

To: New Jersey Law Revision Commission
From: Jayne Johnson
Re: New Jersey Filial Responsibility Statutes
Date: July 6, 2015

MEMORANDUM

Executive Summary

This Memorandum discusses the statutes governing filial responsibility in jurisdictions outside of New Jersey to provide the Commission additional information concerning the NJLRC project that examines the Title 44 statutes governing filial responsibility and support.

Background

Last month, the Commission revisited several issues, first presented by the Office of the Ombudsman for the Institutionalized Elderly, concerning the Title 44 provisions governing filial responsibility.¹

Following an extensive discussion of the issues related to the New Jersey statutes, the Commission requested additional information concerning the statutes in other jurisdictions that govern filial responsibility and support. Staff submits this memorandum to present the research requested at the June meeting.

Introduction

Forty-five states enacted filial responsibility statutes based on the vestiges of the early colonial welfare laws. Today, thirty jurisdictions, including New Jersey, still maintain filial responsibility statutes.²

Historically, a person was considered indigent if support was provided at public expense.³ American colonists extended this principle, by establishing, under the colonial welfare laws, a legal duty to care for indigent and poor family members.⁴ These laws were modeled after the 1601 Elizabethan Poor Relief Act, which required that “the father and grandfather and the

¹ N.J. STAT. ANN. §§ 44:4-100 to 44:4-103 (West 2014) (finding the identical language in N.J. STAT. ANN. §§ 44:1-139 to 44:1-142 - to be adopted by county referendum; “The provisions of this chapter shall be and remain inoperative as to a particular county until the chapter has been adopted upon referendum as provided in article 17 of this chapter).

² *Id.* at 173-74; *see also Appendix*, pp. 7-9 (noting that twenty-nine states and Puerto Rico currently have filial responsibility statutes).

³ Allison E. Ross, Taking Care of Our Caretakers: Using Filial Responsibility Laws to Support the Elderly Beyond the Government’s Assistance, 16 *Elder L.J.* 167, 170 (2008).

⁴ Seymour Moskowitz, Filial Responsibility Statutes: Legal and Policy Considerations, 9 *J.L. & Pol’y* 709, 710-11 (2001).

mother and the grandmother, and the children of every poor, old, blind, lame, and impotent person” must support their indigent relative to extent they are best able.⁵

After Medicaid was enacted in 1965, the motivation for states to enforce their filial responsibility statutes was severely lessened. This was due to the Federal Act’s prohibition of considering an applicant’s resources as well as those of a spouse or minor child, for eligibility purposes. In its final report on the bill, the Senate Finance Committee declared that states could not require contributions to an applicant’s medical care from family members beyond a spouse, parent of a minor child, or a parent of an adult child who is blind or totally disabled.

In 1977 and 1978, the Medicaid regulations were amended to expressly prohibit requests for reimbursement from anyone who was not the spouse of the person, or parent of the child, for whom benefits had been paid. In response to the amendments, many states attempting to guarantee the receipt of federal funding entirely stopped forcing their filial responsibility laws.⁶

“To ensure compliance with the federal scheme, some states even repealed their filial responsibility statutes,” including New York, Minnesota, and Wisconsin.⁷

More recently, Idaho repealed its filial responsibility in 2011.⁸ The statement of purpose indicates that the statute “was not a law of general applicability and violated the intent of Congress in establishing Medicaid and could subject Idaho to federal sanctions if implemented.” Instead, the statutes were found to be:

special laws directed at county indigency programs (32-1002) and Medicaid recipients (32-1008A). These statutes have not been enforced since [sic] [the Attorney General Opinions issued in 1986] were rendered. Therefore, this bill repeals those sections, removing the possibility that the laws could be used against citizens of the State of Idaho who are not aware of the said opinions, or in ignorance by county indigency programs or Medicaid.⁹

Likewise, in 2013, New Hampshire repealed a provision requiring the child of an indigent individual to contribute to or pay the cost of support for an indigent parent. The New

⁵ *Id.*

⁶ W. Wade Scott & Erica L. Sharp, *The Wolf at the Door: Filial Responsibility*, 20 *Widener L. Rev.* 239, 240-41 (2014).

