1988

State and Local Government Legal Responsibilities to Provide Medical Care for the Poor

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by
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I. Introduction

Over the past few years, litigation and legislation have increasingly focused on state and county government medical assistance programs. State and local government indigent care budgets have been strained due to increased unemployment, tax revenue declines, rapidly spiralling health care costs, and changes in federal government health insurance program reimbursement mechanisms. Increased competition and cost containment efforts have altered the traditional cost shifting system of private payors subsidizing indigent care that is not reimbursed by federal, state, or local governments.[1]

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[1] Hadley & Feder, *Hospital Cost Shifting and Care for the Uninsured*, 4 Health Aff. 67 (1985) [hereinafter Hadley & Feder].

The number of persons who lack health insurance has increased by 34.7% since 1977.[2] The health status of the poor is in extreme jeopardy. According to the Robert Wood Johnson Foundation, 15% of the uninsured families in 1982 needed medical care but did not receive it.[3] In California, state reductions in financing care for medically indigent adults resulted in greatly reduced access to necessary care and was directly attributed to the deaths of four Los Angeles County indigents.[4] Patients with chronic illness suffered significant hardship and rapid deterioration of health status.[5]

Public concern with rising taxes and other increased budgetary priorities have caused reductions in medical assistance program funding when the need for indigent care is at its highest. Budgetary limitations give state or local governments incentive to implement numerous impermissible changes, such as: (1) use of more restrictive eligibility criteria for medical assistance; (2) reduction in the types of services provided; (3) "streamlined" program administrative procedures; and (4) reduced provider reimbursement fees. Hospitals are under pressure to contain costs in order to meet limits under the Medicare prospective payment system and other prudent purchasers and, thus, are unable to provide indigent care through cross-subsidization of private payors.[6] Numerous hospitals have adopted stringent patient admission policies, as health advocates note that private facilities have begun "cherry-picking" or skimming off patients who are able to pay and "dumping" patients, who cannot pay or who underpay, onto understaffed and underequipped public facilities.[7]

This article will provide an overview of the extent to which state and local government entities must provide medical care for the poor and ways to enforce these obligations.

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[2] Address by Margaret Solvetta & Katherine Swartz, *National Health Policy Forum at George Washington University, Washington, D.C.* (June 1986).

[3] ROBERT WOOD JOHNSON FOUNDATION, UPDATED REPORT ON ACCESS TO HEALTH CARE FOR THE AMERICAN PEOPLE, SPECIAL REPORT NO. 1 (1983).

[4] Lurie, Ward, Shapiro & Brook, *Termination from Medi-Cal — Does It Affect Health?* 311 NEW ENG. J. MED. 480 (1984); Lurie, Ward, Shapiro, Gallego, Vaghaiwalla & Brook, *Termination of Medi-Cal Benefits — A Follow-Up Study One Year Later,* 314 NEW ENG. J. MED. 1266 (1986).

[5] *Id.*

[6] *See* Hadley & Feder, *supra* note 1.

[7] Annas, *Your Money or Your Life: Dumping Uninsured Patients from Hospital Emergency Wards,* 76 AM. J. PUB. HEALTH 74 (1986); Bernard, *Patient Dumping: A Resident's Firsthand View,* NEW PHYSICIAN, Oct. 1985, at 23; Frank, *Dumping the Poor — Private Hospitals Risk Suits,* A.B.A. J., Oct. 15, 1984, at 25; Friedman, *The Dumping Dilemma: The Poor are Always with Some of Us,* 56 HOSP. 51 (1982); Friedman, *The Dumping Dilemma,* 56 HOSP. 75 (1982); Himmelsteing, Woolhandler, Harnly, Bader, Silber, Backer & Jones, *Patient Transfers: Medical Practice as Social Triage,* 74 AM. J. PUB. HEALTH 494 (1984); Schiff, Ansell, Scholsser, Idris, Morrison & Whitman, *Transfers to a Public Hospital,* 314 NEW ENG. J. MED. 552 (1986); Taylor, *Ailing, Uninsured, and Turned Away: Americans Without Health Coverage Finding Hospital Doors Closed,* Washington Post, June 30, 1985, at 1, col. 1; *Hospitals in Cost Squeeze 'Dump' More Patients Who Can't Afford to Pay Bills,* Wall St. J., Mar. 8, 1985, Sec. 2, at 1.

II. LEGAL REQUIREMENTS

There is no federal constitutional right to medical care.[8] State and local government obligations to provide medical care for the poor are derived from state statutes and constitutions. Ideally, statutory or constitutional provisions state clear, express, and mandatory obligations to provide medical assistance to the poor. In actuality, state medical assistance program statutes or constitutional provisions lack specific guidelines and tend to be rather generalized and imprecise, leading to broad variations in benefit coverage, eligibility standards, and program administrations. Not surprisingly, when state and local governments adopt their own interpretations of the statutes' meaning, the governmental entities attempt to insulate themselves by narrow interpretations that avoid or limit their statutory duties.

Courts are often asked to determine the extent of governmental obligations, or to make judicial determinations of the legal effect of vague or ambiguous medical assistance statutes. The vagueness of these, sometimes antiquated, poor-relief statutes has contributed to inconsistent judicial interpretations of similar issues. For example, the Idaho Supreme Court has declared that the Idaho Medically Indigent Acts are

> [p]ossessed of . . . the most "inartful draftsmanship" . . . Very little within the statues is clear . . . . Only a complete redrafting of these acts will ever satisfactorily clear up the numerous ambiguities and inconsistencies which the acts have created . . . . Until that millenial day, however, we are obligated to give meaning to the act in a rational and reasonable manner, a not altogether easy task.[9]

Delineation of specific medical assistance program responsibilities requires careful review of the legislative intent and statutory purpose. Remedies for state or local failure to meet statutory or constitutional obligations to provide indigent medical care will be discussed in the enforcement section.

A. Statutory Provisions

The duty to provide indigent medical care is most often found in state statutes. The statutes typically impose responsibility on cities or counties, municipalities, special welfare districts, townships, or the state govern-

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[8] *See* Wideman v. Shallowford Community Hospital, Inc., 826 F.2d 1030 (11th Cir. 1987) (no duty based on either the federal constitution or statutes to require states or counties to provide medical care for the medically indigent); *see also* Harris v. McRae, 448 U.S. 297 (1980) (no constitutional right to have an abortion funded); Elliot v. Ehrlich, 203 Neb. 790, 280 N.W.2d 637, 641 (1979) (welfare benefits are not a fundamental right, and neither the state nor the federal government is under any constitutional obligation to guarantee the minimum levels of support).

[9] East Shoshone Hosp. Dist. v. Nonini, 109 Idaho 937, 938, 942, 712 P.2d 638, 639, 643 (1985) (Citation omitted).

ment. When state legislatures have created a mandatory duty to provide indigent medical care, they frequently use the word "shall" or "must" to clarify the non-discretionary nature of the duty. Ordinarily, the use of the word "shall" or "must" in a statute carries with it the presumption that they are used in the mandatory rather than discretionary sense. Use of the words "may", "is authorized to", or "can" creates an opposite presumption. But neither is a conclusive presumption.

Since governmental officials are subject to a high degree of responsibility for the care of the indigent sick, relevant statutes should be accorded a mandatory construction.[10] Characterizing a statute as mandatory or permissive determines what legal effect should be given its provisions. Courts generally will not compel a governmental entity to provide medical assistance based on a statute that is permissive rather than mandatory.[11] Nearly every state has a statutory provision which authorizes or mandates state or local governments to provide medical care for the poor.[12] Section 17000 of the California Welfare and Institutions Code provides that:

> Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, or by their own means, or by state hospitals or state or private institutions.[13]

This provision imposes a mandatory duty upon cities and counties to provide medically necessary health care to indigent California residents. In contrast, the Arizona Revised Code § 11-297 merely states that: "The board of supervisors, under such limitations and restrictions as are prescribed by law may:. . . provide for the care and maintenance of the indigent sick of the county . . .."[14] Although the language used in the Arizona statute is permissive, the Arizona Supreme Court has consistently held that the county obligation to provide medical care for the poor is mandatory.[15]

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[10]Town of City of Peoria v. Rauschkolb, 333 Ill. App. 411, 78 N.E. 2d 123 (1948); Male v. Pompton Lakes Borough Municipal Authority, 105 N.J. Super. 348, 252 A.2d 224 (1969); Tucker v. Toia, 43 N.Y. 2d 1, 371 N.E. 2d 449, 400 N.Y.S. 2d 728 (1977); Speed v. Blum, 97 Misc. 2d 163, 410 N.Y.S. 2d 970 (1978); Multnomah County v. Luihn, 180 Ore. 528, 178 P.2d 159 (1947); Town of Randolp v. Ketchum, 117 Vt. 468, 94 A.2d 410 (1953).

[11] *See, e.g.,* Perth Amboy Gen. Hosp. v. Board of Chosen Freeholders, 158 N.J. Super. 556, 386 A.2d 900 (1978) (statute which authorized counties to make payments to hospitals providing care to indigents did not require counties to do so).

[12] *See generally* M. DOWELL, NATIONAL HEALTH LAW PROGRAM MANUAL ON STATE AND LOCAL RESPONSIBILITY TO PROVIDE MEDICAL CARE FOR INDIGENTS (1985) [hereinafter M. DOWELL].

[13] CAL. WELF. & INST. CODE § 17000 (West 1980).

[14] ARIZ. REV. STAT. ANN. § 11-297 (1985).

[15] Hernandez v. County of Yuma, 91 Ariz. 35, 369 P.2d 271 (1962); Industrial Comm'n v. Navajo County, 64 Ariz. 172, 167 P.2d 113 (1946) (In each case, the Arizona Supreme Court interpreted two statutes authorizing counties to care for the indigent sick and to make appropriations for care "as the supervisors . . . deem necessary and adequate" to impose a mandatory duty to provide medical care for the poor.).

Some states have statutory provisions that do not explicitly mention medical care for indigents, but authorize or mandate state or local governments to provide for "relief", "support", or "maintenance" of the poor.[16] Courts have generally interpreted such statutes to include the provision of medical care.[17] At a minimum, those words mean that the government is responsible to provide or make available all services that are necessary for survival.

Where a statute is clear and unambiguous, the expressed intent of the legislature must be given effect.[18] Courts will give effect to every word, clause and sentence of a statute, where possible.[19] Where a statute makes it the duty of the state or local government to provide for indigent persons, that duty is mandatory and must be complied with strictly.[20] A mandatory statute cannot be ignored due to insufficient government funds,[21] nor may program administrators establish impermissible restrictions on eligibility or scope of available services.[22]

Statutes of authorization are essentially permissive but are viewed as mandatory if such was the intention of the legislature in enacting the statute.[23] The legislative history of the indigent care statutory provision may be an important aid in determining whether the legislature intended the statute to be mandatory or discretionary.[24] Legislative intent may be ascertained by determining the objective to be achieved by the statute and considering the consequences which would result from construing the statute as mandatory or permissive. The mandatory or permissive distinction is also important in the context of the amount, duration, and scope of medical care required to be provided. The extent of state or local government obligations depends on the express terms of the statute, legislative intent, and judicial interpretations of the provisions.[25] As noted by the Kansas Supreme Court: "Consideration must be given to the legislative history, the language of the statute, its subject matter, the importance of its provisions [and] their relation to the general object intended to be accomplished by the act . . . ."[26] Statutory use of permissive words such as "may",

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[16] *See generally* M. DOWELL, *supra* note 12.

[17] *In re* Larson, 215 Minn. 599, 11 N.W.2d 145 (1943); Jerauld County v. St. Paul Mercury Indem. Co., 76 S.D. 1, 71 N.W.2d 571 (1955).

[18] SUTHERLAND STAT. CONST. § 8 46.01-46.07 (4th ed. 1985) [hereinafter SUTHERLAND].

[19] *Id.* at § 45.01.

[20] *See* Mooney v. Pickett, 4 Cal. 3d 669, 483 P.2d 1231, 94 Cal. Rptr. 279 (1971); Williams v. Shapiro, 4 Conn. Cir. Ct. 449, 234 A.2d 376 (1967); Wayne Township v. Lutheran Hosp., 160 Ind. App. 427, 312 N.E.2d 120 (1974); Lawson v. Shuart, 323 N.Y.S.2d 488 (1971); State *ex. rel.* Artega v. Silverman, 56 Wisc. 2d 110, 201 N.W.2d 538 (1972).

[21] *See supra* note 18; *see also infra* notes 37-48 and accompanying text.

[22] *See generally* SUTHERLAND, *supra* note 18, at § 45.01-.15.

[23] *See infra* notes 51-58 and accompanying text.

[24] *Id.*

[25] *Id.*

[26] Wilcox v. Billings, 200 Kan. 654, 438 P.2d 108 (1968).

"authorized", or "empowered" create a mandatory obligation when the requisite duty is imposed upon public officials and their acts are for the benefit of the poor.[27]

Courts tend to favor mandatory interpretation unless it is absolutely clear that the legislature meant the statute to be permissive.[28] Statutes enacted to relieve the poor are generally accorded liberal construction with a view towards the accomplishment of beneficient objectives.[29] Even if the statute is adjudged permissive, it cannot be ignored at will. When reviewing discretionary conduct of government officials, courts will uphold the official conduct *unless* they find that it is inconsistent or in conflict with the statute, or that it is unreasonable or arbitrary and capricious. Even with discretionary provisions, courts lean towards a liberal construction of statutes so that remedial statutory purposes may be achieved.[30] Ambiguous statutes may also be interpreted by reference to related state statutes or similar statutes of other states.

B. Constitutional Provisions

Fifteen states have constitutional provisions which authorize or mandate the provision of medical care for the poor.[31] As with statutory provisions, the mandatory or permissive nature of the constitutional provision is important. Constitutional provisions are generally accorded greater weight than statutes since constitutions are considered the fundamental

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[27] *See generally* Board of Trustees, Univ. of Ark. v. Pulaski County, 229 Ark. 370, 315 S.W.2d 879 (1958); Robbins v. Superior Court, 38 Cal.3d 199, 200, 695 P.2d 695, 700-01, 211 Cal. Rptr. 398, 404 (1985); Harvey v. Bd. of Chosen Freeholders of Essex County, 30 N.J. 381, 153 A.2d 10 (1959); Miller v. Smith, 100 Wis.2d 609, 302 N.W. 2d 468 (1981); Board of County Comm'rs of Fremont v. State, 369 P.2d 537 (Wyo. 1962); *Ex. rel.* Ryan v. Retirement Bd. of Firemen's Annuity & Benefit Fund of Chicago, 136 Ill. App. 3d 818, 483 N.E.2d 1037 (1985); Harless v. Carter, 42 Cal. 2d 352, 267 P.2d 4 (1954); Iowa Nat'l Indus. Loan Co. v. Iowa State Dep't of Revenue, 224 N.W. 2d 437 (Iowa 1974); De Beaussaert v. Shelbvy Township, 122 Mich. App. 128, 333 N.W.2d 22 (1982); McNichols v. City of Denver, 101 Colo. 316, 74 P.2d 99 (1937).

