General Assistance & Emergency Assistance in the Time of COVID-19

Township Officials of Illinois
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Agenda

- COVID-19 Impact
- Legal Landscape
- Legal Updates
  - 2020 Attorney General Opinion
  - Stimulus Payments & Benefit Eligibility
- Practical Tips

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COVID-19 Developments
November 18, 2020

- 8,922 new cases (597,849 total)
  - 12,601 yesterday

- 140 deaths (11,014 total)

- 5,953 Hospitalizations

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• Seven-day rolling average positivity rate is now 11.9%
  • A month ago, it was 5.2%
  • Two months ago, it was 3.5%

• Weekly average of 685 new cases per 100,000 residents
  • A month ago, it was 179
Over The Past Week

- New cases per 100,000 residents
  - Will County – 756
  - Kane County – 657
  - Lake County - 652
  - Suburban Cook County – 639
  - McHenry County - 637
  - DuPage County – 530

- A month ago, all were below 200
Tier 3 Mitigations

- Announced yesterday by Governor Pritzker
  - Effective at 12:01 a.m. on Friday
  - Apply to the entire state
Tier 3 Mitigations

- Grocery stores and pharmacies limited to 50% capacity
- Other retail stores limited to 25% capacity
- Hotels must limit room occupancy to guests and meeting and event space is closed
- Personal care services limited to activities that can be done with a mask
- Physical, occupational and massage therapies must be approved by a doctor
- Fitness centers limited to 25% capacity, with no indoor classes and masks during workouts

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Bars and restaurants must be closed between 11 p.m. and 6 a.m.

Video gambling terminals in bars, restaurants, and elsewhere shut down

Movie theaters, performing arts venues, museums and indoor amusement centers closed

Gatherings are prohibited at banquet halls, clubs, and party venues

Funerals are limited to 10 family members

Anyone who is able to work from home is urged to do so
Economic Impact of COVID-19

- Sudden and severe disruption (1-2 months)
  - Particularly compared to past recessions (2-3 years)

- Unprecedented Level of Unemployment
  - US – 4.3% in February to 14.7% in April to 6.9% in October
  - IL – 3.3% in February to 17.2% in April to 10.2% in September
Economic Impact of COVID-19

Total Jobs – December 2007 to June 2020

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Unemployment is improving, but still well down since February

- US – 8.4% in August
- IL – 11% in August

  - Compare 10% in Great Recession and 24% in Great Depression

- Unemployment claims have continued at highly elevated levels

  - Many people are still losing their jobs
The latest tally of weekly jobless claims was 709,000 last week.
- Down from 757,000 a week earlier
- Peaked near 7 million at the end of March
- Pre-COVID levels were about 200,000

Many laid-off workers have been recalled or hired elsewhere

Other have simply exhausted stated benefits
- A sign that many are facing long periods of joblessness
Economic Impact of COVID-19

- Unemployment has been highly concentrated
  - Leisure and Hospitality
  - Professional and Business Services

- Government employment (particularly, local government) continues to fall as well.
Economic Impact of COVID-19

- Job loss has been overwhelmingly acute in low-wage jobs

- Low-wage employees much more heavily impacted by job loss.
  - Less in savings
  - Those who had employer-provided health insurance are less likely to be able to afford continuing coverage.
Economic Impact of COVID-19

- Hospitality & Food Service
  - 3.9 million
  - $436/week

- Healthcare & Social Assistance
  - 1.4 million
  - $988/week

- Retail
  - 1.3-1.4 million
  - $640/week

- Waste Management Services
  - 1.3 million
  - $809/week
Economic Impact of COVID-19

- Management of Companies and Enterprises
  - Less than 100,000
  - $2,127/week

- Financial and Insurance
  - Less than 100,000
  - $1,812/week
What to Expect for the Future?

