



Will You Be Your Parent's Keepers? Filial Responsibility Law

Situation: The rapid growth of the senior population, ever increasing life expectancy, and dismal retirement saving rate, along with the questionable stability of government programs like Medicaid, Medicare, and Social Security, put the United States on the verge of having more impoverished seniors than ever. Against this backdrop, states are exploring options to cover the costs of extended care. The topic of this monthly message is on one such law – the filial responsibility statutes that exist in the majority of states and Puerto Rico.¹ In honor of Long-Term Care Awareness Month, this Counselor's Corner will describe how enforcement of the filial responsibility laws can provide financial advisors a reason to talk to clients about the purchase of some form of long-term care coverage.

Solution: This article is going to provide a general description of the filial responsibility law and when it applies. Of course, since the laws vary from state-to-state clients should consult with an attorney who specializes in elder law to determine whether or not a state's specific statute is something a family needs to be concerned about.

Filial Support Law Background

The filial support laws are not new. In fact, origins trace them back to antiquity and the moral precepts of Judaism, Christianity, and Islam. The current laws date back to colonial times and were derived from the 1601 Elizabethan Poor Relief Act. During the 1950s, forty-five states had filial support legislation, and prior to the passage of Medicaid in the 1960s, federal legislation recognized the obligation as well. However, with the passage of Medicaid, several states repealed their statutes; and the federal obligation was repealed with the passage of the Medicare legislation. The states that still have filial responsibility statutes have rarely enforced the laws. But times are changing and recently

there has been increased enforcement of the laws to force children to pay their parents' care facility bills. In fact, the passage of the Deficit Reduction Act of 2005 (DCA) brought predictions that care facilities would increase use of these laws as a way to get paid.²

General Description of the Filial Support Laws

In a nutshell, the filial support or responsibility laws state that an adult child of an impoverished parent has the legal obligation to pay for the necessities of the parent who cannot do so for themselves.³ Of course, if the parent is eligible for Medicaid, then the government is paying the bill, and the state filial law is not relevant. Medicare does not require children to contribute funds to their parent's care. Instead, once a Medicaid recipient dies, the state recovers costs from the estate of the individual age 55 and older.

Consequently, the filial laws apply where the individual does not qualify for Medicaid for some reason, yet is not paying his/her bills.

Who Comes Under the Filial Statutes Purview and What Support Must Be Provided?

State statutes define indigent, poor, impoverished in a variety of ways. However, it's clear that the individual does not need to be completely without resources to be covered by the filial laws. For example, in a 1994 Pennsylvania case a court held relatives of an elderly woman responsible for her care because her Social Security income was not sufficient to cover her reasonable care and maintenance. Likewise, laws differ on the extent of support to be provided. Some statutes refer to "support," and others to "food, clothing, shelter or medical attention," others to "medial expenses."



Who Comes Under the Filial Statutes Purview and What Support Must Be Provided? State statutes define indigent, poor, and impoverished in a variety of ways. However, it's clear that the individual does not need to be completely without resources to be covered by the filial laws. For example, in a 1994 Pennsylvania case a court held relatives of an elderly woman responsible for her care because her Social Security income was not sufficient to cover her reasonable care and maintenance. Likewise, laws differ on the extent of support to be provided. Some statutes refer to "support," and others to "food, clothing, shelter or medical attention," others to "medial expenses."

Who is Responsible for the Impoverished Parent's Support? Generally, the filial laws provide that the support obligation is imposed on adult children, however many of the laws do not provide direction concerning how or whether the liability for support should be apportioned among multiple children. Some courts have ruled that it's appropriate to target one arbitrary adult child, and it is the child's responsibility to sue his siblings for contribution. In addition, the laws do not provide direction on whether "children" includes step-children, adopted children, etc. or whether the child must reside in the state.

Where an impoverished individual does not have children, some state statutes extend the support obligation to other family members. For example, the Utah statute lists the order in which relatives are liable for support stating that children are the first to be called upon to support parents if they are of sufficient ability, next goes the parents of the poor person, then the siblings, the grandchildren, and finally the grandparents. Under this statute it's possible that parents or siblings could be obligated to pay medical bills of an impoverished family member.

Exceptions/Limitations. There are exceptions/limitations to finding an adult liable for the support of an indigent parent. First, the party seeking enforcement of the law must establish that the adult is financially able to cover the indigent's expenses. Clearly, if forcing the adult child to pay for the care of the parent would render him/her destitute a court would not enforce the statute. Second, an adult child can avoid filial responsibility if the child can prove that the parent abandoned them. Finally, under an unclean hands doctrine the parent's prior conduct can be considered in determining the necessary amount of support.

Enforcing Obligation. State statutes take a variety of approaches to enforcement. Most states provide civil court action to obtain financial support, others provide criminal penalty, and a few allow both actions.

In Summary. With long-term care costs on the rise and as states seek to control Medicaid expenditures, care facilities and other health care providers may have increasing incentive to seek to use the courts to compel children/families to help a parent. In fact, a 2005 policy paper issued by the National Center for Policy Analysis urged state to vigorously enforce state filial statutes to reduce Medicaid spending and encourage everyone to consider proper planning. A few court decisions in Pennsylvania and South Dakota have opened the door to using the filial support statutes to recover medical expenses.⁴ Clearly, now is the time for financial advisors to educate their clients.

¹As of 2025 sources indicate that 30 states have filial statutes. Most sources agree on the following states: 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.

²In advance of their need for long-term care, some seniors transferred ownership of assets to their children or trusts to become Medicaid eligible. Medicaid coverage by making it more difficult to transfer assets prior to qualifying for Medicaid. ³It's possible that a state statute may impose financial obligations on other relatives such as siblings or parents of an impoverished adult. ⁴In *Americana Healthcare Center v. Randall*, 513 N.W. 2d 566 (S.D. 1994). *Health Care & Retirement Corporation of America v. Pittas*, 46 A.3d 719 (Pa. Super 2012).

For the Education of Financial Advisors & Financial Professionals. Not for use with the General Public.

This material has been prepared to assist our licensed financial professionals. It is designed to provide general information regarding the subject matter covered with the understanding that we are not rendering legal, accounting, or tax advice. Such services must be provided by the client's own advisors. Accordingly, any information in this document cannot be used by any taxpayer for the purpose of avoiding penalties under the Internal Revenue Code.