HISTORY OF IDAHO'S INDIGENCY LAWS

Presented by John Graylor
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Have you ever wondered?

1. When did counties become responsible for care for their sick residents?
2. What was a Poor Farm?
3. When did counties get the authority to seek reimbursement?
4. When did counties get the right to place liens on property?
5. When did the Medicaid rate become part of the indigency law?
6. When was CAT created?
7. When did 3rd parties get the right to file applications…and why?
8. How have the roles of the Clerk and the Commissioners evolved over the years?
9. Was the purpose of the original indigency laws to really help the needy or to make sure that the hospitals got paid?; and finally –
10. Where is Alturas County?

Reviewing the history of indigency laws may provide us with a better understanding and appreciation of why the laws are what they are today.
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When I was hired as the Director of Indigent Services in Ada County back in December of 2003, I knew absolutely nothing about the department. I knew even less about the applicable laws.

After I'd been there about a year, I felt I needed a better understanding of the laws that governed medical and non-medical indigency processes.

My legal training tapped my instinct to do the research and so I spent a lot of time at the Supreme Court library, the state library, and the legislative services library.

I read the old transcripts from legislative committee meetings: I retrieved and traced the indigency statutes from 1864 to 2005.

Finally, I copied and read every appellate case in Idaho that dealt with any aspect of the state's indigency laws and was thus able to see how the courts have interpreted the statutes over the last 140 years.

That amounted to nearly 60 court cases. I then wrote short legal briefs on each case I read.

Also, during my research I reviewed statutes on the issue of what if any responsibility counties had to pay for mental health costs. I will make only a brief mention of that issue today because it is relevant to some historically dramatic legislation.

Time will not allow me to cover every change made to the indigency statutes, so I will focus on the more important changes and I'll share with you some of the interesting trivia I found in my research.

Also, when I conducted my research I concluded with legislative changes ending in 2005. We all know that our statutes suffered additional changes after that, but I quit keeping a record of the changes in 2005.
DID YOU KNOW?

- Humans may have been present in Idaho for 14,500 years.
- On March 4, 1863, President Abraham Lincoln signed an act creating the Idaho Territory from portions of Washington Territory and Dakota Territory with its capital at Lewiston.

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Now, follow me, if you will, on a journey back in time...to a time before Idaho became a state.

Let's set the dial on our time travel machine to December 7th, 1864. Idaho was only a "Territory" with the ultimate goal of someday becoming a state.

To this end the territory behaved like a state.

- They elected legislators
- County commissioners
- Passed laws and
- Collected taxes & appropriated money
- We even had a governor.

It was on this date that:

- A public school system was established
- Ben Holliday established the first stagecoach line
- The Idaho Statesman began tri-weekly publications in Boise: and
- The counties of Ada, Alturas (later to be combined with Logan County to become Blaine County), Boise, Idaho, Kootenai, Lah-Toh, Nez Perce, Oneida and Shoshone were created.

Six days later, on December 13th, the Governor signed into law a piece of legislation entitled:

An *"Act to Provide for the Better Maintenance of the Indigent Sick, Idiotic and Insane Persons, in the Several Counties of This Territory".*

Apparently, the term *"politically correct"* had not yet found its way into the political vernacular.

This was Idaho's first iteration of an indigency law. Funding for implementation was to come from both property taxes and a per capita head tax of $2/yr.

The funds were a special levy to be placed into an account called the "Hospital Fund" and was to be controlled by the county commissioners.

Oddly, the law was more enabling than directive for the law did not mandate anything. It gave counties authority to pay for some named services, but did not appear to require it.

The act did not include any mechanism or process for filing applications for assistance: and did not include any language setting forth the type of care or assistance counties were to provide.

1870

Let's travel forward now to 1870.

- In this year, John D. Rockefeller formed the Standard Oil of Ohio Company.
- Congress created the U.S. Department of Justice
- Congress Adopts the Fifteenth Amendment, prohibiting states from denying a citizen the right to vote based on that citizen's "race, color, or previous condition of servitude" (i.e., slavery).

    - What is interesting is no mention was made of gender and it took another 50 years to guarantee women's right to vote with the Nineteenth Amendment in 1920.

In 1870 there appeared to be a pronouncement from our territorial governor that care for the mentally ill should be provided by the territory.

In his biennial message to the Sixth Session of the Idaho Legislature, acting governor E.J. Curtis made the plea to develop a system where the state (territory) could provide the needed care for the territory's mentally ill. His request was general and included no specifics and nothing changed for a decade.

Eleven years later – in 1881 – the legislature authorized the governor to enter into contracts with Oregon and California for the housing and treatment of Idaho's mentally ill.

These contracts continued until 1886 when the Blackfoot Insane Asylum was finally completed and the state assumed responsibility for the care and treatment of its mentally ill.

Let's return to 1870 where we see the legislature's first amendment to the indigency law.

These amendments provided the mechanism for making the law work by designating the county Clerk or the Probate Judge as responsible for hearing the applicant's declaration that they were indigent and destitute.

These officers were also charged with the responsibility to investigate all applications to determine, as the law said, that the applicants were *"really sick, indigent and in destitute circumstances"* and to issue a "certificate" to show they had carried out their duties.

As a side note, when I took the job as Director of Ada County Indigent Services, staff was issuing what they called certificates to the Board of County Commissioners, together with their written findings. When I asked them why they did this, nobody could give me a clear answer.

After I began my research it became clear that we were simply continuing to use outdated language and process. I told my staff to discontinue the issuance of a certificate as it was no longer required under the law.

Finally, part of the 1870 amendments included the right of a Third Party to file an application on behalf of another, but with one important proviso:

The patient had to be unable to file the application himself. We will see that over the course of time, this proviso would disappear from the third party application process.

I will continue to highlight the life of the third-party application because I found interesting the evolution of this element in the law.

The indigency laws would get a rest for 13 years.

1883

- In this year, the Orient-Express began running between Paris and Constantinople
- Also, The Brooklyn Bridge was opened as the largest suspension bridge in the world: taking 13 years to complete: and
- Florida oranges were going for 55 cents for a dozen.

While the original medical indigency law was designed to provide for the indigent sick and the mentally ill, one category of persons still needed tending to: the poor who were neither sick nor mentally ill.

