

THE PARENT TRAP: *HEALTH CARE & RETIREMENT CORPORATION OF AMERICA V. PITTAS*, HOW IT REINFORCED FILIAL RESPONSIBILITY LAWS AND WHETHER FILIAL RESPONSIBILITY LAWS CAN REALLY MAKE YOU PAY

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I. INTRODUCTION

Parents spend hundreds of thousands of dollars raising and supporting their children, usually without asking for anything in return.¹ Unless the fully-grown children are later (somehow) tricked into it, most of them will not need to support their aging parents.² However, what happens when elderly parents can no longer support themselves? Many elderly require long-term care in costly nursing homes, and the bills add up quickly.³ What happens when they can no longer afford these costs? Are children responsible for the costs of taking care of their parents? In Pennsylvania—or one of the other twenty-eight states with filial responsibility laws—the answer is yes; the children may be held responsible.⁴

In *Health Care & Retirement Corporation of America v. Pittas*, a Pennsylvania court of appeals recently held that John was liable for his mother's \$93,000 bill for long-term care in a nursing home.⁵ With this decision, the court reinforced the state's filial responsibility law that requires adult children to support their aging parents.⁶

This comment will address filial responsibility laws and the various ways they may affect adult children who are unaware of such laws.⁷ First, a discussion of *Pittas* will introduce a common situation in which children could be held liable for their parents' long-term care costs.⁸ Part II.B will present an overview of Pennsylvania's filial responsibility law as well as the history behind it.⁹ Part III will address the twenty-eight other states with similar statutes and discuss the pros and cons of having and enforcing filial responsibility.¹⁰ Part IV will focus on Texas, which does not have a filial responsibility statute, and recommend that Texas should adopt a similar law.¹¹

1. See Phil Izzo, *Cost to Raise a Child: Around \$300,000, Not Including College*, WALL STREET J. (June 14, 2012), <http://blogs.wsj.com/economics/2012/06/14/cost-to-raise-a-child-around-300000-not-including-college/>. In 2011, it would cost between \$212,370 to \$490,830 to raise a child over seventeen years. *Id.*

2. Most consider caring for parents solely a moral obligation. See *infra* Part III.B.2.

3. See generally *Genworth 2012 Cost of Care Survey*, GENWORTH FIN., 14–19, https://www.genworth.com/dam/Americas/US/PDFs/Consumer/corporate/coc_12.pdf (last visited May 21, 2013) [hereinafter *Survey*].

4. See *infra* Parts II–III.

5. *Health Care & Ret. Corp. of Am. v. Pittas*, 2012 PA Super 96, 46 A.3d 719, 724.

6. *Id.*

7. See *infra* Part IV.B.1.

8. See *infra* Part II.A.

9. See *infra* Part II.B.

10. See *infra* Part III.

11. See *infra* Part IV.

II. FILIAL RESPONSIBILITY LAWS

A. Health Care & Retirement Corporation of America v. Pittas

On May 7, 2012, the Superior Court of Pennsylvania held John Pittas liable for his mother's outstanding nursing home debt.¹² In *Health Care & Retirement Corporation of America v. Pittas*, the court affirmed a judgment for \$92,943.41 in favor of the nursing home, Health Care and Retirement Corporation of America (HCR).¹³ Pittas's mother accrued this amount during her six-month stay at HCR's rehabilitation facility where she received nursing care and treatment after sustaining injuries in a car accident.¹⁴ After Pittas's mother withdrew from the facility, a large amount of her bill remained unpaid.¹⁵ Thus, pursuant to Pennsylvania's "Relatives' Liability" statute, HCR turned to Pittas to pay the debt.¹⁶

Pennsylvania's statute does not specifically require that a child bear the burden of caring for an indigent parent; under the statute, any relative could be responsible for caring for the indigent individual.¹⁷ Pittas argued that HCR should consider other sources of income before requiring him to pay for his mother's bills.¹⁸ However, the court rejected this argument and held that the statute's plain language does not require HCR or the court to consider other possible sources.¹⁹ Moreover, the statute required HCR to prove that Pittas was financially able to take on his mother's debt before placing the burden on him.²⁰ Because the court determined that HCR sufficiently proved that Pittas was financially able, he was held responsible for his indigent mother's unpaid bill.²¹

12. *Health Care & Ret. Corp. of Am. v. Pittas*, 2012 PA Super 96, 46 A.3d 719, 724.

13. *Id.*

14. *Id.* at 720.

15. *Id.*

16. *Id.*

17. *Id.* at 723.

