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Elder Law Guys: State's high court to look at case involving paying for a relative's care

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The notion of adult children being financially responsible for paying for their parents' medical care is scary. We've written about how Pennsylvania's filial responsibility law applies frequently when indigent parents can no longer afford their long-term care costs in a facility and there are no other funding options available.

When most people think of long-term care facilities, they generally think of the elderly with some chronic condition that lasts for years and costs hundreds of thousands of dollars.

While this is quite common, we also wrote about another disturbing trend about three years ago where elderly parents were being sued for care provided to their adult disabled son. Similar to the elderly with chronic medical conditions, younger adults with long-term disabilities also can require expensive medical care for many years in a long-term care facility.

At the time of our prior examination of this issue, we did not mention Bob and Peg Mohn by name. But a few months later, the Pennsylvania attorney general sued the law firm attempting to collect the debt from the Mohns.

The attorney general accused the law firm of violating the state's unfair trade practice and consumer protection law, among other things. Ultimately, the law firm settled the case and the pursuit of the Mohns ceased. The debt in question in the Mohns's case? About $2,000.

Fast forward about three years and we now encounter the case of Clarence and Barbara Schutt, who aren't even Pennsylvania residents. They live in New Jersey.

However, Melmark Inc., a multi-service agency, providing residential, educational and therapeutic services for children and adults, provided residential and support services for the Schutts's highly disabled son, Alexander, at a facility inside Pennsylvania and apparently at the direction of the Schutts.

In addition, the amount in controversy has a few more zeros — about $200,000. This litigation has worked its way through the state's lower court system. In December, the Pennsylvania Supreme Court granted Melmark's appeal to hear the case.

This situation is unique in that the last notable case involving the filial responsibility law that was appealed to the Pennsylvania Supreme Court was HCR ManorCare v. Pittas. The Supreme Court denied that appeal a few years ago. So, what's different now?

The Schutt case differs in that there appears to be a genuine issue as to whether Pennsylvania or New Jersey law applies.

Both states have a filial responsibility law. Pennsylvania's law is much broader than New Jersey's and Melmark's chances of success are more favorable if Pennsylvania law were to apply. So far, the Pennsylvania courts have upheld the notion that New Jersey law applies.

While the high court will focus on the conflict-of-laws issue, it is important to consider the impact a successful appeal may have on debt collection practices within our state.

The Mohns were lucky that the debt amount was relatively nominal — $2,000 would have barely paid for one week's care in a long-term care facility — and that the Pennsylvania attorney general stepped in.

Many believe that the filial responsibility law was created to encourage a greater sense of responsibility among family members to care for indigent relatives. There are numerous state and federal protective laws to shield consumers from unfair debt collection practices. Let's hope the lines between these two legal concepts are not blurred as a collateral result of resolving a conflict-of-laws case.

Once again, this issue shows that it pays to plan ahead for this type of situation when there is a family member, young or old, who needs or is expected to receive expensive long-term care — even when there are government programs available.

Like everything, these programs change, care facilities change and the family member's needs change over time.

Julian Gray and Frank Petrich are certified elder law attorneys who practice in the Pittsburgh area at Gray Elder Law. Send questions to elderlawguys@grayelderlaw.com or visit www.grayelderlaw.com.