1883 saw the territory's first attempt at creating our ***non-medical*** indigency laws. The legislature enacted a law that was separate from its medical indigency law.

It was called: ***"An Act to Provide for the Care of the Poor in Ada County."***

Section 7 of this new law reiterated the mandates of the 1864 Act by defining "poor" to include indigent sick, idiotic, and insane county residents, as well as *those who are simply incapable of supporting themselves or having assistance from relatives.*

There were two peculiarities about this new law. First, the entire statute applied only to Ada County.

And, second – the law required that Ada County purchase between 80 and 160 acres of land and to erect a building thereon *"for the maintenance and keeping of the poor"* of that county.

Interestingly, the law even told the county what to call this place and this building. By the terms of the statute, the land was to be called the ***"Poor Farm"***, and the building was to be called the ***"Poor House"***.

The law also required Ada County to hire a physician to attend to the medical needs of those in the poor house.

Section 5 of the law required the doctor to examine these Poor House residents and certify to the Director whether they were able of performing manual labor. If so, they were to be discharged.

Payment of the costs of running the facility were to be taken from the Hospital Fund.

Finally, it smacks of irony that a legislative act of mercy and compassion would in Section 10 refer to the Poor House occupants as ***"inmates"*** requiring that the treatment of all inmates of the poor house shall be kind and humane.

Two years later Washington County saw legislation imposing poor farms on them.

Interestingly, the definition of "poor" in this iteration of the law did not include the mentally ill.

A footnote here: In 1886 Shoshone County was given authority to levy a head tax of $2 per resident to provide funds for the "care and maintenance of the indigent sick, idiotic and insane persons" – but I could find no other references to the Shoshone County program.

One would be justified in surmising that the Territory of Idaho – with its checkerboard of indigent programs – was experimenting: trying to find the best way to deal with an age-old issue of providing for its poor citizens.

Counties have always struggled with revenue issues and the 1800's were no different. The counties upon which these poor farms were imposed got creative and started planting crops on all this land.

The thought was that if successful, the crops could be sold for revenue, and the labor to run the farm was ready at hand.

If one was an "inmate" at the poor farm they didn't just sit around. If they were certified as able-bodied they were given the choice of working the farm or being

discharged: all as a method to raise some revenue and counter the costs of operation.

In 1905, however, Washington County Commissioner John D. Robertson wrote a memo to his fellow commissioners reporting that for the years of 1902 and 1903 their poor farm was a financial failure.

He noted in his memo that the county was paying $46 per month for each inmate at the poor farm: whereas the county paid only $15 prior to the farm's creation.

In the ensuing years, the legislature authorized or directed other counties to purchase and maintain poor farms. But not every county in the state participated in the program.

Idaho was not the first to establish a system of poor farms and houses. This system was adopted from the Elizabethan Era in England.

Until the 19th century, the church gave the poor of Europe assistance.

The Reformation period gave the King of England the lands of the church and a 1536 law of the King outlawed begging and provided for organized local governmental relief to the poor who were willing to work the King's lands.

During the reign of Elizabeth I, a spate of legislation was passed to deal with the increasing problem of paying for and administering poor relief.

As early as 1563 – Justices of the Peace were authorized and empowered to raise compulsory funds for the relief of the poor.

But the queen did not actually create poor farms until 1601 by creating "Overseers" charged with the responsibility of overseeing the work of the poor.

And just in case Idaho property tax payers gripe about paying for the indigent program, I would have them know that the Queen Elizabeth programs were paid for by collecting fees from the ***property owners*** under her rule.

This system remained in effect in England for four centuries and carried over into the United States where it continued to thrive until the New Deal era.

An act of 1911 began to substitute unemployment insurance for poor relief and more reform in 1929 modernized the entire system.

So, yes, the more things change, the more they stay the same.

1887

We now move to 1887 when:

- Thomas Stevens is 1st man to bicycle around the world
- US Senate approves the naval base lease of Pearl Harbor; &
- Anne Sullivan teaches "water" to Helen Keller

It was a year that saw the legislature make its first – but not last - and awkward attempt to combine the laws of medical indigency and poor farms (or non-medical cases) into a single piece of legislation.

While the original poor farm legislation required counties to hire a physician to certify the residents' ability to work, this new law also required that he treat them for their medical issues.

Idaho never saw a law "requiring" all counties to implement the poor farm concept. Throughout the history of the Idaho legislature, this legislation appeared to be county-specific.

Third party applications continued to be allowed under this combined law. We see in Section 2177:

> "That if any sick and indigent person, desiring assistance from any county in this Territory, ***is unable from illness to make the application in writing*** required in this chapter, such application may be made for him on his behalf, by another person under oath."

We also find in Section 2180 of this version of the law a strict mandate prohibiting the use of Hospital Fund dollars for any purpose other than the care and maintenance of the indigent sick or otherwise dependent poor of the county.

Combining All Statutes – Getting Organized

I must digress here for just a moment to share with you what I believe is an incredibly interesting moment in Idaho statutory history.

When one takes on the role of amateur legislative historian it is easy to speculate. As time trudges on more history is made and legal scholars trying to sort through this quagmire must review the entire legislative history and not just a few opportune snippets in time in the legislative spectrum.

So, we are in 1887 -24 years from the time the Territory was created - and up to this point in time the written territorial legislation was – from an organizational perspective - a scattered mess of individual acts not combined in any one format, lacking title or chapter numbers, indices, organization, rhyme or reason.

The fact that this legislature made an awkward attempt to combine the medical and non-medical indigency laws may have been evidence of their realization that as a legislature trying to become a state, they needed a better system of organizing their laws.

Their frustration – and their remedy – came to a head in 1887 when the legislature appointed a commission and directed that all laws be combined into a single volume to be known collectively as the Revised Statutes of the Territory of Idaho.

The Commission charged with this task included two pages of introductory remarks befitting such a momentous change in policy and format.

It was here that the Commission declared their marching orders from the legislature, which included a directive to omit all parts of the Revised Statutes that were previously repealed. The Commission dutifully included in this introduction the following:

> ***"...all parts of the Revised Statutes repealed by unmistakable reference have been omitted from the printed volume."***

What that tells us going forward is, if you didn't find it in the newly printed volume of statutes, it didn't exist and was not considered any part of the territorial law going forward.

