

Are Children Legally Responsible For Their Parents' Care?

Adult children are legally responsible for their parents' financial support, including the payment of their parents' nursing home bills, in 30 states according to The Elder Law Journal (2008). These 30 states have statutes called filial responsibility laws that can be financially devastating!

In some states, the cost to the children can be as much as \$14,000 per month or \$168,000 per year. In southern Illinois, the monthly cost of care in a nursing home is closer to \$5,000 or \$60,000 per year – a lower – yet a stagger sum to all but the most wealthy among us!

Filial Responsibility Laws

Filial responsibility laws are derived from England's Elizabethan Poor Laws of 1601, which made blood relatives responsible for the support of their family members, including aging parents. The English system for dealing with poverty was later transplanted to the American colonies. Although these poor laws were challenged on a variety of grounds, including their constitutionality, the courts upheld them.

Eventually, American society evolved. Despite the lawfulness of the filial responsibility laws, civil and criminal cases filed against adult children to pay for their parent's care all but stopped within the last fifty years.

In the 1930s, with the advent of the New Deal and the Social Security system, the government created a variety of programs to meet the needs of the poor. Indeed, enforcement of the filial responsibility laws was essentially consigned to the dust-bin of history when the Medicare and Medicaid Bill was signed into law by President Johnson as part of his Great Society expansion of the Social Security system. At the signing ceremony in 1965, President Johnson spoke eloquently and hopefully of a brighter future for families and their older parents:

“No longer will older Americans be denied the healing miracle of modern medicine. No longer will illness crush and destroy the savings that they have so carefully put away over a lifetime so that they might enjoy dignity in their later years. No longer will young families see their own incomes, and their own hopes, eaten away simply because they are carrying out their deep moral obligations to their parents, and to their uncles, and their aunts. And no longer will this Nation refuse the hand of justice to those who have given a lifetime of service and wisdom and labor to the progress of this progressive country.”

The Financial Crisis

American society, and Illinois in particular, is now in big trouble. Medicaid is being squeezed. The staggering cost of long-term care has prompted a second look at

filial responsibility laws as a way to deal with the crisis. A conservative think-tank, the National Center For Policy Analysis, that touts itself as a leader in promoting private alternatives to government regulation and control, stated in an issues brief:

“. . . many [seniors] have adult children who could contribute toward their [parents'] care, but do not do so . . . Enforcement of state filial responsibility statutes could reduce Medicaid spending . . . Reminding children of their obligations would encourage them and their parents to consider proper planning . . .”

Are filial responsibility laws “Back To The Future” or have we lost our way? The issue has even gained the attention of THE NEW YORK TIMES. In a recent article (November 20, 2008), “Adult Children, Aging Parents and the Law”, author Jane Gross asked what consequences these laws might have on the competing demands placed on an adult child’s own family as they struggle to pay college tuition, medical bills, and their own eventual retirement.

Now with every state looking for new sources of revenue – so the politicians will not need to raise taxes or cut “ear-marks” for “bridges to nowhere” – the movement now underway to beef up enforcement of these laws is gathering steam. Some even advocate new federal laws.

State of Illinois

With the state of Illinois months behind in paying its bills and our own politicians looking hard for new sources of revenue that would not require them to raise taxes or cut pork-barrel projects, Illinois may soon become the 31st state to adopt a filial responsibility statute.

Long ago – before FDR’s New Deal – Illinois had such a statute. It does not take much imagination to envision the politicians dusting that statute off and reenacting a modern version. The reenacted statute would give Illinois a new and potentially huge source of additional revenue – which the politicians could truthfully say is “not a tax” in the strictest meaning of the word; but one which could potentially have devastating financial consequences for many middle-class families. It could literally wipe them out financially.

With the public distracted by the impeachment of Governor Blagojevich and all the craziness going on in Chicago and Springfield, this might be the perfect time for the politicians to strike. Even if the issue simmers for a few months, it does not take a rocket scientist or a brain surgeon to realize the politicians may soon be salivating at the chance to balance the state’s books on the backs of middle-class families by making adult children pay for the medical and nursing home care of their aging parents.

Now, more than ever, it is extremely important to consult with knowledgeable and experienced counsel to protect yourself, your home, your assets, and those you love –

so that you and your loved ones can be protected from, in the words of a recent caller, those who would seek to “drain you dry.”

For more information on filial responsibility laws, Medicaid, and long-term care go to <http://everydaysimplicity.blogspot.com/2008/07/filial-responsibility-law-adult-kids.html>. Read the article, then scroll down to the link [Filial Responsibility Law - Adult Kids Sued for Care of Parents](#).

Richard Habiger is an elder law attorney, who focuses on estate preservation, disability, Medicaid and VA benefits, and Alzheimer’s and life care planning. You may contact him at 618-549-4529 or toll-free (in Illinois only) at 800-336-4529.

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