

## FILIAL RESPONSIBILITY

### Background

Thirty states<sup>1</sup> currently have filial responsibility laws which create a statutory duty for adult children to financially support their parents who cannot monetarily provide for themselves. Typically, these statutes obligate adult children to pay for their parents' food, clothing, shelter, and medical needs. It should be noted at the outset that each state's statute varies slightly, so there is not 100% uniformity across the board.

Financial need of the parent, ie a parent's indigence, is the main trigger of the child's obligation of support. Indigent parents have limited income which is not adequate to provide for their basic maintenance and care. In MD, along with the financial ability of the parent, that state statute also determines whether or not the parent can be self-supporting due to old age or mental or physical infirmity. From this statute it is not clear whether or not the parent has to agree that they are physically and/or mentally incompetent for the case to go forward. But, if the parent is claiming they cannot pay their bills and either they or someone else is suing for filial responsibility, it would be in the parent's best interest to say they are mentally and/or physically incompetent because it would contribute to the reasons they cannot afford their bills. It should be noted that under the Nursing Home Reform Law a facility cannot require that someone other than the resident sign as a responsible party. The Nursing Home Reform Law also requires the facility to assist the resident in applying for Medicaid.<sup>2</sup>

In terms of how the process to receive filial support occurs, if an adult child in a filial responsibility state is not making good on their monetary obligations, a lawsuit has to be commenced to trigger the support and hold the adult child liable for the payment. In states that have filial responsibility laws, the law itself makes the adult child liable for support. It's only when the adult child is not living up to that monetary support when a lawsuit needs to be brought to get the funds. States vary in terms of who has standing to bring the case. In PA, an indigent person, or any other person or public body or public agency having any interest in the care, maintenance or assistance of such indigent person has standing to bring suit for support. PA's right to bring suit is pretty broad compared to other states' filial responsibility statutes. In VA, the state agency administering the program of assistance or services may bring suit. And in CA the parent, or the county on behalf of the parent, (if the county furnishes support to a parent), may bring an action against the child to enforce the duty of supports.

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<sup>1</sup> The thirty states who currently have filial responsibility statutes are: Alaska, Arkansas, California, Connecticut, Delaware, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Montana, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia and West Virginia.

<sup>2</sup>42 U.S.C. 1396r(b)(4) <http://www.law.cornell.edu/uscode/text/42/1396r> (September 27, 2012)

In the 30 states that have filial responsibility laws, 21 states allow for civil court actions to obtain financial support or cost recovery, 12 states impose criminal penalties on children who do not support their parents, and three states allow both civil and criminal actions. Although filial responsibility laws have rarely been enforced, the passage of the Deficit Reduction Act of 2005 (DRA) brought predictions that nursing homes would begin to utilize these laws as a way to get paid. The DRA made it a lot harder for elderly populations to qualify for Medicaid long-term care coverage by making it much more difficult for these populations to transfer assets prior to qualifying for Medicaid coverage in nursing home care.<sup>3</sup> Essentially, the DRA attempted to save Medicaid program money by shifting the costs of long-term care to families and nursing homes. Therefore, we're now left with an elderly population in need of nursing home care but unable to pay their bills. A perfect example of this situation coming to life is the most recent decision in Pennsylvania, *Health Care & Retirement Corporation of America v. Pittas*, (Pa. Super. Ct., No. 536 EDA 2011, May 7, 2012), where a PA appeals court found a son liable for his mother's \$93,000 nursing home bill under the state's filial responsibility law. What was additionally interesting about this case is that the PA appeals court said it was appropriate for the nursing home to single out one child to pay the bill, and that it did not have to consider any other sources of income such as additional children, the resident's current spouse, or the resident's pending Medicaid application.

### **Exceptions to Finding an Adult Child Responsible**

There are exceptions to finding an adult child liable for the support of their indigent parent. First, the party seeking enforcement of the filial responsibility laws must establish that the adult is financially able to cover their parent's expenses. In making this determination, courts consider many factors such as the adult child's income, responsibilities owed by the adult child to their own family, and the family's overall financial situation. If forcing an adult child to support his/her parents would render him/her nearly destitute as well, a court would hesitate in enforcing the statute. Also, as a way to offset the costs, an adult child could seek contribution from his/her siblings to aid in the support of their parents. What was interesting in the PA case is that the Appellate Court ruled that it was appropriate for the nursing home to only target one arbitrary adult child, and it was the adult child's responsibility to sue his siblings for contribution. This determination might not be upheld in other state courts. If multiple children are able to provide financial support for their parents, courts can consider the financial situation of each child and determine how much support each child owes based on his or her ability to pay. For instance, in VA the statute reads that if there is more than one person bound to support the same parent(s) those individuals will be jointly and equitably responsible for their parent(s) care. Therefore in VA all adult children who are able to provide for their indigent parents need to be taken into account in the beginning of the case.

A second exception to filial responsibility is if the adult child can prove the parent abandoned them. Abandonment laws vary from state to state, but to prove abandonment you typically need the following

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<sup>3</sup> Elder Law Answers, [http://www.elderlawanswers.com/elder\\_info/medicaid-rules.asp#9](http://www.elderlawanswers.com/elder_info/medicaid-rules.asp#9) (July 26, 2012)

three elements: 1) the abandonment occurred during the child's minority; 2) the abandonment continued for a period of at least two years before the child became 18; and 3) during the period of abandonment the parent was physically and mentally able to support the child. If an adult child is able to prove these three elements, they could avoid filial responsibility.

A third exception to filial responsibility is by seeking a partial support order to reduce the amount of support. Under an unclean hands doctrine, the parent's prior conduct would be a relevant factor in determining the necessary amount of support. When a parent's prior bad acts suggest that a child should have no moral obligation to support his/her parent, and yet the filial responsibility statute is in place, the court can limit the amount of support to the parent's minimum needs. Factors a court may consider when determining how much a child owes are if a parent previously abandoned the child and later returned, past treatment of the child, and whether the parent paid child support while the child was a minor.

### **Conclusion**

Unfortunately at this point there are no favorable conclusions to this issue. With the DRA in place and elderly adults still encountering difficulties in qualifying for proper Medicaid coverage, there will continue to be a large population of individuals who need nursing home care but cannot pay for it. It remains to be seen whether there will be a rise in cases seeking to hold adult children liable for their parent's care, as the costs of care of services continues to rise, and as states seek to control Medicaid expenditures.

If the predictions from 2005 hold true and nursing homes continue to seek money from resident's adult children, families will need to be educated about the filial responsibility laws in their states or more adult children could find them in the same situation as Mr. Pittas in PA, liable for \$93,000. This issue should also be highlighted so that families know to get involved early and work with their elderly parents to understand their finances, the costs of long-term services and supports, and the options available to them.