

# FILIAL RESPONSIBILITY: BREAKING THE BACKBONE OF TODAY'S MODERN LONG TERM CARE SYSTEM

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## I. INTRODUCTION

Mrs. Smith has been living in a nursing home for about seven months in Pennsylvania. Her limited income and lack of assets has left a nursing home bill of approximately \$93,000.00 unpaid. Barbara, Mrs. Smith's only daughter, lived five miles from Mrs. Smith for years. Even though Barbara works full time and is raising two children, she helped Mrs. Smith for several years before Mrs. Smith entered the nursing home. Bob, Mrs. Smith's only son, lives in Florida and visits Mrs. Smith a few times a year, calls her every week, and occasionally sends money to Barbara when Mrs. Smith needs something. Yesterday, while at work, Barbara was served with a lawsuit filed by the nursing home in which Mrs. Smith lives. The nursing home is suing Barbara for Mrs. Smith's unpaid nursing home bill.

This may seem a far-fetched hypothetical, but for many in the United States this could be reality. In many states, this can occur under filial responsibility laws.<sup>1</sup> Filial responsibility laws place responsibility and liability for the care of indigent family members on other family members.<sup>2</sup> These laws exist in the majority of states.<sup>3</sup> Some states are beginning to see aggressive use of these laws in pursuit of coverage of the cost of long term care.<sup>4</sup>

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1. See discussion *infra* Part II.

2. See *infra* Tables A–E (listing all of the filial responsibility statutes in the United States and several of the provisions of each statute).

3. See *infra* Table A (showing that twenty-nine states and the unincorporated territory of Puerto Rico have some type of statutory obligation that individuals pay for their parents' care).

4. See *Health Care & Ret. Corp. of Am. v. Pittas*, 46 A.3d 719, 720 & 724 (holding a son liable for his mother's stay in a nursing home that lasted approximately six months and levying a \$92,943.41 support order against him); *Americana Healthcare Ctr. v. Randall*, 513 N.W.2d 566, 569–71 (S.D. 1994) (holding a son liable for the \$36,772.30 bill accrued by his mother's stay in a nursing home); It is important to note that the son in *Randall* had not been a resident of the state where the suit was brought for over forty years at the time the support order was implemented. *Randall*, 513 N.W.2d at 569.

Enforcement of these laws is unsustainable and will break the “backbone” of the modern long term care system: the informal care giver.<sup>5</sup>

This article will briefly discuss the development of filial responsibility in the United States, the government programs that have displaced it, and its modern day application, including the ambiguity that creates problems for indigent elders’ family members and care providers.<sup>6</sup> This article will outline the current long term care system, including its costs and the government and private programs that primarily assist consumers with these costs.<sup>7</sup> It will end by arguing that enforcement of filial responsibility unfairly targets the informal caregiving structure that is the backbone of today’s modern long-term care system, which is why filial responsibility is unsustainable today.<sup>8</sup> Because the growing costs of long-term care have created, as some describe, “a national crisis”<sup>9</sup> in need of a solution, this article will end by proposing some solutions that support the informal caregiving system to create a more sustainable modern long-term care system.<sup>10</sup>

## II. FILIAL RESPONSIBILITY LAWS: AN ANTIQUATED SYSTEM

### A. BACKGROUND AND EARLY DEVELOPMENT

American filial responsibility laws are a derivation of laws like the Elizabethan Poor Act of 1601.<sup>11</sup> The Elizabethan Poor Act mandated that the “Father and Grandfather, and the Mother and Grandmother, and the Children of every poor, old, blind, lame, and impotent Person” support the person to the extent he or she is able.<sup>12</sup> No duty exists at common law requiring adult children to financially support a parent or to pay for a parent’s care; this duty can only be created by statute.<sup>13</sup> States first created

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5. See JEANNETTE TAKAMURA ET AL., U.S. DEP’T OF HEALTH & HUMAN SERV., *INFORMAL CAREGIVING: COMPASSION IN ACTION 1* (1998), [http://aspe.hhs.gov/daltcp/reports/car\\_ebro2.pdf](http://aspe.hhs.gov/daltcp/reports/car_ebro2.pdf) (describing informal caregiving as “the backbone of America’s long-term care system”).

6. See *infra* Part II.

7. See *infra* Part III.

8. See *infra* Part IV.

9. *The Future of Long-Term Care: Saving Money by Serving Seniors: Hearing Before the Spec. Comm. on Aging*, 112th Cong. 16 (2012) (statement of Sen. Bob Corker, Ranking Member, Spec. Comm. on Aging), <http://www.aging.senate.gov/publications/04182012.pdf>.

10. See *infra* Part V.

11. See Act for the Relief of the Poor 43 Eliz. 1, c. 2 (Eng.) (1601).

12. See *id.* § 7.

13. See *McCook Cnty. v. Kammoss*, 64 N.W. 1123, 1123 (S.D. 1895) (asserting that while the common law extends a duty only to parents to support their children, statutes impose such duties on children to support their elderly parents).

this duty hundreds of years ago.<sup>14</sup> A Pennsylvanian colonial law was one of the earliest American examples of these types of statutes and “authorized overseers of the poor to impose taxes with the intent of relieving ‘poor, indigent and impotent persons.’”<sup>15</sup>

Codification of filial responsibility began in earnest in the United States around the 1850’s in states such as Iowa.<sup>16</sup> These statutory schemes provided for the care of certain groups, specifically the elderly. By the 1950’s, at the height of their popularity in America, as many as forty-five states had some form of a filial responsibility statute.<sup>17</sup>

#### B. FILIAL RESPONSIBILITY LAWS DISPLACED BY GOVERNMENT PROGRAMS

When filial responsibility laws were passed in the United States, care for the elderly was usually provided informally by spouses and families, and not by institutions.<sup>18</sup> Filial responsibility laws were passed before medical advances<sup>19</sup> and pharmaceuticals<sup>20</sup> allowed individuals to live long after their minds and bodies had failed. They were passed when the United States’ economy was agriculturally based and generations of families were stationary on the same family farm.<sup>21</sup> In addition, the life expectancy for the average American during this time was 49.2 years.<sup>22</sup>

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14. See *Albert Einstein Med. Ctr. v. Forman*, 243 A.2d 181, 183 (Pa. Super. Ct. 1968) (stating the first provision requiring children to support their parents if their parents were indigent is found in the 1771 Act, 1 Smith 344, in § 29).

15. Terrance A. Kline, *A Rational Role for Filial Responsibility Laws in Modern Society?*, 26 FAM. L. Q. 195, 197 (1992).

16. See, e.g., IOWA CODE § 252.2 (2013) (“The father, mother, and children of any poor person, who is unable to maintain the poor person’s self by labor, shall jointly or severally relieve or maintain such person . . .”).

17. See Kline, *supra* note 15, at 196.

18. See generally Usha Narayanan, *The Government’s Role in Fostering the Relationship Between Adult Children and their Elder Parents: From Filial Responsibility Laws to . . . What?, a Cross-Cultural Perspective*, 4 ELDER L. J. 369 (1996) (discussing the modernization of technology, a favoring of the nuclear family over the extended family, and the development of social systems based on geographic mobility as factors in the shift from family caregiving to institutional caregiving).

19. See *infra* Part III.a–c.

20. See *Prescription Drug Costs*, KAISEREDU.ORG, <http://www.kaiseredu.org/Issue-Modules/Prescription-Drug-Costs/Background-Brief.aspx> (last updated Dec., 2012).

21. See Herman F. Grundmann, *Adult Assistance Programs Under the Social Security Act*, 48 SOC. SEC. BULL. 10, 11 (1985), <http://www.ssa.gov/policy/docs/ssb/v48n10/v48n10p10.pdf>.

22. See LAURA B. SHRESTHA, CRS REPORT FOR CONGRESS: LIFE EXPECTANCY IN THE U.S. (2006), <http://www.aging.senate.gov/crs/aging1.pdf>.

In America's infancy, care for the elderly who had no family and no resources was provided in "almshouses."<sup>23</sup> These institutions had reputations for poor care and horrible conditions.<sup>24</sup> In these early years, family members held responsible for the care of a parent based on filial responsibility were often liable only for the incidental costs necessary to ensure the indigent elder had food, shelter, or clothing.<sup>25</sup>

Over time, the United States' economy shifted from agricultural to industrial based, and families became more transient. The elderly who were unable to do the physically taxing work of the new industrial economy were at an economic disadvantage.<sup>26</sup> Until the nationwide financial devastation of the Great Depression, the prevailing attitude was that families could and should care for their own elderly without regard for cost.<sup>27</sup> With the Great Depression, Americans began to acknowledge that the economy could inflict financial harm and dependency through no fault of the individual.<sup>28</sup>

In 1935, the Social Security Act<sup>29</sup> was passed to provide elderly who had insufficient income with a "decent subsistence."<sup>30</sup> The Social Security Act made filial responsibility laws less popular by giving Old Age Assistance grants to retirees not living in "almshouses" and other public institutions.<sup>31</sup> The Social Security Act ensured the use of filial responsibility statutes was rarely a method individuals and government entities would utilize to provide care to indigent elders.<sup>32</sup>

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23. *The Evolution of Nursing Home Care in the United States*, PUB. BROAD. SERV., <http://www.pbs.org/newshour/health/nursinghomes/timeline.html> (last visited Sept. 10, 2013).

24. *See id.* (describing almshouses as "dilapidated facilities").

25. *See* Cnty. of Jasper v. Osborn, 13 N.W. 104, 104–106 (Iowa 1882) (holding a son liable to the county for \$48 worth of "board and clothing" provided to his father).

26. *See* Grundmann, *supra* note 21, at 11.

27. *Id.* (discussing the American peoples' view that every person was completely capable of taking care of his or her self through "hard work and savings," regardless of society's economic conditions).

28. *Id.*

29. Social Security Act of 1935, Pub. L. No. 74–271, 49 Stat. 620.

30. *See id.* (discussing that Social Security was meant to "meet the problem of millions of persons who are already superannuated or shortly will be so and are without sufficient income for a decent subsistence. A contributory annuity system, while of little or no value to people now in these older age groups, [would] enable younger workers, with the aid of their employers, to build up gradually their rights to annuities in their old age. Without such a contributory system the cost of pensions would, in the future, be overwhelming.") (quoting SOC. SEC. ADMIN., REPORT TO THE PRESIDENT OF THE COMM. ON ECON. SEC. 25 (1935), available at <http://www.socialsecurity.gov/history/reports/ces/ces5.html>).

31. *See The Evolution of Nursing Home Care in the United States*, *supra* note 23.

32. *See* PETER A. CORNING, SOC. SEC. ADMIN., *THE EVOLUTION OF MEDICARE . . . FROM IDEA TO LAW* ch. 2 (last visited Sept. 14, 2013), available at <http://www.socialsecurity.gov/history/corning.html/corningpreface.html>.