The newly revised statutes contained the following legislative declaration:

> ***"Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:***
>
> ***[Section] 1: That the following laws must remain and continue in force, as the only laws of this Territory, and all other laws, <u>not included herein or continued in force by or included in the Revised Statutes are hereby repealed.</u>"***

<u>Now, please note that all medical and non-medical indigency laws survived this major reconstruction.</u>

So, all of this makes for interesting drama, I suppose, but the modern day indigency worker will wonder why this moment in history may be important.

It's important if you are part of the debate about whether counties are legally responsible to pay for mental health costs that are not part of the involuntary commitment process. Most people call this, for lack of a better term: VOLUNTARY MENTAL HEALTH.

When one looks at the history of Idaho's legislation in this area a good argument could be made that from the very beginning the territorial legislature put on the backs of counties the duty to care for those suffering from voluntary mental illness, while the state would take care of the involuntary commitments.

The very first piece of legislation telling the counties to take care of their poor and sick, included "*the idiotic and insane.*" But the legislature also passed laws putting on the state the duty to care for the involuntary commitments.

Interestingly, when the legislature enacted separate and specific laws about poor farms, they included the "idiotic and insane" language in some of those laws, but not in all of them.

For example, the Ada County Poor Farm Act required that the idiotic and insane be cared for along with the sick and the poor.

Yet, the Washington County Poor Farm Act included only the indigent sick and those unable to support themselves. No mention of mental illness.

And, in 1886 the Shoshone County Poor Farm Act included the duty to care for the indigent sick, as well as the mentally ill.

So, standing alone it would appear that counties were held responsible to provide care and payment for voluntary mental health cases. But remember, you can't look at history in a vacuum.

As I said earlier, I won't include in this presentation a discussion about the history of legislation dealing with mental illness in this state. That takes up an entire chapter in my research materials.

But, any debate about this responsibility cannot ignore that after the re-organization of statutes in 1887 – where all previous laws were repealed unless preserved by specific action – it is difficult to find in any post-1887 legislation similar language putting on counties a duty to pay for voluntary mental health costs.

In fact, it was in 1887 that the legislature revised Chapter VI of the new Revised Statutes and titled it: "The County Poor." References to those entitled to county assistance now took on a new face and included only:

- The indigent sick or otherwise dependent poor
- Inmates of the poor house or county hospital
- Sick or indigent person
- Indigent and destitute

No longer was there any mention of the idiotic or insane.

Further, that portion of this statute (Section 2180) prohibited counties from using funds from the per capita and ad valorem levies for any purpose other than for the:

> "...care and maintenance of the indigent sick or otherwise dependent poor of the county..."

Again, no mention of costs related to mental illness.

Certainly, it could be argued that one can and often does end up being "poor" or "destitute" as a result of mental illness and that alone could have landed a person in the poor house.

Conversely, however, it could be argued with equal persuasion that the law only required that the person be given food and shelter: and a medical checkup by a physician most likely not trained in treating mental illness.

And, unless committable to the state's institution, providing on-going care was never anticipated by Idaho's territorial laws.

Finally, it is difficult to know when poor farms ceased to exist. But at least three things are quite certain:

First: After the 1887 re-organization of Idaho's written laws I could not find anywhere the commonly clear language of the older legislature making counties responsible to care for the mentally ill.

Second: Idaho's territorial legislature was never shy and was always quite clear when placing responsibility on the counties to care for the mentally ill. They did this in the very first act of medical indigency in 1864.

At some point along the path of history, they removed that blatant language and this duty no longer appeared in the medical indigency statutes.

And, Third: By the 1974 amendments to the medical indigency laws the phrase "poor farm" disappeared.

So, in the great debate over county responsibility to provide payment for mental illness costs, the only certain thing that can be said is that if you're going to place that responsibility on counties, you will have to find authority for that somewhere other than the medical indigency statutes.

And, you'll have to find it in statutes adopted 1887 or later.

Also keep in mind that if you want to argue that mental illness is a medical sickness, while I may agree with you, the Idaho legislature has demonstrated a vivid inclination to treat them separately.

Remember that the early laws on medical indigency required counties to care for 3 distinct classes of people:

- The indigent sick,
- The poor, and
- The idiotic and insane.

The legislature viewed mental illness as not being part of the class of "indigent sick" or "poor".

OK, let's' move on now, to:

1899

- In this year, Cuba was liberated from Spain by the U.S.:
- The first known use of the word "automobile" was seen in an editorial in The New York Times.

The Responsibility of Parents & Family

Early common law required that a person was not entitled to government assistance if he had family that was able to take care of them.

Indeed, early versions of the law required the county investigator to certify that an adult applicant's family was not assisting him.

In Idaho, however, there was no formalized law requiring relatives to provide any form of care for adult family members until 1899 rolled around.

It was in this year that the Idaho legislature enacted ***"An Act Governing the Reciprocal Duties of Parents and Children of Poor People"***.

Under this law, it was the reciprocal duty of parents and children to provide care for each other if they were able to do so.

The law stated that if an adult made application to the county for assistance and the county determined that a parent or child was able to care for them, the county was required to provide the care and then file a civil suit against the parent or child to recover their costs.

This law contained an emergency declaration in Section 2 and it is easy to speculate that counties were being inundated with people appearing at the doors of their poor houses or county hospitals seeking assistance when they had family capable of extending to them a helping hand. This burden may have caused the counties to scream for help from the legislature.

Although this particular law was not a part of the indigency laws, it's broad definition of "poor person" and the mention of county assistance brought into play the combined statute of indigency, making the requirement of reciprocity applicable to both medical and non-medical care.

Oddly, this reciprocal responsibility statute persisted in Idaho Code 32-1002 (under the Domestic Relations section).

I remember when I was the Trial Court Administrator and I became aware of this particular section of the law as it was contained in the chapter used mostly by my Family Law Judges.

We would often engage in academic legal discussions about whether it was constitutional to require an adult to provide and pay for the care of another adult. ***We all concluded it was not***. Perhaps that is why this law was never enforced by our court during my 18-year tenure there.

This law stayed on the books, however, until just recently. In 2011 the Idaho legislature repealed it.

But, they may have missed an opportunity to clean up other similar statutes.