- The situation is currently getting worse

- The future will largely be dictated by the success of efforts to control COVID-19

- Even in the best-case scenario, problems will linger
  - Reluctance by consumers to resume normal activities
  - Lower employment and reduced activity will spillover to other industries
  - Many employers will be depleted or have ceased operations
COVID-19 Developments: Takeaway
The effects of COVID-19 are:
- Severe
- Widespread
- Ongoing

Recovery will be slow

**Continued** regression is a real possibility
Implications for GA Program

- The needs of existing clients will increase
- New clients will be applying for benefits
- We are in this for the long haul
Before the Great Depression, there was only General Assistance

- Then known as “Poor Relief” or “Pauper Relief”
- Township Supervisors were ex officio “overseers of the poor” (since 1867)
- They had authority to admit someone to the "county poor farm"
- If you needed assistance, you go to the Township Supervisor – there was nowhere else to go
A History Lesson

- Following the Great Depression, the Federal Government got involved in welfare
  - But, it only wanted to help the “worthy” poor
    - Dependent children
    - Aged
    - Blind
    - Disabled

- Townships continued to provide General Assistance to those ineligible for Categorical Assistance (the "unworthy" poor)
The Last Resort!

- Section 6-1.3 of the Public Aid Code
  - Applicants for General Assistance must have been determined **ineligible** under:
    - Article III (Aged, Blind, and Disabled)
    - Article IV (Temporary Assistance for Needy Families)
    - Article V (Medical Assistance)
Legal Landscape
Townships and other units of local government are regulated by provisions of Article VII, Sec. 8 of the 1970 Illinois Constitution, which states, in part, that they “shall have only powers granted by law.”
“Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control.”

- John F. Dillon, Justice of the Iowa Supreme Court
Dillon’s Rule

- What does it mean?
  - Townships have only the powers expressly granted to them by statute
  - But—the legislature may still decide to grant townships broad authority.
  - Also—where not specifically directed by the legislature, townships have discretion to choose the method by which it may implement its power.
    - The method must be “reasonable.”
Section 12.3

- Townships shall provide funds for and administer the programs provided in Article VI of the Public Aid Code.
- Townships shall also provide the social services and utilize the rehabilitative facilities authorized in Article IX for persons served through Article VI.
Section 12-21.1 of the Public Aid Code

- The township supervisor shall be *ex officio* supervisor of general assistance in the township.

- The township supervisor *shall* administer the general assistance program in the township as provided in the Code.

- The township supervisor *shall* appoint such other employees as may be necessary to provide public aid under the code and prescribe their compensation and duties.
Case Law – Statutory Duty

  - Plaintiff taxpayers and GA recipients sought a declaration that supervisor had *no authority to set or revise* basic maintenance level
  - Court entered declaratory judgment in favor of supervisor and town
Case Law – Statutory Duty

  - Supervisor has lawful authority to administer GA (including the establishment and revision of the basic maintenance level) unhampered by rules and regulations set by the board.
  - Board is given accounting, auditing, and taxing, but not administrative, powers under the public aid and township codes.
Case Law – Statutory Duty

- Painter v. Board of Trustees of Town of Lyons, 161 Ill.App.3d 26 (1st Dist. 1987)
  - Supervisor submitted GA budget with salary for social worker
  - Board adopted budget but reduced line item for the social worker
  - Court compelled the board to budget the full amount
Case Law – Statutory Duty

- *Painter v. Board of Trustees of Town of Lyons, 161 Ill.App.3d 26 (1st Dist. 1987)*
  - Board had general responsibility for adopting combined budget and appropriation ordinance for entire township
  - But—legislature exclusively granted supervisor power to administer GA, appoint staff, and set compensation.
Statutory Duties of the Board

- Public Aid and Township Codes
- Board has no **administrative** duties or powers
- Grants the Trustees of the Board the following duties:
  - Levy the Tax
  - Receive an Accounting
  - Examine and Audit
- May be “deputized” by the Township Supervisor as Supervisors of GA

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Section 12-21.10 of the Public Aid Code

Board may remove supervisor of general assistance and appoint “suitable” replacement if the supervisor:

- Is a “defaulter” and in “arrears” with the governmental unit
- Has misused, misappropriated, or converted to his own use or the use of any other person any township funds
- Is guilty of any other misconduct in office
Public Aid Code – General Assistance

- Article VI of the Code establishes the general assistance programs administered by townships

- Sets forth:
  - Types of aid
  - Eligibility
Public Aid Code – Types of Aid

- General Assistance
  - “Basic maintenance requirements”
  - Formerly, “minimum subsistence requirements”
Public Aid Code – Types of Aid

- Medical treatment, care, and supplies
  - “Necessary treatment, care, and supplies required because of illness or disability” or
  - “Acute medical treatment, care, and supplies only”
Public Aid Code – Types of Aid

- Emergency Assistance
  - “To alleviate life-threatening circumstances,” or
  - “To assist the individual in attaining self-sufficiency”
“Transportation and other necessary expenses”
- To comply with job search, training, and work programs
- To receive certain types of medical assistance and services
Public Aid Code – Types of Aid

- Food Pantries (P.A. 101-309, eff. 1-1-20)
  - The result of lobbying efforts by MTA
  - Permits townships to use GA funds to fund and administer programs for providing in-kind aid in meeting basic maintenance requirements
  - Recipients need **not** be eligible for GA; must only be poor, indigent, homeless, or in need of immediate assistance

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Section 6-2

The “**amount and nature**” of general assistance for basic maintenance requirements shall be determined by township in accordance with local budget standards.
Case Law – Amount of Aid

  - Supervisor has the lawful authority to administer the general assistance program which includes the establishment and/or revision of the basic maintenance level
Case Law – **Nature** of Aid

  - Township supervisor’s requirement of an agreement to repay as a condition for receiving general assistance benefits related to the “nature” of general assistance benefits and thus was within the authority of the township
Issue #1

• July 20, 2020 – Attorney General Raoul issued an unofficial opinion letter regarding the permissibility of disbursements of certain expenses.

• The opinion was issued in response to the request of Representative Fred Crespo of the 44th District.
AG Opinion: The Question

☐ Are disbursements of the general assistance funds for the following expenses permissible?

- Homeowner’s insurance
- Property taxes
- Homeowner’s association dues
- Automobile insurance
- License plate renewals
- Fuel costs

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AG Opinion: The Question

- The Code does not specifically grant townships authority to disburse funds for the expenses.

- The Code only authorizes aid for:
  - “Basic maintenance”
  - “Necessary treatment”
  - “Acute medical treatment”
  - “Transportation or other necessary expenses”
AG Opinion: The Answer

- The disbursements are permissible expenses!
AG Opinion: “Shelter” Expenses

- The **plain and unambiguous language of Section 6-2** provides that local governments are responsible for determining the “amount and nature” of General Assistance payments.

- The General Assembly has therefore authorized townships to exercise **“considerable discretion and flexibility”** in tailoring both the amount and nature of basic maintenance to local budget considerations, and to the individual needs of each recipient.
AG Opinion: “Shelter” Expenses

- The Handbook allows and the Code does not specifically prohibit disbursements for the “shelter” expenses

- It is **obvious** that “shelter” was included in maintaining or supporting oneself at a minimum level—i.e., “basic maintenance”
AG Opinion: “Shelter” Expenses

- The inability to pay could jeopardize the recipient’s shelter—e.g., by resulting in foreclosure or eviction

- A foreclosure or eviction could conceivably increase a recipient’s need for assistance

- The payments might be the most economical approach to providing basic maintenance for a recipient
AG Opinion: “Transportation” Costs

- The AG applied similar reasoning:
  - The Code and the Handbook provide for reimbursement of “transportation and other expenses”
  - Illinois Vehicle Code requires motor vehicle insurance and vehicle registration
  - Fuel is necessary to driving a vehicle
  - The inability to pay may jeopardize the recipient’s ability to obtain specific types of medical care or to participate in work, job search, or other programs.
Important Points!