This national concern for support of the elderly continued in the United States after 1935. In 1965, Medicare,<sup>33</sup> a national system of health insurance for older adults, passed and ensured that America's elderly would have medical care.<sup>34</sup> When advocating for the passage of Medicare, President Johnson said Medicare was the logical extension of the Social Security Act as a safety net for the elderly and was to provide a "prudent, feasible, and dignified way to free the aged from the fear of financial hardship in the event of illness."<sup>35</sup> Medicare's extension of the federal safety net for the elderly continued to weaken reliance on filial responsibility statutes.<sup>36</sup>

Medicare initially covered care in nursing homes but in 1969, the Department of Health and Human Services issued "Intermediary Letter 371" and terminated much of the nursing home coverage Medicare provided.<sup>37</sup> However, the costs of nursing home care were too much for families and individuals, and in 1972 Medicaid<sup>38</sup> began covering long-term care costs.<sup>39</sup> In making this decision, Congress was attempting to alleviate "the hardships" caused by forced payment of medical expenses and felt that it was "destructive and harmful to the relationships among members of the family group."<sup>40</sup>

The changing attitudes of Americans and the passage of the Social Security Act, Medicare, and Medicaid, made filial responsibility obsolete as a means to care for elders in the United States. Now, filial responsibility laws are often viewed as an "archaic" part of our economy.<sup>41</sup> Twenty-eight states and Puerto Rico, an unincorporated territory, still have filial responsibility laws.<sup>42</sup> In twenty-seven of these states, there have been no appellate court decisions upholding a parental direct support order against an adult child in the past thirty or more years.<sup>43</sup> In 2011, the State of Idaho

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33. Social Security Amendments of 1965, Pub. L. No. 89-97, 79 Stat. 286.

34. See CORNING, *supra* note 32, at ch. 4, available at <http://www.ssa.gov/history/corningchap4.html>.

35. *The Evolution of Nursing Home Care in the United States*, *supra* note 23.

36. See Kline, *supra* note 15 at 198-99.

37. See *The Evolution of Nursing Home Care in the United States*, *supra* note 23.

38. Social Security Amendments of 1965, Pub. L. No. 89-97, 79 Stat. 286.

39. See *The Evolution of Nursing Home Care in the United States*, *supra* note 23.

40. S. REP. NO. 89-404 pt. 1, at 78 (1965).

41. Kline, *supra* note 15, at 196; see generally George F. Indest, *Legal Aspects of HCFA's Decision to Allow Recovery from Children for Medicaid Benefits Delivered to Their Parents Through State Financial Responsibility Statutes: A Case of Bad Rule Making Through Failure to Comply with the Administrative Procedure Act*, 15 S.U. L. REV. 225 (1988) (examining filial responsibility statutes).

42. See *infra* Tables A-E.

43. See Katherine C. Pearson, *Filial Support Laws in the Modern Era: Domestic and*

went even further and repealed its filial responsibility statute.<sup>44</sup> The repeal of Idaho's statute was based in part on the Idaho Attorney General's determination that filial responsibility was "inconsistent with federal [Social Security] law[s]"<sup>45</sup> in addition to being outdated and confusing.<sup>46</sup>

Despite negative treatment and obsolescence, as the baby boomers age and their need for long-term medical care grows, interest in filial responsibility is increasing.<sup>47</sup> Advocates for filial responsibility believe states should expand enforcement of their individual filial responsibility laws<sup>48</sup> or the federal government should implement a federal filial responsibility scheme<sup>49</sup> to resolve the issues raised by the costs associated with a growing elderly population. However, this solution would undermine the utility of informal caregiving. In contrast to the original intent of filial responsibility laws, the laws are now being used by commercial entities to extract payment of long-term care costs from the family members of the elderly.<sup>50</sup>

### C. EXAMPLE OF CONTEMPORARY FILIAL RESPONSIBILITY STATUTORY SCHEME

To understand how filial responsibility laws operate, it is helpful to review a current statutory scheme. Montana's filial responsibility laws are a good example of modern day statutes that are in place throughout the nation. Enacted in 1915, the filial responsibility law in Montana is entitled "Duty of child to support indigent parents."<sup>51</sup> The statute states:

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*International Comparison of Enforcement Practices for Laws Requiring Adult Children to Support Indigent Parents*, 20 ELDER L. J. 269, 279 (2013).

44. See IDAHO CODE ANN. § 32-1002 (West 2013) (repealed 2011).

45. Health and Welfare, Op. IDAHO ATT'Y GEN. 85-10 at 3 (1985), <http://www.ag.idaho.gov/publications/op-guide-cert/1985/OP85-10.pdf>.

46. See Pearson, *supra* note 43, at 277.

47. See *id.* at 302.

48. See Robin M. Jacobson, *Americana Healthcare Ctr v. Randall: The Renaissance of Filial Responsibility*, 40 S.D. L. REV. 518, 518-19 (1995).

49. See Matthew Pakula, *A Federal Filial Responsibility Statute: A Uniform Tool to Help Combat the Wave of Indigent Elderly*, 39 FAM. L.Q. 859, 860 (2005).

50. See, e.g., *Vencor, Inc. v. Gray*, 2003 MT 24N ¶ 9; *Health Care & Ret. Corp. of Am. v. Pittas*, 46 A.3d 719, 719-20 (Pa. Super. Ct. 2012); *Prairie Lakes Health Care Sys., Inc. v. Wookey*, 583 N.W.2d 405, 409 (S.D. 1998).

51. MONT. CODE ANN. § 40-6-301 (West 2013); see also MONT. CODE ANN. § 40-6-301 (West 2013); Pearson, *supra* note 43, at 275.

There are at least seven important components that should be (but are not always) addressed by the surviving statutes: (1) a general statement of obligation of the adult child to the parent (which may or may not be reciprocal); (2) language establishing grounds for financial liability . . . ; (3) a provision prioritizing liability among several children or other obligors . . . ; (4) a statement of any exceptions to liability (such as a child who was not cared for sufficiently by the parent while a minor); (5) a provision

(1) It is the duty of every adult child, having the financial ability, to furnish and provide necessary food, clothing, shelter, medical attendance, and burial, entombment, or cremation costs for an indigent parent, unless, in the judgment of the court or jury, the child is excused by reason of intemperance, indolence, immorality, or profligacy of the parent.

(2) If a county pays for burial, entombment, or cremation costs under 53-3-116, the county may seek reimbursement under this part, if applicable.<sup>52</sup>

The statutory scheme establishes that a failure to fulfill this duty is a crime.<sup>53</sup> It authorizes any child (if there is more than one adult child), any parent to whom support is due, or the county attorney to initiate a civil suit founded in a violation of § 40-6-301 and allows courts to apportion the expenses associated with the suit amongst the children liable for violating the duty.<sup>54</sup> In certain circumstances, a third party may be able to argue that an adult child can be held liable for the costs of maintaining a parent based on the child's unwritten promise to pay the parent's debt.<sup>55</sup> Although Montana's statute seems comprehensive, comparisons with other filial responsibility schemes reveal the confusion parents and children encounter when reviewing their statutory rights and duties.<sup>56</sup>

The tables at the end of this article summarize filial responsibility laws in every state and in Puerto Rico.<sup>57</sup> These tables provide the statute, responsible parties, who can bring the suit for support, what support must be provided, any available statutory defenses associated with the specific laws, and whether or not a violation constitutes a crime.<sup>58</sup> A review of the tables reveals that filial responsibility laws throughout the United States are complex and confusing.

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for who has standing as claimants; (6) a provision harmonizing the law with any relief provided by welfare programs, such as Medicaid; and (7) a mechanism for enforcement.

Pearson, *supra* note 43, at 275. Montana's filial responsibility statutory scheme has components 1-5 of this list. § 40-6-214; § 40-6-301.

52. § 40-6-301.

53. § 40-6-302 (West 2013) ("Any person violating the provisions of 40-6-301 shall be deemed guilty of a misdemeanor.").

54. § 40-6-303 (West 2013).

55. *See Vencor, Inc. v. Gray*, 2003 MT 24N ¶ 26 (reasoning that when a child has already promised to pay for a portion of a parent's nursing home stay, her failure to pay allows the child to be held personally at fault despite the status as the parent's conservator).

56. *See infra* Part IV.b.i-ii (discussing the ambiguity inherent in filial responsibility statutes).

57. *See infra* Tables A-E.

58. *See infra* Tables A-E.

### III. MODERN LONG TERM CARE SYSTEM

#### A. WHAT IS LONG TERM CARE?

As stated above, filial responsibility laws developed in an agricultural economy when life expectancy was approximately fifty years and before institutional medical care and pharmaceuticals prolonged life long after an individual could care for himself.<sup>59</sup> Today, it is estimated that seventy percent (70%) of people over the age of sixty-five will need some form of long term care services in their lifetime.<sup>60</sup>

Long term care encompasses medical and non-medical services that help individuals with disabilities or chronic illness meet their daily needs.<sup>61</sup> Long term care includes assistance with completing Activities of Daily Living (“ADLs”)<sup>62</sup> as well as the care and supervision necessary to protect individuals who have lost the ability to protect themselves due to cognitive impairment.<sup>63</sup> Long term care encompasses many services, it is provided in a variety of environments, and it becomes increasingly more intensive as many chronic or debilitating conditions progress.<sup>64</sup>

Long term care falls on a continuum, with homemaking services and adult day care on the least intensive end and nursing home care on the most intensive end.<sup>65</sup> For individuals living in their own homes, long term care can include homemaker services,<sup>66</sup> supervision, and even home health care.<sup>67</sup> Individuals needing long term care while their regular caregiver works a job may utilize adult day care centers<sup>68</sup> that can provide necessary supervision and assistance during the day.<sup>69</sup> Individuals who need

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59. *See supra* Part II.b.

60. *See* GENWORTH, COST OF CARE SURVEY 8 (10th ed. 2013), [https://www.genworth.com/dam/Americas/US/PDFs/Consumer/corporate/130568\\_032213\\_Cost%20of%20Care\\_Final\\_nonsecure.pdf](https://www.genworth.com/dam/Americas/US/PDFs/Consumer/corporate/130568_032213_Cost%20of%20Care_Final_nonsecure.pdf).

61. *See* CENTERS FOR MEDICARE & MEDICAID SERV. DEP’T. OF HEALTH & HUMAN SERV., MEDICARE & YOU 117 (2013), <http://www.medicare.gov/pubs/pdf/10050.pdf>.

62. *See* GENWORTH, *supra* note 60, at 8 (describing examples of ADLs, including “bathing, dressing or eating”).

63. *See id.*

64. *See id.*

65. *See id.*

66. *See* GENWORTH, *supra* note 60, at 4 (discussing that homemaker services offers assistance with completion of household tasks and that home health aides can provide respite care for individuals that need assistance on an hourly basis at a median salary of \$19 per hour).

67. *See id.* (discussing that home health aides offer assistance with household tasks as well as extensive personal and medical services).

68. *See id.* at 8 (discussing that nursing home care offers around-the-clock skilled nursing assistance for those that require a higher level of supervision and care).