Except as set forth in paragraph (2), all of the following individuals have the responsibility to care for and maintain or financially assist an indigent person, regardless of whether the indigent person is a public charge: (i) The spouse of the indigent person. (ii) A child of the indigent person. (iii) A parent of the indigent person.

23 PA. CONS. STAT. ANN. § 4603(a) (West 2005).

18. *Pittas*, 46 A.3d at 723.

19. *Id.* The court was "sympathetic" to Pittas for the obligation to support his mother but noted that he should have joined his mother's husband or other children in this case to help relieve the burden. *Id.*

20. *Id.* at 722.

21. *Id.* at 723. HCR presented evidence including Pittas's individual and "S" corporation joint tax returns from 2005–2008 and bank statements. *Id.* Additionally, Pittas testified that his net income exceeded \$85,000, and he had recently made monthly payments of \$1,100 to pay off a tax lien. *Id.* Taking all of the evidence into consideration, the court held that HCR sufficiently fulfilled its burden in proving Pittas's financial ability. *Id.*

B. Early Filial Responsibility Statutes

Although many are unaware of existing filial responsibility statutes, the idea of placing legal responsibility for indigent individuals on family members dates back hundreds of years.²² Filial responsibility laws originated from England's Elizabethan Poor Relief Act of 1601 (Act).²³ The Act expanded the legal responsibility placed on parents and children to include grandparents as well.²⁴ It required the "father and grandfather and the mother and grandmother, and the children of every poor, blind, lame, and impotent person" to support the indigent individual as best they could.²⁵ The Act emphasized that family should be the primary source of support for the poor and elderly.²⁶ This mindset continued in the American colonies, first as a moral duty, then as a legal duty as states began passing statutes imposing this duty upon family members.²⁷

C. Pennsylvania's "Relatives' Liability" Statute

In Pennsylvania, the first filial support law was the Act of March 9, 1771.²⁸ Section XXVI, worded similarly to its predecessor from England,²⁹ required those of "sufficient ability [to], at their own charges, relieve and maintain every such poor person."³⁰ The current statute, section 4603 of Pennsylvania Consolidated Statutes, states in relevant part:

Except as set forth in paragraph (2), all of the following individuals have the responsibility to care for and maintain or financially assist an indigent person, regardless of whether the indigent person is a public charge: . . . (ii) A child of the indigent person.³¹

22. See generally Matthew Pakula, *The Legal Responsibility of Adult Children to Care for Indigent Parents*, NAT'L CENTER FOR POL'Y ANALYSIS (July 12, 2005), <http://www.ncpa.org/pub/ba521>.

23. *Id.* These laws may date thousands of years back to early Roman law and a duty in Jewish and Christian texts. Seymour Moskowitz, *Filial Responsibility Statutes: Legal and Policy Considerations*, 9 J.L. & POL'Y 709, 710 (2001).

24. William P. Quigley, *Five Hundred Years of English Poor Laws, 1349-1834: Regulating the Working and Nonworking Poor*, 30 AKRON L. REV. 73, 102 (1996).

25. Pakula, *supra* note 22.

26. 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, 172 (2008).

27. Pakula, *supra* note 22.

28. Patti S. Spencer, *Courts Weigh Adult Children's Responsibility in Parents' Care Costs*, LANCASTER ONLINE (June 17, 2012), http://lancasteronline.com/article/local/671285_Courts-weigh-adult-children-s-responsibility-in-parents--care-costs.html.

29. See Pakula, *supra* note 22.

30. JAMES T. MITCHELL ET AL., THE STATUTES AT LARGE OF PENNSYLVANIA FROM 1682 TO 1801 92 (1896).

31. 23 PA. CONS. STAT. ANN. § 4603 (West 2005).

In addition, the law also requires other relatives to take responsibility, care for, and support an indigent individual.³²

While section 4603 enforces a family's responsibility to care for indigent members, it is not an absolute responsibility.³³ Two exceptions exist.³⁴ The first exception, which applies to all family members, only applies if the relative does not have "sufficient financial ability" to take on responsibility of the indigent member.³⁵ The other exception applies only to adult children taking responsibility of their parents.³⁶ If the indigent parent abandoned the child for at least ten years while the child was a minor, the adult child would not be liable for the parent.³⁷