[28] Damon v. Secretary of HEW, 557 F.2d 31, 33 (2nd Cir. 1977) (public welfare laws are construed liberally to effect their remedial purpose); State v. Herbert, 49 Ohio St.2d 88, 358 N.E.2d 1090 (1976); Town of Tiverton v. Fraternal Order of Police, 118 R.I. 160, 372 A.2d 1273 (1977); Midwest Mut. Ins. Co. v. Nicolazzi, 138 Wis. 2d 192, 405 N.W.2d 732 (1987).

[29] Ranquist v. Stackler, 55 Ill. App.3d 545, 370 N.E. 2d 1198 (1977); State *ex rel.* Florence-Carlton School Dist. No. 15-6 v. Board of County Comm'rs of Ravalli County, 180 Mont. 285, 590 P.2d 602 (1978); County of San Francisco v. Collins, 216 Cal. 187, 13 P.2d 912 (1932); Gordon v. District Unemployment Compensation Bd., 402 A.2d 1251 (D.C. App. 1979); Kindley v. Governor of Maryland, 289 Md. 620, 426 A.2d 908 (1981); Selectmen of Sterling v. Governor, 289 Mass. App. 597, 317 N.E. 2d 209 (1974); Burton v. New Jersey Dep't of Inst's & Agencies, 147 N.J. Super. 124, 370 A.2d 878 (1977); Hall v. Cook County, 359 Ill. 528, 195 N.E. 54 (1935); Shinrone Farms, Inc. v. Gosch, 319 N.W.2d 298 (Iowa 1982); Smith v. City Commission, 281 Mich. 235, 274 N.W. 776 (1937); City of Rome v. New York State Health Dep't, 65 A.D. 2d 220, 411 N.Y.S.2d 61 (1978).

[30] *See* SUTHERLAND, *supra* note 18 at § 71.08.

[31] *See generally* M.DOWELL, *supra* note 12.

law of the state. Public policy and social justice provide the basis for liberal construction of constitutional provisions designed to provide relief to the poor. In *Graham v. Reserve Life Insurance Company*,[32] a North Carolina constitutional provision requiring "beneficent provision for the poor" was interpreted to require state provision of medical treatment, without cost, to the indigent sick.

The New York legislature once attempted to exclude persons under the age of 21 from receiving welfare benefits unless they were living with a parent or relative. In *Tucker v. Toia*,[33] a New York appellate court ruled that this age restriction was unconstitutional and declared that welfare benefits were fundamental rights since the provision of welfare benefits is specifically mandated by the New York Constitution.

In *Butte Community Union v. Lewis*,[34] the Montana Supreme Court noted that "states may interpret their own constitutions to afford greater protections than the Supreme Court of the United States has recognized in its interpretations of the federal counterparts to state constitutions. Federal rights are considered minimal and a State constitution may be more demanding than the equivalent federal constitutional provision."[35]

Language variation or the legislative history may provide a basis for finding a state constitutional right to be more expansive than its federal analogue.[36] In recent years, litigants and judges have begun to look at state constitutions as sources of more expansive rights than those available under the federal Bill of Rights.[37]

III. Enforcing State And Local Government Duties

When state or local government officials fail to provide medical assistance as required, or promulgate unreasonable restrictions on eligibility or services, court actions may be brought to require the governmental agency to take affirmative action in order to perform its specified duties.

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[32] 274 N.C. 115, 161 S.E.2d 485 (1968).

[33] 43 N.Y.2d 1, 371 N.E.2d 449, 400 N.Y.S.2d 728 (1977).

[34] 712 P.2d 1309 (Mont. 1986).

[35] *Id.* at 1313 (citation omitted). Only New York has a constitutional provision as broad as Montana's. Compare Mont. Const. art. XII, § 3(3) with New York Const. art. VII, § 8, art. XVII, §§ 1, 3, 4.

[36] *See, e.g.*, People v. Anderson, 6 Cal.3d 628, 493 P.2d 880, 100 Cal. Rptr. 152 (1972), *cert. denied*, 406 U.S. 958 (1972) (where the California Supreme Court analyzed legislative history and differences in language between state and federal constitutional provisions); *see also* Robins v. Pruneyard Shopping Center, 23 Cal.3d 899, 592 P.2d 341, 153 Cal. Rptr. 854 (1979), *aff'd*, 447 U.S. 74 (1980); Batchelder v. Allied Stores Int'l, Inc., 388 Mass. 83, 445 N.E.2d 590 (1983) (broadens freedom of speech based on differences between state and federal constitutions); Right to Choose v. Byrne, 91 N.J. 287, 294, 450 A.2d 925, 933 (1982) (court based decision on "more expansive" state constitutional language).

[37] *See, e.g.*, Bamberger, *Boosting Your Case with Your State Constitution*, A.B.A. J., Mar. 1, 1986, at 45; Brennan, *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489 (1977); *Developments in the Law - The Interpretation of State Constitutional Rights*, 95 Harv. L. Rev. 1193 (1982); Hudnut, *State Constitutions and Individual Rights: The Case for Judicial Restraint*, 63 Den. U.L. Rev. 85 (1985).

In view of the hardship, pain and suffering caused to persons who are wrongfully denied medical assistance, all impermissible eligibility restrictions, inadequate program funding or other violations should be challenged through negotiations and/or litigation.

Local government regulations, policies or procedures may be struck down for any of the following reasons:

* In violation of constitutional, statutory or regulatory provisions;
* In excess of statutory authority;
* Made in accordance with an unlawful procedure;
* Clearly erroneous in view of reliable, probative and substantial evidence on the record;
* Arbitrary and capricious; or
* Affected by other areas of law.

When challenging local government policies or regulations developed pursuant to state or local government medical assistance program statutes, advocates should begin by discussing and negotiating with program administrators. Negotiations are a necessary prerequisite to any planned litigation, since litigation takes time and costs money. Further the implementation of judicially imposed remedies can be difficult. Despite the limitations of litigation, carefully planned lawsuits produce positive results and can be a uniquely effective tool in increasing access for the medically indigent. Moreover, lawsuits raise the public consciousness and attract the attention of taxpayers and governmental officials.

A. Failure to Fund or Establish a State or Local Government Medical Assistance Program as Required

The lack of available funds does not exempt governmental entities from their statutory obligations to provide medical care for indigents.[38] Failure to finance required medical assistance programs may be remedied by a writ of mandamus, mandatory injunction, or request for declaratory relief.[39]

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[38] St. John's Hosp. v. Town of Capitol, 75 Ill. App. 2d 222, 220 N.E.2d 333 (1966); Cahalan v. Wayne County Bd. of Comm'r, 93 Mich. App. 114, 286 N.W.2d 62 (1979) (budgetary reductions must not result in an appropriation so small that statutorily mandated functions cannot be fulfilled); Toia v. Schueler, 55 A.D.2d 621, 389 N.Y.S.2d 414 (1976); Wilkins v. Perales, 128 Misc.2d 265, 487 N.Y.S.2d 961 (1985) (state has mandatory duty to aid the needy and may not ignore this mandate); *contra* Board of Directors v. County Indigent Hosp. Claims Bd., 77 N.M. 475, 423 P.2d 994 (1967); Board of Comm'rs v. Ming, 195 Okla. 234, 156 P.2d 820 (1945); Cache Valley Gen. Hosp. v. Cache County, 92 Utah 279, 67 P.2d 639 (1937).

[39] *See* 54 C.J.S. *Mandamus* § 151 (1988 Supp.); *see, e.g.,* Rodgers v. Detrich, 58 Cal.App.3d 90, 128 Cal. Rptr. 261 (1976) (welfare agency's improper actions or failure to act may be corrected by mandamus); Carroll v. Miller, 116 Ill. App.3d 311, 451 N.E.2d 1034 (1983) (mandamus order issued to compel state agency to furnish welfare assistance to applicants who established eligibility); Creighton - Omaha Regional Health Care Corp. v. Douglas County, 202 Neb. 686, 277 N.W.2d 64 (1979) (appropriate legal remedies may be employed to correct a public office's refusal to perform its mandatory duty in respect to care of the poor); Hodge v. Ginsberg, 303 S.E.2d 245 (W. Va. 1983) (provision of adult protective services was

In *Madera Community Hospital v. County of Madera*,[40] a California court granted a writ of mandamus to a hospital seeking to compel funding of the county medical assistance program, and required the promulgation of regulations regarding the county's statutory obligation to aid and care for the medically indigent. In another case, the Ohio Supreme Court ruled that a county Board of Supervisors' refusal to fund the poor relief program necessitated county liability for the cost of hospitalization of an indigent patient who became ill during the period when no poor relief program was in operation.[41] The Ohio court noted that the claim for relief could be an action for restitution, and there was no need to resort to the extraordinary remedy of mandamus.[42]

After an Idaho county announced that its indigent care fund had been depleted and it would not pay indigent medical assistance claims until the following year, an Idaho court ruled that indigents were entitled to seek declaratory judgment to the effect that medical aid could not be withheld because of a lack of funds.[43] In *San Francisco v. Superior Court of San Francisco*,[44] an analogous general assistance case, the court ruled that the county had a duty to relieve and support its indigents and the excuse that it could not afford to do so was unavailing. Similarly, a New York court ruled that a county may not evade its obligation to provide for the welfare needs of indigent residents because of the county legislature's refusal to allocate necessary funding.[45] Moreover, the expenditure of limited funds must be allocated based on some system of priority; the allocation should be

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mandatory when discretionary plan for comprehensive system of adult protective services was developed, and the agency's interpretation of the statute was inapplicable since it was unduly restrictive and in conflict with legislative intent); McGraw v. Hansbarger, 301 S.E.2d 848 (W. Va. 1983)(mandamus order directed state agency to provide detoxification and alcoholism programs at community mental health center and compelled the state government to fund such services); *see generally* Brown & Cousineau, *Effectiveness of State Mandates to Maintain Local Government Health Services for the Poor*, 9 J. HEALTH, POL. POL'Y & L. 223 (1984).

[40] 155 Cal. App. 3d 136, 201 Cal. Rptr. 768 (1984); *see also* Sandergren v. Florida *ex rel.* Sarasota County Pub. Hosp., 397 So. 2d 657 (Fla. 1981) (since the Florida legislature had declared that counties must provide mental health services, funding of local program was a clear legal duty which could be compelled by mandamus); Creighton - Omaha Regional Health Care Corp. v. Douglas County, 202 Neb. 686, 277 N.W.2d 64 (1979) (appropriate legal remedies may be employed to correct county's refusal to perform its mandatory duty to care for the poor and indigent); E.H. v. Matin, 284 S.E. 2d 232 (W.Va. 1981) (state hospital's failure to provide adequate care and treatment to mental patients was corrected by an action in mandamus).

[41] St. Thomas Hosp. v. Schmidt, 62 Ohio St.2d 439, 406 N.E.2d 819 (1980).

[42] *Id.*

[43] Harris v. Cassia County, 106 Idaho 513, 681 P.2d 988 (1984).

[44] 57 Cal. App. 3d 44, 128 Cal. Rptr. 712 (1976).

[45] Wiklins v. Perales, 128 Misc.2d 265, 487 N.Y.S.2d 961 (1985); *see also* Cahalan v. Wayne County Bd. of Comm'rs, 93 Mich. App. 114, 286 N.W.2d 62 (1979); King v. Director of Midland County Dep't of Social Servs., 73 Mich. App. 253, 251 N.W.2d 270 (1977).

evenhanded and not arbitrary.[46]

As an alternative to mandamus actions, when governments fail to carry out established required medical assistance programs, persons who meet statutory eligibility criteria may implead the responsible governmental entity as a defendant in collection actions brought by hospitals or physicians. A court may imply a government promise to pay absent an express contract, especially when the governmental entity had a mandatory duty to provide medical assistance to the poor.[47] In *New York City Health & Hosp. Corp. v. Jones*,[48] a court ruled that the state Department of Social Services was liable to indemnify an indigent for a hospital collection judgment rendered against him for hospitalization. The court noted that a quasi-contractual duty could be imposed on the government to hold the indigent patient harmless.[49]

Attorneys representing the poor should also consider filing collection action cross-complaints against governmental entities for causing emotional distress and negligent impairment of their clients' credit rating. Hospital collection actions against persons eligible for state or county medical assistance programs may also violate state debt collection practice statutes.

B. The Scope of Services Which Must Be Provided

Most state statutes do not define the types or amounts of medical services to which eligible individuals are entitled.[50] In general, the amount, duration, and scope of state and local government medical assistance programs are left to agency discretion. Since no statutory requirement is intended by the legislature to be superfluous, the statute should be construed according to its subject matter and the purpose for which it was enacted. Review of statutory enabling language, legislative history, and judicial interpretations are the primary indicators of the statute's true purpose. For example, the preamble to the Idaho medical assistance statute states that its purpose is to "provide suitable facilities and provisions for the care and hospitalization of persons in the state."[51]

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[46] *See* Cahalan v. Wayne County Bd. of Comm'rs, 93 Mich. App. 114, 286 N.W.2d 62 (1979); Caldwell v. Department of Social Welfare, 134 Vt. 96, 353 A.2d 336 (1976); Pannell v. Thompson, 91 Wash. 2d 591, 589 P.2d 1235 (1979).

[47] Mt. Carmel Medical Center v. Board of County Comm'rs, 1 Kan. App. 2d 374, 566 P.2d 384 (1977); Creighton - Omaha Regional Health Care Corp. v. Douglas County, 202 Neb. 686, 277 N.W.2d 64 (1979); St. Thomas Hosp. v. Schmidt, 62 Ohio St.2d 439, 406 N.E.2d 819 (1980).

[48] 117 Misc. 2d 61, 457 N.Y.S.2d 355 (1982).

[49] *Id. See also* RESTATEMENT (SECOND) OF CONTRACTS § 302 (1988) which provides that "[u]nless otherwise agreed between promisor and promisee, a beneficiary of a promise is an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties and . . . the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance."

[50] *See generally* M. DOWELL, *supra* note 12.

[51] IDAHO CODE § 31-3501 (1984 & Supp. 1988).

