South Dakota Legislative Research Council

Issue Memorandum 96-27

DEFINING MEDICAL INDIGENCE

A CONTINUING PROBLEM

Introduction

Problems the counties have been experiencing in trying to meet demands for payment for medical care for indigents were addressed in two bills introduced in the 1996 Legislative Session. The bills were the result of study by the Medical Indigence Study Committee of the South Dakota Association of Counties and were drafted with the aid of the Department of Social Services, which administers the Catastrophic County Poor Relief Program.

The first bill, SB 167, defined medical indigence and set out considerations for counties to use in determining medical indigence for the purpose of the county poor relief laws in SDCL chapter 28-13. The second bill, SB 168, attempted to address the medical indigence of students attending South Dakota's public universities by requiring them to carry health insurance.[1] No clear consensus was reached at the first hearing of the bills in the Senate Health and Human Services Committee during the 1996 legislative session, and they were sent back to the South Dakota Association of Counties for further study.

The Issue

State law in SDCL 28-13-33 makes counties liable for emergency and nonemergency hospitalization of the medically indigent. In recent years hospitals have aggressively pursued the counties for payment of unpaid hospital bills. If the counties have refused to pay the bills because they had determined that the persons were not indigent, the hospitals have sued. The courts have rejected the counties' guidelines for determining medical indigence based solely on poverty,[2] and the decisions are leaving the counties liable for payment of unpaid bills.

Some counties are finding their budgets overwhelmed. The property tax reduction plan passed by the 1995 Legislature froze property taxes for 1996 and limited property tax increases to three percent thereafter.[3] The counties find themselves not only unable to budget for the unknown, but unable to increase their revenues significantly to cover shortfalls.[4] State law in SDCL 10-13-36 provides for a special tax levy, but an attempt by Brule County in September 1996 to exceed its tax limit was defeated by a two-to-one margin.[5]

Background

South Dakota has a long history of taking care of its poor at the county level. Even before South Dakota was a state, the territorial government designated the county commissioners as overseers of the poor, making them responsible for the relief and

support of the needy poor and indigent who were lawfully settled.[6] From its earliest days as a state, the law has required the counties to provide their poor and indigent residents with relief and support when they are in need.[7] The Supreme Court noted in 1955 that the general duty of a county to relieve and support poor and indigent persons included the specific duty to provide hospitalization, medical care, and treatment.[8]

Increasing hospitalization costs for both county poor relief and Medicaid were the topic of a summer study in 1983 by the Interim Health and Welfare Committee. That study resulted in changes in the definition of an indigent person and establishment of the catastrophic county poor relief fund by the 1984 Legislature.[9]

The Legislature has continued to react to decisions of the Supreme Court, making changes in poor relief statutes permitting counties to set standards for the amount, scope, and duration of medical services, providing for reimbursements to out-of-state hospitals, revising requirements pertaining to hospital notices and statements of cost, and clarifying that counties are not liable for debts discharged in bankruptcy unless the person is indigent.[10]

Recent Judicial Decision

Since 1984, the Supreme Court has actively interpreted aspects of the poor relief statutes, but its decision in June of 1995 in a Lake County case stretched the definition of medical indigence further than ever before.[11]

Lake County refused to pay for emergency hospital treatment of a person whom the county claimed was not indigent according to its guidelines. Sioux Valley Hospital disagreed with the decision, saying that the county's guidelines did not conform to state law. The trial court found for the hospital, and the county appealed. In its opinion upholding the trial court's decision, the Supreme Court recalled earlier decisions that said that "medical indigence is to be determined in light of the facts that exist upon hospital admission and at the time the bill is due" and that "emergency assistance eligibility was not based on a complete lack of resources, but also applied to 'those persons who do not have the present or future hope of resources sufficient to pay for all the medical and hospital services required in emergency instances.'" The Court also determined in this case that the person's subsequent bankruptcy proceedings did not free the county from its obligation to pay the debt.[12]