For example, today in Idaho Code 66-327a, adult children are stated to be responsible to pay pre-commitment costs of involuntary commitment proceedings against their parents.

I have never known of a county prosecutor who attempted to enforce this provision fearing. I suggest, that they could not overcome the argument that it is unconstitutional to require one adult to care or pay for another adult's expenses. The repeal of 32-1002 likely supports this argument.

1913 – Burial Expenses For Soldiers

- The National Woman's Party is formed;
- For the 1st time, a prize is inserted into a Cracker Jack box; and

- 16th amendment authorizing income tax was ratified. What were our ancestors thinking?

By 1913 poor farms were still in vogue but the legislature added to the counties the responsibility for the first time to pay for burials.

This duty was limited to the burial of former soldiers, sailors or marines who were honorably discharged and served in the Civil War, the war with Mexico, the Spanish-American War or the Philippine Insurrection, where the solider died without leaving sufficient funds to pay for his burial.

Because this law is specifically inclusive, it begs the question: Who paid for the burial of the poor who did not fall under any of these categories? I found no law placing that responsibility on the counties.

The law goes on to include on the counties' dime burial for the wives or widows of these veterans where their estate could not cover the costs.

<u>The law capped the counties' responsibility at $50. Ah! The good old days.</u>

This statute was amended in 1919 to include veterans of WWI and raised the cap to $75. An amendment in 1946 included veterans of WWII.

In 1969 this statute was again amended to include female vets and to raise the cap to $250.

In 1992 counties would no longer be responsible for veteran burials...and the dollar limit would disappear.

The indigency laws would not be amended again for the next 44 years.

<u>1957 – Emergency Services</u>

- 1st electric watch was introduced;
- Elvis Presley was the biggest star in America; and
- I turned 4 years old ☺

Up to this point in the history of medical indigency laws, applicants were required to file their application BEFORE they received any medical services.

In fact, the statutes specifically prohibited the county from paying for any services that were rendered before an application was filed and a certificate issued.

This amendment changed all that with a concept that would never leave us by allowing hospitals to render emergency services to an indigent sick person BEFORE an application for payment was filed with the county.

Still, an application had to be filed after the fact and a certificate of eligibility issued.

Indigent laws would enjoy another long period of legislative inactivity for the next 17years.

After that, things would never be the same.

The 1974 Amendments

Move the time machine dial ahead to 1974.

- Inflation was over 11%
- Cost of a new home was $35,000
- A new car cost $3,700
- Price of gas was 55 cents/gallon

And the Idaho legislature took a major step in tinkering with the indigency statutes, and the state would begin to:

Become Politically Correct

From the beginning of Territorial days the words, "indigent" and "poor" were used interchangeably in Idaho's statutes.

"Indigent" was generally used in conjunction with a reference to the medically needy, while "poor" referred to those who were not sick, but needed some assistance with living expenses.

The 60's were behind us and the decade following insisted that our government assume a new image that included political correctness.

It was in 1974 that Idaho deleted from its indigency statutes the term "*poor*" and relied instead on the term "*medically indigent*".

The old "*inmates*" of the poor house were now to be called "*patients*" and the poor farm and poor house became the "*county hospital*".

Good-Bye Judges

Because of court reform in 1971 Justices of the Peace, Municipal Judges and Probate Judges were eliminated and replaced with the lawyer Magistrate Judge. This reform, spurred by the Idaho Supreme Court, would also remove the judiciary from the indigency application process.

The creation, in these amendments, of the right of appeal to the District Court, also necessitated getting the judges out of the process altogether.

New Application Form

This legislation gave us the first Application form for county assistance. Although the form was not prescribed as uniform, any form used was to be in substantially the same format.

The Investigation

By 1974 county physicians were still included in the process. Counties could still require applicants (now referred to as "persons") to submit to a physical and mental examination by the county doctor.

And, the applicant still had to demonstrate he was medically indigent, sick or otherwise indigent and in destitute circumstances. This replaced the previous standard of having to show you were "really sick", the standard that had persisted for the last 110 years.

Also stricken from the law was the county's authority to force applicants to perform physical labor in the maintenance and upkeep of county buildings.

For the first time, the Clerk was now authorized to delegate the duty to investigate applications for assistance.

Still, no time restrictions were placed on the Clerk for completing these investigations. They were only required to be "immediately" investigated.

Third Party Applications – Here We Go

Before 1974 third parties could file applications on behalf of a patient only when the patient was unable to do so because of his illness.

These amendments loosened that standard and provided that if the patient simply failed to file an application – for any reason – then a third party could file the application for him "or on his behalf", so long as it was done under oath.

The skeptical eye of a veteran of medical indigency can quickly see a pattern developing with regard to third party applications.

A Total Repeal and Re-Write

Recall that in 1887 the territorial legislature made its awkward attempt to consolidate the indigency laws under one statutory roof by moving the laws on poor

farms into the same chapter as the laws requiring counties to care for the medically indigent.

Since that time, the state morphed through different codification formats. By 1974 we had Chapter 34 dealing mostly with medical AND non-medical assistance; and Chapter 35 dealing mostly with county hospitals.

The 1974 legislature repealed Chapter 35 in Title 31 in its entirety. While the title of this chapter did not change, it was completely re-written to contain the medical indigency laws.

Yet, the language of Chapter 34 still contained references to medical indigents and was retained as a stand-alone chapter with many cross-references in both chapters. So, the medical indigency laws at this time spanned two chapters.

Looking back, using two separate chapters appeared to be an odd way to approach codification. Doing this was sure to cause confusion as was sort of anticipated by the Definitions section found in 31-3502:

> "As used in this chapter, and chapter 34, title 31, Idaho Code, the terms defined in this section have the following meaning, unless the context clearly indicates another meaning..."

This was borne out in the judiciary as the bulk of Idaho's case law on medical indigency was heard and decided in the late 1970's the 1980's and the early 1990's.

It was during this period of time that the medical indigency laws suffered the most significant and voluminous changes since their birth in 1864 or since this stormy period.

Time for Filing

While Chapter 34 spoke to the need to file an application and even offered a form to follow, it did not address the time frames for filing.

Chapter 35, however, provided that an application could be filed at any time within one year following the death or discharge of the patient. The hospitals had an undefined duty to notify the county when they had a patient who was medically indigent.