Review of legislative statutory intent may indicate a desire to ensure that all persons obtain necessary medical care of all kinds. The word "necessary" refers to that which is needed for accomplishing a given purpose as determined by persons objectively qualified to make the judgment of need.[52] Medical necessity should be the only criteria for deciding whether to fund certain services for medical assistance recipients. Benefits provided under minimum coverage health insurance programs and health maintenance organizations (HMOs) are examples of minimum services which should be provided under state or local government medical assistance programs. The Health Maintenance Organization Act of 1973[53] lists the following services as required basic medical services:

* Hospital services (inpatient and outpatient);
* Physician services;
* Emergency medical care;
* Limited outpatient mental health services;
* Alcohol and drug abuse treatment;
* Laboratory, x-ray;
* Home health services;
* Immunizations, contagious disease control, and other preventive health services.

While counties may have discretion in how they fulfill their duty to provide indigent health care, this discretion is not absolute. It must be exercised within fixed boundaries and consistent with the underlying statutes which impose the duty. A New York court ruled that the types of care, services, and supplies available under the state medical assistance program are not limited to those specifically referred to under that statute.[54] Thus, an elderly widow was entitled to medical assistance funding for a special diet prescribed as treatment for hypoglycemia, and to reimbursement for the difference between the cost of that diet and a normal diet for the six years since she applied for that assistance. An Idaho court recently ruled that the provision of medical assistance required county reimbursement for an indigent patient's private physician bills.[55]

A New Jersey poor relief statute, which provided that the county *"shall render* such aid and material assistance as he may in his discretion,

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[52] *See, e.g.*, Pinneke v. Preisser, 623 F.2d 546 (8th Cir. 1980); Dodson v. Parham, 427 F.Supp. 97 (N.D. Ga. 1977); Jeneski v. Meyers, 163 Cal. App.3d 18, 209 Cal. Rptr. 178 (1984), *cert. denied,* 471 U.S. 1136 (1985); G.B. v. Lackner, 80 Cal. App.3d 64, 145 Cal. Rptr. 555 (1978); J.D. v. Lackner, 80 Cal. App.3d 90, 145 Cal. Rptr. 570 (1978); Brooks v. Smith, 356 A.2d 723 (Me. 1976); Doe v. Department of Pub. Welfare, 257 N.W.2d 816 (Minn. 1977).

[53] Health Maintenance Organization Act of 1973, Pub. L. No. 93-222, 87 Stat. 914 (1973), as amended Pub. L. No. 100-517, 102 Stat. 2578 (1988).

[54] Denton v. Perales, 129 A.D.2d 636, 514 N.Y.S.2d 115 (1987), *aff'd*, 72 N.Y.2d 979, 530 N.E.2d 1284, 534 N.Y.S. 2d 364 (1988).

[55] Saxton v. Gem County, 113 Idaho 929, 750 P.2d 950 (1988).

. . . deem necessary to the end that such person may not unnecessarily suffer from sickness," was held in *Higdon v. Boning* to require the town to provide physical therapy to a disabled indigent patient.[56] Since the statute did not expressly define the sicknesses or diseases for which a needy person could receive assistance, the county was precluded from excluding such a common and inexpensive mode of medical treatment from coverage.[57] The *Higdon* court noted that the requirement to provide "necessary" medical assistance reflected a legislative intent to provide for the alleviation of human suffering and recognized certain basic human dignity, which is the duty of society to foster and preserve.[58] However, an Illinois court held that the statutory provision that "counties *may provide* any necessary treatment, care, and supplies required because of illness or injury" meant that agency administrators had discretion to determine whether to include payment for optical and nonemergency dental care.[59]

Several courts have ruled that medical assistance programs must provide transportation or reimburse travel expenses where an applicant's need to travel in order to obtain medical assistance is established.[60] A California court held that "when an emergency occurs which requires hospitalization, it necessarily follows that the duty to provide medical care includes the duty to provide emergency transportation."[61] A South Dakota court ruled that a South Dakota county was liable for the costs of airplane ambulance transport services provided to an indigent resident.[62]

Despite non-specific language in the California general assistance statute, a California appellate court relied on statutory language, which

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[56] Higdon v. Boning, 121 N.J. Super. 276, 296 A.2d 569 (1972).

[57] *Id.* at 279, 296 A.2d at 572.

[58] *Id.*

[59] Miller v. Illinois Dep't of Pub. Aid, 94 Ill. App.3d 11, 418 N.E.2d 178 (1981); *see generally* Zuravsky v. Asta, 116 Ariz. 473, 569 P.2d 1371 (1977) (range of medical services provided by a county is best left to its board of supervisors); Lutheran Hosp. of Fort Wayne, Inc. v. Department of Pub. Welfare, 397 N.E.2d 638 (Ind. App. 1979) (normal pregnancy was not a "disease, defect, or deformity" within the meaning of the Indiana statute which required the county to provide assistance for persons suffering from a disease, defect, or deformity); *cf.* Sioux Valley Hosp. Ass'n v. Bryan, 399 N.W.2d 352 (S.D. 1987) (air ambulance service is a service the county owes to the poor since it is a mini-hospital outfitted with special equipment and trained medical personnel).

[60] City of Lomita v. County of Los Angeles, 148 Cal. App. 3d 671, 196 Cal. Rptr. 221 (1983), *later proceeding*, City of Lomita v. Superior Court, 186 Cal. App. 3d 479, 230 Cal.Rptr. 790 (1986) (county medical assistance duties include an obligation to reimburse city for emergency medical transportation); Clark v. Blum, 68 A.D.2d 1005, 415 N.Y.S.2d 115 (1979) (medical assistance program required to provide travel expenses where an applicant needs to travel in order to obtain medical assistance).

[61] *City of Lomita*, 148 Cal. App. 3d at 673, 196 Cal. Rptr. at 221; *see also* City of Lomita v. Superior Court, 186 Cal. App. 3d 479, 230 Cal. Rptr. 790 (1986) (writ of mandamus issued to require counties to provide emergency medical transportation to low-income residents).

[62] Sioux Valley Hosp. Ass'n v. Bryan, 399 N.W. 2d 352 (S.D. 1987).

required local welfare agencies to "relieve and support" and to provide "appropriate aid and services to all its needy and distressed," and directed the local welfare agency to provide general assistance and care, which provided all the benefits necessary for basic survival.[63] The court ruled that setting general assistance grant standards so far below what is necessary to survive, for persons who have no other means to live, is arbitrary and capricious and not consistent with the objects and purposes of the law requiring such aid. Similarly, in *State ex rel. Ventrone v. Birkel*,[64] the Ohio Supreme Court held that a $43/month general assistance grant was inadequate to satisfy the statutory mandate to establish general assistance levels "sufficient to maintain [the] health and decency" of eligible individuals.[65] The court ruled that the paltry general assistance grant was an abrogation of the clear intent of the Ohio legislature to provide indigents with minimum subsistence support.

Many medical assistance programs contain a limitation on the maximum days of hospitalization.[66] Unless expressly stated in the statutory mandate, such limitations are of dubious legality. In *Welborn Memorial Baptist Hospital v. County Dept. of Public Welfare*,[67] an Indiana court prohibited the county from limiting the maximum number of days for indigent hospital care. The court ruled that the legislature had not granted the county the discretion or authority to limit reimbursement of hospital expenses incurred by indigents.[68] All program limitations must be consistent with the relevant medical assistance statute, and agency-based limitations on the provision of poor relief may not be justified by the need to conserve public funds.[69] Limiting indigent medical care to public hospitals or facilities accessible to all county residents may be also contrary to the intent of medical assistance statutes. In *Washoe County v. Wittenbert*,[70] the Nevada Supreme Court held that the mere operation of a county hospital

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[63] Boehm v. Superior Court, County of Merced, 178 Cal. App. 3d 494, 223 Cal. Rptr. 716 (1986).

[64] 54 Ohio St.2d 461, 377 N.E.2d 780 (1978), *later appealed*, State *ex rel.* Ventrone v. Birkel, 65 Ohio St.2d 10, 417 N.E.2d 1249 (1981); *but see* Collins v. Hoke, 705 F.2d 959 (8th Cir. 1983) (state statute obligating counties to provide general relief gives the county board of social services complete discretion as to form and amount of support it would provide).

[65] *State ex rel. Ventrone*, 54 Ohio St.2d at 462, 377 N.E.2d at 781.

[66] *See generally* M. DOWELL, *supra* note 12; *see also* INTERGOVERNMENTAL HEALTH POLICY PROJECT, GEORGE WASHINGTON UNIVERSITY, STATE PROGRAMS OF ASSISTANCE FOR THE MEDICALLY INDIGENT (1985).

[67] 442 N.E.2d 372 (Ind. Ct. App. 1982).

[68] *Id.*

[69] *See infra* notes 97, 108; *see also* Orr v. Orr, 440 U.S. 268, 281 (1979); Rinaldi v. Yaegar, 384 U.S. 305 (1966). *Cf.* Warrior v. Thompson, 96 Ill.2d 1, 449 N.E.2d 53 (1983) (Governor permitted to implement Employment Emergency Budget Act regulations which placed a maximum day limitation on general aid-medical assistance and eliminated the Aid to the Medically Indigent Program).

[70] 100 Nev. 143, 676 P.2d 808 (1984).

was not sufficient to fulfill the county obligation to provide medical care for indigents. The *Washoe* court noted that if there is a duty to provide care, and it cannot under the circumstances be reasonably provided at the county hospital, it must be provided elsewhere at the county's expense.[71] This argument may be used to secure access to emergency care, services unavailable at a county facility and satellite primary care sites, or transportation for people who live a great distance from a county facility. Geographic limitations are improper, beyond the scope of government discretion, and abrogate statutory intent to provide medical assistance to all indigents.

State or local governments which meet their statutory obligations through a network of public hospitals and clinics also have a duty to maintain public facilities in a manner so the indigent will receive high quality medical care. In *Ochoa v. Superior Court*,[72] the California Supreme Court ruled that governmental conduct manifesting a deliberate indifference to the serious medical needs of a person for whom the government was responsible is a 42 U.S.C. § 1983 civil rights violation because it impinges on an indigent's liberty interest protected by the due process clause and his/her right to be free from cruel or unusual punishment. In *Harris v. Harris County Hosp. Dist.*,[73] plaintiffs challenged the adequacy of a county hospital's facilities. The Texas appellate court ruled that in determining whether the hospital had exercised reasonable care the jury should consider "the physical custodial surroundings [provided] for mental patients."[74]

A recent California suit challenges state and county medical assistance funding cutbacks on the grounds that a wrongful death occurred because

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[71] *Id.* at 145-46, 676 P.2d at 810-11. *See generally* Trinity Memorial Hosp. of Cudahy, Inc. v. Milwaukee County, 113 Wis.2d 18, 334 N.W.2d 685 (1983) (attempt to establish one facility as primary care site ruled an impermissible precondition for eligibility due to inconsistency with the statutory provisions for eligibility); *see also* University of Utah Hosp. v. Bethne, 101 Idaho 245, 612 P.2d 1030 (1980) (definition of hospital in Idaho medical indigent statute does not limit payment of necessary medical care and treatment to only those hospitals located in Utah); *see also* McGraw v. Hansburger, 301 S.E.2d 848 (W. Va. 1983) (W. Va. Supreme Court required a local health director to provide inpatient detoxification services and other alcoholism treatment programs at all community health centers rather than just a couple of centralized locations); *but see* Warrior v. Thompson, 96 Ill.2d 1, 449 N.E.2d 53 (1983) (Governor, acting under 1982 Employment Emergency Budget Act, was permitted to place a maximum day limitation on general assistance and to eliminate entirely the aid to the Medically Indigent Program).

[72] 39 Cal. 3d 159, 703 P.2d 1, 216 Cal. Rptr. 661 (1979); *see also* Deer v. County of Alameda, No. 554052-9 (California Super. Ct. Nov. 9, 1986). A $200,000 settlement was reached in favor of a plaintiff who sued Alameda County and County administrators for causing the stillbirth of her child by providing her with grossly inadequate maternity care at the County hospital. Amy Deer brought an action for damages on four theories: negligence, deprivation of federal civil rights under 42 U.S.C. §§ 1981, 1983, various state statutes, and breach of trust by County administrators.

[73] 557 S.W.2d 353 (Tex. Ct. App. 1977).

[74] *Id.* at 355.

the public hospital had been allowed to operate with inadequate equipment, poor maintenance, and insufficient personnel to provide the quality of services available at private hospitals in the community.[75] The suit also alleges civil rights discrimination, since the brunt of state and county medical assistance cutbacks fell disproportionately on the black and Hispanic poor.

C. Removing Impermissible Eligibility Restrictions

Many state or county medical assistance programs utilize arbitrary categorical eligibility criteria such as unemployability, age, residency, citizenship, or require a person to be destitute rather than poor in order to receive medical assistance. When a state or local government distributes benefits unequally, the distinctions it makes are subject to review under state constitutions and the equal protection clause of the fourteenth amendment to the U.S. Constitution.[76]

Historically, social and economic welfare legislation have survived equal protection scrutiny by merely bearing a rational relationship to the statutory goal.[77] However, in recent years there has developed a heightened level of rational basis equal protection scrutiny and occasional application of intermediate scrutiny to strike down barriers to eligibility or termination of social welfare benefits that threaten an interest in survival.[78] Under

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[75] Jones v. Contra Costa County, No. 271331 (California Super. Ct. filed Nov. 12, 1985).

[76] U.S. CONST. amend. XIV, § 1 provides that "no state shall . . . deny to any person equal protection of the laws." Equal protection challenges to governmental action may occur when individuals are either classified or treated differently from those similarly situated.

[77] Under the rational basis test a law will be upheld unless the party challenging it proves that it has no rational relationship to any conceivable legitimate legislative purpose. *See, e.g.*, Schweiker v. Hogan, 457 U.S. 569 (1980); Dandridge v. Williams, 392 U.S. 471 (1970) (the Court rejected an equal protection challenge to a Maryland welfare statute that set a maximum limit on care assistance to families above a certain size, regardless of the number of additional children because the statute was rationally based); United States R.R. Retirement Bd. v. Fritz, 449 U.S. 166 (1980) (state may eliminate benefits to certain classes of persons on any basis not "patently arbitrary" or irrational); Richardson v. Belcher, 404 U.S. 78 (1971) (upheld reduced social security benefits, which offset worker's compensation benefits on a rational basis test); Jefferson v. Hackney, 406 U.S. 635 (1977) (Court rejected a challenge to a Texas law, which provided lower grants to AFDC recipients than to elderly who received social security benefits); *see, e.g.*, Exxon Corp. v. Eagerton, 462 U.S. 176 (1983); San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1 (1973).

