The Legal Responsibility of Adult Children to Care for Indigent Parents

by Matthew Pakula

Currently, 30 states have filial responsibility statutes that establish a duty for adult children to care for their indigent elderly parents. When enforced, the statutes can require the adult child to reimburse state programs or institutions that have cared for the indigent parent with either a one-time contribution or installment payments. Today, there is no uniform federal filial responsibility statute, and indeed, it may be difficult to enact one; but if even a few states began to more systematically enforce their laws, their action could help reduce the explosive growth of Medicaid’s long-term care benefit.

Historically, filial responsibility laws have rarely been enforced, and in some states have not been enforced at all. Since the 1960s, federal law [United States Code Title 42, §1396a(a)(17)(D)] has prevented the states from considering the financial responsibility of any individual (except a spouse) in determining the eligibility of an applicant or recipient of Medicaid or other poverty programs. Besides the politically sensitive nature of filial responsibility laws, this is probably the major reason the laws are not uniformly enforced.

Filial Responsibility and the States. U.S. filial responsibility statutes derive from England’s Elizabethan Poor Relief Act of 1601, which required the “father and grandfather and the mother and grandmother, and the children of every poor, blind, lame, and impotent person” to support that individual to the extent they were able. This English system for dealing with the poor and indigent was transplanted to the American colonies. The duty to care for parents is a purely statutorily created duty that does not exist in common law. Until statutes imposed the legal duty, supporting poor family members was considered a moral duty. The moral duty receded as society evolved, family life changed, and government created a variety of federal and state programs to meet the needs of the poor.

Who is poor enough to come under a filial statute’s purview? State statutes define indigent, poor and pauper in a variety of ways. However, to be poor does not require the elderly parent to be completely without resources. For example, a 1959 New Jersey case (Pavlick v. Teresinski), where a mother sought support from her two sons, the court held that although she had a house and furniture, both were required for her shelter, and unless she received support from her sons she would become a public charge. Therefore, she was poor within the meaning of the state’s filial responsibility statute. More recently, a 1994 Pennsylvania case, Savoy v. Savoy, involved an elderly parent whose reasonable care and maintenance expenses exceeded her monthly Social Security income. The court found that she was poor within the meaning of the state’s filial responsibility statute. More recently, a 1994 Pennsylvania case, Savoy v. Savoy, involved an elderly parent whose reasonable care and maintenance expenses exceeded her monthly Social Security income. The court found that she was indigent, making her relatives liable for support. So to be poor does not always mean completely broke, according to judicial interpretations of filial responsibility statutes.

Medicaid and Long-Term Care. Less than one-third of older Americans are able to pay for two or three years of nursing home care, according to a recent study published by AARP. As baby boomers who have failed to adequately prepare for old age retire, there will be...
fewer seniors with the means to pay for such care. In turn, the financial stress will become even greater on government.

Medicaid, the joint federal-state health care program for the poor, is the major funder of long-term care in the United States. For example, when seniors in nursing homes exhaust limited Medicare benefits, those who have not purchased long-term care insurance must pay for their care themselves. If they consume their financial assets and their incomes are low enough, they qualify for Medicaid coverage. Long-term care cost Medicaid $60 billion in 2002, according to Centers for Medicare and Medicaid Services data. [See the figure.] Federal and state laws allow Medicaid to seek reimbursement from recipients’ estates. Under current laws, the states now collect $350 million a year, according to the AARP. Unfortunately, most Medicaid recipients have no estate when they die, and an increasing proportion of those who receive assistance are sheltering their financial assets to meet the definition of poor under the Medicaid statutes. So while their children receive the benefit of these assets, taxpayers pick up the tab for their care.

In advance of their need for long-term care, some middle class seniors transfer ownership of assets to their children through trusts to become Medicaid eligible without jeopardizing their children’s inheritance. To discourage improvident estate plans, federal law now allows the states to count assets for Medicaid eligibility that were transferred to children within three years of the application for coverage. However, an elderly person can give away an unlimited amount of assets to their adult children if they do so more than three years before Medicaid enrollment.

Some middle income Americans are essentially using Medicaid as an inheritance protection plan. In addition to transfers, these elderly convert assets into items that are not included in income and asset tests. The value of these excludable assets vary from state to state, but can encompass a home, car, burial plot and so forth. Furthermore, some elderly spouses divorce in order to split and protect assets. Enforcement of filial responsibility statutes could make much of this asset shifting irrelevant.

Potential Help from Children. Although some would argue that most low income seniors have no assets to transfer, many may have adult children who could contribute toward their care, but do not do so. In 1983, the Health Care Financing Administration estimated that nationwide enforcement of state filial responsibility statutes could reduce Medicaid spending by as much as $25 million. Today, that figure could be significantly higher.

Medicaid long-term care spending could be substantially reduced if states with large percentages of indigent elderly — like Mississippi, Tennessee, North Carolina, Arkansas, Louisiana and Kentucky — enforced their respective filial responsibility statutes. If states with large elderly populations in general — like California, Pennsylvania, Ohio and New Jersey — also enforced their statutes, spending could be further curtailed.

Enforcing Children’s Obligations. States with filial responsibility statutes take a variety of approaches to enforcement: 21 allow some sort of civil court action to obtain financial support (or cost recovery) and 12 specify a criminal penalty for filial nonsupport; three states allow both civil and criminal actions. Of course, in many cases state filial responsibility laws limit children’s liability under a variety of conditions, such as whether the adult child has enough income to actually contribute, or if the adult child’s financial circumstances change, or if they were abandoned or deserted by the parent.

Some suggest an alternative approach: Allow states to consider an adult child able to pay towards care of an indigent parent unless they file a public notice that they are not responsible for the debts of the parent, foreswear any inheritance rights and consent to the revocation of any trust set up for their benefit by the parent. If costs are not contained, such measures could be instituted. In addition, short of enacting a federal filial responsibility statute, federal limits on cost recovery by state and local health care agencies and private caregivers should be repealed. Adult children of Medicaid beneficiaries then could be billed for at least some of the costs incurred.

Conclusion. The Center for Long-Term Care Financing estimates that one-third of Medicaid long-term care costs — $20 billion annually — are for seniors who could have purchased their own insurance to pay for their care, but did not. It could be difficult to recover from their children the costs indigent seniors impose on taxpayers. However, reminding children of their obligations would encourage them and their parents to consider proper planning for their old age needs, like purchasing long-term care insurance, using health savings accounts, and the like. Otherwise, state filial responsibility statutes, in the absence of a uniform federal statute, could require contributions or installment payments from children to support the growing number of indigent elderly.

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