⁷ *Id.*; see also Twyla Sketchley & Carter McMillan, *Filial Responsibility: Breaking the Backbone of Today’s Long-Term Care System*, 26 *St. Thomas L. Rev.* 131, 160 (2013) (noting the following states do not have filial responsibility statutes: Alabama, Arizona, Colorado, Florida, Hawaii, Idaho, Illinois, Kansas, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Mexico, New York, Oklahoma, South Carolina, Texas, Washington, Wisconsin, and Wyoming).

⁸ ID. STAT. ANN. §§ 32-1002, 32-1008A (West 2014); see also *Who Will Pay For Mom’s or Dad’s Nursing Home Bill? Filial Support Laws and Long-Term Care*, *Forbes* (Feb. 2, 2014), available at <http://www.forbes.com/sites/northwesternmutual/2014/02/03/who-will-pay-for-moms-or-dads-nursing-home-bill-filial-support-laws-and-long-term-care/>.

⁹ S. B. 1043, *Statement of Purpose* (2011).

Hampshire Legislature also limited the obligation of a parent to support children over the age of 18, as follows:

Every person whose income or other resources are more than sufficient to provide for his or her reasonable subsistence compatible with decency or health owes a duty to support or contribute to the support of the following persons when in need: his or her wife, husband, or child ~~[, father or mother when in need]~~ under the age of 18 or for as long as the department of health and human services has the authority to recover support for the child under Title IV of the Social Security Act.¹⁰

Filial Responsibility Statutes in Other Jurisdictions

Many of the states with surviving filial responsibility statutes require a reciprocal duty of care of parents and children. The Virginia statute is one such provision, opening with a general statement of duty and scope, it provides that:

[i]t shall be the ... duty of all persons eighteen years of age or over, of sufficient earning capacity or income, after reasonably providing for his or her own immediate family, to assist in providing for the support and maintenance of his or her mother or father, he or she being then and there in necessitous circumstances.¹¹

The statute was amended after the enactment of Medicaid to “restrict primary filial responsibility, if the parent became eligible for public benefits under Medicaid, while permitting the state the option of seeking reimbursement from a child or children for ‘a parent receiving such assistance or services . . . as the court may determine to be reasonable.’ The reimbursement potential was capped in Virginia, providing that ‘children shall in no case be responsible for such costs for more than sixty months of institutionalization.’ ”¹²

Several states have wrestled with the issue of whether the support of an indigent individual should be a private or public burden.¹³ Maryland’s filial responsibility law provides that if a destitute parent has an adult child who has or is able to earn sufficient means, the adult child may not neglect or refuse to provide the destitute parent with food, shelter and clothing.¹⁴ A "destitute parent" is defined as a parent who has “no means of subsistence and cannot be self-supporting due to old age or mental or physical infirmity” and can file a written complaint with the State's Attorney.¹⁵ Maryland, however, bars, nursing homes from holding children

¹⁰ N.H. REV. STAT. ANN. § 546-A:2 (West 2014)(emphasis added).

¹¹ VA. CODE ANN. § 20-88 (West 2014).

¹² Katherine C. Pearson, Filial Support Laws in the Modern Era: Domestic and International Comparison of Enforcement Practices for Laws Requiring Adult Children to Support Indigent Parents, 20 Elder L.J. 269, 275-76 (2013) (citing VA. Code Ann. § 20-88).

¹³ The Parent Trap: Health Care & Ret. Corp. of Am. v. Pittas, How it Reinforced Filial Responsibility Laws and Whether Filial Responsibility Laws Can Really Make You Pay. 5 Est. Plan. & Community Prop. L.J. 441, 448-49 (2013) (citing M.D. CODE ANN. FAM. LAW. § 13-102 (West 2014)).

¹⁴ M.D. CODE ANN. FAM. LAW. § 13-102 (West 2014).