[78] Ranchburg v. Toan, 709 F.2d 1207 (8th Cir. 1983) (a Missouri welfare statute, which limited the class of disabled persons who could receive home heating bill assistance benefits to those receiving one of the types of public assistance benefits in the statute but denied benefits to those receiving benefits under the medical program, lacked a rational basis, and therefore, violated equal protection); Butte Community Union v. Lewis, 712 P.2d 1309 (Mont. 1986) (legislative classification denying welfare benefits to "able-bodied" under 50 who did not have dependent children was invalidated after being subjected to heightened scrutiny equal pro-

intermediate review, classifications must be "substantially related" to the achievement of "important governmental objectives."[79] This intermediate level of scrutiny permits the court to carefully review the objective and means of the challenged statute, instead of merely pronouncing it valid or invalid under traditional rational basis review. The court does not accept every goal or objective offered by the state, and if an alternative means exists which does not disadvantage the "group" or "classification," the court can require the legislature to utilize least restrictive alternative means by invalidating the legislation. Recent cases have based the need for heightened judicial scrutiny on the fact that the challenged classifications punished individuals for circumstances beyond their control and created "sensitive" groups or "discrete minorities."

The indigent sick have the characteristics of a sensitive class or minority: their poverty and illness is involuntary and a result of many circumstances beyond their control. Moreover, the lack of adequate health care creates a disadvantaged class. Thus classifications that exclude some of the indigent sick should be accorded a heightened standard of equal protection review; either intermediate scrutiny or a heightened rational basis review.

With heightened rational basis review, a government is required to produce convincing evidence that demonstrates a rational relationship between the statutory or regulatory classification and preeminent statutory goal. In determining the level of necessary scrutiny to apply courts will consider:

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tection analysis); Morales v. Minter, 393 F.Supp. 88 (D.Mass. 1975) (the court held that the exclusion of the elderly from eligibility for welfare assistance denied them equal protection because it bore no relationship to the program's purpose of aiding all Massachusetts residents in need of assistance); Medora v. Colautti, 602 F.2d 1149, 1152 (3rd Cir. 1979) (the court invalidated a welfare regulatory eligibility requirement which utilized grounds other than need "when disparate treatment is purposeful and results in denial of all aid to some, but not all similarly situated persons, the courts more closely examine the rationality of the classification." The court ruled that administrative classifications must be reasonable, not arbitrary, and must rest upon some ground having a "fair and substantial relationship" to the object of the legislation); Felder v. Foster, 71 A.D.2d 71, 421 N.Y.S.2d 469 (1979) (Saving money was not proper justification for terminating welfare assistance to single persons); Rich, *Equal Protection for the Poor: Fair Distribution to Meet Brutal Needs,* 24 SAN DIEGO L. REV. 1117 (1987); Pettinga, *Rational Basis with Bite,* 62 IND. L.J. 779 (1987); *see generally* Good, *Freedom From Want: The Failure of the United States Courts to Protect Subsistance Rights,* 6 HUM. RTS. Q. 335 (1984), *Intermediate Equal Protection Scrutiny of Welfare Laws that Deny Subsistence,* 132 U.PA.L. REV. 1547 (1984); Judinsky, *Selecting the Appropriate Standard of Review for Equal Protection Challenges to Legislation Concerning Subsistence Benefits,* 53 CIN. L. REV. 587 (1984); Abramson, *Equal Protection and Administrative Convenience,* 52 TENN. L. REV. 1 (1984). *Cf.* Barone v. Department of Human Servs., 210 N.J. Super. 276, 509 A.2d 786 (1986); Price v. Cohen, 565 F.Supp. 657 (E.D.Pa.), *rev'd,* 715 F.2d 87 (3rd Cir. 1983), *cert. denied.*, 465 U.S. 102 (1984).

[79] Craig v. Boren, 429 U.S. 190 (1976); Trimble v. Gordon, 430 U.S. 762 (1977).

(1) the character of classification in question;
(2) the relative importance to government benefits not received to the individuals in the class discriminated against; and
(3) the strength of the interest asserted by the state in support of the classification.

The requisite level of scrutiny will vary with

> the constitutional and societal importance of the interest adversely affected and the recognized invidiousness of the basis upon which the particular classification is drawn. A classification that denies all benefits to some similarly situated persons must be subjected to closer scrutiny than one that allocates some benefits to all similarly situated persons.[80]

"Maintaining the personal dignity and stability of persons on the edge of poverty serves not only their personal interests, but the interests of the society in which they live."[81] Denial of medical assistance interferes with the right to free speech, assembly and petition since the indigent sick will be unable to communicate or associate with the public. Medical assistance denials also violate the right to travel and the right to privacy through denial of access to birth control. The medically indigent are among those classes with the least political power; access to health care is a prerequisite to political participation and the medically indigent are "minorities" in need of protection from self-serving governmental political decisions. When persons sustain injuries or illnesses so grave that hospitalization is required to preserve life or restore physical well-being, access to health care is a fundamental right to life, and the state or local government's interest in creating eligibility classifications must be compelling to overcome their needs. Barriers to adequate health care prevent indigent persons from becoming productive members of society and lower the indigents status in the community, thus creating a disadvantaged class. As the Supreme Court noted in *Goldberg v. Kelley*[82] the termination of welfare benefits forces an indigent into a desperate struggle for survival and renders that person practically incapable of protecting his or her rights. Moreover, "legislation imposing special disabilities upon groups disfavored by virtue of circumstances beyond their control suggests the kind of 'class or caste' treatment that the Fourteenth Amendment was designed to abolish."[83]

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[80] Lyng v. Castillo, 477 U.S. 635, 639 n.3 (1986); Weber v. Aetna Casualty & Surety Co., 406 U.S. 164 (1972); Medora v. Colautti, 602 F.2d 1149, 1154 n.1 (3rd Cir. 1979).

[81] Soave v. Milliken, 497 F.Supp. 254, 262 (W.D. Mich. 1980).

[82] 397 U.S. 254, 264 (1970). *See also* Memorial Hosp. v. Maricopa County, 415 U.S. 250, 259 (1974) ("governmental privileges or benefits necessary to basic subsistence have often been viewed as being of greater constitutional significance than less essential forms of government entitlements").

[83] Plyler v. Doe, 457 U.S. 202, 218 n.14 (1982); *see also*, Price v. Cohen, 715 F.2d 87, 90 (3rd Cir. 1983) (discussing plight of plaintiffs who would probably be forced to seek survival on the street).

In *Plyler*, the Supreme Court indicated that intermediate scrutiny should be applied when the denial of an "important" interest with a close nexus to constitutional rights would result in discriminatory infringement of the constitutional rights of a disadvantaged group.[84] In *Plyler* the Court was faced with a Texas law that denied free public education to the children of illegal aliens.[85] The Court declined to find the disadvantaged class of illegal aliens suspect, or the right of education fundamental, but found that the challenged classification "can hardly be considered rational unless it furthers some substantial goal of the state."[86] The Court based the use of intermediate scrutiny on the nature of the classification and the importance of the right affected by the classification. The classification of illegal alien children warranted intermediate scrutiny since it burdened a "discrete class of children, not accountable for their disabling status."[87]

Texas advanced three reasons to justify the statute: (1) the preservation of the state's limited resources, (2) the burden imposed on the state to provide quality education for the undocumented children, and (3) the fact that undocumented children were less likely to remain in the state to put their education to productive social or political use. The statute was invalidated because the state could not demonstrate that any of these interests was substantial.[88] The *Plyler* decision holds that where the complete denial of an important interest is threatened, the court will inquire whether the classification "[r]eflects a reasoned judgment consistent with the idea of equal protection . . . ."[89]

In a more recent U.S. Supreme Court decision a unanimous panel overturned a zoning ordinance that required a special use permit for a group home for the mentally retarded.[90] The Court purported to employ rational basis minimal scrutiny, but in fact subjected the ordinance to a heightened form of scrutiny. The Court ruled that the trial court record did not justify requiring a special permit for the group home.[91] Traditional rational

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[84] 457 U.S. 202 (1982).

[85] The *Plyler* Court indicated that the application of intermediate scrutiny hinges on the vulnerability of a "disfavored underclass" and on the importance of the rights affected. *Id.* at 221 n.20. The Court asserted that illegal aliens were a disfavored underclass and virtually defenseless against exploitation. *Id.* at 219, 222; *see, e.g.*, Douglas v. California, 372 U.S. 353 (1963) (indigency treated as a sensitive class).

[86] 457 U.S. at 224.

[87] The Court noted the importance of education in the democratic process and in promoting upward social mobility. The Court then noted that a denial of basic education would deny children "the ability to live . . . and would perpetuate a subclass of illiterates." *Id.* at 230.

[88] *Id.* at 227-30.

[89] *Id.* at 230.

[90] City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985).

[91] *Id.* at 448.

basis scrutiny would have required no such examination of the record to determine whether the policies were actually supported by fact. Three justices concurred separately, insisting that the provisions at issue should have been declared invalid under the intermediate scrutiny standard. They contended that heightened scrutiny was necessary due to the importance of the interest at stake.[92]

In *Butte Community Union v. Lewis*,[93] the Montana Supreme Court struck down a statute that excluded all able-bodied persons under the age of thirty-five having no dependent minor children living with them, from general assistance eligibility and provided very limited general assistance to able-bodied persons between the ages of thirty-five and forty-nine. Utilizing intermediate scrutiny, the court concluded that the challenged statute established an impermissible discriminatory classification which denied equal protection. In determining whether the statute violated the equal protection clause of the Montana Constitution, the court required the state to show that the classification of welfare benefits on the basis of age was reasonable, and that its interest in classifying welfare recipients on the basis of age was more important than the people's interest in obtaining welfare benefits.[94] The state failed to show that able-bodied persons under the age of fifty were more capable of surviving than those over fifty; nor did it demonstrate that the interests of the state outweighed those of the individuals affected.

In response, the Montana legislature passed the following legislation: "The legislature, in recognition of the need to expand the employment opportunities available to able-bodied persons who do not have dependent minor children, will provide two months of general relief so that such able-bodied persons may be eligible for the job readiness training."[95] Though deleting the reference to age, the new legislation classified the poor into two groups: (1) able-bodied persons with minor dependent children and the infirm are eligible for general assistance 12 months per year; and (2) able-bodied persons with no minor children are eligible only two months per year.

This legislation was also challenged on equal protection grounds. The Montana Supreme Court ruled that the classification "able-bodied with no minor dependent children" is unconstitutional since it bears no logical relation to need for assistance since the legislation falsely assumes that the excluded class is an employable one,[96] and does not consider numerous barriers to employment. The classification "without dependent minor children" also is unreasonable because it falsely assumes that such persons could never be determined indigent.

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[92] *Id.* at 458-60 (Marshall, Brennan, Blackmun, JJ., concurring in part, dissenting in part).

[93] 712 P.2d 1309 (Mont. 1986).

[94] *Id.* at 1314.

[95] In June, 1986, the legislature passed HB 33.

[96] Butte Community Union v. Lewis, 745 P.2d 1128 (Mont. 1987).

In *Ranschburg v. Toan*,[97] a free heat program sponsored by the state of Missouri for poor, elderly, and disabled persons excluded participants in the state medical assistance program who already had been determined to be disabled under standards equally as restrictive as those in the free heat program. The Eighth Circuit Court of Appeals ruled that to exclude persons similarly situated to those receiving the free heat assistance lacked a rational basis and, therefore, violated equal protection.[98]

Though unwilling to create new quasi-suspect classifications, or to find fundamental rights infringed upon, courts increasingly have been prone to strike down legislation as serving no legitimate purpose and to demand justification stronger than a proffered governmental interest. Past courts had found almost any governmental purpose legitimate, without regard to whether it actually motivated the challenged legislation, or was even advanced in defense of the classification. Now, use of the rational basis testing equal protection analysis no longer means that the challenged statute or policy will be automatically found valid. On the contrary, courts have explicitly used the rational basis test to find state statutes or policies in violation of the equal protection clause. In four cases during the 1984 term, the Supreme Court struck down state or municipal statutes for equal protection violations.[99] These recent Supreme Court decisions hold that a classification that is arbitrary and bears no rational relationship to a legitimate governmental interest offends equal protection of the law. Thus to uphold challenged legislation, the Court must find that the statutory classifications are rationally related to legitimate state interests or objectives, and the Court must determine what governmental interests are served, whether those interests are legitimate, and whether they are rationally related to the statutory classifications created to serve them. State objectives, when served by discriminatory means, are not "legitimate" and therefore violate equal protection.[100]

Medical assistance program rules and regulations must be consistent with the statutory mandate, and be reasonably necessary to effectuate its purpose.[101] An administrative agency cannot alter the plain language of a statute or adopt regulations contrary to the language of the statute pursuant to which they are adopted.[102]

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[97] 709 F.2d 1207 (8th Cir. 1983).

[98] *Id.* at 1210.

[99] City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985); Hooper v. Bernalillo County Assessor, 472 U.S. 612 (1985); Williams v. Vermont, 472 U.S. 14 (1985); Metropolitan Life Ins. v. Word, 470 U.S. 869 (1985). *See also* Zobel v. Williams, 457 U.S. 55 (1982); Wohlgemuth v. Williams, 415 U.S. 901 (1974); U.S. Dept. of Agric. v. Moreno, 413 U.S. 528 (1973).

[100] *See generally Moreno*, 413 U.S. 528.

[101] San Francisco v. Superior Court, 57 Cal. App.3d 44, 50, 128 Cal. Rptr. 712, 716 (1976) ("We have no doubt that when statutes affecting the well-being, perhaps the very survival of citizens of this state, are being violated with impunity by the county, an agent of the state, the courts, as final interpreters of the law, must intervene to enforce compliance.")

[102] Biomedical Labs, Inc. v. Trainor, 68 Ill.2d 540, 370 N.E.2d 273 (1977).

1. Employability

Some medical assistance program administrators require a person to be unemployable or disabled in order to obtain medical assistance, although relevant statutory provisions do not exclude employable individuals from eligibility. Obviously, people can be "poor" or "needy" despite their potential employability. When a statute equates eligibility for indigent medical assistance with financial need, further restrictive provisions, such as employability, narrow eligibility beyond the legislative purpose and are thus unconstitutional.[103] Employable persons may not be denied eligibility by agency policy or regulations, "upon the theory that their employability is an economic resource which the county may weigh against their indigence because it is no more than a theoretical resource."[104]

In *Page v. Auburn*,[105] a Maine court ruled that a city's general assistance program could not be conditioned on unemployability because the statutory authorization to provide general assistance was conditioned on need alone. A Montana statute that eliminated general assistance to able-bodied persons under the age of 35 who did not have minor dependent children and reduced benefits for ages 35-49 without dependent children was also recently found unconstitutional.[106] The Montana Supreme Court ruled that the state constitution, the statute's legislative history, and state case law require Montana counties to provide general assistance benefits sufficient to meet the needs of all of the indigent sick.[107] "Although states may have great discretion in the area of social welfare, they do not have unbridled discretion. They must still explain why they chose to favor one group of recipients over another."[108]

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[103] *See supra* notes 99-102 and *infra* notes 104-110.