69. *See id.*

assistance but either have no home in which to receive services or need more intensive services than can be provided at home can utilize assisted living facilities<sup>70</sup> or nursing homes.<sup>71</sup>

#### B. COSTS OF LONG TERM CARE

Long-term care costs can be devastating to individuals who require long term care and their families. In 2012, the median cost of adult day care nationally was \$16,900 per year; homemaker services were \$41,756 per year; and assisted living facility care was \$41,400 per year; and nursing home care was \$75,405 per year.<sup>72</sup> In the last five years, the median cost of nursing home care has increased by \$16,425, and the costs associated with long-term care show no sign of going anywhere but up.<sup>73</sup>

Compare the costs of long term care to the median yearly income of a retiree, which is \$32,454.<sup>74</sup> Or, compare these costs to the median salary of an American worker at \$50,054 per year.<sup>75</sup> Unlike long term care costs, which have been steadily increasing,<sup>76</sup> the median wage of the American worker has dropped 8.1 percent since 2007.<sup>77</sup> The more affordable long term care costs, such as adult day care and homemaker services, are close to or exceed the average yearly income of a retiree. The costs of long-term care on the more expensive end of the continuum, such as nursing home care, exceed the average yearly salary of the American worker. The average cost of long-term care is 135% of the yearly income of the average person over the age of 65.

#### C. OPTIONS FOR PAYMENT FOR MODERN LONG TERM CARE

Today's long term care costs are unaffordable for the average American family. Individuals requiring long term care have four basic options to pay for care: 1) long term care insurance; 2) private resources; 3) government benefit programs; and 4) informal caregivers services.

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70. *See id.* (discussing that assisted living facilities are living arrangements for those that need assistance with ADLs but would like to live as independently as possible).

71. *See* GENWORTH, *supra* note 60, at 8 (discussing that nursing home care offers around-the-clock skilled nursing assistance for those that require a higher level of supervision and care).

72. *Id.* at 20.

73. *See id.* at 5.

74. CARMEN DENAVAS-WALT ET AL., U.S. DEP'T OF COMMERCE, INCOME, POVERTY, & HEALTH INS. COVERAGE IN THE U.S.: 2011 6 (2012), <http://www.census.gov/prod/2012pubs/p60-243.pdf>.

75. *Id.* at 5–7.

76. *See supra* text accompanying note 73.

77. CARMEN DENAVAS-WALT, *supra* note 74, at 7.

### i. Long Term Care Insurance

Individuals can purchase or attempt to purchase long term care insurance<sup>78</sup> before they are diagnosed with an illness that will require long term care.<sup>79</sup> The majority of long term care insurance has medical underwriting requirements<sup>80</sup> and monthly or yearly premiums.<sup>81</sup> The average long term care premium varies between \$409 and \$1,087 for individuals fifty years of age, depending on the level of benefits and interest protection.<sup>82</sup> However, certain types of long term care insurance policies are tax qualified and part of the premiums are tax deductible.<sup>83</sup> Some employers, most notably the Federal Government and United States Postal Service, offer employees and their families long term care insurance at group rates through the Federal Long Term Care Insurance Program (“FLTCIP”).<sup>84</sup>

Medical underwriting requirements may prevent some individuals from obtaining long term care, while others may find the costs unaffordable. However, often those who have long term care insurance available to them do not purchase it.<sup>85</sup> Some have even questioned the viability of long term care insurance.<sup>86</sup>

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78. *What is Long Term Care Insurance?*, FED. LONG TERM CARE INS. PROGRAM, [http://www.ltcfeds.com/start/aboutltci\\_what.html](http://www.ltcfeds.com/start/aboutltci_what.html) (last visited July 30, 2013) (defining long term care insurance as an insurance product that pay for long term care services).

79. *Qualifying for Benefits*, FED. LONG TERM CARE INS. PROGRAM, <http://www.ltcfeds.com/programdetails/qualifyingbenefits.html> (last visited July 31, 2013) (stating that the inability to complete two out of six ADLs or the onset of a severe cognitive impairment are two factors which allow the initiation of a claim).

80. NAT'L ASSOC. OF INS. COMM'RS, A SHOPPER'S GUIDE TO LONG TERM CARE INSURANCE 26 (2010), [http://www.ltcfeds.com/documents/files/NAIC\\_Shoppers\\_Guide.pdf](http://www.ltcfeds.com/documents/files/NAIC_Shoppers_Guide.pdf) (explaining that medical underwriting is the process by which companies examine a potential insuree's health history before agreeing to provide coverage to the potential insuree).

81. *See id.* at 28 (discussing that premiums vary based on the age, health, and level of coverage of the insuree).

82. *See id.* at 28–29.

83. *See id.* at 12 (discussing that the amount one can deduct depends on one's other tax obligations, but the chart that is shown represents a high likelihood that all or part of the premium will be tax deductible).

84. *See Who is Eligible to Apply for this Insurance?*, FED. LONG TERM CARE INS. PROGRAM, <http://www.ltcfeds.com/eligibility/index.html> (last visited July 31, 2013).

85. *E.g., The Future of Long-Term Care: Saving Money by Serving Seniors: Hearing Before the Special Comm. On Aging*, 112th Cong. 24–25 (2012) (statement of Sen. Bob Corker, Ranking Member, Special Comm. On Aging) (“This is a very massive problem. I mean, people are not thinking in advance of those kind of things down the road. I mean, people, candidly, have difficulty just sort of seeing daily and yearly activities through. . . . [B]y the way, I haven't signed up either, and I may not.”).

86. *Long Term Care Insurers Face Uncertain Future*, MOODY'S INVESTOR SERV., (Sep. 19, 2012), <http://www.moody.com/research/Moodys-Long-term-care-insurers-face-uncertain-future->

## ii. Private Resources

Individuals who are unable or unwilling to purchase long term care insurance can pay for the costs of their long term care from their own income and assets, including retirement savings and investments. For those with few assets other than the home in which they live, a home equity conversion mortgage, also known as a reverse mortgage, might provide an opportunity to pay for care.<sup>87</sup> However, given the costs of long term care, many will be unable to pay for all of their long term care needs from their assets alone.

Once an individual's personal assets, income, and long term care insurance, if any, have been exhausted, they may turn to their families for assistance. Millions of Americans are receiving billions of dollars of long term care from family members who receive no compensation for the services they provide.<sup>88</sup>

When individuals and families can no longer afford the costs of long term care or are unable to provide it themselves, they may be forced to rely on government safety net programs, like Medicaid, to cover those costs of care.<sup>89</sup> In recent years, individuals have been turning to Medicaid in record numbers.<sup>90</sup>

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87. See *Frequently Asked Questions about HUD's Reverse Mortgages*, U.S. DEP'T OF HOUSING & URBAN DEV., [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/sfh/hecm/rmtopten](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/hecm/rmtopten) (last visited Aug. 1, 2013) [hereinafter *Reverse Mortgages*] (stating that a reverse mortgage is a type of home loan that allows a person to convert the equity they have accrued in their home into cash); *Costs and How to Pay*, LONGTERMCARE.GOV, <http://longtermcare.gov/costs-how-to-pay/> (last visited Aug. 1, 2013) (listing a reverse mortgage as a common method of private payment for long term care). Reverse mortgages differ on when repayment is necessary, but some allow repayment to be delayed until the borrower no longer uses their home as their principal place of residence. *Reverse Mortgages, supra*.

88. See *infra* Part III.c.iv.2 (discussing the high costs of long term care).

89. See Public Health and Welfare Act, 42 U.S.C. § 1396d (2012) (including "nursing facility services," "skilled nursing facility" services, and "intermediate care facilities" in the types of long term care covered by Medicaid to some degree); *Long-Term Services & Support*, MEDICAID.GOV, <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Support/Long-Term-Services-and-Support.html> (last visited Aug. 1, 2013) (discussing the "institutional long term care" and the "community based long-term services [and] supports" covered by Medicaid).

90. See NAT'L ASS'N OF STATE BUDGET OFFICERS, STATE EXPENDITURE REPORT: EXAMINING FISCAL 2010-2012 STATE SPENDING 43-44 (2012), [http://www.nasbo.org/sites/default/files/State%20Expenditure%20Report\\_1.pdf](http://www.nasbo.org/sites/default/files/State%20Expenditure%20Report_1.pdf) [hereinafter STATE EXPENDITURE REPORT].

### iii. Government Programs

Medicaid now plays a large role in the modern long term care landscape. While some believe Medicare pays for long term care,<sup>91</sup> Medicare does not pay for long term care and has not since 1969.<sup>92</sup> Medicare merely pays for up to 100 days of skilled nursing care through its Part A benefits.<sup>93</sup> Medicaid currently pays for almost half of paid long term care in the United States.<sup>94</sup>

Medicaid is a federal and state partnership program funded, in part, by federal tax dollars and funded, in part, by state revenues<sup>95</sup> providing benefits for those that fall below specific asset and income caps.<sup>96</sup> The percentage of cost sharing between the state and federal government varies by state.<sup>97</sup> The total Medicaid spending in the United States in 2011 was nearly \$414 billion including expenditures for long term care, general medical care, and health care programs for families and children.<sup>98</sup>

Between 2007 and 2010, total Medicaid spending grew 6.8%.<sup>99</sup> Medicaid currently finances 43% of all spending on long term care in the nation.<sup>100</sup> As Medicaid enrollment and health and long term care costs increase, the Medicaid budget for both federal and state governments and

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91. *See Paying for Assisted Living*, SENIORHOMES.COM, <http://www.seniorhomes.com/p/paying-for-assisted-living> (last visited July 29, 2013).

92. Social Security Act, 42 U.S.C. § 1395d(b).

93. 42 U.S.C. § 1395d(a)(2); *see generally* Coming, *supra* note 32 (explaining the majority of Medicare benefits).

94. *See* KAISER COMM'N ON MEDICAID AND THE UNINSURED, HENRY J. KAISER FAMILY FOUND., MEDICAID AND LONG-TERM CARE SERVICES AND SUPPORTS 1 (2012), <http://kaiserfamilyfoundation.files.wordpress.com/2013/01/2186-09.pdf> [hereinafter MEDICAID AND LONG-TERM CARE SERVICES AND SUPPORTS].

95. *Financing & Reimbursement*, MEDICAID.GOV, <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Financing-and-Reimbursement/Financing-and-Reimbursement.html> (last visited Aug. 1, 2013).

96. *Eligibility*, MEDICAID.GOV, <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Eligibility/Eligibility.html> (last visited Aug. 1, 2013).

97. *Federal and State Share of Medicaid Spending*, HENRY J. KAISER FAMILY FOUND., <http://kff.org/medicaid/state-indicator/federalstate-share-of-spending-fy2010/> (last visited Aug. 1, 2013).

98. *See Total Medicaid Spending*, HENRY J. KAISER FAMILY FOUND., <http://kff.org/medicaid/state-indicator/total-medicaid-spending/> (last visited Aug. 1, 2013).

99. *Average Annual Growth in Medicaid Spending*, HENRY J. KAISER FAMILY FOUND., <http://kff.org/medicaid/state-indicator/growth-in-medicaid-spending-fy90-fy10/> (last visited Aug. 1, 2013).

