioux Valley Hosp. Ass'n v. Davison County*, 319 N.W.2d 490, 492 (S.D. 1982).

¹³*Sioux Valley Hosp. Ass'n v. Lake County*, 553 N.W.2d 161, 163 (S.D. 1995); *Sioux Valley Hosp. Ass'n v. Davison County*, 319 N.W.2d 490, 491 (S.D. 1982); *Sioux Valley Hosp. Ass'n v. Mies*, 422 N.W.2d 414, 417.

¹⁴SDCL §§ 28-13-32.5, 32.6, 32.7, 32.8, 32.9 (Michie 1997 Supp).

¹⁵SDCL §§ 28-13-32.5, 32.9 (Michie 1997 Supp).

Funding

Each board of county commissioners may raise money by taxation for the support and employment of the poor.¹⁶ The county is liable for the support of indigents even where its poor relief fund is insufficient.¹⁷ When any county shall furnish relief under this program it shall have a claim against the beneficiary for the value of the relief, a claim which may be enforced against any non-exempt property which the beneficiary may have or later acquire.¹⁸

Counties rendering assistance to residents of other South Dakota counties may have a claim for reimbursement against the county of which the person is a resident.¹⁹ Further, a county may make a similar claim against another county where the patient only comes to reside within the county within 60 days prior to the date of service.²⁰

Counties may pay into a fund which will, when the costs of treating any one indigent patient exceed \$25,000 per year, pay the county 90 percent of the amount which exceeds the \$25,000 mark.²¹

Renal Disease Program

The department of social services is required to provide necessary medical services and supplies to end-stage renal disease patients who have exhausted all third-party coverage (including V.A., Medicaid and Medicare benefits), and who have insufficient income and resources to pay for the services themselves.²² The state limits benefits under this program to \$5,000 per year per person.²³

County Hospitals

Any county may establish and maintain a hospital for the care and treatment of county indigents and

¹⁶SDCL § 28-13-1 (Michie 1992).

¹⁷Attorney General's Report 1955-56, p.408; 1961-62, p.8.

¹⁸SDCL § 28-14-1 (Michie 1992).

¹⁹SDCL § 28-14-2 (Michie 1992).

²⁰SDCL § 28-14-2.1 (Michie 1992).

²¹SDCL § 28-13A-1 *et seq.* (Michie 1992).

²²SDCL § 28-6A-1 *et seq.* (Michie 1992).

²³SDCL § 28-6A-8 (Michie 1997 Supp).

others.²⁴ Counties may use bonds or taxation to pay for the construction of such hospitals.²⁵ County hospitals may charge for their services, and shall be paid for services it renders to indigents eligible under the county medically indigent program outlined above.²⁶ Municipalities also have the power to establish and maintain hospitals, and may establish medical clinics where the municipal population is less than fifteen hundred.²⁷

Tuberculosis (TB) and Contagious Disease Control

The state Department of Health shall have the power and authority, and it shall be the duty of such department, to arrange for the care of persons with T.B. living in South Dakota, without regard to residence or ability to pay. This program provides for diagnosis, control, and treatment of suspected or actual cases of TB.²⁸

Mental Health Services

If any person is admitted to a state facility for the mentally ill, the resident and his or her legal guardian, if applicable, is liable for the cost of his or her care, support, maintenance, and treatment.²⁹ If the person is medically indigent, however, his or her county is obligated to pay for the cost of care.³⁰ Upon application, apart from the county medically indigent program, the secretary of human services shall determine the patient and his or her family or guardians' ability to pay.³¹ The board of county commissioners shall annually appropriate a sum sufficient to pay for the support of the mentally ill.³²

²⁴SDCL § 34-8-1 (Michie 1992).

²⁵SDCL §§ 34-8-2 through 34-8-5 (Michie 1992).

²⁶SDCL § 34-8-11 (Michie 1992).

²⁷SDCL § 34-9-1.1 (Michie 1992).

²⁸SDCL §§ 34-22-1 *et seq.* (Michie 1992).

²⁹SDCL § 37A-13-4 (Michie 1992)

³⁰SDCL § 37A-13-5 (Michie 1992).

³¹SDCL §§ 37A-13-9, 10 (Michie 1992).

³²SDCL § 27A-13-15 (Michie 1992).