[104] Bernhardt v. Alameda County Bd. of Supervisors, 58 Cal. App. 3d 806, 811, 130 Cal. Rptr. 189, 192 (1976); *see also* Covington v. Missouri State Div. of Family Serv's, 603 S.W.2d 103 (Mo. App. 1980); Nelson v. Board of Supervisors, 190 Cal.App. 3d 25 (1987) (county general assistance program unlawfully excluded indigents without fixed addresses); Mooney v. Pickett, 4 Cal.3d 669, 679-81, 94 Cal. Rptr. 279, 281-83 (1971) (court struck down county regulation denying non-emergency general assistance to employable single men). *But see*, Smith v. Peet, 29 Or. App. 625, 564 P.2d 1083 (1977) (state had discretion to exclude employable persons from welfare assistance).

[105] 440 A.2d 363 (Me. 1982); *see generally* Pascucci v. Vaggot, 71 N.J. 40, 362 A.2d 566 (1976); Jennings v. St. Louis, 323 Mo. 173, 58 S.W.2d 979 (1933); City of Los Angeles v. Post War Public Work Review Bd., 26 Cal.2d 101, 156 P.2d 746 (1945); *contra*, Herrera v. Jamieson, 124 Ariz. 133, 602 P.2d 514 (1979); Cozart v. Winfield, 687 F.2d 1058 (7th Cir. 1982); Smith v. Peet, 29 Or. App. 625, 564 P.2d 1083 (1977).

[106] Butte Community Union v. Lewis, 712 P.2d 1309 (Mont. 1986).

[107] *Id.* at 1313-14.

[108] Ranschburg v. Toan, 709 F.2d 1207, 1222 (8th Cir. 1983) (invalidating Missouri statute which limited the class of disabled persons who could receive benefits to those receiving the types of public assistance benefits enumerated in the statute but which denied such benefits to those receiving benefits under the medical assistance program).

Even if a statute limits the provision of poor relief to unemployable persons, "employability" should be defined as the true potential to obtain employment, rather than mere physical ability to work.[109] In *Covington v. Missouri State Division of Family Services*,[110] a Missouri appellate court ruled that the denial of welfare benefits to a 49-year-old male with a third grade education who had been previously employed only in a variety of manual labor positions was an improper determination of employability. *Covington* noted that an employability determination should consider plaintiff's illness and the extent to which employment was available for a person with plaintiff's education, training, and experience.[111] The following factors are significant barriers to employment which should also be considered in determining employability:

* age
* work history
* English-speaking ability
* literacy
* job availability
* lack of transportation
* no address or phone
* chronic health problems
* poor appearance or hygiene
* alcoholism or chemical dependency[112]

Classifications based on employability create invidious distinctions between two similarly situated types of people. To pass constitutional muster, state or local governments must demonstrate that their classification is tailored to serve a compelling government interest.[113] In *Shapiro v. Thompson*,[114] the U.S. Supreme Court stated:

> We recognize that a state has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. *But a state may not accomplish such a purpose by invidious distinctions between classes of its citizens.* [emphasis added][115]

Such classifications also create an irrebuttable presumption that employable persons can satisfy their medical assistance needs even when unemployed or underemployed. This presumption is violative of the due process clause of the U.S. Constitution.[116]

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[109] Pascucci v. Vaggot, 71 N.J. 40, 362 A.2d 566 (1976); *see also* A. WICKS & C. CARO, FACTORS AFFECTING THE EMPLOYABILITY OF WELFARE RECIPIENTS (1986).

[110] 603 S.W.2d 103 (Mo. Ct. App. 1980).

[111] *Id.* at 105.

[112] *See generally* Neiman, *General Assistance: A Preliminary Legal Analysis*, 13 CLEARINGHOUSE REV. 175 (1979); Hodge v. Ginsburg, 303 S.E.2d 245 (W.Va. 1983) (person who lacks means to maintain permanent residence was "incapacitated adult" under statute authorizing the county to provide adult protective service to incapacitated adults).

[113] *See supra* notes 75-95.

[114] 394 U.S. 618 (1969).

[115] *Id.* at 633.

[116] *Id.* at 632-33. *See also* Vlandis v. Klein, 412 U.S. 441 (1973); Stanley v. Illinois, 405 U.S. 645 (1972); Soave v. Milliken, 497 F.Supp. 254 (W.D. Mich. 1980); U.S. Dept. of Agric. v. Murray, 413 U.S. 508 (1973). *Cf.* Weinberger v. Salfi, 422 U.S. 749 (1975) (irrebutable presumption repudiated in area of welfare eligibility requirements).

2. Age

Age restrictions for state medical assistance programs were prohibited in *Morales v. Minter*.[117] In *Morales*, a Massachusetts statute which barred persons below 18 years of age from receiving general medical relief was struck down as a violation of the equal protection and due process rights of emancipated indigents under 18 who met financial eligibility requirements.[118] When eligibility criteria for medical assistance programs excludes classes of individuals, members of the class may show that the classification is wholly irrelevant to the achievement of the statutory and legislative objective. In *Fecht v. Washington Dep't of Social & Health Serv's*,[119] a public assistance maximum age limit established by regulation was declared unauthorized by state statute and was therefore void.

3. Residency

The liability of a state or local government for medical assistance provided for an indigent is usually determined by the place or residence of the person aided or supported. To constitute residency the applicant must live in the state and/or county with the intent to make it his home. Requirements that an applicant for medical assistance live in a state or county for a certain durational period of time as an eligibility condition impose an unconstitutional limitation on the right of interstate travel.[120] Since residency does not determine need; in the absence of statutory provisions expressly excluding nonresidents, *all* needy persons should be provided medical assistance. State or local government medical assistance programs have traditionally utilized durational residency requirements of variable degrees. For example, the Idaho medical assistance statute requires applicants to have been a resident of the State of Idaho for at least one year and of the county for at least six months preceding the application for assistance.[121]

Laws that prohibit newly arrived persons in a state or county from receiving the same benefits as established residents are subject to strict

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[117] 393 F.Supp. 88 (D. Mass. 1975); *but see* Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307 (1976) (age classifications are not suspect classes requiring strict scrutiny).

[118] *Morales*, 393 F.Supp. at 96.

[119] 86 Wash.2d 109, 542 P.2d 780 (1975); *but see* Price v. Cohen, 715 F.2d 87 (3rd Cir. 1983).

[120] *Shapiro*, 394 U.S. 618 (1969). *See also* Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974) (state law requiring one year residency in the county for persons seeking free non-emergency medical care was struck down). *Cf.* Sioux Valley Hospital Ass'n v. Kingsbury County, 414 N.W.2d 816 (S.D. 1987) (intent to remain in state not sufficient evidence to meet poor relief residency requirement).

[121] IDAHO CODE § 31-3504 (1984 & Supp. 1988).

judicial scrutiny.[122] Durational residence requirements are subject to strict scrutiny because they may penalize exercise of the constitutional right to travel, which is a fundamental personal right.[123] In *Shapiro*, the U.S. Supreme Court struck down, on fourteenth amendment equal protection grounds, a one year state residency requirement for state welfare benefits.[124] The Court held that there was no compelling state interest to justify imposing a classification of indigent persons which impinged upon their constitutional right to travel freely from state to state.[125] The Court also ruled that durational residency requirements are unconstitutional because they create irrebuttable presumptions that everyone who moves interstate does so for the sole purpose of obtaining higher welfare benefits.[126] In *Memorial Hospital v. Maricopa County*,[127] the U.S. Supreme Court struck down an Arizona county medical assistance program's durational residency requirement. The *Memorial Hospital* Court noted that bona fide residency could be verified by means which did not impinge on the right to travel.[128] Residency should be determined by mere physical presence in the county with an intent to remain there for an indefinite period of time, and could be demonstrated through a rental agreement, proof of employment or unemployment registration.

4. Citizenship

State and local governments may not deny medical assistance benefits to lawfully resident aliens. In *Graham v. Richardson*,[129] the U.S. Supreme Court held that state restrictions on welfare benefits for lawfully resident aliens, as a class, are inherently suspect and thus subject to strict scrutiny analysis under the equal protection clause. In *Graham*, the Supreme Court also ruled that such restrictions violated the supremacy clause because they interfered with Congress' power to establish the conditions for alien residence in the United States.[130]

Undocumented immigrants, unlike lawfully resident aliens, are not a "suspect class" entitled to strict scrutiny judicial review. Thus, the power of state and local governments to deny medical assistance benefits to

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[122] *Shapiro*, 394 U.S. 618 (1969); *see also* Hodge v. Ginsburg, 303 S.E.2d 245 (W.Va. 1983); *but see* Bies v. Dep't of Pub. Welfare, 44 Pa. Commw. 274, 40 A.2d 1341 (1979).

[123] Shapiro v. Thompson, 394 U.S. 618 (1969).

[124] *Id.*

[125] *Id.* at 638.

[126] *Id.* at 631.

[127] 415 U.S. 250 (1974).

[128] *Id.* at 266.

[129] 403 U.S. 365 (1971) (Arizona attempted to require durational residency of 15 years for federally-funded disability benefits; Pennsylvania attempted to limit state-funded welfare benefits to U.S. citizens).

[130] *Id.* at 378.

undocumented immigrants may vary according to the state statute, legislative history and constitutional provisions.[131]

In *Plyler v. Doe*,[132] however, the U.S. Supreme Court struck down Texas statutes denying free public education to undocumented immigrants. Although undocumented persons are not a suspect class, and education is not a fundamental right, the Court overturned the Texas restrictions using an intermediate level of review under the equal protection clause.[133] In *Perez v. New Mexico Dep't of Health and Social Serv's*,[134] an appellate court ruled that an undocumented immigrant was a "person" within the meaning of the state Special Medical Needs Act. The court noted that the word "residence", as used in a statute, should be given its ordinary and common meaning. The Arizona Supreme Court had previously ruled that illegal entry into the United States does not disqualify an alien from becoming a "resident" of a county of Arizona for the purpose of statutes governing medical assistance.[135]

Moreover, in *Guerrero v. Cooper Queen Hosp.*,[136] the Arizona Supreme Court ruled that statutory emergency medical care requirements applied to plaintiffs, notwithstanding the fact that they were not citizens of the United States or residents of Arizona. The court pointed out that the statute was directory in nature and did not contain an express legislative limitation. California courts have ruled that undocumented aliens may be county residents but counties are under no obligation to provide nonemergency care to the undocumented since the California indigent care statute requires counties to provide relief to "lawful" indigent residents.[137] Arguably, a "lawful" resident is any undocumented immigrant who is not in violation of an order of deportation. The Idaho Supreme Court has ruled that U.S. citizen children of undocumented immigrant parents cannot be denied medical assistance because of their parents' status.[138]

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[131] *But see* Immigration Reform and Control Act of 1988, Pub. L. No. 99-603 § 121, 1986 U.S. CODE CONG. & ADMIN. NEWS (100 Stat.) 3384 which limits state or governmental ability to exclude undocumented persons from state or country welfare programs.

[132] 457 U.S. 202 (1982).

[133] *Id.* at 211-16, 220-24.

[134] 91 N.M. 334, 573 P.2d 689 (1977), *cert. denied*, 91 N.M. 491, 576 P.2d 297 (1978).

[135] St. Joseph's Hosp. & Med. Center v. Maricopa County, 142 Ariz. 94, 688 P.2d 986 (1984).

[136] 112 Ariz. 104, 537 P.2d 1329 (1975).

[137] *Id. See generally* Bay General Community Hosp. v. County of San Diego, 156 Cal. App.3d 944, 203 Cal. Rptr. 184 (1984); Cabral v. State Bd. of Control, 112 Cal. App.3d 1012, 169 Cal. Rptr. 604 (1980); Griffeth v. Detrich, 603 F.2d 118 (9th Cir. 1979), *cert. denied*, 445 U.S. 970 (1980).

[138] Intermountain Health Care v. Board of Comm'rs of Blaire County, 109 Idaho 412, 707 P.2d 1051 (1985).

5. Income Eligibility Standards

Unreasonable income eligibility standards are generally invalidated because they are contrary to legislative intent. Many medical assistance statutes fail to define indigency or give any indication of how to determine who is entitled to free or reduced cost care. Despite the lack of statutory guidance, program administrators must tailor eligibility standards to match legislative intent.

The generally accepted definition of an indigent is "one who is needy and poor, or one who has not sufficient property to furnish him a living nor anyone able to support him to whom he is entitled to look for support."[139] A medical indigent, however, "need not be impoverished or devoid of all assets,"[140] and may include a person who has insufficient means to pay for necessary medical care after providing for those who legally claim his support.[141] The term "poor" however, is generally synonymous with

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[139] BLACK'S LAW DICTIONARY 695 (5th ed. 1979). *See also* Powers v. State, 194 Kan. 820, 402 P.2d 328 (1965); Blouin v. City of Rockland, 441 A.2d 1008 (Me. 1982); *In re* Fentress Estate, 249 Iowa 783, 89 N.W.2d 367 (1958); Town of St. Johnsbury v. Town of Granby, 124 Vt. 367, 205 A.2d 422 (1964); Symmes Arlington Hosp. v. Town of Arlington, 292 Mass. 162, 197 N.E. 677 (1935); Peabody v. Town of Holland, 107 Vt. 237, 178 A. 888 (1935); Spokane County v. Arvin, 169 Wash. 349, 13 P.2d 1089 (1932); Town of Mazomanie v. Village of Mazomanie, 254 Wis. 597, 36 N.W.2d 696 (1949); Juneau County v. Wood County, 109 Wis. 330, 85 N.W. 387 (1901); Weeks v. Mansfield, 84 Conn. 544, 80 A. 784 (1911); Goodall v. Brite, 11 Cal. App. 2d 540, 54 P.2d 510 (1936); Healy v. Healy, 198 Misc. 688, 99 N.Y.S. 2d 874 (1950); Edeter v. Kember, 136 N.E.2d 630, 635 (Ohio 1955); Brown v. Upfold, 204 Misc. 416, 123 N.Y.S. 2d 342 (1953); Madison v. City and County of San Francisco, 106 Cal.App. 2d 232, 234 P.2d 995 (1951); Destitute of Bennington County v. Henry W. Putnam Memorial Hosp., 125 Vt. 289, 215 A.2d 134 (1965); County Dep't. of Pub. Welfare v. Trustees of Indiana University, 145 Ind. App. 392, 251 N.E.2d 456 (1966).