100. KAISER COMM'N ON MEDICAID AND THE UNINSURED, HENRY J. KAISER FAMILY FOUND., MEDICAID'S LONG-TERM CARE USERS: SPENDING PATTERNS ACROSS INSTITUTIONAL AND COMMUNITY-BASED SETTINGS 1, (2011), <http://kaiserfamilyfoundation.files.wordpress.com/2013/01/7576-02.pdf> [hereinafter MEDICAID'S LONG-TERM CARE USERS].

the burden on taxpayers also increase. Medicaid constituted 23.7% of state expenditures nationwide in 2011 and that percentage is increasing.<sup>101</sup>

Over the past decade, federal and state governments have looked for ways to reduce their Medicaid budgets.<sup>102</sup> As the economy slowed in 2008, states faced even more pressure to reduce government benefit budgets.<sup>103</sup> To reduce these budgets, states now search for new and innovative ways to reduce Medicaid long term care costs, such as Medicaid long term care waivers that force all Medicaid recipients into a long term care managed care system.<sup>104</sup> As pressure builds to reduce Medicaid budgets<sup>105</sup> and to pay or reimburse long term care providers for the costs of long term care, filial responsibility laws have captured the attention of scholars and practitioners.<sup>106</sup> However, this utilization will damage the “backbone” of the long-term care system: informal caregiving.<sup>107</sup>

#### iv. Informal Caregiving

Just as federal and state governments struggle with the enormous costs of long term care, so do American families. Twenty-one percent of American households provide care for another adult, with 44 million Americans provide care for an adult family member or friend.<sup>108</sup> The majority of caregivers care for a relative (86%), with over one third caring

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101. STATE EXPENDITURE REPORT, *supra* note 90, at 44.

102. See Pearson, *supra* note 43, at 289; see also MEDICAID AND LONG-TERM CARE SERVICES AND SUPPORTS *supra* note 94, at 1–2 (discussing new payment and delivery models that states have experimented with over the past few decades in an attempt to manage costs).

103. Pearson, *supra* note 43, at 289.

104. See Letter from Ralph F. Lollar, Director of Health and Human Services Division of Long Term Services & Supports, & Nancy Klimon, Director of the Health and Human Services Division of Integrated Health Systems, to Justin Senior, Deputy Secretary for Medicaid for Florida (Feb. 1, 2013), [http://ahca.myflorida.com/medicaid/statewide\\_mc/pdf/Signed\\_approval\\_FL0962\\_new\\_1915c\\_02-01-2013.pdf](http://ahca.myflorida.com/medicaid/statewide_mc/pdf/Signed_approval_FL0962_new_1915c_02-01-2013.pdf) (waiving Florida’s obligation to offer comparability of services between Federal and Florida Medicaid law). See generally Letter from Michael Garner, President and CEO of Florida Association of Health Plans, Inc., to Justin Senior, Deputy Secretary for Medicaid for Florida (Oct. 24, 2012), [http://ahca.myflorida.com/medicaid/statewide\\_mc/pdf/mma/Medically\\_Needy\\_Comments\\_010313.pdf](http://ahca.myflorida.com/medicaid/statewide_mc/pdf/mma/Medically_Needy_Comments_010313.pdf) (exhibiting the various requirements that Florida’s citizens must meet in order to properly apply for the Federal waiver).

105. Pearson, *supra* note 43, at 289.

106. See *Health Care & Ret. Corp. of America v. Pittas*, 46 A.3d 719, 720–21 (Pa. Super. Ct. 2012).

107. See JEANNETTE TAKAMURA ET AL., U.S. DEP’T OF HEALTH & HUMAN SERV., INFORMAL CAREGIVING: COMPASSION IN ACTION 1 (1998), <http://aspe.hhs.gov/daltcp/reports/carebro2.pdf> (describing informal caregiving as “the backbone of America’s long term care system” by the U.S. Department of Health and Human Services).

108. METLIFE MATURE MKT. INST., METLIFE, THE METLIFE CAREGIVING COST STUDY: PRODUCTIVITY LOSSES TO U.S. BUSINESSES 5 (2006), <http://www.caregiving.org/data/Caregiver%20Cost%20Study.pdf>.

for a parent (36%).<sup>109</sup> More than 60% of these caregivers are women<sup>110</sup> and women account for 66% of all caregivers over 50 years of age.<sup>111</sup>

Nearly three-quarters (74%) of caregivers live with or within twenty minutes of their care recipient.<sup>112</sup> Of the caregivers who do not live with their care recipient, three-quarters visit care recipient at least once a week.<sup>113</sup> On average, caregivers spend 20.4 hours per week providing care.<sup>114</sup> These hours are in addition to the caregiver's other obligations such as employment, child rearing, household tasks, and maintaining their own health. The average caregiver in the United States provides unpaid care for her loved one for nearly five years.<sup>115</sup>

### 1. The Costs of Caregiving to the Informal Caregiver

Providing care for a family member or friend carries great costs to the individual caregiver. Caregiving negatively impacts every aspect of a caregiver's life, from health, to family, to finances.<sup>116</sup> Caregiving negatively affects a caregiver's health.<sup>117</sup> The longer a caregiver has provided care, the more likely she is to report poor health.<sup>118</sup> As much as 35% of caregivers report their health is fair or poor.<sup>119</sup> By comparison, only 13% of the general adult population describes their health as *fair* or *poor*.<sup>120</sup> Seventeen percent of caregivers feel their health has worsened as a result of caregiving.<sup>121</sup>

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109. NAT'L ALLIANCE FOR CAREGIVING, EXECUTIVE SUMMARY: CAREGIVING IN THE U.S. 4 (2009), <http://www.caregiving.org/data/CaregivingUSAllAgesExecSum.pdf>.

110. See LYNN FEINBERG ET AL., AARP PUB. POL'Y INST, VALUING THE INVALUABLE: 2011 UPDATE ON THE GROWING CONTRIBUTIONS AND COSTS OF FAMILY CAREGIVING 1 (2011), <http://assets.aarp.org/rgcenter/ppi/lc/i51-caregiving.pdf>.

111. METLIFE MATURE MKT. INST., METLIFE, THE METLIFE STUDY OF CAREGIVING COSTS TO WORKING CAREGIVERS: DOUBLE JEOPARDY FOR BABY BOOMERS CARING FOR THEIR PARENTS 7 (2011), <http://www.aarp.org/content/dam/aarp/livable-communities/learn/health/metlife-study-of-caregiving-costs-to-working-caregivers-2011-aarp.pdf> [hereinafter STUDY OF CAREGIVING COSTS TO WORKING CAREGIVERS].

112. NAT'L ALLIANCE FOR CAREGIVING, *supra* note 109, at 14.

113. *Id.*

114. *Id.* at 7.

115. See FEINBERG, *supra* note 110, at 1.

116. Family Caregiver Alliance, *Caregiving Fact Sheet*, CAREGIVER.ORG, [http://www.caregiver.org/caregiver/jsp/content\\_node.jsp?nodeid=2313](http://www.caregiver.org/caregiver/jsp/content_node.jsp?nodeid=2313) (last visited July 29, 2013).

117. *Id.*

118. See *id.*

119. FEINBERG, *supra* note 110, at 8.

120. NAT'L ALLIANCE FOR CAREGIVING, *supra* note 109, at 14–15.

121. *Id.* at 15.

Caregivers report negative effects to their relationships with their children<sup>122</sup> and their marriages.<sup>123</sup> Caregivers report higher rates of family discord and divorce, some attributing their divorces directly to caregiving.<sup>124</sup> Divorce adds additional financial and emotional stress to an already difficult situation.<sup>125</sup>

Caregivers also report harm to their employment status due to caregiving.<sup>126</sup> Over 74% of caregivers were employed at some time when they were caregiving.<sup>127</sup> Among them, two-thirds (69%) were late for work, left early, or took time off during the day to deal with caregiving issues.<sup>128</sup> The estimated aggregate of all economic losses, including lost wages, pension, and Social Security benefits of caregivers over age fifty caring for their parents is nearly \$3 trillion.<sup>129</sup> Estimates show that individual caregivers over age fifty will lose approximately \$303,880.00 over the course of their lifetime due to caregiving.<sup>130</sup> The economic cost of caregiving for women is even worse given the dramatic wage differential between men and women.<sup>131</sup> In addition to all of these negative factors, in 2010 caregivers also spent approximately \$8,000 of their own money providing care for a loved one.<sup>132</sup> This is up from \$5,531 in 2007.<sup>133</sup>

## 2. Value of Informal Caregiving To the Long Term Care System

While the financial and personal costs of caregiving are high to caregivers, the value of their services to their family members and friends is significant. The value of informal caregiving in the United States was

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122. See Family Caregiver Alliance, *supra* note 116 (explaining how caregiving places great strain on family relationships).

123. Connie Matthiessen, *Love and Marriage (and Caregiving): Caring.com's Marriage Survey* CARING.COM, <http://www.caring.com/articles/love-and-marriage-when-caregiving> (last visited July 29, 2013).

124. See *id.*

125. See NAT'L ALLIANCE FOR CAREGIVING, *supra* note 109, at 14–15.

126. *Id.* at 17.

127. LYNN FEINBERG, *supra* note 110, at 6.

128. *Id.*

129. STUDY OF CAREGIVING COSTS TO WORKING CAREGIVERS, *supra* note 111, at 2.

130. Feinberg, *supra* note 110, at 6 (discussing a loss to caregivers over age fifty of \$115,900 in wages, \$137,980 in Social Security benefits, and \$50,000 in pension benefits).

131. See NAT'L WOMEN'S LAW CTR., HOW THE WAGE GAP HURTS WOMEN AND FAMILIES (2013), [http://www.nwlc.org/sites/default/files/pdfs/how\\_the\\_wage\\_gap\\_hurts\\_women.pdf](http://www.nwlc.org/sites/default/files/pdfs/how_the_wage_gap_hurts_women.pdf) (explaining that the typical full-time working woman will earn \$443,360 less than her male peers over the course of forty years).

132. GENWORTH, BEYOND DOLLARS: THE TRUE IMPACT OF LONG TERM CARING 8 (2012), [https://www.genworth.com/dam/Americas/US/PDFs/Consumer/corporate/Beyond%20Dollars%20FINAL%20109048\\_093010\\_secure.pdf](https://www.genworth.com/dam/Americas/US/PDFs/Consumer/corporate/Beyond%20Dollars%20FINAL%20109048_093010_secure.pdf).

133. See FEINBERG, *supra* note 110, at 6.

\$450 billion dollars in 2009.<sup>134</sup> This exceeds the total of all national Medicaid spending on all Medicaid covered services and programs for the year 2009.<sup>135</sup> It was nearly double all long term care expenditures by any source in the United States in 2009 (\$240 billion)<sup>136</sup> and was nearly triple the expenditures on long term care by both Medicare and Medicaid (\$160.8 billion).<sup>137</sup> In 2012, caregivers provided more than 17.5 billion hours of unpaid care to individuals with Alzheimer's and other dementias alone.<sup>138</sup>

Scholars have concluded the enormous amount of uncompensated care provided by families is not the result of statutorily mandated filial responsibility, but a sense in families of "personal devotion or moral duty."<sup>139</sup> Without informal caregiving arrangements, more individuals would be in nursing homes and assisted living facilities.<sup>140</sup> Because of the costs of assisted living facilities and nursing homes,<sup>141</sup> government safety nets, such as Medicaid would have to spend even more on long term care.<sup>142</sup>

#### IV. UTILIZATION OF FILIAL RESPONSIBILITY LAWS WILL BREAK THE BACKBONE OF LONG TERM CARE

##### A. FILIAL RESPONSIBILITY IS AMBIGUOUS

The antiquated patchwork of family liability created by filial responsibility laws is a veritable field of landmines for an adult child, and often does not directly provide relief to indigent elders. Twelve states provide for criminal sanctions for a violation of the filial responsibility statute,<sup>143</sup> and several impose only criminal liability for the failure to support an indigent elder.<sup>144</sup>

Filial responsibility laws are far from uniform in the type of support

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134. *Id.* at 1.