Again, since counties had no jurisdiction to do anything until an application was filed, the exercise was merely ceremonial.

Time Requirements Placed on Counties

While speaking in broad general terms about a hospital's responsibility to act in a timely manner, 1974 saw the first time specific restrictions placed on counties.

Now, the clerk would have only 30 days to either approve or deny the application.

- If he was going to refuse to issue a certificate; or
- If he was not going to meet this deadline, he had to notify the applicant and state why.

I'm not sure why this notice of future non-action was required to be given because the statute did not provide for an extension.

In fact, the law provided that if the clerk failed to meet these deadlines, the application was to be considered as approved.

Appeal to the District Court

We're stuck in 1974 and now we find a specific right to appeal to district court.

But the right of appeal here was only to appeal the clerk's refusal to file a certificate of eligibility with the Board.

So, why did the legislature not provide a right to appeal the Board's decision? This is where it gets interesting. There are at least two theories here.

Prior to the 1974 amendments the indigency statutes gave the Board of County Commissioners plenary authority and discretion to decide whether and to what extent they would approve payment on a certificate of eligibility.

The 1974 language arguably took that right away from the Board by providing that once a certificate of eligibility was presented by the Clerk to the Board, the Board's duty was then to *"make provisions for the applicant's relief or pay the bill."*

Gone was the previous language that allowed the Board to make its own determination that the applicant was really sick and needed assistance and would suffer if not aided by the county.

Oddly, some discretionary language was kept by the 1974 amendments that allowed the Board to determine just how much relief would be granted with the provision that the Board could:

> "...make such provisions for...relief...as may be necessary under the circumstances."

The fact that this language remained - while at the same time the language about exercising their judgment as to whether the applicant was really sick and indigent - was deleted is odd at best.

So, theory #1 proposes that no right of appeal of a Board's decision was necessary since they had very limited authority under these amendments.

Theory #2:

Boards of county commissioners were created in 1864 and during that year the territorial legislature created a general right of appeal to the district court of basically any decision of the Board. That general right still exists today in I.C. 31-1506.

So, theory #2 suggests that since the predecessor of 31-1506 remained on the books, there was not need to create another right of appeal here.

Miscellaneous Provisions

- The 1974 legislature attempted to define obligated county for the first time, but included so many "buts", "ifs" and provisos that it remained classically obscure as to which county was the obligated county.

- Hospitals were now required to make all reasonable efforts to collect from third party resources prior to submitting claims to the county.

    - Time standards for filing and processing claims would effectively neuter this requirement.

- Counties secured rights of subrogation upon payment of any claims.

- It became a misdemeanor to give false or misleading information to a county or a hospital or fail to disclose any third party payment resource.

- Neighboring counties were given authority to open joint county hospitals and share the costs.

1976

As we inch close to the present we find ourselves two years down the road in 1976.

- US female Figure Skating championship won by Dorothy Hamill:
- Gas was a whopping 61 cents a gallon:
- Bread was 35 cents a loaf: and
- Stephen Wozniak & Steven Jobs founded a small obscure company called: Apple Computer.

Medical indigency remained in both Chapters 34 and 35 as they worked in tandem. We also see the evolving responsibilities of counties and its officers begin to shift.

Demise of the County Physician

The first of the many changes made during this term saw the elimination of the mandate to employ a county physician, which now became permissive.

The Application Process

It's hard to believe that it took 112 years of indigent laws to finally set forth reasonable time references and deadlines for the filing of applications.

Non-emergency applications had to be filed 10 days prior to the service being received.

Oddly, the legislatively suggested form gave way to the counties wanting to do their own thing and they were given the freedom to draft and use their own application forms.

With 44 counties creating their own forms, even one who flunked rocket science could predict that a uniform application was not too far off into the future.

Role of the Clerk Diminished – Board Given More Power

Two years of exercising little or no authority must have lit a fire under the Board of County Commissioners' lobby.

Under the new changes this year, the Clerk no longer made any decisions about eligibility and merely conducted the investigation and filed with the Board a statement of findings.

The word "certificate" would be forever removed from medical indigency litany. It was now the Board that had the final say.

What is an Emergency?

Under the 1974 amendments, if a patient presented at the hospital's emergency room the hospital assumed the risk that an application would be approved AFTER the services were provided.

Section 31-3407 at that time provided that claims could be paid for such services only if a certificate was issued after the fact.

The 1976 amendments to Section 31-3407 changed that by providing that these claims would be paid:

> "...where a hospital rendered the services to a medically indigent person in an emergency and subsequently there is obtained said approval..."

But, along with this sort of relaxed process, came tighter time restrictions for filing such "emergency" applications.

Recall that previous law allowed hospitals to wait a full year before filing an application for emergency services.

Removing the Clerk from the decision-making process required that the legislature also address the filing time standards because they used to be tied to action by the Clerk.

The 1976 amendments shortened that filing period to 45 days following admission.

The new law also provided that if a person became medically indigent after being admitted to a hospital or subsequent to receiving treatment, the application could be filed within 30 days of the time the person became medically indigent.

This amounted only to more subjective convolution that would prove impossible to implement in the real world.

This particular piece of the law would later fall under the scrutiny of a future legislature.

The County's Failure To Act

When the legislature tinkers with a statute as frequently as they have the medical indigency laws, something is surely going to be overlooked.

Earlier I criticized that section of the law that required the Clerk to notify the applicant if the Clerk was refusing to issue a certificate: or if he was not going to render his decision on the application within the statutorily imposed time frames. And, that's all it required.

Well, when the legislature swapped responsibilities between the Clerk and the Board of County Commissioners giving final say to the Board they must have forgotten just how silly that provision was because they kept it in their 1976 amendments.

The amendments simply stated that:

> "If the board of county commissioners fails to act upon an application within 60 days, it shall notify the applicant in writing."

The use of the negative "fails to act" to trigger an affirmative "shall notify the applicant" causes some confusion.

Doesn't it go without saying that if the applicant does not get the county's decision within the required time frame, then that is considered a failure to act? Not necessarily.

After all, how does one notify another that it has failed to act? And is a failure to act an action that can be appealed to the district court?