[140] Hudson County v. Hernandez, 157 N.J. Super. 85, 384 A.2d 552 (1978) (person who has insufficient means to pay for maintenance in a private hospital after providing for those who legally claim support qualifies as indigent); Parkview Memorial Hosp., Inc. v. County Dep't of Pub. Welfare, 134 Ind. App. 689, 191 N.E.2d 116 (1963) (court interpreted legislative intent to be that in order for a person to be "poor" or "indigent" he or she need only be without sufficient resources to pay for all the medical and hospital services required by the injury); Beaulieu v. City of Lewiston, 440 A.2d 334 (Me. 1982) (welfare eligibility must be based on need, and an applicant could not be denied assistance simply because she owned her own home and sought welfare assistance to meet her mortgage payments); County of Lander v. Board of Trustees of Elko General Hosp., 81 Nev. 354, 403 P.2d 659, 662 (1965); Commonwealth *ex rel.* Home for the Jewish Aged v. Kotzker, 179 Pa. Super. 521, 118 A.2d 271, 273 (1955); State v. Rutherford, 63 Wash. 2d 949, 389 P.2d 895, 898 (1964); State v. Henry, 733 S.W. 2d 127, 128 (Tenn. 1987); Neal v. Wallace, 15 Wash. App. 506, 550 P.2d 539, 541 (1976); State v. Richter, 221 Neb. 487, 378 N.W. 2d 175, 179 (1985), *later appealed*, 225 Neb. 837, 408 N.W.2d 717 (1987).

[141] St. Patrick Hosp. v. Powell County, 156 Mont. 153, 477 P.2d 340 (1970); Sioux Valley Hosp. Ass'n v. Jones County, 309 N.W.2d 835 (S.D. 1981).

the term "indigent."[142] Thus, one need not be destitute to receive indigent medical assistance.

The Federal Depertment of Health & Human Services poverty income guideline is sometimes used by local governments to determine medical assistance eligibility.[143] This method fails to consider assets or the needs of medical indigents who reach indigency only because of enormous medical bills. In the context of medical assistance, "poor" should always include medical indigents whose costs of necessary medical care are so high that remaining available income would be below the national poverty level.[144] In *St. Patrick Hosp. v. Powell County*,[145] a Montana court held that the state's constitutional mandate to provide county indigent medical care required eligibility standards that considered not only family income, but also debts, including outstanding medical bills.

Income eligibility criteria must be set at reasonable levels to respond to the increased needs of the medically indigent. In addition, as inflation rises and incomes increase, income eligibility criteria should be revised annually to allow legislative intent to remain intact. The computational method used to determine income eligibility must also be fair and

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[142] County Dep't of Public Welfare v. Trustees of Indiana University, 145 Ind. App. 392, 251 N.E.2d 456 (1966); Destitute of Bennington County v. Henry W. Putnam Memorial Hosp., 125 Vt. 289, 215 A.2d 134 (1965); Risner v. State *ex rel.* Martin, 55 Ohio App. 151, 9 N.E.2d 151 (1937); Dane County v. Barron County, 249 Wis. 618, 26 N.W.2d 249, 251, 254 (1947).

[143] HHS poverty guidelines are annually updated and utilized as the current United States official poverty threshold cutoff. For an excellent review of medically indigent eligiblity standards, see Nalibog & Lang, *Expanding Access to Health Care: Written Eligibility Standards for the Medically Indigent,* 13 CLEARINGHOUSE REV. 848 (1980).

[144] Wheatland County v. Bleeker, 175 Mont. 478, 575 P.2d 48 (1978) (intent of medical assistance program is to extend broad coverage to those who, due to calamitous circumstances, are faced with medical costs they cannot hope to meet); Deaconess Medical Center, Inc. v. Dep't of Social and Rehabilitation Servs., 720 P.2d 1165 (Mont. 1986) (it would be unreasonable to deny medical assistance benefits solely because an applicant's income exceeds the AFDC income eligibility threshold). *See also* State v. Schutzler, 20 Ohio Misc. 79, 249 N.E.2d 549 (1969); *In re* Estate of Feutress, 249 Iowa 783, 89 N.W.2d 367 (1958); *In re* Commitment of Dennis, 135 Pa. Super. 237, 5 A.2d 406 (1939); *In re* Barnes, 119 Pa. Super. 533, 180 A. 718 (1935); Allegheny County v. City of Pittsburgh, 281 Pa. 300, 127 A. 72 (1924); Brock v. Jones County, 145 Iowa 397, 124 N.W. 209 (1910); Spokane County v. Arvin, 169 Wash. 349, 13 P.2d 1089 (1932); Conant v. State, 197 Wash. 21, 84 P.2d 378 (1938). *But cf.* Sioux Valley Hosp. Ass'n v. Davison County, 319 N.W.2d 490 (S.D. 1982)(bankruptcy insufficient to establish eligiblity for medical assistance since such persons may have a present or future hope of resources and the purpose of bankruptcy laws differ from the statutory purpose of relief to the poor).

[145] 156 Mont. 153, 477 P.2d 340 (1970). *See also* Deaconess Medical Center, Inc. v. Dep't of Social and Rehabilitative Servs., 720 A.2d 1165 (Mont. 1986) (legislature may set income limitations that do not impede the purpose of the constitutional provisions).

reasonable. In *McMullen v. Hargis*, [146] an Arizona county's practice of taking gross income from the applicant's previous three months and multiplying the figure by four to obtain annual income was ruled arbitrary, capricious, and contrary to legislative intent. The New Hampshire Supreme Court struck down a county regulation which made persons ineligible for necessary nursing home care because their income exceeded federal Medicaid guidelines.[147] The county argued that when the state adopted the Medicaid program, the county's obligation was impliedly limited to those who met the Medicaid income eligibility guidelines. The court rejected the county's argument, stating, "in light of the deeply rooted and longstanding obligation of local governments to provide assistance . . . we must refuse to infer such a limitation."[148] The court further noted that county eligibility requirements must reflect the "humanitarian purpose" of the statute and bear a rational relationship to the costs of necessary medical care.[149]

Any eligibility criteria which is unrelated to need would deny the indigent their rights to equal protection and due process of law.[150] Creation

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[146] 128 Ariz. 142, 624 P.2d 339 (Ariz. Ct. App. 1980); *see generally* County Dep't of Public Welfare v. Baker, 434 N.E. 2d 958 (Ind. App. 1982) (financial guidelines of the Department of Public Welfare which resulted in denial of medical assistance to applicant who would have been eligible for assistance if there had been a father in her family or one of other several family composition variations contravened intent of medical assistance statute).

[147] Hall v. County of Hillsborough, 122 N.H. 448, 445 A.2d 1125 (1982). *See also* Tucker v. Toia, 43 N.Y.2d 1, 371 N.E.2d 449, 400 N.Y.S.2d 728 (1977) (invalidation of welfare eligibility requirement for needy children not residing with a parent to commence a support proceeding against a parent and receive a judgment before becoming eligible for public assistance); County Dep't of Public Welfare v. Baker, 434 N.E.2d 958 (Ind. App. 1982). *But see* Deaconess Medical Center, Inc. v. Dep't of Social and Rehabilitation Servs., 720 P.2d 1165 (Mont. 1986).

[148] *Hall*, 445 A.2d at 1128.

[149] *Id.* at 1127; *cf.* Hubbard v. University of Arkansas Medical Sciences, 272 Ark. 500, 616 S.W.2d 10 (1981) (purpose of medical assistance statute was to distribute proportionately the cost of indigent care among counties; thus, there was no requirement that hospitals establish standards of indigency related to patient ability to pay).

[150] A statute or regulation that arbitrarily creates a separate class of poor and indigent persons who receive unequal treatment is a violation of the equal protection clause. *See supra* notes 77-79. Moreover unreasonable income eligibility restrictions are unlawful since they create an irrebutable presumption that certain medically indigent persons are not entitled to "poor relief" or "medical assistance." Such irrebutable presumptions violate due process requirements. Vlandis v. Kline, 412 U.S. 441, 449-53 (1973), *overruled by,* Weinberger v. Salfi, 422 U.S. 749 (1975); Stanley v. Illinois, 405 U.S. 645, 653-58 (1972); Soave v. Millikin, 497 F.Supp. 254, 260-62 (W.D. Mich. 1980); Clay v. Tryk, 177 Cal. App. 3d 119, 124, 222 Cal. Rptr. 729, 732 (1986); Idaho Falls Consol. Hosps., Inc. v. Board of Comm'rs., 109 Idaho 881, 712 P.2d 582 (1985); *see generally* Sisters of Charity v. Glacier County, 177 Mont. 259, 581 P.2d 830 (1978) (fact that there are collateral resources available should not be considered unless it is demonstrated that such collateral source is currently available for medical expenses); Massachusetts General Hosp. v. Revere, 346 Mass. 217, 191 N.E.2d 120 (1963) (in establishing whether a person is "in need of public assistance, a court must determine whether assets can be liquidated fast

of arbitrary classifications of indigent persons impermissibly narrows broad legislative poor relief statutes, is radically inconsistent with medical assistance statutes, and fails to promote the statute's humanitarian purpose. Income eligibility standards which have no relation to need or any meaningful standard of poverty are unreasonable and in conflict with the purpose of medical assistance legislation.[151]

D. Ensuring Due Process Protections

Many state or county medical assistance programs do not notify lower income persons of the availability of medical assistance, lack written eligibility criteria, or do not have proper notice and appeal procedures for eligibility or service denials. Such program inadequacies are violative of due process. These issues are so clear that a single demand letter may be successful in changing program practice.

The Federal Constitution's fourteenth amendment prohibits deprivation of life, liberty, or property without due process of law. Statutory entitlement to medical assistance benefits is a property right to which due process rights attach.[152] Many courts have declared government-mandated benefits to be property interests of both recipients and applicants.[153]

In 1972 the Supreme Court, in setting guidelines for when a person has a property interest in a benefit, stated, "[t]o have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a *legitimate claim of entitlement to it.*"[154]

Courts have focused upon two elements which establish such a claim of entitlement: the language authorizing the benefit, and the eligibility

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enough to cover medical expenses"); Luther Hosp. v. Eau Claire County, 115 Wis.2d 100, 339 N.W.2d 798 (Wis. Ct. App. 1983) (county's liability to pay for an indigent's medical care is not affected by potential eligibility for veterans' relief); Braun v. Ada County, 102 Idaho 901, 643 P.2d 1071 (1982) (Hill-Burton uncompensated care is not an available resource to be sought before eligibility for county and medical assistance); St. Alphonsus Regional Medical Center, Ltd. v. Twin Falls County, 112 Idaho 309, 732 P.2d 278 (1987) (the indigent may receive county medical assistance for treatment of self-inflicted injuries).

[151] Hogan v. Harris, 501 F.Supp. 1129 (D. Mass. 1980), *rev'd sub nom.*, Schweiker v. Hogan, 457 U.S. 569 (1982); *see also supra* notes 133-143.

[152] *See* Gregory v. Town of Pittsfield, 470 U.S. 1018 (1985) (O'Connor, J., dissenting from denial of certiorari); Atkins v. Parker, 472 U.S. 115, 124 (1985); Greenholtz v. Inmates of Nebraska Penal & Correctional Complex, 442 U.S. 1 (1979); Goss v. Lopez, 419 U.S. 565 (1975); Goldberg v. Kelly, 397 U.S. 254 (1970); Daniels v. Woodbury County, 742 F.2d 1128 (8th Cir. 1984); Holbrook v. Pitt, 643 F.2d 1261, 1278 n.35 (7th Cir. 1981); Griffeth v. Detrich, 603 F.2d 118 (9th Cir. 1979); White v. Roughton, 530 F.2d 750 (7th Cir. 1976); Johnston v. Shaw, 556 F.Supp. 406 (D.Tex. 1982); Harris v. Lukhard, 547 F.Supp. 1015 (W.D Va. 1982), *aff'd*, 733 F.2d 1075 (4th Cir. 1984); Meyer v. Niles Township, 477 F.Supp. 357, 361-62 (N.D.Ill. 1979); Baker-Chaput v. Cammett, 406 F.Supp. 1134 (D.N.H. 1976); Alexander v. Silverman, 356 F.Supp. 1179 (E.D. Wis. 1973).

[153] *See* cases cited *supra* note 145.

[154] Board of Regents v. Roth, 408 U.S. 564, 577 (1972) (emphasis added).

requirements for receiving the benefit. If the court finds that the authorizing language is mandatory, as opposed to discretionary, and that the eligibility requirements are comprehensive and specific enough to narrow the government's discretion in granting the benefit, then the court will hold that a property right exists.

In *Matthews v. Eldridge*,[155] the Supreme Court noted that three distinct factors must be considered and weighed before the specific dictates of due process may be ascertained:

(1) The importance of the private interest that will be affected by the official action;

(2) The risk of erroneous deprivation of such interest and the probable value of additional procedural safeguards; and

(3) The importance to the government's interest and administrative burdens that the additional procedural requirement would entail.[156]

Issues of procedural due process frequently center on (1) whether a hearing must be had *prior to the deprivation* or may take place after the government action has already occurred, and (2) the *nature* of the hearing. In *Goldberg v. Kelly*,[157] residents of New York City who were receiving financial aid under state and federally assisted welfare programs alleged that state and city welfare officials had terminated, or were about to terminate, that aid without prior notice and hearing in violation of due process. The Supreme Court held that procedural due process required that welfare recipients be afforded a hearing before termination of benefits by welfare authorities.[158] Since welfare recipients had no other source of income, their interest in continued receipt was of extreme importance, outweighing the cost to the government of providing a prior evidentiary hearing. In *Matthews v. Eldridge*,[159] the Supreme Court considered whether a prior evidentiary hearing was required by due process where the federal government wished to terminate Social Security disability benefits. The Court concluded that (a) such benefits were unlikely to be the sole source of income to the recipient, so the interest of the individual of continuing to receive such benefits during adjudication, though important, was not critical, (b) the additional value of an evidentiary hearing would be minimal since continuing eligibility to disability benefits is a medical issue usually determined by documentary evidence, and (c) the cost to the government of providing full evidentiary hearings in each instance of termination of disability benefits would be significant and might reduce the amount of funds available to be paid out in such benefits.[160] Thus, no prior evidentiary hearing was required. The *Eldridge* Court noted that *after* benefits are

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[155] 424 U.S. 319 (1976).
[156] *Id.* at 335.
[157] 397 U.S. 254 (1970).
[158] *Id.* at 261-64.
[159] 424 U.S. 319 (1976).
[160] *Id.* at 343-48.

terminated, a former Social Security recipient is afforded an administrative hearing, and may seek judicial review of that procedure.[161] For many such former recipients, of course, the loss of income during the months and years such procedures may occupy can be an ongoing problem. As the dissent remarked in *Eldridge*, the recipient's home was lost through foreclosure and his furniture was repossessed as a result of termination of his disability benefits.[162] Potential beneficiaries of state or county medical assistance programs have a significant interest at stake. The indigent sick are persons in need of relief by the state or counties in order to meet the minimum requirements and exigencies of day-to-day living.