135. JOHN HOLAHAN ET AL., THE HENRY J. KAISER FAMILY FOUND., MEDICAID SPENDING GROWTH OVER THE LAST DECADE AND THE GREAT RECESSION, 2000-2009 1 (2013), <http://kaiserfamilyfoundation.files.wordpress.com/2013/01/8152.pdf> (discussing that the national spending on Medicaid was at \$347 billion in 2009).

136. MEDICAID AND LONG-TERM CARE SERVICES AND SUPPORTS, *supra* note 94.

137. *See id.* at 1, fig. 2.

138. *Alzheimer's Facts and Figures*, ALZHEIMER'S ASS'N, [http://www.alz.org/alzheimers\\_dis\\_ease\\_facts\\_and\\_figures.asp#quickFacts](http://www.alz.org/alzheimers_dis_ease_facts_and_figures.asp#quickFacts) (last visited July 29, 2013).

139. Pearson, *supra* note 43, at 285.

140. *See* FEINBERG *supra* note 110, at 10.

141. *See supra* Part III.b.

142. *See* FEINBERG, *supra* note 110, at 1, 3, 26, 28.

143. *See infra* Table D (listing Alaska, California, Connecticut, Indiana, Kentucky, Massachusetts, Montana, North Carolina, Ohio, Oregon, Rhode Island, and Vermont).

144. *See infra* Table D (listing Kentucky, Massachusetts, North Carolina, and Ohio).

required, what relatives are obligated to provide support, who can pursue those relatives for support, and under what circumstances relatives may be relieved of the duty. Some states expressly focus on the duty of children to care for indigent parents,<sup>145</sup> while others allow action against relatives as distant as grandparents and grandchildren.<sup>146</sup> The amount of support required also varies. Some states require a specific dollar amount;<sup>147</sup> some states define the required contribution vaguely as “necessaries”<sup>148</sup> or “support.”<sup>149</sup> Still, other states only allow for recovery of the cost of medical bills for hospitalization for certain periods.<sup>150</sup>

Defenses against filial responsibility also differ from state to state as well. Defense provisions are usually present, if at all, when a filial responsibility statute is meant to provide duties of care between children and parents.<sup>151</sup> Some states have no statutory defenses at all.<sup>152</sup>

The available defenses against filial responsibility can include abandonment,<sup>153</sup> which may differ in definition from state to state.<sup>154</sup> Defenses may also include a laundry list of ill-favored behaviors, in which a parent could engage such as being “intemperate, indolent, immoral, or profligate.”<sup>155</sup> The most common defense against filial responsibility is an

145. See *infra* Table A (listing California, Connecticut, Indiana, Massachusetts, Montana, Nevada, North Carolina, South Dakota, and Vermont).

146. See *infra* Table A (listing Alaska, Iowa, Rhode Island, and Utah).

147. See *infra* Table C (showing Mississippi allows for the collection of \$150 per month).

148. See *infra* Table C (listing California as an example of this type of required contribution).

149. See *infra* Table C (listing Utah and Vermont as examples of this type of required contribution).

150. See *infra* Table C (listing Nevada as an example of this type of required contribution).

151. See *infra* Table E (listing which states provide defenses); see also *supra* note 146 and accompanying text.

152. See *infra* Table E (listing Arkansas, Georgia, Mississippi, and Tennessee as having no relief of duty provision).

153. See *infra* Table E (listing California, Montana, Ohio, and Pennsylvania as states that allow for relief of duty for abandonment).

154. Compare Tit. 23 PA. CONS. STAT. ANN. § 4603(a)(2)(ii) (West 2013) (“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.”), with CAL. FAM. CODE § 4411 (West 2013) (expanding the definition of abandonment to include various elements). In California,

The court shall make the order requested pursuant to Section 4410 only if the petition alleges and the court finds all of the following: (a) The child was abandoned by the parent when the child was a minor. (b) The abandonment continued for a period of two or more years before the time the child attained the age of 18 years. (c) During the period of abandonment the parent was physically and mentally able to provide support for the child.

§ 4411.

155. MONT. CODE ANN. § 40-6-301 (2013); see *infra* Table E (listing Ohio as a state that allows for relief of duty for abandonment and Montana as allowing relief of duty for “intemperance, indolence, immorality, or profligacy of the parent”).

adult child's own inability to financially support themselves and the elder; however, these provisions are not universal.<sup>156</sup>

## B. FILIAL RESPONSIBILITY HARMS THE INFORMAL CAREGIVER AND DISCOURAGES FAMILY CAREGIVING AND PLANNING

### i. Issues with Enforcement Across State Lines

In addition to the ambiguity in filial responsibility on what family members must be liable for and what defenses may be available, one of the most glaring issues is the uncertainty of enforcement of these obligations against family members who live out of state. There is a settled trend in many states that filial responsibility will be enforced against state citizens.<sup>157</sup> However, enforcement of statutes against residents of other states without filial responsibility laws is still an unsettled issue.<sup>158</sup> In order to better understand this, it is helpful to return to the hypothetical family at the beginning of this article.

Mrs. Smith lives in Pennsylvania, a state with broad filial responsibility laws.<sup>159</sup> Mrs. Smith's son, Bob, lives in Florida where there are no filial responsibility laws requiring adult children to support their parents.<sup>160</sup> In the hypothetical, Barbara, Mrs. Smith's daughter, is sued for Mrs. Smith's unpaid nursing home bill. Is Bob also liable for Mrs. Smith's nursing home bill under Pennsylvania's filial responsibility laws? If so, under what theory could he be held liable either by the nursing home or by Barbara? If he is held liable, how can his income and assets be attached in another state?

One option for obtaining jurisdiction over Bob is by examining his "contacts" with the state and his mother to determine if they are enough to allow a Pennsylvania court to assert jurisdiction over him without violating traditional notions of fair play and substantial justice.<sup>161</sup> An assertion of

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156. See *infra* Table E (listing Alaska, California, Connecticut, Delaware, Kentucky, Maryland, New Jersey, North Dakota, Ohio, Pennsylvania, South Dakota, and Virginia as states where a child's inability to financially support themselves is a defense to a filial responsibility).

157. See, e.g., *Americana Healthcare Ctr. v. Randall*, 513 N.W.2d 566, 573–74 (S.D. 1994) (discussing the understanding that filial responsibility can be enforced against residents in the context of an enforcement action against a non-resident).

158. See *Pearson*, *supra* note 43, at 298–99 (discussing the challenges associated with cross-border enforcement).

159. See *infra* Tables A–E.

160. See *infra* note 211.

161. See *Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945) ("[D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain

personal jurisdiction that violates these notions would deprive Bob of due process under the Constitution.<sup>162</sup>

A “contacts” argument was used to establish personal jurisdiction over a non-resident of South Dakota in *Americana v. Randall*.<sup>163</sup> In *Americana*, a nursing home sued to recover \$36,720.30 from a son who had not been a resident of South Dakota for forty years at the time the suit was filed.<sup>164</sup> The court rejected the son’s argument that collection of the costs of care from him violated his due process rights under the Constitution.<sup>165</sup> The court found the son’s serving as an agent under a power of attorney for the mother’s checking account, his status as a legal guardian of his mother’s residency, his legal title to a house in South Dakota, his several visits to the nursing home, and his maintenance of a bankruptcy action in South Dakota as guardian for his mother to be instrumental in establishing the necessary contacts to allow the court to exercise jurisdiction over him and hold him responsible under South Dakota’s filial responsibility scheme.<sup>166</sup>

Some heralded *Americana* as a “renaissance” of filial responsibility statutes.<sup>167</sup> However, there has been only one appellate decision since *Americana* in which an adult child was made to pay for the care of a parent.<sup>168</sup> It is more likely *Americana* is an example of the fact intensive inquiry a court must make regarding the relationship between a parent and the child alleged to be responsible for the parent’s care.

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minimum contacts with it such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”). See generally CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1067 MODERN SUPREME COURT NOTIONS OF PERSONAL JURISDICTION—INTERNATIONAL SHOE (4th ed. 2013) (discussing the concept of contacts within the state allowing a court to attain the requisite personal jurisdiction over a defendant).

162. See MILLER, *supra* note 161 § 1067.2 at 248 (discussing Supreme Court jurisprudence centering on questions of violations of the Due Process Clause of U.S. CONST. Amend. XIV). A suit that is filed against an out-of-state defendant is unconstitutional if it violates standards of fair play and substantial justice. *Id.*

163. *Randall*, 513 N.W.2d at 574.

164. *Id.* at 569–70.

165. *Id.* at 574.

166. See *id.*

167. See generally Jacobson, *supra* note 48 (discussing the South Dakota Supreme Court’s decision in *Americana*).

168. See Pearson, *supra* note 43, at 279.

This inquiry could require a review of every aspect of the parent-child relationship because, as the Idaho Attorney General stated with regard to enforcement of Idaho's filial responsibility statute:

The mere relationship of a parent and child is not sufficient to meet the due process test requiring minimum contacts or a sufficient connection of the non-resident with the state so as not to offend the traditional notions of fair play and substantial justice.<sup>169</sup>

Courts would have to hear evidence regarding whether the child lived in the state in the past; owned property or had an interest in any property in the state; served as a fiduciary for the parent; had her name added to a bank account for the parent's convenience; paid bills for the parent; received a gifts from the parent and if so, whether those gifts were given while the parent was in the state; visited the parent and how often; called, emailed, or wrote to the parent; or had any other contact that might bring the child under the jurisdiction of the court.

This fact intensive investigation and inquiry would consume valuable court resources. It would also cause both plaintiffs and defendants to expend immense resources on discovery and evidentiary hearings with none of those resources benefitting the elder for which support is sought.

#### ii. Filial Responsibility Defenses Lack Utility

Even if filial responsibility could be established against a child, particularly against an out-of-state child, that child can still assert defenses. In some states, this could require the court and the parties to delve into decades of a dysfunctional family's dirty laundry to determine whether a parent acted in a way that would negate a child's liability.<sup>170</sup> In others, this could require the court to examine the adult child's finances and make a judgment regarding whether the adult child should save for retirement, pay her own children's college education, or pay for other bills over paying the costs of her parent's care.<sup>171</sup> Again, this type of litigation would require the parties to expend resources with no benefit to the elder who allegedly needs the support and assistance from the adult child.