¹⁵ *Id.*

responsible for parent's nursing home bills unless the children agreed in writing to be financially responsible.¹⁶

Kentucky courts also construed the state statute to require a child to provide for the personal care of an indigent parent, but the courts held that the child is not liable to the "providers of necessities" for the indigent parents.¹⁷

South Dakota's filial support statute also requires "[a]ny adult child, having the financial ability to do so, shall provide necessary food, clothing, shelter or medical attendance for a parent who is unable to provide for oneself."¹⁸ South Dakota's statute is unique in that it requires the indigent parent to provide written notice to the adult child indicating need before filing a claim.¹⁹

The California Supreme Court held in 1971 under the state filial statute that "a person can qualify to receive aid [from the state]. . .yet not be so destitute that his children will owe him a duty of support."²⁰ The legislature responded by amending the statute to clarify that adult children do, in fact, have a duty to support an indigent parent receiving state aid. The amendment distinguished between those deemed "poor" by the statutory definition and those "in need." The statute requires a duty to support of parents in the latter group, it provides: ²¹

No relative shall be held legally liable to support or to contribute to the support of any applicant for or recipient of aid under this chapter. No relative shall be held liable to defray in whole or in part the cost of any medical care or hospital care or other service rendered to the recipient pursuant to any provision of this code if he is an applicant for or a recipient of aid under this chapter at the time such medical care or hospital care or other service is rendered.

Notwithstanding Sections 3910, 4400, and 4401 of the Family Code, or Section 270c of the Penal Code, or any other provision of this code, no demand shall be made upon any relative to support or contribute toward the support of any applicant for or recipient of aid under this chapter. No county or city and county or officer or employee thereof shall threaten any such relative with any legal action against him by or in behalf of the county or city and county or with any penalty whatsoever.²²

¹⁶ *See id.*

¹⁷ *Vance v. Atheron*, 252 Ky. 591 (1934).

¹⁸ S.D. CODIFIED LAWS § 25-7-27 (West 2014); *see also* Mom, Dad, Here's Your Allowance: The Impending Reemergence of Pennsylvania's Filial Support Statute and An Appeal for its Amendment, 86 Temp. L. Rev. 849, 860 (2014).

¹⁹ Mom, Dad, Here's Your Allowance: The Impending Reemergence of Pennsylvania's Filial Support Statute and An Appeal for its Amendment, 86 Temp. L. Rev. 849, 860 (2014) (citing *Cnty. Of San Mateo v. Boss*, 479 P.2d 654, 659 (Cal. 1971), *overruled sub nom. Swoap v. Superior Ct.*, 516 P.2d 840 (Cal. 1973)).

²⁰ CA. FAM. CODE § 4400 (West 2014).

²¹ CA. WELF. & INST. CODE § 12350 (West 2014).

²² *Id.*

Connecticut also recently adopted a statute that permits debtors to collect from “transferors” or “transferees” if the resident was denied Medicaid due to a transfer of the resident’s assets or property.²³

On the other hand, under Pennsylvania’s statute, a person satisfying the definition of “indigent,” may not be considered destitute enough to qualify for public support.²⁴ To be considered “indigent” in Pennsylvania, the person “need not be helpless and in extreme want, [or] so completely destitute of property, as to require assistance from the public.”²⁵ Pennsylvania looks to the common law definition of “those who do not have sufficient means to pay for their own care and maintenance.”²⁶ Pennsylvania’s filial support law requires an adult child to care for and financially assist an indigent parent.²⁷ As evidenced in the *Health Care & Retirement Corp. of America v. Pittas* decision, a ruling that held an adult child liable for outstanding cost of a parent’s care in a long-term health care facility, the Pennsylvania statute is the most actively and ardently enforced state statute to date.²⁸

Conclusion

With the rise of long-term health care costs and federal funding shortages, long-term health care facilities and other “health care providers have increasing incentives to seek to compel” adult children to assist their parents financially or “be at risk for covering the costs” of their parents’ care.”²⁹ Particularly, in situations “where the Medicaid reimbursement rate does not fully cover the shortfall amount between the resident’s income and the facility’s monthly rate.”