This conundrum was addressed by the Court of Appeals in 1984 in *St. Benedict's Hospital v. The County of Twin Falls* by Judge Burnett. His frustration with the language was made clear when he concluded that surely the legislature could not have intended to do what it did:

> "...we do not infer from the 1976 amendment that the Legislature intended to replace the definitive notice provided in the 1974 law – a notice which plainly informed the applicant of the outcome of

his application – with an obscure notice merely advising the applicant that the commissioners have not acted."

Instead, the Court found, the county was still required to take some official action to approve or deny.

Even though the statute did not provide a penalty for failure of the county to comply, the court stated that a failure to do this would be deemed as a failure to comply with the statute and would result in an approval.

Since 1974 was the year in which the indigency laws went through a total re-write, it's easy to see how something like this got overlooked.

The Appeal - A New Middle Step in the Process

Section 31-3505 was amended by deleting all the language of appealing directly to the district court and was replaced by a new middle step that heretofore did not exist:

> "If the application is denied, the applicant may request ***a hearing*** before the board of county commissioners. The applicant shall be entitled to judicial review of the decision of the board..."

This new process of getting in front of the board was not referred to as an appeal. It was a hearing without further definition.

Trying to Define Obligated County – Again

This legislature continued its fumbling efforts to define obligated county.

In this round of changes it removed the references to situations where the applicant didn't reside in any county at the time of application, and also removed the provisions relating to car accidents involving non-residents requiring the county where the accident happened to pick up the tab.

Still remaining, however, was the distinction of the husband who had more than one residence.

The Hospital's Responsibility Diminished

The 1974 total rewrite of Chapter 35 included a requirement that hospitals make all reasonable efforts to "collect" from third party resources before filing a county claim.

That didn't last very long because in 1976 this section was changed.

Under the new law the only obligation placed upon the hospitals was that of making reasonable efforts to "determine" third party liability for the hospital charges.

Without a penalty to follow non-compliance, this provision amounts to nothing more than feel-good, poor draftsmanship that does absolutely nothing to create value.

A skeptic historian might note a progressive decrease in hospital responsibilities, meshed together with an increase in their rights and protections – over the course of history.

Entering the State is Safe Again

Section 31-3511 was amended to eliminate as criminal activity coming into the state primarily to receive hospitalization as a medically indigent person. This portion of the law would never return to the books.

1982

- A stamp was 20 cents
- Gas was 91 cents a gallon
- Magnum P.I. and Knight Rider were TV hits: and
- The first CD player was sold in Japan

In 1982 the legislature created the pre-litigation panel process for reviewing resource availability. This portion of the law would see no changes until 2005 when the prelitigation sections were re-designated to become part of chapter 35.

But 1982 should be remembered as the year that the CAT Program was created. Initially, counties were given the option of participating in the program.

Counties that chose to participate were assessed a per capita premium to fund the program. In return, participating counties' liability would be limited to $10,000 during any 12-month period.

This is the first time, by the way, that any dollar limits on county liability would be mentioned.

Remember, during all the years that preceded 1982, counties were on the hook for the entire medical bills for qualified citizens.

It was in 1990 that the legislature eliminated the county-funded CAT Fund, made that a State fund, and made participation in the CAT program mandatory upon all counties, thus eliminating the need for county assessments or contributions.

In retrospect, I'm sure the legislature wishes it never would have relieved the counties of contributing to the CAT Fund.

1983

1983 saw only a few amendments, but they were significant for counties.

First, the right of counties to seek reimbursement without filing a civil suit was created.

> Oddly, the statute said the county could pursue "a portion" of the medical expenses paid on their behalf. I'm not sure what was meant by that.

The Medicaid Rate

Also, in the past counties were required to pay the billed charges of hospitals. The 1983 amendments lessened this burden by requiring that they only pay the adjusted Medicaid rate.

1987

1987 saw no amendments to the medical indigency laws but there was a significant change in Title 31 that affected county indigency budgets. It was this year that Idaho Code 31-873 was created.

This new section was added to "assist counties with their medical indigency claims" by expanding the state's participation in the federal Medicaid assistance program.

To pay for this the state assessed against each county a $.70 head tax for all persons living in the county to be deposited in the state's County Medical Indigency Suspense Account.

1988 -1989

Over a period of six consecutive years spanning from 1988 through 1993 every Idaho legislative session would see some tinkering with the indigency statutes.

1988 was the year in which medical indigency records became confidential by the creation of Idaho Code 31-874.

Residency saw changes to its definition in both 1988 and again in 1989.

And, of course, any tinkering with the law can't leave out yet another attempt to define obligated county. This time, however, they started forming the foundation for what would become the somewhat final definition with only a few modifications in later years.

I guess practice makes perfect.

1990 – 1991 - The Great Divide and Reassembly

1990 marked the beginning of a grand idea that went nowhere.

It was during this year that the legislature embarked on an idea to eliminate county indigent services and assume full responsibility for indigent medical costs.

The thought was that the state could do this by a "Medicaid Expansion" using the Medically Needy Program. – SOUND FAMILIAR???

First, they amended Chapter 34 to eliminate all references to assisting the medically indigent and changed all terms with the word "medical" to "nonmedical".

Chapter 35 was then amended to repeal 12 sections and striking all references to the counties' responsibility for medical assistance, and reducing their levy authority.

While county responsibility would now be limited to only nonmedical assistance, the statutes outlining this duty were still spread between Chapters 34 and 35 instead of simply combining the two chapters into one.

At the same time, a new section was added in Title 56 that created the new *Idaho Medial Assistance Program* to be managed by the Department of Health and Welfare.

Under this program the state would use state funds to pay for some medical costs of residents who did not otherwise qualify for Medicaid or Medicare.

By this new section the Department of Health and Welfare was given the responsibility to investigate all applications for medical assistance and rule-making authority to determine eligibility.

The legislation wasn't to take effect until October 1, 1991 to coincide with the counties' budget cycle and to give the state and the counties time to work through the transition.

But – the new State Medical Assistance Program went into effect July 1st of 1991.

Beginning July 1st of that year CAT and the counties would no longer be liable for medical indigency costs and the Charities Fund would cease to exist except to allow counties to continue processing county claims that were pending until the funds were exhausted.

If there was to be a fund balance, the counties would be permitted to absorb the funds into their general fund.

