



When Parents Can't Pay

On Paper, Filial Support Laws Hold Adult Children Accountable

By Jason Frank, CELA, CAP, Fellow of NAELA

It's no secret that long-term care is in crisis. Today, many nursing home bills are paid by Medicaid, but with the aging of baby boomers and increased longevity, that program will face increasing pressure. As states seek budget-balancing relief, there are fears that largely ignored "filial responsibility" laws could be resurrected. Thirty states and the District of Columbia—on paper—hold adult children legally responsible for support of financially strapped parents. This could cover anything from food to medical treatments to long-term care. With some states seeking to reduce Medicaid costs through less than 24/7 home and community-based services, filial responsibility may raise its head in the context of requiring children to provide services for those periods of time in which Medicaid is not providing services. Watch out!

Pennsylvania has captured the most attention, due to legal steps taken to reduce its Medicaid outlays. In 2005, the state legislature toughened its Medicaid eligibility guidelines while highlighting its filial support statutes by transferring them to the domestic relations code. At the time, Governor Rendell stated, this "updates provisions requiring immediate family members to contribute to cost of care, thus decreasing burden on [Medicaid] when possible."

Of special interest has been a recent Pennsylvania case in which an adult son was found liable for his mother's \$93,000 nursing home bill following an automobile accident. The court declared him responsible even though a Medicaid application was in process.

Similar suits have cropped up throughout the country. While laws vary greatly, 21 states allow cost recovery through civil suits. Wages can be garnished, liens imposed on property and credit reports tarnished. A dozen states impose criminal penalties. At the other end of the spectrum, Idaho has repealed its filial support law. And California law states that "no demand shall be made upon any relative to support or contribute toward support" of state aid recipients.

In Maryland, while nursing homes are prohibited from attempting to recover expenses from adult offspring, that's not the case with state psychiatric hospitals, where charges are typically \$1,000 per day. If a parent is under 65 and being cared for in such a facility, the kids could get hit with the bill. Attempts to repeal this draconian statute have failed.

Federal law bars recovery of Medicaid costs from anyone besides an applicant or spouse, so the issue can arise if Medicaid paperwork hasn't been filed in a timely manner or if payments have lapsed. Down the road, this could become a bigger problem for expenses associated with assisted living communities, which aren't eligible for Medicaid payments.

It's unfair to force someone who didn't sign a contract to be liable for a parent's bills. In the meantime, though, this uncertain situation underlines the need for frank inter-generational discussions about financial planning. Retirement advisors report that health care costs are consistently underestimated.

Adult children may wish to buy long-term care insurance for parents who can't afford it on their own. If they do investigate such coverage, they should engage a professional with no vested interest in selling policies to ensure that it meets their needs. They should also consult an elder law/special needs attorney who can advise them on the complicated Medicaid application process so that they aren't faced with payment gaps that could be charged to them.

While many parents balk at revealing details of their personal finances, children need to know. Beyond an obvious concern for Mom and Dad's well-being, there could be very real legal implications.

Note: Many of the observations contained in this post resulted from collaboration with Professor Katherine Pearson, Dickinson School of Law, Pennsylvania State University

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