As the New Jersey Law Journal reported in an article following the *Pittas* decision that “New Jersey’s filial responsibility statute has rarely been enforced,” but acknowledged that, “[i]n this era of ‘runway’ Medicaid long-term care spending, it is certainly possible that the right facts could awaken this slumbering giant” in New Jersey.³⁰

The Commission determined at the June 2015 meeting to continue work on this project as a stand-alone project, and not to merge this project with the report concerning anachronistic statutes or other related projects as was suggested. Staff will conduct outreach to formulate a drafting approach that best addresses the issues concerning the filial responsibility and support provisions under Title 44.

APPENDIX

²³ CONN. GEN. STAT. ANN. §§ 46b-215 (West 2014).

²⁴ 23 Pa. CONST. STAT. § 4603(a)(1-2) (West 2014).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *See id.*

²⁸ *Health Care & Retirement Corp. of America v. Pittas*, 2010 WL 8749722, (Pa.Com.Pl., Aug. 31, 2010), *aff’d by Health Care & Retirement Corp. of America v. Pittas*, 2012 Pa. Super. 96 (2012).

²⁹ Isele, 209 N.J.L.J. 373.

³⁰ *Id.*

State Survey – Filial Responsibility Statutes³¹

(See pp. 7-9)

³¹ Twyla Sketchley & Carter McMillan, Filial Responsibility: Breaking the Backbone of Today's Long-Term Care System, 26 St. Thomas L. Rev. 131, 160 -163 (2013).

STATE	STATUTE	RELATIONSHIP OF LIABLE PARTY TO INDIGENT ELDER	CONTRIBUTION REQUIRED
ALABAMA	N/A		
ALASKA	Ak. Stat. § 25.20.030 Ak. Sec. 47-25-230	Spouse, children, parents, grandparents, grandchildren, or siblings”	“Support” inc. necessary food, care, clothing, shelter, and medical attention
ARIZONA	No Existing Statute		
ARKANSAS	Ark. Code Ann. § 20-47-106	Duty limited to those liable for individual who receives state mental health services	Reimbursement for cost of providing mental health services
CALIFORNIA	Cal. Fam. Code 4400-4405 Cal. Fam. Code 4410-4414 Cal. Welf. & Inst. Code § 12350 Cal. Penal Code § 270(c)	Child	Necessaries
COLORADO	N/A		
CONNECTICUT	Conn. Gen. Stat. Ann §§ 46b-215, 53-304	“Any person who neglects or refuses to furnish reasonably necessary support to the person's spouse . . . or parent under the age of sixty-five shall be deemed guilty of nonsupport and shall be imprisoned not more than one year”	“reasonably necessary support” in lieu of or in addition to criminal liability
DELAWARE	Del. Code Ann. Title 13 § 503	“[S]pouse, parents, or children, in that order”	Monetary support, health care, arrearages, or reimbursement; inc. related costs/fees, interest, income withholding, atty's fees, and other relief
FLORIDA	N/A		
GEORGIA	Ga. Code Ann. § 36-12-3	Father, mother, or child	
HAWAII	N/A		
IDAHO	Repealed in 2011		
ILLINOIS	N/A		
INDIANA	Ind. Code Ann. §§31-16-17-1 to -7 Ind. Code Ann. § 35-46-2-7	Child	
IOWA	Iowa Code Ann. § 252.1 Iowa Code Ann. § 252.2 Iowa Code Ann. § 252.5	Father, mother, children, grandparents, or grandchildren (in that order)	
KANSAS	N/A		
KENTUCKY	KY Rev. Stat. Ann. § 530.050	Child residing in Kentucky	
LOUISIANA	La. R.S. 13:4731	Parents and children have reciprocal duties to care; children born out of wedlock are expressly included	