I was told by those who are in the know that this legislation was an attempt to copy what the state of Utah had recently done.

I heard from others that it was an attempt to provide property tax relief.

Still, others told me that there was some effort by the legislature to take control over county funds in order to pay for this ambitious endeavor; and that met with some forceful resistance from the counties.

By this law, counties were given about a year and a half to shut down their indigent services programs.

1991

Then came 1991. The 1990 legislature failed to appropriate sufficient funds to put into effect the changes they made that same year.

So, without the funding in place, the first thing the 1991 legislature did was to repeal everything it had done to medical indigency the year prior. The legislature put things back to the way they were before with a few changes.

In reviewing the minutes of the various 1991 legislative committees that brought about the 1991 repealing amendments, I found little there to offer any explanation for the legislature's about-face.

The law requiring counties to assist with payments to the Medicaid program was changed to remove counties from that equation.

But this change of heart did not restore the medical indigency laws to where they were prior to 1990. Of the 12 code sections in Chapter 35, only 5 were re-enacted.

Eliminated was the past mandatory practice of requiring all counties to contribute to the program and, instituted was a system of state funding.

Also, the counties' liability was to stop and transfer to the state once the dollar amount reached "the level of catastrophic health care costs."

So,

- Gone was the Idaho Medical Assistance Program (or the Medicaid Expansion);
- The CAT program was bolstered with additional authority and funding; and,
- Counties were once again in the business of handling and paying for medical indigent costs.

1992 and the Split Between Medical and Non-Medical

- In this year, McDonalds opened its first restaurant in Beijing, China
- Bill Clinton became our President; and
- AT&T releases its video phone for $1,500

In 1992 the legislature repealed all of Chapter 34 and rewrote it to deal only with non-medical assistance.

This would be the first time that the difference between medical and non-medical would be officially delineated.

In this first attempt to split responsibilities, the legislature provided that the counties would not be responsible to provide non-medical assistance for more than 3 months in the aggregate in any twelve month period.

The new law included a definition of "medically unemployable" and talked about extending assistance for only three months to "unemployable persons". These references would disappear in later amendments.

Burial of Veteran

For years, counties were responsible for the burial of veterans. In 1992 the burial section of Chapter 34 was moved to Section 3412 where it rests today and the title of the Section was changed to INDIGENT BURIAL, and any references to providing these services to veterans were noticeably absent.

If these 1992 amendments were of any significance it would be that non-medical and medical assistance were for the first time in Idaho's history to be viewed and treated as completely separate processes, each with their own application and appeals systems, never again to travel the same road.

Chapter 35

Now, as earlier noted, both Chapters 34 and 35 were replete with cross-references to one another. The 1992 amendments eliminated those references so there was no mistake that each chapter stood separate from the other.

Those references to chapter 35 medical indigency previously found in chapter 34 were merged into a new chapter 35.

1993

In older times the Idaho convening of the legislature was a biennial event. That means they met only once every two years. At some juncture that changed to once a year and as one studies the history of medical indigency it is at least entertaining to see the constant meddling with this law pick up steam and regularity at the same time.

So, it should be no surprise, then, that the legislature again decided to meddle with the law in 1993.

What is a Hospital?

The definition of hospital was changed to parallel the definition used in Title 39 of the code – the Title that regulates the licensure of hospitals in the state.

Medical Clinics

The 1993 amendments also added the term "medical clinics" to the list of facilities county commissioners were authorized to build or purchase.

1995

In 1995 the legislature made only one change to the medical indigency statutes. It officially set the limit of county responsibility in medical indigency cases to $10,000.

1996 – The Year of Significant Changes

Other than 1974 and 1976, no other year represented the broad significance of change as did 1996.

Chapter 34 saw only one insignificant change this year.

In the medical indigency chapter:

- 10 sections were either completely eliminated or combined in other sections;
- 11 sections were amended; and
- 12 new sections were added.

New Definitions

In this year, some old definitions got the boot, while others were introduced for the first time.

- "Medically necessary services" – was added for the first time.
- "Sick" – was permanently eliminated
- "Indigent Person" – eliminated and replaced with "obligated person"
- "Emergency Service" – added
- "Provider" was a new term added to coincide with the expansion of county responsibility to pay for services rendered outside the hospital environment
- "Third party ***applicant***" was a new term
- "Resources" – a new term to include virtually anything of value.

This new definition of "resource" included all forms of public assistance or benefits for which the applicant MAY be eligible, or for which they MAY HAVE an interest.

This reference to hypothetical or future resources was a first and may have been in response to an earlier Supreme Court opinion holding that counties could not consider potential future income or resources; and could not consider access to public benefits as a resource.

Powers and Duties of the County Commissioners

- References to "sick persons" were eliminated and substituted with "residents of their counties".
- Counties were given the authority to enter contracts to carry out their duties under this chapter.

And, in an interesting twist, **and only for 1 year**, counties were required to pay up to $5,000 for the emergent care of a non-resident to the point of stabilization, and, if necessary, for the costs of transfer to the nonresident's place of residence. The CAT fund was to cover the balance of these costs.

Also:

- A new section was created outlining the powers and duties of the CAT administrator
- The governor was given authority to enter into "reciprocal agreements" with other states

Uniform Applications

Prior to 1996 there was a time in the history of Idaho's medical indigency laws when counties were given the option of participating in the CAT program.

At the same time those counties that opted into the program were required to use the same application form. The counties that did not opt into the program could use whatever form they wanted for their application process.

It wasn't until 1996 that the Uniform Application was adopted as the mandatory statewide form. The new law did not prescribe a particular form. It simply said that the Uniform Application would be the one finally adopted by the Idaho Association of Counties and the Idaho Hospital Association.

And, the application was now, by these amendments, required to be signed under oath. A new section also addressed how to deal with applications for follow-up treatment.

Remember in older days only third party applications had to be signed under oath. If the patient was filing the application this requirement did not exist for them.

Presumably, that was because the old laws required the patient/applicant to appear before a justice of the peace or the Clerk – and they would then place them under oath to take their declaration that they were in need of assistance.

The **automatic lien** on the real and personal property of applicants was created in the 1996 amendments.

If we can step back to 1974 for just a minute, we are reminded that during that year timelines for filing applications were for the first time put into the law.