Once a support order or liability order has been entered against an out-of-state child, there is still the problem of enforcing it against the child in the state in which the child actually lives. Not all states have filial

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169. See Health and Welfare, Op. IDAHO ATT'Y GEN. 85-10 at 10 (1985), <http://www.ag.idaho.gov/publications/op-guide-cert/1985/OP85-10.pdf>.

170. See *infra* Table E (listing Montana as allowing relief of duty of the child for the "intemperate, indolent, immoral, or profligate" parent).

171. See *generally infra* Table E (listing states that have a relief of duty provision that allows for relief when the child's finances meet a certain standard).

responsibility statutes.<sup>172</sup> Even among those states with filial responsibility, the support obligations of the adult child differ from state to state.<sup>173</sup> As the Idaho Attorney general pointed out, in order for filial responsibility schemes to work, states without filial responsibility would have to cooperate by enforcing orders from other states.<sup>174</sup> This would be difficult because many states have no filial responsibility schemes. It would also be difficult because some states, like Idaho, have determined these statutes to be unenforceable and others have already resisted enforcement within their borders.<sup>175</sup>

It is also unclear what support might be required state to state if enforcement were requested between states. The definitions of required support are varied and, as the Supreme Court of Montana put it when it declined to hold a child liable for the parent's long term care costs, "[c]ertainly the legislature in 1895 would not have entertained the idea that [the duty to maintain a parent] included the obligation to 'maintain' a person in a nursing home."<sup>176</sup>

One option available to filial responsibility enforcers might be to obtain an order of support against an out-of-state child as discussed above in Section IV.b.i and then seek enforcement in the child's state via the Full Faith & Credit Clause.<sup>177</sup> Enforcement under this clause is an untested issue.<sup>178</sup> This ambiguity assists in highlighting the haphazard outcomes that enforcement of filial responsibility could cause.

Because enforcing filial responsibility laws against out-of-state children involves lengthy and costly litigation with questionable chances of collection, it is unlikely that out-of-state children will be regularly held liable for a parent's support or long term care bills. This means support

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172. See *infra* note 211 (listing Alabama, Arizona, Colorado, Florida, Hawaii, Idaho, Illinois, Kansas, Maine, Michigan, Minnesota, Missouri, Nebraska, New Mexico, New York, Oklahoma, South Carolina, Texas, Washington, Wisconsin, Wyoming, and the District of Columbia as states that do not have a filial responsibility statute).

173. See generally *infra* Table C.

174. See Health and Welfare, Op. IDAHO ATT'Y GEN. 85-10 at 11 (1985), <http://www.ag.idaho.gov/publications/op-guide-cert/1985/OP85-10.pdf> (comparing the foreseeable issues of interstate enforcement associated with filial responsibility support orders to the issues faced by interstate enforcement of child support orders).

175. See *Pennsylvania v. Mong*, 117 N.E.2d 32, 33-34 (Ohio 1954) (holding that an Ohio abandonment defense prevented a Pennsylvania support order from being applied to a resident of Ohio); see also *State Welfare Comm'r v. Mintz*, 280 N.Y.S.2d 1007, 1009-10 (N.Y. App. Div. 1967) (resisting enforcement of a Connecticut statute, which would have granted a mother support from her son, because the court felt that the New York legislature intended to remove filial obligation from its statutes).

176. *Vencor, Inc. v. Gray*, 2003 MT 24N ¶¶ 23-25.

177. U.S. CONST. art. IV, § 1.

178. Pearson, *supra* note 43, at 299.

will more often be enforced against the children who live within the state, closest to the parent—the ones most likely to be providing care or the ones who provided care until they were unable to do so.<sup>179</sup>

### iii. Attacking Informal Caregiving

Enforcement of filial responsibility against the children providing the care will destroy the informal caregiving system that is currently the backbone of our long term care system. Informal caregivers can least afford the additional personal, emotional, and financial burden of filial responsibility lawsuits. Further, the knowledge of this potentially catastrophic financial burden is likely to drive away caregivers who have the sophistication to provide appropriate care since they can arrange their lives to insulate themselves from the high costs of liability, like the liability the child was subjected to in *Pittas*.<sup>180</sup>

The consequences of filial responsibility will also affect a family's planning associated with providing care. As potential caregivers, children will not only need to investigate the care options available to a parent and eligibility for those options, but also the child's potential liability when the parent exercises a particular option. To protect their own families, adult children will have to take protective action to insulate themselves from the potentially catastrophic costs of long term care.<sup>181</sup> Protective planning may include: (1) children moving out of a state where filial responsibility laws exist, insisting that parents uproot the lives they have led for decades to move to a state without filial responsibility; (2) children refusing to act as fiduciaries for their parents, limiting visits with a parent for fear of filial responsibility lawsuits, interfering with a parent's choice of care if it has higher consequences to a child; or (3) even leaving the elderly parent with no family support. This protective planning diminishes informal caregiving and family protection of an elder. Because of the significant benefit to society from informal caregiving, public policy should encourage informal caregiving, not discourage it.

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179. See *supra* Part III.c.iv.1–2 (discussing the profile of an informal caregiver and the costs associated with caregiving).

180. *Health Care & Ret. Corp. of Am. v. Pittas*, 46 A.3d 719, 720, 723 (holding a son liable for his mother's stay in a nursing home that lasted approximately six months and leveling a \$92,943.41 support order against him).

181. See *supra* Part III.b (discussing the high costs of long term care).

### C. FILIAL RESPONSIBILITY DISCOURAGES FAMILY COOPERATION & PLANNING

Some filial responsibility advocates claim the threat of filial responsibility encourages family members to work together to create comprehensive plans for an elder's future.<sup>182</sup> However, this is not the case. Filial responsibility statutes encourage litigation amongst family members and encourage children to seize control over many aspects of their parents' lives in an attempt to shield themselves from liability.

#### i. Filial Responsibility Encourages Family Members to Sue One Another

Contrary to the assertions of filial responsibility advocates, filial responsibility actually encourages litigation between family members.<sup>183</sup> In many jurisdictions, statutes allow parents, who may have made irresponsible financial decisions leading to the inability to pay for care, to sue their adult children for support.<sup>184</sup> Other states allow a suit to be filed against only one child with the expectation that the child held liable will seek contributions from his siblings.<sup>185</sup> Litigation between family members is the antithesis of family cooperation and planning and damages the informal caregiving structure within the family.

#### ii. Filial Responsibility Encourages Families to Take Over Parent's Lives

Because filial responsibility imposes liability on children, in most cases, regardless of a parent's life decisions, children may have to regularly interfere with the parent's decisions to protect themselves from the consequences of those decisions. While some states allow a child to use a parent's bad acts as a defense against filial responsibility,<sup>186</sup> none allow a child's disagreement with the parent's poor planning decisions or spending habits as defenses. Further, no state allows a child, simply due to the

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182. Pakula, *supra* note 49, at 876.

183. See *infra* Table B (listing California, Indiana, Louisiana, Maryland, Montana, North Dakota, Pennsylvania, Puerto Rico, South Dakota, and Virginia as states whose statutes contain provisions that allow family members to bring action against each other in order to hold them responsible for the indigent elder's care).

184. Pearson, *supra* note 43, at 275–76 (noting that twenty states provide a direct cause of action for parents against their children).

185. See MONT. CODE ANN. § 40-6-303 (West 2013) (stating that where there are multiple adult children, the court or jury will divide up the expenses among the children).

186. 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, 170–71 (2008) (“Under the unclear hands doctrine, the parent's prior conduct could be a relevant factor in determining requisite support.”).

parent-child relationship, to access a parent's financial accounts or interfere with a financial decision.<sup>187</sup> To access financial information or interfere with a parent's decisions, a child must have legal authority. This authority can come from an express authorization<sup>188</sup> or a legal proceeding such as a guardianship proceeding.<sup>189</sup>

In states like Pennsylvania where filial responsibility can be enforced against a child by a third party with whom a parent has contracted for long term care, children may be wise to interfere with and take control of the parent's finances as soon as possible to ensure the parent is using assets in the best way to insulate a child from liability. In the most extreme cases, could a child seek an injunction against a competent parent to prevent the parent from going on a vacation to Las Vegas to gamble giving gifts to family members, tithing to their church, or buying goods and services the child deems inappropriate? Even if a child does not initiate legal proceedings against a parent to stop a parent's actions, simply expressing a concern about how a parent is spending the money he has earned may be considered inappropriate and can cause significant family conflict. Attempts to control a parent's finances can lead to increased family discord and potential litigation.

If a parent is incapacitated, taking over a parent's financial decisions may be easier than arguing with a competent parent since a child can seek to manage an incompetent parent's finances by initiating legal proceedings against the parent.<sup>190</sup> Some states even insulate court appointed fiduciaries from liability for the debts of an incapacitated elder.<sup>191</sup> This exemption from liability could encourage family members to fight to have a parent declared incompetent as soon as possible, with the winner of the legal contest serving as the court-appointed fiduciary to insulate themselves from

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187. An extensive search of WestLaw and LexisNexis research databases, with and without a focus on financing and banking, showed no way that an adult child could access a parent's bank account based solely on their status as a child.

188. See MONT. CODE ANN. § 32-6-105 (West 2013) (outlawing third parties from accessing financial records absent very specific circumstances).

189. See, e.g., MONT. CODE ANN. § 72-5-306 (West 2013) (discussing the purpose and basis for guardianship); MONT. CODE ANN. § 72-5-321 (discussing the breadth of duties of a guardian of an incapacitated person); FLA. STAT. § 744.358(1) ("A guardian is not liable, solely because of the guardianship, for the debts, contracts, or torts of her or his ward."); FLA. STAT. § 744.344 (2013) (explaining the order of appointment and expressing a guardian's duties).

190. FLA. STAT. 744.1012 (discussing a portion of the legislature's intent in shaping guardianship law as being to allow prudent financial management to a ward).

191. See MONT. CODE ANN. § 72-5-436(1) (West 2013). "Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in the conservator's fiduciary capacity in the course of administration of the estate unless the conservator fails to reveal the representative capacity and identify the estate in the contract." *Id.*

liability. For family members providing informal care, additional litigation and family conflict may be too much. Placing more burdens on informal caregivers does not just harm the individual caregiver, but it will undermine what appears to be the most successful aspect of the long term care system: informal caregiving.<sup>192</sup>

## V. SOLUTIONS

The costs of long term care are staggering<sup>193</sup> and a solution must be found for this crisis. However, mandatory filial responsibility is not the answer. Enforcement of filial responsibility in the modern long term care system is unsustainable and ineffective. Filial responsibility has been recognized since the Great Depression as ineffective in providing for the needs of elders.<sup>194</sup> Scholars have recognized that families provide care, not out of legal obligation, but personal moral obligation, and do so at great sacrifice.<sup>195</sup> Enforcement of filial responsibility in today's long term care system burdens those who are the least able to shoulder the additional burden.<sup>196</sup> Based on the value and the consistency of the care provided by informal caregivers, informal caregiving is the one piece of the long term care system that is working. Therefore, the solutions to the long term care financing system must encourage and support the informal caregiving system not add additional, unsustainable burdens.

### A. CREATE SUPPORTS FOR INFORMAL CAREGIVING

Our long term care system must be designed to support the informal caregivers. To alleviate as much of the financial strains associated with caregiving as possible, caregivers must feel secure in both their jobs and in the care for their loved ones while they work. These can be addressed by enhancing services and protections already available—adult day care and family leave acts.