MAINE	N/A		
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STATE	STATUTE	RELATIONSHIP OF LIABLE PARTY TO INDIGENT ELDER	CONTRIBUTION REQUIRED
MARYLAND	MD. Code Ann. Fam. Law §§ 13-101 to 13-109	Parents and children have reciprocal duties	Necessary food, shelter, care, and clothing
MASSACHUSETTS	Mass. Gen. Laws Ann. ch. 273, § 20	Person over eighteen who unreasonably neglects his parent “	Support and maintenance”
MICHIGAN	N/A		
MINNESOTA	Repealed in 1973		
MISSISSIPPI	Miss. Code Ann. § 43-31-25	Parents, grandparents, siblings, and descendants	\$150 per month for every month that the County maintained the indigent
MISSOURI	N/A		
MONTANA	Mont. Code Ann. § 40-6-214 Mont. Code Ann. § 45-5-621	Child that has reached the age of majority	Necessary food, clothing, shelter, medical attendance; burial, entombment, or cremation costs
NEBRASKA	N/A		
NEVADA	Nev. Rev. Stat. Ann § 428.070 Nev. Rev. Stat. Ann. § 439B.310	Child has duty under certain circumstances to reimburse County for hospitalization of parent	The total cost of hospitalization
NEW HAMPSHIRE	Repealed children’s obligation to parents in 2013 N.H. Rev. Stat. Ann. § 546-2:2 (retaining parental obligation)		
NEW JERSEY	N.J. Stat. Ann. §§44:4-100 to § 44:4-103; N.J. Stat. Ann. §§44:1-139 to § 44:1-142	Parents, spouses, and children	Relieve and maintain (N.J.S.A. 44:1-140)
NEW MEXICO	N/A		
NEW YORK	Repealed in 1966		
NORTH CAROLINA	N.C. Gen. Stat. § 14-326.1	Child	Maintain and support
NORTH DAKOTA	N.D. Cent. Code § 14-09-10	Parents and children have reciprocal duties	Maintain
OHIO	Ohio Rev. Code Ann. § 2919.21	Spouse, child, or parent	Adequate support”
OKLAHOMA	N/A		
OREGON	OR. Rev. Stat. § 109.010	Parents and children have reciprocal duties	Duty to “maintain” and not abandon
PENNSYLVANIA	23 Pa. C.S.A. §§ 4601 to 4606	Reciprocal duty of parents, spouses, and children	Amount deemed appropriate by a court of competent jurisdiction
RHODE ISLAND	R.I. Gen. Laws §§ 15-10-1 to 15-10-7 R.I. Gen. Laws §§ 40-5-13 to	Child (crime); father or grandfather, mother or grandmother, children or	Relief and support

	40-5-21	grandchildren, by consanguinity, or children by adoption (civil)	
STATE	CIVIL STATUTE	RELATIONSHIP OF LIABLE PARTY TO INDIGENT ELDER	CONTRIBUTION REQUIRED
SOUTH CAROLINA	N/A		
SOUTH DAKOTA	S.D. Codified Laws § 25-7-28 S.D. Codified Laws § 28-13-1.1	Child	Necessary food, clothing, shelter, or medical assistance
TENNESSEE	Tenn. Code Ann. § 71-5-103 Tenn. Code Ann. § 71-5-115	Parents, spouses, children, guardians of relative receiving medical assistance	Reimbursement for “medical assistance”
TEXAS	N/A		
UTAH	Utah Code Ann. § 17-14-2	Children, parents, siblings, or grandchildren of indigent person (in that order)	Support
VERMONT	VT. Stat. Ann. Tit. 15, §§ 202-03	Spouse, parent, or child	Support when the parent is destitute
VIRGINIA	VA. Code Ann. § 20-88	Children	support or maintenance
WASHINGTON	N/A		
WISCONSIN	Repealed in 1973		
WYOMING	N/A		
WEST VIRGINIA	W. VA. Code § 9-5-9	Children, father, sibling, and mother (in that order)	Support indigent individual “in the manner required by the department of welfare”
DISTRICT OF COLUMBIA	N/A		
PUERTO RICO	8 L.P.R.A. § 712	Descendant of any kind	fair and reasonable” monetary or care contribution