There are both substantive and procedural due process considerations in the administration of state/local government medical assistance programs. Substantive due process analysis examines whether the administrative procedures used to determine an applicant's eligibility might deprive that person of an essential right. The lack of written uniform eligibility standards and procedures will render statutes authorizing medical assistance violative of substantive due process because the statute is subject to arbitrary and capricious administration.[163] Procedural due process involves looking at whether an applicant was afforded the fair-play notions of proper notice and the right to a hearing. Procedural due process requires that medical assistance recipients receive notice of the availability of benefits, written applications and eligibility determinations and an opportunity for an evidentiary hearing prior to the denial or termination of benefits.

1. Notice of the Availability of Benefits

Notice to the public that benefits are available under state or local government medical assistance programs is essential for due process. There is a substantial risk of applicants being erroneously deprived of medical assistance benefits if they are never informed of the availability of such benefits nor informed of the standards of eligibility or service denials. Many otherwise eligible indigent sick may be deterred from applying because a lack of knowledge or because they are unable to ascertain whether or not they qualify. The administrative burden and cost to the government associated with providing notice of the availability of state or county medical assistance and rights to appeal denials of eligibility or services

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[161] *Id.* at 349.

[162] *Id.* at 350.

[163] Leist v. Shawano County, 91 F.R.D. 64 (E.D. Wis. 1981); White v. Roughton, 530 F.2d 750 (7th Cir. 1976); Baker-Chaput v. Cammett, 406 F.Supp. 1134 (D.N.H. 1976); Madera Community Hosp. v. County of Madera, 155 Cal. App.3d 136, 201 Cal. Rptr. 768 (1984); State *ex rel.* Van Buskirk v. Wayne Township, 418 N.E.2d 234 (Ind. Ct. App. 1981).

is not sufficient to override the interests of persons entitled to medical assistance.

The requirement that governments publish written eligibility standards and inform the public of the availability of medical assistance for the indigent sick is also an essential issue of due process. Due process mandates that a person be afforded a reasonable opportunity to know of the rights and procedures to which he is entitled and the standards by which he will be judged. Thus, governments must make good faith efforts reasonably calculated to bring the availability of medical assistance to the attention of potential beneficiaries and must publish objective, detailed, and specific written standards of eligibility.[164]

In *Griffeth v. Detrich*,[165] applicants for general assistance benefits were held to have a vested property interest in the county's relief program. The statute authorizing the general relief program in *Griffeth* mandated assistance for eligible applicants and directed the county board of supervisors to establish standards for granting relief. The *Griffeth* court held that the mandatory language of the statute, coupled with the specific nature of the regulations, created an expectancy sufficient to rise to the level of a property interest; thus, procedural due process requirements had to be met before the county could deny the plaintiffs' claim.[166] In *Perez v. Lavine*,[167] the New York Department of Social Services failed to distribute or to accept public assistance applications and also failed to supply information about programs that were available. The district court found that the plaintiffs' due process rights were violated and ordered the department to provide applications and to post signs in every department office notifying people that they had the right to apply for public assistance. In a recent California case, *Etter v. Los Angeles County Board of Supervisors*,[168] the plaintiffs challenged the lack of notice of free county health care. Part of the settlement agreement involved designing a detailed, readable notice for patients. As stated by the United States District Court of the Northern District of Indiana in its consideration of the procedural due process requirements associated with the Indiana Medical Assistance Program: "Notice that benefits under the Act are available is basic. Those eligible under the Act are completely helpless to protect their rights if they are not even aware that aid is available."[169]

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[164] Atkins v. Parker, 472 U.S. 115 (1985); Griffeth v. Detrich, 603 F.2d 118 (9th Cir. 1979); Carey v. Queen, 588 F.2d 230, 232 (7th Cir. 1978); Perez v. Lavine, 422 F.Supp. 1259 (S.D.N.Y. 1976); Baker-Chaput v. Cammett, 406 F.Supp. 1134 (D.N.H. 1976); Gilmore v. Custer, 14 CLEARINGHOUSE REV. 370 (N.D. Ind. Feb. 29, 1980).

[165] 603 F.2d 118 (9th Cir. 1979).

[166] *Id.* at 121.

[167] 422 F.Supp. 1259 (S.D.N.Y. 1976).

[168] CA 90843 (Los Angeles Superior Court, consent agreement filed April 3, 1987).

[169] Gilmore v. Custer, 14 CLEARINGHOUSE REV. 370 (N.D. Ind. Feb. 29, 1980).

2. Requirement for Written Eligibility Standards

Due process requires written standards and guidelines for eligibility determinations and scope of available services.[170] Such standards and guidelines must be public information.

In *White v. Roughton*,[171] the plaintiff challenged a locally-funded general assistance program which did not have published standards for eligibility, scope of services, or due process standards of notice and opportunity for a hearing to appeal denials. In *White*, the Seventh Circuit concluded that, in order to ensure fair and consistent application of eligibility requirements, program administrators were required to establish written standards and regulations.[172] The defendant administrator had admitted that his staff determined eligibility based upon their own arbitrary personal standards. The *White* court declared such an arbitrary decision-making procedure to be "clearly violative of due process."[173]

In a similar challenge to a standardless general assistance program, the court in *Baker-Chaput v. Cammett*,[174] held that establishing written, objective, and ascertainable standards is an elementary and intrinsic part of due process. Advocates should note that standards can be written objectively and yet still be inadequate if they do not have sufficient detail to reasonably apprise an applicant or a reviewer of the reasons for the eligibility decision.

3. Right to Hearing, Fairness, and Appeal

Due process requires, in addition to an orderly application procedure, notice and an opportunity to be heard for a person whose application is denied. As the courts have recognized, an applicant for, or recipient of, general assistance has an overwhelming interest in having a meaningful opportunity to explain why assistance should not be denied.[175] Thus an applicant whose request has been denied must be given an opportunity for a timely hearing, although the hearing need not be held before benefits are denied and need not be held at all when an application clearly indicates

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[170] White v. Roughton, 530 F.2d 750 (7th Cir. 1976); Leist v. Shawano County, 91 F.R.D. 64 (E.D.Wis. 1981); Hopson v. Schilling, 418 F.Supp. 1223 (N.D.Ind. 1976) (class certification granted); Baker-Chaput v. Cammett, 406 F.Supp. 1134 (D.N.H. 1976); Madera Community Hosp. v. County of Madera, 155 Cal. App. 3d 136, 201 Cal. Rptr. 768 (1984); State *ex rel.* Van Buskirk v. Wayne Township, 418 N.E.2d 234 (Ind. Ct. App. 1981); Gilmore v. Custer, 14 CLEARINGHOUSE REV. 370 (N.D. Ind. Feb. 29, 1980).

[171] 530 F.2d 750 (7th Cir. 1976).

[172] *Id.* at 753.

[173] *Id.* at 754.

[174] 406 F.Supp. 1134, 1135 (D.N.H. 1976).

[175] *See generally Goldberg*, 397 U.S. 254, 263-65. *See also* Brooks v. Center Township, 485 F.2d 383, 385 (7th Cir. 1973); Alexander v. Silverman, 356 F.Supp. 1179, 1181 (E.D. Wis. 1983).

on its face that the applicant is ineligible.[176] So that the applicant has a meaningful opportunity to explain, the program administrator must provide a written statement of reasons if the applicant is denied assistance.[177]

Indigents must also be afforded the opportunity to complete a written application of medical assistance.[178] Due process mandates a right to be heard at a meaningful time and in a meaningful manner, which can only be accomplished by giving applicants an opportunity to submit information in reference to his or her eligibility.[179] A prompt determination of eligibility is necessary so that persons reluctant to furnish medical services without assurance of payment be able to obtain that assurance in a time frame consistent with medical necessity.[180] A District of Columbia federal court ruled that due process requirements also prohibit subjecting medical assistance program beneficiaries to long waits for appointments.[181] Applicants should have the right to appeal an application denial and must be informed of the method of review on appeal.[182] Written statements of the reasons for denying an application are necessary to give an applicant a basis on which to contest the decision, i.e., by analyzing the reasons behind it, correcting arithmetic errors, etc.[183]

Due process always requires certain basic principles of fairness regarding government actions. Program administrators must use written standards to ensure fair and consistent application of eligibility requirements. Final determinations of eligibility or denials must be made by unbiased tribunals.[184] In *Meyers v. Niles Township*,[185] an Illinois court ruled that a medically indigent patient was denied procedural due process in connection with denial of medical assistance where members of the public aid eligibility committee were township supervisors who had an overriding interest in protecting township funds and, thus, were unable to render an unbiased, disinterested decision on medical assistance denial appeals.

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[176] *Alexander*, 356 F.Supp. at 1180.

[177] *Id.*

[178] Matthews v. Eldridge, 424 U.S. 319 (1976); Goldberg v. Kelly, 397 U.S. 254 (1970); Ortiz v. Eichler, 794 F.2d 889 (3rd Cir. 1986); Holbrook v. Pitt, 643 F.2d 1261 (7th Cir. 1981); Carey v. Quern, 588 F.2d 230, 232 (7th Cir. 1978); White v. Roughton, 530 F.2d 750 (7th Cir. 1976); Perez v. Lavine, 422 F.Supp. 1259 (S.D.N.Y. 1976); Black v. Beame, 419 F.Supp. 599 (S.D.N.Y. 1976); Baker-Chaput v. Cammett, 406 F.Supp. 1134 (D.N.H. 1976); Alexander v. Silverman, 356 F.Supp. 1179, 1181 (E.D.Wis. 1973).

[179] *Matthews*, 424 U.S. 319 (1976).

[180] Like v. Carter, 448 F.2d 798 (8th Cir. 1971), *cert. denied*, 405 U.S. 1045 (1972); Black v. Beame, 419 F.Supp. 599 (S.D.N.Y. 1976).

[181] Spivey v. Barry, 501 F.Supp. 1093 (D.D.C. 1980), *rev'd on other grounds*, 665 F.2d 1222 (D.C. Cir. 1981).

[182] *See* M. DOWELL *supra* note 12, at 131-35.

[183] *Id.* at 132.

[184] Withrow v. Larkin, 421 U.S. 35 (1975); Ward v. Monroeville, 409 U.S. 57 (1972).

[185] 477 F.Supp. 357 (N.D.Ill. 1979).

IV. CONCLUSION

In light of recently erected barriers to health care for the poor, enforcement of state and local government duties to provide medical assistance is necessary to ensure adequate access to medical care. Government efforts to reduce program budgets to contain indigent health care costs should not be permitted to impair statutory and constitutional rights to medical assistance.

Any improper governmental actions or failures to act may be challenged in the manners described herein. Though there is no federal constitutional right to obtain medical assistance, public policy has always been committed to the principle that equitable treatment of individuals, irrespective of economic characteristics, is fundamental to a democratic and humane society.

STATE AND LOCAL GOVERNMENT RESPONSIBILITIES TO PROVIDE MEDICAL CARE FOR THE POOR

STATE	PRIMARY INDIGENT CARE LAW	LEADING CASE LAW
Alabama	Alabama Health Care Responsibility Act ALA. CODE § 22-21-290-22-21-297 (1984)	Marengo County v. University of South Alabama, 479 So. 2d 48 (Ala. Civ. App. 1985)
	ALA. CONST. art. IV, § 88 Amendment #125	Board of Comm'rs v. Board of Trustees, 483 So. 2d 1365 (Ala. Civ. App. 1985)
Alaska	General Relief Medical ALASKA STAT. §§ 47.25.120 - 47.25.300 (1986)	NONE
	ALASKA CONST. art. VII, §§ 4, 5	
Arizona	Hospitalization and Medical Care of Indigent Sick ARIZ. REV. STAT. ANN. §§ 11-291 - 11-300 (Supp. 1988) (effective Oct. 1, 1989)	Industrial Comm'n v. Navajo County, 64 Ariz. 172, 167 P.2d 113 (1946)
	Arizona Health Care Cost Containment System ARIZ. REV. STAT. ANN. §§ 36-2901 - 36-2958 (Supp. 1988)	St. Joseph's Hospital & Med. Center v. Maricopa County, 142 Ariz. 94, 688 P.2d 986 (1984)

STATE	PRIMARY INDIGENT CARE LAW	LEADING CASE LAW
Arkansas	State Medical Center ARK. CODE ANN. §§ 6-64-501 - 6-64-504 (1987 & Supp. 1988) ARK. CONST. art. 19, §§ 16, 20	Hubbard v. University of Arkansas Medical Center, 272 Ark. 500, 616 S.W.2d 10 (1981)
California	County Health Services CAL. WELF. & INST. CODE §§ 16700-16718 (West 1980 & Supp. 1989) County Aid & Relief to Indigents CAL. WELF. & INST. CODE §§ 17000-17501 (1980 & Supp. 1989) CAL. CONST. art. 16, §§ 14, 15	Madera County Hospital v. County of Madera, 155 App. 3d 136, 201 Cal. Rptr. 768 (1984) City & County of San Francisco v. Superior Court, 57 Cal. App. 3d 44, 128 Cal. Rptr. 712 (1976)
Colorado	Reform Act for the Provision of Health Care for the Medically Indigent COLO. REV. STAT. §§ 26-15-101 - 26-15-113 (Supp. 1988)	McNichols v. City & County of Denver, 101 Colo. 316, 74 P.2d 99 (1937)
Connecticut	Medical Assistance Aid CONN. GEN. STAT. ANN. §§ 17 - 273, 274, 292 (West 1988)	Middlesex Memorial Hosp. v. Town of North Haven, 206 Conn. 1, 535 A.2d 1303 (1988) Windham Community Hosp. v. Town of Windham, 32 Conn. Supp. 271, 350 A.2d 785 (1975)
Delaware	Hospitals Caring for the Indigent Sick DEL. CODE ANN. tit. 29, §§ 7201 - 7204 (1983) Public Assistance DEL. CODE ANN. tit. 31, §§ 505, 517, 522 (1983 & Supp. 1988)	NONE