Clearly, the counties were placed on notice that their guidelines based only on income, which might be sufficient for determining who should receive poor relief, were not sufficient for determining medical indigence. Given the ever higher costs of medical care, counties worried that they might be increasingly liable for the emergency medical bills of persons who were otherwise not considered indigent.[13]

Action by the Counties

In September 1995 the South Dakota Association of County Commissioners established the Medical Indigence Study Committee. The committee identified persons whose need for aid could be questioned: individuals who have the means to purchase a health plan but do not; college students who are not covered by a health plan; illegal aliens or foreign visitors; working persons whose income exceeds their expenses but who cannot pay the entire hospital bill upon demand; and persons who are employed and have a health plan which does not take effect for six to twelve months.

The recommendations of the study committee to the South Dakota Association of County Commissioners included several proposals for possible legislation.[14] Of these recommendations, two were introduced as bills in the 1996 Legislature--SB 167 and SB 168 described at the beginning of this memorandum.

Demographics

One of the choices given to counties in SB 167 for setting income guidelines for medical indigence was 175 percent of federal poverty guidelines. The 1996 federal poverty level is $7,740 for a single person and $15,600 for a family of four.[15] If a county chose to set an income guideline based on 175 percent of federal poverty levels, a person with an income below $13,545 or a family of four with an income below $27,300 would be medically indigent.

According to figures based on information from the Bureau of Economic Analysis, U.S. Department of Commerce, and the State Data Center at Brookings, the average per capita personal income of South Dakotans for the years 1989 to 1993 was $16,265, and fifteen counties had average per capita incomes at that time below $13,800.[16] Census figures from 1990 show that twenty-one counties, almost one-third of the state, have from 20.0 percent to 63.1 percent of their population below the poverty level.[17] Charts containing these figures may be found at the end of this memorandum.

Medical expense figures for 1994 that were provided to the Legislative Research Council by the South Dakota Association of County Commissioners, minus burial expenses, showed thirteen counties with medical expenses from $50,000 to $100,000, four counties with medical expenses from $100,000 to $150,000, one county with medical expenses from $150,000 to $200,000, and four counties with medical expenses over $200,000. The two most populous counties in South Dakota, Minnehaha and Pennington, were in the last category. Total medical expenses for counties were reported by the press as more than $5.8 million in 1994 and nearly $7.2 million in 1995.[18]

Catastrophic County Poor Relief Program

The catastrophic county poor relief program was established by the Legislature in 1984 to aid counties in meeting the financial burden of providing medical care for the poor.[19] Counties wanting to participate in the program contribute to the catastrophic county poor relief fund according to population and taxable value, as provided in SDCL 28-13A-9. The fund reimburses participating counties for ninety percent of medical expenses incurred after the first $20,000 attributed to a claim in a year's time.

According to the Department of Social Services, a total of 58 counties contributed $600,004 in 1995 to the fund through a regular assessment and a supplemental assessment. This was the first year that a supplemental assessment was required of the participating counties. The highest contribution was $119,345 and the lowest was $1,654. Eighteen counties were reimbursed for medical costs through the fund in 1995, for a total of $508,975.44. The highest reimbursement to a county was $111,695.67 for eleven claims, and the lowest was $2,445.50 for one claim. Each one of the forty-three medical claims reimbursed through catastrophic county poor relief in 1995 represents an expenditure of $20,000 to a county, plus ten percent of the costs over that amount.

The catastrophic county poor relief fund aids counties when a claim rises over $20,000. The fund is of no help to a county, however, when an emergency medical bill comes in at $10,000 and the patient is unable, because of the lack of present resources, to pay the bill.

