



Elder Law: A new twist on filial responsibility in Pennsylvania

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By Julian Gray and Frank Petrich

One of our most controversial columns in the past few years that garnered the most comments dealt with Pennsylvania's filial responsibility statute.

That's the name given to Pennsylvania Act 43 of 2005, which resurrected the sleeping and old filial support laws in our state that make adult children financially responsible for payment of their parents' long-term medical care costs (i.e. nursing home costs).

While the law has been on the books for decades, its resurgence has generated debate over whether adult children are truly financially "emancipated."

This law became the focal point of the interesting court case known as HCR Manorcare v. Pittas, decided in just the past two years. In that case, the son of a nursing home resident was held liable for paying his mother's \$93,000 nursing home bill when she fled the country. Ironically, neither the husband nor the other children of the nursing home resident were named as defendants in the lawsuit. Last year, the Pennsylvania Supreme Court refused to hear the appeal of the defendant son, and so now we have precedent in the Commonwealth.

Act 43 and the Pittas case warn us of the dangers of not addressing the planning needs of the elderly in advance.

Fast-forward to a parallel situation involving Peg and Bob Mohn, an elderly couple living in Pennsylvania. The Mohns' son died at age 47, leaving unpaid medical bills. Now, it is reported that debt collectors are pursuing the Mohns using the filial responsibility law as leverage.

Since we normally only hear about adult children being the target of supporting parents, this was a new one for us. While there are 28 states that have filial responsibility statutes on the books,

frankly, we had to go back and check the law to see if Pennsylvania were one of the states that has “reverse” filial responsibility for debts of children.

Sure enough, our statute states, in part, “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: (i) the spouse of an indigent person, (ii) A child of the indigent person; and (iii) a parent of the indigent person.”

So, it seems in Pennsylvania there may be the potential for liability between generations going both ways. We are not aware of any formal lawsuit filed against parents on this basis, but it may only be a matter of time until the highest court in the Commonwealth is again faced with reviewing a much broader reaching decision on this topic.

The good news is, being proactive in addressing such problems usually yields more palatable results.

So remember the old Dutch proverb: “Na regen komt zonneschijn” (Every cloud has a silver lining.) If you can find it!

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On a nursing-home-related matter, the Medicare nursing home website Nursing Home Compare should shortly be much improved.

The site provides information on all Medicare and Medicaid participating nursing homes. Facilities have been rated on a five-point scale involving their overall rating, quality measures, health inspection surveys and nurse staffing (hours/patient/day).

The primary improvements will be in the accuracy of the information contained on the site relative to nursing home staffing information and certain quality measures. Among other things, nursing staffing ratios will now be based on actual “payroll and other verifiable and auditable data in a uniform format.” Up to now, many facilities have been playing fast and loose with the system by self-reporting such information and inflating the actual numbers.

With funding now provided to the Centers for Medicare and Medicaid Services under a provision of the Affordable Care Act to allow the agency to implement changes to the website, individuals will be in a better position to help select a facility for themselves and their loved ones.

Julian Gray and Frank Petrich are both Certified Elder Law Attorneys with over 55 years of combined elder law experience who practice in the Pittsburgh area at Gray Elder Law. Send questions for consideration in this column to elderlawguys@grayelderlaw.com and visit their web site at www.grayelderlaw.com.