• Townships have “considerable discretion and flexibility” in tailoring both the **amount** and **nature** of aid to local budget considerations and to the individual needs of each recipient.

• Townships may, as an exercise of that discretion, determine whether and when expenses qualify as a “basic maintenance” need or “transportation or other necessary expense”
Important Points!

- Townships have broad authority to amend the General Assistance Handbook
  - Not just Payment Levels
  - Poverty Levels, Application Periods, and Eligibility Requirements, too!
Important Points!

- Amendments generally must be reasonable and in accordance with acts of the General Assembly

- In the absence of legislation saying otherwise, amendments are generally permissible
Beware!
Due Process Obligations

- White v. Roughton, 530 F.2d 750 (7th Cir. 1976):
  - Plaintiffs sued supervisor alleging that she:
    - Operates GA welfare program without published standards for eligibility or the amount of aid given
    - Terminates GA without giving the recipient notice and a hearing prior to that termination
    - Denies applications for general assistance welfare without giving the applicant notice and a hearing after the denial of the application
    - Fails adequately to inform recipients and applicants of their right to appeal.
Due Process Obligations

- White v. Roughton, 530 F.2d 750 (7th Cir. 1976):
  - Fourteenth Amendment of the United States Constitution
  - Due Process Clause requires that:
    - Welfare recipients must be provided with **adequate notice** and an **evidentiary hearing** before benefits may be discontinued.
    - Welfare assistance be administered to ensure **fairness** and **freedom from arbitrary decision-making** as to eligibility.
    - Supervisor must establish **written standards** for general assistance and must fairly and **consistently apply** those written standards.
The Consent Decrees

- Henson vs. East Lincoln Township, (Case No. 80-3280, U.S. District Court, Central District of Illinois, Springfield Division.)
  - This was a defendant class action which sought enforcement of the White holding throughout much of central and southern Illinois. The consent decree requires 750 Townships to maintain written standards and to follow them.

- Rodriquez v. Township of DeKalb, (Case No. 85-C-20190, U.S. District Court, Northern District of Illinois, Western Division.)
  - This was another defendant class action seeking enforcement of the White holding throughout 37 northernmost counties of Illinois. The consent decree requires 682 Townships to maintain written standards and to follow them.
Important Points!

- You must:
  - Provide notice and an opportunity to be heard
  - Have written standards
  - Fairly and consistently apply them
Issue #2

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Stimulus Payments: The Answer

- Illinois HB2096 – Public Act 101-0632
- Signed into law 6/5/20
- Provides that:
  - **Eligibility** for GA is not impacted by stimulus payments or any future COVID stimulus
  - **Amount** and **nature** of GA is not impacted by stimulus payments or any future COVID stimulus
Important Points!

- The issue has been resolved – the payments do not affect GA

- Consider reviewing and revising your Handbook, as stimulus payments are likely still considered “non-exempt”
  - See our proposed language on the following slide.
6.07 **Exempt Income**

The following income is exempt:

***

(ai) Tax credit payments pursuant to Section 6428 of the Internal Revenue Code of 1986, known as "Recovery Rebates," received either as advance payments or as part of an income tax refund.
Practical Tips

- Face masks or coverings should be worn by all persons over 2 years of age in all township facilities or properties—both inside and outside—when social distancing is not possible.

- Signs should be posted regarding face covering and other COVID-19 requirements or precautions.

- PPE should be made available to staff, volunteers, and residents with appropriate personal protective equipment.
Practical Tips

- All individuals who are allowed access in public spaces should be screened for COVID-19 symptoms (i.e. checking temperatures upon entrance)

- Any individual displaying symptoms should be excluded from any public space until cleared with a negative test for COVID-19

- Township facilities and property should be cleaned and sanitized on a regular basis in accordance with CDC Guidelines.

- Consider adopting waiver, release, and hold harmless agreements specifically mentioning COVID-19
Questions?
Thank You!

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