- In 1974 medical indigency applications had to be filed within 1 year following the death or discharge of the patient from the hospital.
- This was changed in 1976 requiring an application to be filed prior to being admitted to a hospital.
- The 1996 amendments changed that to require the filing to be done prior to "receiving services from the provider".

- Although the requirement to investigate an application dates clear back to territorial days, the 1996 amendments created a new section
  - Giving the clerk subpoena power
  - Requiring cooperation from the applicant and 3rd party applicant

- Giving the clerk 20 and 45 days to complete their investigations for non-emergencies and emergency applications, respectively.

- And now, the Board would be required to act on the application within 15 days of receiving the clerk's findings.

    - They had 5 days to mail out their written decision.

- In the past, the law provided that a decision by the clerk on the determination of eligibility could be appealed directly to the district court.

    - Then, in 1976 an interim step was added by providing for an "appeal" hearing before the county commissioners.

        - Now, in the legal vernacular, use of the process of "appeal" generally refers to a separate body reviewing the decision of another.

        - As used here, it is likely a misnomer since the county commissioners would be reviewing their own decision. This is not a true appeal.

        - "Reconsideration" would have been the more appropriate word.

            - Previous law allowing a rehearing was limited in that the board could refuse to reconsider its decision.

                - With this new process called an "appeal" the board had no discretion. The right was now absolute, forcing the Board to reconsider its initial decision.

        - And, for the first time in the history of medical indigency – ***providers*** are now given the right to appeal to the board...even if they did not file a third party application.

        - The amendments also put time restrictions on the appeal hearings. They had to be held within 75 days of the notice of appeal: could be continued once for 45 days: and any further continuances had to be stipulated to by the applicant.

            - The board also had to make its final decision within 30 days of the conclusion of the hearing.

- Non-binding arbitration was created to address those applications that were denied solely on the basis of medical necessity.

- While appeal to the district court remained, it was limited to those situations where an appeal was first filed and heard by the county commissioners.

- "Obligated County" was again tinkered with in no significant way.

    - But – one new subsection would make its way into the law addressing the issue of which county would be responsible for students attending college.

        - The responsibility would rest with the county of the student's residence: or that residence of his parents if they were claiming him as dependent.

- <u>Reimbursement</u>

Recall that in 1983 the right of the county to seek reimbursement without filing a civil lawsuit was created. The statute at that time was crude and ambiguous as it allowed only recovery of a portion of the costs paid by the county.

The 1996 amendments included substantial changes and clarification of this right.

- Reimbursement was now to be split between the counties and the CAT fund

- Counties were allowed to seek reimbursement at a later date if they found that the applicant's circumstances changed

- The applicant was given the right to ask the Board at a later date to reduce or forgive reimbursement

- Subsection 4 provided an avenue for the applicant to sign a consensual lien in addition to the automatic lien created by law: and provided a mechanism for counties to file their liens in other counties and other states.

- Subsection 6 found a return to physical labor by providing that a board could require applicants to become employed

- This should not be viewed as a form of servitude or a return to the "poor farms" of yesteryear. More likely – it was meant to allow the county in setting an amount of reimbursement to attribute income to the applicant

- Finally, with regard to reimbursement, the applicant was given a right of direct appeal to the district court to challenge the reimbursement order.

Violations and Penalties

- With the 1996 amendments came the 2-year ban for failure of an applicant to cooperate in the county's investigation.

- Subsection (2) was added providing that the county commissioners had no jurisdiction to process an application that did not comply with the requirements of the chapter.

Supreme Court cases pre-dating these amendments held that absent some statutory remedy counties could not deny an application simply because the applicant failed to file an application within time limits.

Instead, the court held that the county had to demonstrate some prejudice it suffered in order to justify a denial.

  - This amendment may have been added to address this.

- Subsection (3) was also a new segment re-emphasizing the failure to cooperate tone expressed by the legislature throughout these amendments: stating that the county may deny an application if the applicant or third party applicant failed to cooperate.

  - It also provided for denial if the applicant divested himself of assets within one year prior to filing

- Conversely – Subsection (4) provided that if the county failed to act upon an application within the prescribed time limits, the application would be deemed approved.

- Finally, new provisions in this year required providers to submit their bills within 60 days of receiving the county's notification of an approval.

  - And, counties were given 60 days to pay those bills: and 14 days to submit paperwork to CAT

1998

In this year, the definition of "Clerk" was changed to mean the clerk of the board, or his or her designee.

Chapter 34 saw a few minor changes this year:

- The term "medically employable" was deleted.
- The definition of resident was changed to require a 30 days presence.
- The definition of "resource" was broadened to include Worker's Compensation, VA, Medicare and Medicaid.
- Also, the limit of counties' responsibility to provide non-medical assistance was changed from 3 months in a 12-month period, to just 1 month of assistance.

    - The commissioners were also given authority here to provide additional non-medical assistance beyond what was required in the statute.

2000

136 years after the birth of medical indigency, we find ourselves now at the turn of the century in the year 2000.

- Somebody brought to the attention of the legislature that a few key words were missing from the definition of "resident" of the state.

- The oversight in drafting from previous years made it possible for a person to live in another state and still claim residency in Idaho for purposes of medical indigency. These amendments cleaned that up.

- An amendment was made to clarify how to count days in calculating the time restrictions for filing applications.

    - Emergency applications were given an extra day (from 30 – 31 days)

    - And, calculation was now to begin with the first day of the provision of services instead of the "following" day.

    - The time for filing in the proper county after being denied in another county was also rewritten and clarified.

- Obligated County got yet another minor makeover by adding a new Subsection (e) that said if a person has not lived in any county for 30 consecutive days, the county where he last resided would be the obligated county.

2004

In 2004 the law was changed to say the Medicaid copayments and deductibles were not necessary medical services that counties were obligated to pay.

The rules governing delayed applications were amended, and also included a better definition of a "bona fide application".

2005

In 2005 the definition of "resources" was expanded to look at the ability of the applicant to pay the medical bills over a period of 60 months – changing it from the earlier 36-month window.

Also, the segment on Pre-Litigation was moved into Chapter 35.

And with that, we've come to the end of our journey through time.

We've travelled through 149 years in an hour. I hope you enjoyed the ride. Thank you.