STATE	PRIMARY INDIGENT CARE LAW	LEADING CASE LAW
District of Columbia	Public Assistance General D.C. CODE ANN. §§ 3-202 - 3-206 (1988)	Spivey v. Barry, 501 F.Supp. 1093 (D.D.C. 1980), *rev'd on other grounds*, 665 F.2d 1222 (D.C. Cir. 1981)
	Care for Indigent Sick D.C. CODE ANN. §§ 32-123 - 32-125 (1988)	Colomeris v. District of Columbia, 226 F.2d 266 (D.C. Cir. 1955)
Florida	Health Care Responsibility for Indigents FLA. STAT. §§ 154.301 - 154.331 (Supp. 1988)	Dade County v. American Hospital of Miami, 502 So. 2d 1230 (Fla. Dist. Ct. App. 1987)
		Cleary v. Dade County, 160 Fla. 892, 37 So. 2d 248 (1948)
Georgia	Hospital Care for the Indigent GA. CODE ANN. §§ 31-8-1 - 31-8-46 (1985)	Terrell County v. Albany/ Dougherty Hosp. Auth., 256 Ga. 627, 352 S.E.2d 378 (1987)
	GA. CONST. art. IX, § 5 2(7)	
	Hospital Care for Non-Resident Indigents GA. CODE ANN. §§ 31-8-30 - 31-8-36 (1985 & Supp. 1988)	
	Emergency Medical Services to Pregnant Women in Labor GA. CODE ANN. § 31-8-42 (1985)	
Hawaii	General Assistance State-Only Medicaid HAW. REV. STAT. §§ 346-59, 346-71 (1986 & Supp. 1987)	Keller v. Thompson, 56 Haw. 183, 532 P.2d 664 (1975)
	HAW. CONST. art. IX, §§ 1, 2, 3	

STATE	PRIMARY INDIGENT CARE LAW	LEADING CASE LAW
Idaho	Hospitals for Indigent Sick IDAHO CODE §§ 31-3501 - 31-3519 (1984 & Supp. 1984)	Intermountain Health Care, Inc. v. Board of Comm'rs, 109 Idaho 299, 707 P.2d 410 (1985)
Illinois	Aid to the Medically Indigent ILL. ANN. STAT. ch. 23, paras. 7-1 - 7-6 (Smith-Hurd 1988) Medical Assistance ILL. ANN. STAT. ch. 23, paras. 5-1 - 5-15 (Smith-Hurd 1988)	Lakeview Med. Center v. Richardson, 76 Ill. App. 3d 953, 395 N.E. 2d 405 (1979)
Indiana	Hospital Care for the Indigent IND. CODE. ANN. §§ 12-5-6-1 - 12-5-6-20 (West 1983 & Supp. 1988)	Welborn Memorial Baptist Hosp. v. County Dep't of Welfare of Vanderburgh County, 442 N.E.2d 372 (Ind. Ct. App. 1982)
Iowa	Medical & Surgical Treatment of Indigent Persons IOWA CODE ANN. §§ 255.1 - 255.30 (1985 & Supp. 1988)	*In re* Fentress Estate, 249 Iowa 783, 89 N.W. 2d 357 (1959) Collins v. State Bd. of Social Welfare, 248 Iowa 369, 81 N.W.2d 4 (1957)
Kansas	Medikan General Assistance KAN. STAT. ANN. §§ 39-701 - 39-709 (1982) KAN. CONST. art. VII, § 4	State Dep't of Welfare v. Dye, 204 Kan. 760, 466 P.2d 354 (1970)
Kentucky	NONE	NONE
Louisiana	State Charity Hospital System LA. REV. STAT. ANN. § 46:6 (West 1982 & Supp. 1988)	Muse v. St. Paul Fire & Marine Insurance Co., 328 So. 2d 698 (La. Ct. App. 1976)

STATE	PRIMARY INDIGENT CARE LAW	LEADING CASE LAW
Maine	Municipal General Assistance ME. REV. STAT. ANN. tit. 22, §§ 4300 - 4324 (Supp. 1988)	Blouin v. City of Rockland, 441 A.2d 1008 (Me. 1982)
Maryland	Medical and Pharmacy Assistance Programs MD. HEALTH-GENERAL CODE ANN. §§ 15-100 - 15-301 (1982 & Supp. 1989)	Bayne v. Secretary of State, 283 Md. 560, 392 A.2d 1008 (1978)
Massachusetts	Commonwealth Liable to Certain Individuals for Expense of Hospital Care MASS. GEN. LAWS ANN. ch. 117, § 24A-21 (West 1975 & Supp. 1985)	Sargent v. Comm'r of Public Welfare, 383 Mass. 808, 423 N.E.2d 755 (1981) Massachusetts Gen. Hosp. v. Dep't of Pub. Welfare, 1 Mass. App. 363, 297 N.E.2d 517 (1973)
Michigan	Resident County Hospitalization Program General Assistance Medical MICH. COMP. LAWS ANN. §§ 400.55, 400.58, & 400.66 (West 1988) MICH. CONST. art. IV, § 51	King v. Midland County Dep't of Social Serv's, 73 Mich. App. 253, 251 N.W.2d 270 (1977)
Minnesota	General Assistance Act MINN. STAT. ANN. §§ 256D.01 - 256D.21 (West 1982) Medical Assistance for the Needy MINN. STAT. ANN. §§ 256B.01 - 256B.73 (West 1982 & Supp. 1988)	Beltrami County v. Hennepin County, 264 Minn. 406, 119 N.W.2d 25 (1963) Ramsey County v. Sherburne County, 281 N.W.2d 888 (Minn. 1979)
Mississippi	State Charity Hospitals MISS. CODE ANN. §§ 41-11-1 - 41-11-91 (1981) MISS. CONST. art. IV, § 86; art. XIV, § 262	Craig v. Mercy Hospital, 209 Miss. 427, 45 So.2d 809 (1950)

STATE	PRIMARY INDIGENT CARE LAW	LEADING CASE LAW
Missouri	General Relief Medical MO. ANN. STAT. §§ 208.010 - 208.030 (Vernon 1983 & Supp. 1989)	Lewis v. Shulimson, 400 F.Supp. 807 (E.D. Mo. 1975), *aff'd*, 534 F.2d 794 (8th Cir. 1976), *cert. denied*, 430 U.S. 940 (1977)
Montana	General Relief MONT. CODE ANN. §§ 53-2-321, 53-3-310 (1985)	Butte Community Union v. Lewis, 712 P.2d 1309 (Mont. 1986)
	MONT. CONST. art. 12, § 3(1) & (3)	St. Patrick Hosp. v. Powell County, 156 Mont. 153, 477 P.2d 340 (1970)
Nebraska	Paupers and Public Assistance NEB. REV. STAT. §§ 68-104 - 68-126 (1987)	Creighton-Omaha Regional Health Care Corp. v. Douglas County, 202 Neb. 686, 277 N.W.2d 64 (1979)
	University of Nebraska Hospital, Admission of Needy Patients NEB. REV. STAT. § 85-172 (1987)	Mary Lanning Hosp. v. Clay County, 107 Neb. 61, 101 N.W.2d 510 (1960)
Nevada	Hospital Care to Indigent Persons NEV. REV. STAT. §§ 428.000 - 428.345 (1985)	Washoe County v. Wittenberg, 100 Nev. 143, 676 P.2d 808 (1984)
New Hampshire	Aid to Assisted Persons N.H. REV. STAT. ANN. §§ 165:1-34 (1978 & Supp. 1988)	Hall v. County of Hillsborough, 122 N.H. 448, 445 A.2d 1125 (1982)
New Jersey	Financial Assistance to Certain Needy Persons N.J. STAT. ANN §§ 44: 8-104, 8-147 & 44:7-81 (West Supp. 1989)	Sharp v. Dep't of Human Serv., 187 N.J. Super. 70, 453 A.2d 890 (1982) Hudson County v. Hernandez, 157 N.J. Super. 85, 384 A.2d 552 (1978)

STATE	PRIMARY INDIGENT CARE LAW	LEADING CASE LAW
New Mexico	Indigent Hospital Claims Act N.M. STAT. ANN. §§ 27-5-1 - 27-5-18 (1985) Special Medical Needs Program N.M. STAT. ANN. §§ 27-4-1 - 27-4-5 (1985)	Perez v. Dep't of Health & Social Servs., 91 N.M. 334, 573 P.2d 689 (1977)
New York	Medical Assistance for Needy Persons N.Y. SOC. SERV. LAW §§ 363-369 (McKinney 1983) N.Y. CONST. art. VII, § 8; art. XVII, §§ 1, 3, 4	Graham v. Fahey, 90 A.D. 2d 927, 457 N.Y.S.2d 922 (1982) Montgomery County Dep't of Social Serv. v. N.Y. State Dep't of Social Serv's, 83 A.D.2d 684, 442 N.Y.S.2d 251 (1981)
North Carolina	General Assistance N.C. GEN. STAT. §§ 108A-24-108A-98, §§ 153A-247-108A-260 (1987) N.C. CONST. art. IX, § 4	Graham v. Reserve Life Ins. Co., 274 N.C. 115, 161 S.E.2d 485 (1968) Board of Managers v. City of Wilmington, 237 N.C. 179, 74 S.E.2d 749 (1953)
North Dakota	Medical Assistance for Needy Persons N.D. CENT. CODE §§ 50-24.1-01 - 50-24.1-08 (Supp. 1987) Assessment of Medical Assistance Recipients N.D. CENT. CODE §§ 50-24.3-01 - 50-24.3-05 (Supp. 1987)	Nielson v. Social Service Bd. of North Dakota, 216 N.W. 2d 708 (N.D. 1974)
Ohio	General Assistance Medical OHIO REV. CODE ANN. §§ 5113.01 - 5113.99 (Anderson 1981 & Supp. 1987)	St. Thomas Hosp. v. Schmidt, 62 Ohio St. 2d 439, 406 N.E.2d. 819 (1980)

STATE	PRIMARY INDIGENT CARE LAW	LEADING CASE LAW
Oklahoma	Oklahoma Indigent Health Care Act OKLA. STAT. ANN. tit. 56, § 57-67 (West 1987 & Supp. 1989)	Board of Comm'rs v. Enid Springs Sanitarium & Hosp., 116 Okla. 249, 244 P.2d 426 (1926)
Oregon	Medical Assistance OR. REV. STAT. §§ 414.025 - 414.670 (1987)	Smith v. Peet, 29 Or. App. 625, 564 P. 2d 1083 (1977)
Pennsylvania	Public Assistance Medical PA. STAT. ANN. tit. 62, §§ 444.1 - 447 (Purdon Supp. 1989)	Price v. Cohen, 715 F. 2d 87 (3rd Cir. 1983), *cert. denied*, 465 U.S. 1032 (1984) Dearfield Hospital v. Lininger, 3 Pa. D. & C. 3d 501 (1977)
Rhode Island	Support of the Needy R.I. GEN. LAWS §§ 40-5-1 - 40-5-21 (1984)	Roe v. Affleck, 120 R.I. 679, 390 A.2d 361 (1978)
	Medical Assistance R.I. GEN. LAWS §§ 40-8-1 - 40-8-15 (1984)	Carrillo v. Rohrer, 448 A.2d 1282 (R.I. 1982)
South Carolina	Medically Indigent Assistance Act S.C. CODE ANN. §§ 44-6-150 - 44-6-200 (Law. Co-op. Supp. 1988) S.C. CONST. art. XII, § 1	NONE
South Dakota	County Poor Relief S.D. CODIFIED LAWS ANN. §§ 28-13-1 - 28-14-8 (1984)	Sioux Valley Hosp. Ass'n v. Davison County, 319 N.W.2d 490 (S.D. 1982)
	Catastrophic County Poor Relief Fund S.D. CODIFIED LAWS ANN. §§ 28-13A-1 - 28-13A-10 (1984)	

STATE	PRIMARY INDIGENT CARE LAW	LEADING CASE LAW
Tennessee	Medical Assistance Act TENN. CODE ANN. §§ 71-5-101 - 71-5-131	Jennings v. Davidson County, 208 Tenn. 134, 344 S.W.2d 359 (1961)
Texas	Indigent Health Care and Treatment Act TEXAS REV. CIV. STAT. ANN. art. 4438f (Vernon Supp. 1989)	Willacy County v. Valley Baptist Hosp., 29 S.W.2d 456 (Tex. Ct. App. 1930)
	TEXAS CONST. art. IX §§ 4, 9, 11; art. XVI, § 8	San Patricio County v. Nueces County Hosp. Dist., 721 S.W.2d 375 (Tex. Ct. App. 1986)
Utah	Medical Assistant Act UTAH CODE ANN. §§ 26-18-1 - 26-18-10 (1984 & Supp. 1988)	Cache Valley General Hospital v. Cache County, 92 Utah 279, 67 P.2d 639 (1937)
Vermont	General Assistance VT. STAT. ANN. tit. 33, §§ 3001-3075 (1981) Medical Assistance VT. STAT. ANN. tit. 33, §§ 2901-2905 (1981)	Hatin v. Philbrook, 134 Vt. 456, 365 A.2d 511 (1976)
Virginia	Hospitalization & Treatment of Indigent Persons VA. CODE ANN. §§ 63.1-134 - 63.1-141 (1987)	NONE
Washington	General Assistance Medical Care WASH. REV. CODE ANN. §§ 74.04.005 - 137, 74.04.720, 74.09.010 -74.09.910 (1982)	Toulou v. Washington Dep't of Social & Health Serv's, 27 Wash. App. 137, 616 P.2d 678 (1980)

STATE	PRIMARY INDIGENT CARE LAW	LEADING CASE LAW
West Virginia	General Assistance Medical W. VA. CODE §§ 9-1-2, 9-3-2, 9-5-11 - 9-5-15 (1984 & Supp. 1988)	Hodge v. Ginsberg, 303 S.E.2d 245 (W.Va. 1983)
Wisconsin	Public Assistance Medical WIS. STAT. ANN. §§ 49.001 - 49.178 (West 1987)	Trinity Memorial Hosp. of Cudahy, Inc. v. Milwaukee County, 98 Wis.2d 220, 295 N.W.2d 814 (1980)
	Medical Assistance WIS. STAT. ANN §§ 49.43-49.90 (West 1987 & Supp. 1988)	Clintonville Community Hosp. Ass'n v. City of Clintonville, 87 Wis.2d 635, 275 N.W.2d 655 (1979)
Wyoming	General Assistance Minimum Medical Program WYO. STAT. §§ 42-1-102 - 42-5-102 (1988) WYO. CONST. art. VII, § 20	Lutheran Hosp. & Homes v. Yepson, 469 P.2d 409 (Wyo. 1970)