Possible Solutions

In addition to the legislation introduced in the 1996 legislative session, the Medical Indigence Study Committee of the South Dakota Association of Counties in 1995 suggested other possible solutions to the problems involved with caring for the medically indigent.[20] The committee recommended that

- hospitals be required to show that they have negotiated in good faith a repayment plan with the patient for claims under $10,000;
- hospital admission papers include a statement of the patient's obligations if a lien is imposed by a county and a release of information form;
- the patient be named in any lawsuit that a hospital files against a county;
- a statewide mediation hospital claims board be established by law to review disputed hospital claims; and
- new sources of revenue be found to fund a medical indigence relief fund.

Suggested funding sources were license fees on insurance companies, a portion of fine money, a portion of block grants, and a sales tax on medical services and supplies paid for by insurance, Medicaid, and Medicare.

The counties are expected to ask the 1997 Legislature to consider a proposal for establishing income guidelines based on the federal poverty level, adjusted for conditions in each county, and for requiring some persons to repay a portion of their medical expenses over a period of years.[21]

Conclusion

Counties continue to be confronted with rising costs for providing medical care to the indigent. The costs rise far faster than property taxes are allowed to rise under current limits, and county resources are strained. The courts have made it clear that the definition of medical indigence needs to be clarified, and it is evident that at least part of the solution will be statutory. However, the problem will need the cooperation of county governments, the Legislature, hospitals, and indigent patients for satisfactory solutions to be found.

ENDNOTES

1. 1996 SB 167, An Act to define a medically indigent person; 1996 SB 168, An Act to require students attending a South Dakota institute of higher education to have health insurance coverage.

2. Sioux Valley Hosp. Ass'n v. Jones County, 309 N.W.2d 835 (S.D. 1981); Sioux Valley Hosp. Ass'n v. Davison County, 319 N.W.2d 490 (S.D. 1982); Sioux Valley Hosp. Ass'n v. Mies, 422 N.W.2d 414 (S.D. 1988); Sioux Valley Hosp. Ass'n v. Lake County, 533 N.W.2d 161 (S.D. 1995).

3. SL 1995, ch 57, §§ 2 and 14, codified at SDCL 10-13-23 and 10-13-35.

4. Molly Miron, "County welfare fund runs dry," Brookings *Daily Register*, August 9, 1995; Terry Woster, "Counties want to change medical indigent laws," Sioux Falls *Argus-Leader*, December 18, 1995.

5. Terry Woster, "Counties that want out of tax limit must prove funding need, official says," Sioux Falls *Argus-Leader*, September 13, 1996.

6. An Act for the Relief of the Poor, ch 17, 1869 S.D. Sess. Laws. Cited in John D. Wagner, "General Assistance in South Dakota: A Need for Written, Objective and Ascertainable Standards," 27 SD LRev 203 (1982).

7. PolC 1877, ch 33, § 4, codified at SDCL 28-13-1.

8. Jerauld County v. St. Paul-Mercury Indem. Co., 76 S.D. 1, 71 N.W.2d 57a (1955).

9. SL 1984, ch 203; SL 1984, ch 204.

10. SL 1986, ch 234; SL 1988, ch 225; SL 1988, ch 226; SL 1991, ch 227; SL 1995, ch 166.

11. Sioux Valley Hosp. Ass'n v. Lake County, 533 N.W.2d 161 (S.D. 1995).

12. *Ibid.*

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13. See note 4 above.

14. *County Comment*, A Publication of South Dakota Counties, Volume 41, Number 11, December 1995.

15. 61 *Federal Register* 8286 (March 4, 1996).

16. Chart, "Per Capita Personal Income: 1989 - 1993 Average," Bureau of Economic Analysis, U.S. Department of Commerce, and State Data Center, South Dakota State University, Brookings, South Dakota.

17. Chart, "Percent Population Below Poverty," 1990 Census and State Data Center.

18. "Counties seek to clarify questions about indigent care," Pierre *Capital Journal*, November 4, 1996.

19. See note 9 above.

20. See note 14 above.

21. See note 18 above.

This issue memorandum was written by Rosemary Quigley, Administrative Rules Analyst for the Legislative Research Council. It is designed to supply background

information on the subject and is not a policy statement made by the Legislative Research Council.