



Elder Law: Kin may be held liable for care

By Julian Gray and Frank Petrich /

If you're a regular reader of this column, you know that we've written frequently on the virtues of planning ahead for the costs and care options as we (and our parents and loved ones) age. While there are still usually some options that one can engage at the last minute -- although perhaps not always the best ones -- planning ahead clearly pays off and can help ease one's mind.

The root of many of the crises are created by the need to finance extremely expensive long-term care costs, such as nursing home care, which now runs almost \$100,000 a year in Pennsylvania. While many people who fail to address this issue risk "losing it all," it may get even worse. Now, families are facing financial pressures beyond just the loss of the assets of the person needing care because a little known law, dating back to Colonial "poor laws," opens the door to financial liability to pay for such care for other family members, such as the children of a nursing home resident.

In July 2005, the Pennsylvania General Assembly passed the "Filial Support Law," commonly known as Act 43. As we approach the seven-year anniversary of the re-codification of this law (it previously existed in the Welfare Code from the 1930s and was re-codified in the Domestic Relations Code for modern usage), there have been increasing instances of facilities pursuing family members to pay for care, usually for parents' care in a long-term care facility.

The key language is found in Section 4603 of the Act, which states:

"All of the following individuals have the responsibility to care for and maintain or financially assist an indigent person, regardless of whether the indigent person is a public charge:

1. Spouse of indigent person;
2. Child of indigent person;
3. Parent of indigent person."

In the broadest interpretation of Act 43, it means that a person could be liable to pay for his or her parents' long-term care facility costs. In the narrowest sense, it means that baby boomers should be concerned that their parents have adequately addressed the situation. Either way, this law is now being regularly used as a device to secure payment from family members to pay for care costs.

Act 43 does provide some defenses. Section 4603(a)(2) states the obligation to support does not apply:

1. If an individual does not have "sufficient financial ability to support the indigent person"; or
2. "A child shall not be liable for the support of a parent who abandoned the child and persisted in the abandonment for a period of ten years during the child's minority."

Practically speaking, the former exception is difficult to prove and would assumedly require a child to engage in expensive litigation. Which begs the question, "How does a person without 'sufficient financial ability' to assist a parent pay to defend himself?" The latter exception is truly just that -- the exception, and not the norm, when dealing with aging parents.

Consider a few recent examples of how Act 43 has been used:

1. A lawsuit by a nursing home against an adult child (who did not live in Pennsylvania) who had no contact with the parent in the nursing home.
2. A lawsuit by a nursing home against two adult children when the third adult child (at that point, in prison) stole the money from the parent.

These are just two examples of the potential liability to children. There are many others, and it appears to be an increasing trend.

In all fairness to long-term care facilities, they are providing necessary care and should be paid for their services. The problem occurs when families fail to recognize the risks involved and either ignore the problem or obtain incorrect guidance on how to avoid it. You can't just sit back and not pay attention to your parents' health and wealth (or lack thereof).

As we've written about in previous articles, there are numerous options to deal with these situations and it should never rise to the level of family members being sued, unknowingly, to pay for their relatives' long-term care expenses.

Interestingly, Pennsylvania is now considering the repeal of Act 43. House Bill 321 was introduced on January 31, 2011, and may provide relief. Until and if that happens, families need to consider carefully the risk of filial responsibility and take measures to reduce or eliminate the financial exposure.

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