#### i. Adult Day Care

In order for adult day care to work, caregivers must be confident in the care their loved one receives while the caregiver is working. Wider

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192. See *supra* Part IV.b.iii.

193. See *supra* Part III.b. (discussing the overwhelming burden of paying for long term care when compared to the average American salary).

194. See *supra* Part II (discussing how filial responsibility laws have been unable to sustain social, technological, and economic developments that have occurred over time).

195. Pearson, *supra* note 43, at 285.

196. See *supra* Part IV.b.iii.

availability of quality adult daycare would ensure caregivers have access to quality care for a loved one while meeting their moral or personal obligation to provide care<sup>197</sup> while continuing to work. To be effective as part of a solution to the long term care crisis, adult day care should be provided through a nationwide adult daycare system. This system should include both publically funded options available to those with limited resources and a private pay program for those who can pay. The availability of adult daycare could reduce the costs to family caregivers, care recipients, and government programs that fund long term care services. Adult daycare is one of the least expensive long term care options at approximately \$16,000.00 a year instead of \$41,756.00 a year for homemaking services, \$41,400.00 a year for assisted living facility care, or \$75,405.00 a year for nursing home care.<sup>198</sup>

#### ii. Family Medical Leave Act

In addition to having quality care available while they work, family caregivers must also be secure in their jobs in the event they must take time to fulfill caregiving obligations. The Family and Medical Leave Act<sup>199</sup> (“FMLA”) is a federal law that allows caregivers of a certain relationship to take unpaid leave to provide care or to attend medical appointments.<sup>200</sup> The FMLA only applies to public entities and companies with fifty or more employees.<sup>201</sup> Furthermore, companies and state governments can provide additional leave protections. Companies and state governments should consider expanding these medical leave protections for working caregivers by making it possible for caregivers to continue to work while providing care, thereby alleviating the negative impact on the caregiver’s job. Companies could also save money if they implemented programs to accommodate caregivers.<sup>202</sup>

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197. See Pearson, *supra* note 43, at 285.

198. See *supra* Part III.b (comparing the costs of different forms of long term care).

199. 5 U.S.C. §§ 6381–6387 (2012); 29 U.S.C. §§ 2601–2619, 2631–46, 2651–54 (2012).

200. See generally 5 U.S.C. §§ 6381–6387 (2012); 29 U.S.C. §§ 2601–2619, 2631–46, 2651–54 (2012) (comprising the entirety of the statutes that implement the Federal Family Medical Leave Act).

201. 29 U.S.C. § 2611(A) (2012) (defining which employers are obligated to provide leave and indicating which employees are entitled to leave).

202. *The Hidden Costs of Caregiving*, CARING NEWS (Aug. 2006), <http://www.caringnews.com/pub.59/issue.367/article.553/> (offering a survey of productivity loss studies from various sources and concluding that as much as \$33.6 billion is lost in productivity costs to businesses as a result of caregiving).

### iii. Modifying Medicaid Long Term Care to Emphasize Family Caregiving

The current Medicaid long term care system must also be redesigned to encourage and support the informal family caregiver. Under current law, long term care coverage in a nursing home is an entitlement.<sup>203</sup> This is the most expensive long term care service.<sup>204</sup> Instead of making institutional care an entitlement, Medicaid programs should make adult daycare, respite care, and home-making services entitlements. In addition, Medicaid programs should pay stipends to informal caregivers who provide certain levels of care to Medicaid recipients. Some states, like Florida, are attempting to develop these systems.<sup>205</sup> However, as of the writing of this article, Florida's Patient Directed Care Option has not been completely developed or implemented, so its successes and failures cannot be evaluated here.<sup>206</sup>

Currently, some states like Florida are attempting to transition their Medicaid long term care system to a home and community-based service system.<sup>207</sup> However, home- and community-based services are not entitlements<sup>208</sup> and are subject to budget constraints.<sup>209</sup>

## B. ENCOURAGE INFORMAL CAREGIVING

Tax credits can also be used to encourage and support informal caregiving. Family members who pay for certain long term care expenses including but not limited to respite care, home health services, and incontinent supplies should receive tax deductions or credits for those expenditures regardless of whether the family member receiving the item is a dependent of the tax payer and regardless of the percentage of the

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203. See 42 C.F.R. § 440.220 (2013) (stating that the State plan has to provide a specified minimum list of services for medically-needy individuals).

204. See *supra* Part III.b.

205. FLORIDA AGENCY FOR HEALTHCARE ADMIN., PARTICIPANT DIRECTION OPTION MANUAL 1 (n.d.), [http://ahca.myflorida.com/Medicaid/statewide\\_mc/pdf/LTC/PDO\\_Manual.docx](http://ahca.myflorida.com/Medicaid/statewide_mc/pdf/LTC/PDO_Manual.docx) (outlining the methods by which each Florida Managed Care Plan should implement and operate the Participant Direction Option Plan, including the ability to pay informal caregivers). See generally FLORIDA AGENCY FOR HEALTHCARE ADMIN., YOUR GUIDELINES AS A PARTICIPANT (n.d.), [http://ahca.myflorida.com/medicaid/statewide\\_mc/pdf/LTC/PDO\\_Guidelines.docx](http://ahca.myflorida.com/medicaid/statewide_mc/pdf/LTC/PDO_Guidelines.docx) (outlining a participant's guidelines within the Florida Managed Care System).

206. *Long-term Care: Roll-Out Schedule*, FLORIDA AGENCY FOR HEALTHCARE ADMIN., [http://ahca.myflorida.com/Medicaid/statewide\\_mc/index.shtml#LTCMC](http://ahca.myflorida.com/Medicaid/statewide_mc/index.shtml#LTCMC) (last visited Sept. 15, 2013) (establishing the anticipated deadlines for the long-term care plans).

207. Letter from Ralph F. Lollar to Justin Senior, *supra* note 104.

208. FLA. STAT. § 409.979(3) (2013) (stating that eligible individuals will be provided with the benefits based on a wait-list prioritization).

209. *Id.*

taxpayer's income expended. This would encourage more families to contribute to the costs of a loved one's care and allow family member caregivers to feel as if they can better afford these expenses.

## VI. CONCLUSION

Enforcement of filial responsibility in the modern long term care system is unsustainable and ineffective. Filial responsibility has been recognized since 1935 as ineffective in providing for the needs of elders.<sup>210</sup> Enforcing it now as a part of a long term care system adds an unbearable burden to informal caregivers, the backbone of the modern long term care system.

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210. *See supra* Part II.b.

STATE-BY-STATE SURVEY OF STATUTES THAT MANDATE FILIAL RESPONSIBILITY FOR CARE OF CERTAIN INDIGENT ELDERLY<sup>211</sup>

Table A: Relationship of Liable Party to Indigent Elder by State

State	Statute(s)	Relationship of Liable Party to Indigent Elder
Alaska	ALASKA STAT. §§ 25.20.030, 47.25.230	"spouse, children, parents, grandparents, grandchildren, or siblings"
Arkansas	ARK. CODE ANN. § 20-47-106	Duty limited to those liable for individual who receives state mental health services
California	CAL. FAM. CODE § 4400	Child
Connecticut	CONN. GEN. STAT. § 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"
Delaware	DEL. CODE ANN. tit. 13, § 503	"[S]pouse, parents, or children, in that order"
Georgia	GA. CODE ANN. § 36-12-3	Father, mother, or child
Indiana	IND. CODE § 31-16-17	Child
Iowa	IOWA CODE §§ 252.1, 252.5	Father, mother, children, grandparents, or grandchildren (in that order)
Kentucky	KY. REV. STAT. ANN. § 530.050(1)(a)	Child residing in Kentucky
Louisiana	LA. CIV. CODE ANN. art. 229, 239	Parents and children have reciprocal duties to care; illegitimate children are expressly included
Maryland	MD. CODE ANN., FAM. LAW § 13-102	Parents and children have reciprocal duties
Massachusetts	MASS. GEN. LAWS ch. 273, § 20	Person over eighteen who unreasonably neglects his parent
Mississippi	MISS. CODE ANN. § 43-31-25	Parents, grandparents, siblings, and descendants
Montana	MONT. CODE ANN. §§ 40-6-214, 40-6-301	Child that has reached the age of majority
Nevada	NEV. REV. STAT. § 428.070	Child has duty under certain circumstances to reimburse County for hospitalization of parent
New Jersey	N.J. STAT. ANN. § 44:4-101	Parents, spouses, and children
North Carolina	N.C. GEN. STAT. § 14-326.1	Child
North Dakota	N.D. CENT. CODE § 14-09-10	Parents and children have reciprocal duties
Ohio	OHIO REV. CODE ANN. § 2919.21	Spouse, child, or parent
Oregon	OR. REV. STAT. § 109.010	Parents and children have reciprocal duties
Pennsylvania	23 PA. CONS. STAT. § 4603	Reciprocal duty of parents, spouses, and children
Rhode Island	R.I. GEN. LAWS § 15-10-1	Child (crime); father or grandfather, mother or grandmother, children or grandchildren, by consanguinity, or children by adoption (civil)
South Dakota	S.D. CODIFIED LAWS § 25-7-27	Child
Tennessee	TENN. CODE ANN. § 71-5-103(12)	Parents, spouses, children, guardians of relative receiving medical assistance
Utah	UTAH CODE ANN. § 17-14-2	Children, parents, siblings, or grandchildren of indigent person (in that order)
Vermont	VT. STAT. ANN. tit. 15, § 202-03	Spouse, parent, or child
Virginia	VA. CODE ANN. § 20-88	Children
West Virginia	W. VA. CODE § 9-5-9	Children, father, sibling, and mother (in that order)
Puerto Rico	P.R. LAWS ANN. tit. 8, § 712 (translated from Spanish)	Descendant of any kind

<sup>211</sup> The following states do not impose a duty of care on relatives of the indigent elderly: 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.

Table B: Enforcers by State

State	Statute(s)	Enforcers
Alaska	ALASKA STAT. § 47.25.230	The state may bring a civil action
Arkansas	ARK. CODE ANN. § 20-47-106	State on behalf of provider of mental health services
California	CAL. FAM. CODE § 4403(a)(1)	A parent or the county on behalf of the parent.
Connecticut	CONN. GEN. STAT. ANN. § 53-304	The State
Delaware	DEL. CODE ANN. tit. 13, § 401	State may enforce support orders, recipient of support may petition for enforcement against appropriate party.
Georgia	GA. CODE ANN. § 36-12-3	County who provided for "pauper" may seek civil action for care provided
Indiana	IND. CODE § 31-16-17-2	Parents, prosecuting attorney, local office of county, township trustee, or division of family resources
Iowa	IOWA CODE § 252.2	County agencies may apply to a state board for an order mandating assistance; county may also recover directly under limited circumstances
Kentucky	KY. REV. STAT. ANN. § 530.050	Prosecutor
Louisiana	LA. REV. STAT. ANN. § 13:4731	Person in "necessitous" circumstances
Maryland	MD. CODE ANN., FAM. LAW § 13-103	Destitute individual may make a claim
Massachusetts	MASS. GEN. LAWS ch. 273, § 20	Prosecutor
Mississippi	MISS. CODE ANN. § 43-31-25	The County or another party in the name of the county
Montana	MONT. CODE ANN. § 40-6-303	The parent due support, one of the children in cases of multiple children, the county
Nevada	NEV. REV. STAT. § 428.070	The county
New Jersey	N.J. STAT. ANN. § 44:4-102	The "Director of Welfare" or two members of the county
North Carolina	N.C. GEN. STAT. § 14-326.1	Prosecutor
North Dakota	N.D. CENT. CODE § 14-09-10	"[A]ny person furnishing necessaries to the [indigent] person"
Ohio	OHIO REV. CODE ANN. § 2919.21	Prosecutor
Oregon	OR. REV. STAT. § 163.205	Prosecutor
Pennsylvania	23 PA. CONS. STAT. § 4603	Indigent person or any public party interested in the care, maintenance, or assistance of the indigent person
Rhode Island	R.I. GEN. LAWS §§ 15-10-3–15-10-4, 15-10-6	Designated prosecutor (Crime); Director of public welfare or department of human services (Civil)
South Dakota	S.D. CODIFIED LAWS § 25-7-28	The County; Child is entitled to reimbursement from adult brothers and sisters
Tennessee	TENN. CODE ANN. §§ 71-5-103, 71-5-115	Department of Health
Utah	UTAH CODE ANN. § 17-14-2	N/A
Vermont	VT. STAT. ANN. tit. 15, § 203	Prosecutor
Virginia	VA. CODE ANN. § 20-88	The County; any party may petition the court for holding another party jointly liable
West Virginia	W. VA. CODE § 9-5-9	Commissioner of the Department of Welfare
Puerto Rico	P.R. LAWS ANN. tit 8, § 712 (translated from Spanish)	Individual; individual's legal representative; a police officer; a public or private agency or instrumentality; a guardian; a public official; or any private person concerned for the support of said person; liable relative may petition for an additional person to be liable

\* See Michael Lundberg, *Our Parents' Keepers: The Current Status of American Filial Responsibility Laws*, 2009 Utah L. Rev. 581, 583 (2009). Utah's filial responsibility statute was enforced by the county pursuant to UTAH CODE ANN. § 17-14-1 up until § 17-14-1 was repealed in 1975. *Id.* Since then, Utah's filial responsibility statute has not been enforced. *Id.*

Table C: Contribution Required by State

State	Statute(s)	Contribution Required
Alaska	ALASKA STAT. § 11.51.210	"Support" includes necessary food, care, clothing, shelter, and medical attention
Arkansas	ARK. CODE ANN. § 20-47-106	Reimbursement for cost of providing mental health services
California	CAL. PENAL CODE § 270c	Necessaries
Connecticut	CONN. GEN. STAT. ANN. § 53-304(a)	"reasonably necessary support" in lieu of or in addition to criminal liability
Delaware	DEL. CODE ANN. tit. 13, § 401	Monetary support, health care, arrearages, or reimbursement; this may include related costs/fees, interest, income withholding, attorney's fees, and other relief.
Georgia	GA. CODE ANN. § 36-12-3	"support" of relative
Indiana	IND. CODE § 31-16-17-1	"support" of parent; parent's burial under certain conditions
Iowa	IOWA CODE § 252.2	"maintain" such person
Kentucky	KY. REV. STAT. ANN. § 530.050(1)(a)	"provide support which he can reasonably provide"
Louisiana	LA. CIV. CODE ANN. art. 229	"life's basic necessities of food, clothing, shelter, and health care"
Maryland	MD. CODE ANN., FAM. LAW § 13-103	"necessary food, shelter, care, and clothing"
Massachusetts	MASS. GEN. LAWS ch. 273, § 20	"support and maintenance"
Mississippi	MISS. CODE ANN. § 43-31-25	\$150 per month for every month that the County maintained the indigent
Montana	MONT. CODE ANN. § 40-6-301	Necessary food, clothing, shelter, medical attendance; burial, entombment, or cremation costs
Nevada	NEV. REV. STAT. § 428.070	The total cost of hospitalization
New Jersey	N.J. STAT. ANN. § 44:1-140	"relieve and maintain"
North Carolina	N.C. GEN. STAT. § 14-326.1	"maintain and support"
North Dakota	N.D. CENT. CODE § 14-09-10	"maintain"
Ohio	OHIO REV. CODE ANN. § 2919.21	"adequate support"
Oregon	OR. REV. STAT. §§ 109.010, 163.205	Duty to "maintain" and not abandon
Pennsylvania	23 PA. CONS. STAT. § 4603	Amount deemed appropriate by a court of competent jurisdiction
Rhode Island	R.I. GEN. LAWS § 40-5-14	"relief and support"
South Dakota	S.D. CODIFIED LAWS § 25-7-27	Necessary food, clothing, shelter, or medical assistance
Tennessee	TENN. CODE ANN. § 71-5-103	Reimbursement for "medical assistance"
Utah	UTAH CODE ANN. § 17-14-2	"support"
Vermont	VT. STAT. ANN. tit. 15, §§ 202	"support" when the parent is destitute
Virginia	VA. CODE ANN. § 20-88	"support or maintenance"
West Virginia	W. VA. CODE § 9-5-9	Support indigent individual "in the manner required by the department of welfare"
Puerto Rico	P.R. LAWS ANN. tit 8, § 712 (translated from Spanish)	"fair and reasonable" monetary or care contribution

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Table D: Criminal Liability by State

State	Statute(s)	Is it a Crime?
Alaska	ALASKA STAT. §11.51.210	Yes
Arkansas	ARK. CODE ANN. § 20-47-106	No
California	CAL. PENAL CODE § 270c	Yes
Connecticut	CONN. GEN. STAT. ANN. § 53-304	Yes
Delaware	DEL. CODE ANN. tit. 13, § 401	No
Georgia	GA. CODE ANN. §§ 36-12-2, 36-12-3	No
Indiana	IND. CODE. § 35-46-1-7	Yes
Iowa	IOWA CODE §§252.1, 252.5, 252.8	No
Kentucky	KY. REV. STAT. ANN. § 530.050(5)-(6)	Yes
Louisiana	LA. CIV. CODE ANN. art. 229, 239 LA. REV. STAT. ANN. § 13:4731	No
Maryland	MD. CODE ANN., FAM. LAW § 13-102	Yes
Massachusetts	MASS. GEN. LAWS ch. 273, § 20	Yes
Mississippi	MISS. CODE ANN. § 43-31-25	No
Montana	MONT. CODE ANN. § 40-6-302	Yes
Nevada	NEV. REV. STAT. § 428.070	No
New Jersey	N.J. STAT. ANN. § 44:1-141	No
North Carolina	N.C. GEN. STAT. § 14-326.1	Yes
North Dakota	N.D. CENT. CODE § 14-09-10	No
Ohio	OHIO REV. CODE ANN. § 2919.21	Yes
Oregon	OR. REV. STAT. § 163.205	Yes
Pennsylvania	23 PA. CONS. STAT. §§ 4601-06	No
Rhode Island	R.I. GEN. LAWS § 15-10-6	Yes
South Dakota	S.D. CODIFIED LAWS § 25-7-27 S.D. CODIFIED LAWS § 25-7-28	No
Tennessee	TENN. CODE ANN. §§ 71-5-103, 71-5-115	No
Utah	UTAH CODE ANN. § 17-14-2	No
Vermont	VT. STAT. ANN. tit. 15, §§ 202-03	Yes
Virginia	VA. CODE ANN. § 20-88	No
West Virginia	W. VA. CODE § 9-5-9	No
Puerto Rico	P.R LAWS ANN. tit 8, § 712 (translated from Spanish)	No

Table E: Defenses by State

State	Statute(s)	Defenses
Alaska	ALASKA STAT. § 47.25.230	Lack of "ability" to provide support
Arkansas	Ark. Code Ann. § 20-47-106	N/A
California	CAL. FAM. CODE §§ 4410-4414	Abandonment of child for over two years while parent was able to care for child; parent receives welfare aid from State; child unable to provide support
Connecticut	CONN. GEN. STAT. ANN. § 53-304	Inability to furnish support based on physical disability or other "good cause"
Delaware	DEL. CODE ANN. tit. 13, § 506	"just cause" for failing to provide support
Georgia	GA. CODE ANN. § 36-12-2	If the person can care for himself
Indiana	IND. CODE § 31-16-17-1	Parents did not provide statutorily enumerated support items until child reached 16; when she is not financially able
Iowa	IOWA CODE § 252.8	Recovery against relative is only allowed as is "just and right"
Kentucky	KY. REV. STAT. ANN. § 530.050(1)(a)	Must be able to "reasonably provide"
Louisiana	LA. REV. STAT. ANN. § 13:4731	Ability "to contribute"
Maryland	MD. CODE ANN., FAM. LAW § 13-102	Relative relieved if does not possess "sufficient means"
Massachusetts	MASS. GEN. LAWS ch. 273, § 20	If child was not reasonably cared for in his minority.
Mississippi	MISS. CODE ANN. § 43-31-25	N/A
Montana	MONT. CODE ANN. § 40-6-301	If the parent was "intemperate, indolent, immoral, or profligate" the child is relieved
Nevada	NEV. REV. STAT. § 428.070	If the children does not have "sufficient ability" or does not have access to the parent's funds
New Jersey	N.J. STAT. ANN. § 44:1-140-41	If the relative's income is inadequate or if the liable relative is over the age of fifty-five
North Carolina	N.C. GEN. STAT. § 14-326.1	If there is "reasonable cause" for neglecting duty
North Dakota	N.D. CENT. CODE § 14-09-10	Relieved duty if relative is "unable" to provide care
Ohio	OHIO REV. CODE ANN. § 2919.21	If relative unable to provide "adequate" support or if the relative was abandoned by the parent
Oregon	OR. REV. STAT. § 163.205	Criminal provision only applies to indigent elders over the age of sixty-five
Pennsylvania	23 PA. CONS. STAT. §§ 4603	If relative does not have "sufficient financial ability" or was abandoned for ten or more years during her minority
Rhode Island	R.I. GEN. LAWS § 40-5-13	Relative lacks "sufficient ability"
South Dakota	S.D. CODIFIED LAWS § 25-7-27	If relative does not have the financial ability to provide the necessities
Tennessee	N/A	N/A
Utah	UTAH CODE ANN. § 17-14-2	If relative does not have "sufficient" ability
Vermont	Vt. STAT. ANN. tit. 15, § 202	If relative does not have "sufficient pecuniary or physical ability"
Virginia	VA. CODE ANN. § 20-88	If relative does not have "sufficient income after taking care of her family or if there is "substantial evidence of abuse, neglect, or willful failure"
West Virginia	W. VA. CODE § 9-5-9	If relative does not have "sufficient ability"
Puerto Rico	P.R. LAWS ANN. tit 8, § 712 (translated from Spanish)	The relatives mental, physical, and financial situation may be considered in addition to the relative's past relationship with the indigent individual when considering relief from liability