The statute does not clearly define the words "indigent" and "sufficient financial ability."³⁸ However, the Superior Court of Pennsylvania interprets these words in various ways.³⁹ Indigent individuals include, "but [are] not limited to, those who are completely destitute and helpless."⁴⁰ Still, an individual "need not be helpless and in extreme want [and] so completely destitute" to be considered indigent.⁴¹ Indigent individuals simply "do not have sufficient means to pay for their own care and maintenance."⁴² The definition also "encompasses those persons who have some limited means but whose means are not sufficient to adequately provide for their maintenance and support."⁴³

Pittas is not the first case to support and uphold the "Relatives' Liability" statute.⁴⁴ Another recent case from Pennsylvania is *Presbyterian Medical Center v. Budd*.⁴⁵ In *Budd*, Presbyterian Medical Center (PMC) claimed that under the support law, Budd had been under a duty to support her indigent mother while her mother stayed at PMC.⁴⁶ Thus, PMC claimed that Budd needed to reimburse PMC for the amount PMC expended while caring for Budd's mother.⁴⁷ The court agreed with PMC and ruled that because the nursing home incurred around \$96,000 of expenses while caring for Budd's mother, the nursing home could bring a support action against Budd under the

32. Spencer, *supra* note 28.

33. § 4603.

34. *Id.*

35. Spencer, *supra* note 28.

36. *See* § 4603.

37. Spencer, *supra* note 28.

38. *Id.*

39. Health Care & Ret. Corp. of Am. v. Pittas, 2012 PA Super 96, 46 A.3d 719, 723.

40. Savoy v. Savoy, 641 A.2d 596, 600 (Pa. Super. Ct. 1994) (quoting Verna v. Verna, 432 A.2d 630, 633 (Pa. Super. Ct. 1981)).

41. *Id.* at 599.

42. *Id.* at 600.

43. *Id.*

44. *See* Presbyterian Med. Ctr. v. Budd, 2003 PA Super 323, 832 A.2d 1066; Savoy, 641 A.2d at 596.

45. *Budd*, 832 A.2d at 1066.

46. *Id.* at 1075.

47. *Id.* at 1076.

support statute.⁴⁸ However, the court in *Budd* did not confirm a dollar amount for this judgment; it only concluded that the trial court erred in dismissing PMC's claim against Budd.⁴⁹

While *Pittas* was not the first case to uphold the "Relatives' Liability" statute, the case is unique.⁵⁰ The ruling in *Budd* may not seem to differ much from *Pittas*, but the *Pittas* ruling may be a game-changer for filial responsibility.⁵¹ *Pittas* is the first decision in which the court did not find any efforts to avoid Medicaid eligibility rules by diverting assets.⁵² Additionally, "it is the first time substantial dollars have been awarded against an adult son to support his mother."⁵³ Thus, more nursing homes may begin to use this filial responsibility law to enforce payment.⁵⁴

III. FILIAL RESPONSIBILITY LAWS IN OTHER STATES

A. Statutes

Currently twenty-nine states have some form of a filial responsibility law.⁵⁵ Although over half of the states have filial responsibility laws, most do not regularly enforce these laws.⁵⁶ In fact, eleven states have never enforced filial responsibility, and the ones that do enforce them rarely do.⁵⁷ Of the twenty-eight states with support laws, fifteen allow only a civil cause of action,⁵⁸ eight impose a criminal penalty upon failure to support,⁵⁹ and five allow both civil and criminal causes of action.⁶⁰

48. *Id.*

49. *Id.* at 1077. The court held that the trial court properly dismissed PMC's claims except for the support action. *Id.* Thus, the court remanded the case on the support action claim. *Id.*

50. *Health Care & Ret. Corp. of Am. v. Pittas*, 2012 PA Super 96, 16 A.3d 719, 720; Spencer, *supra* note 28.

51. Spencer, *supra* note 28.

52. Katherine Pearson, "Filial Support" Laws: Making Children Pay for Their Parents' Nursing Home, FLEMING & CURTI PLC (July 30, 2012), <http://issues.flemingandcurti.com/tag/filial-responsibility/>. In *Pittas*, "the court did not suggest the son was at 'fault' for his mother's indigent status," but instead found his claim that he was unable to support his mother incredible. *Id.* However, in *Budd*, the court dismissed PMC's claim that Budd committed fraud and "misrepresented her intention to 'spend down' [her] [m]other's resources on medical expenses." *Presbyterian Med. Ctr. v. Budd*, 2003 PA Super 323, ¶ 14, 832 A.2d 1066, 1072. PMC further "complain[ed] that Ms. Budd 'sabotaged' [her] [m]other's application for medical assistance when she failed to 'spend down' [her] [m]other's available resources." *Id.*

53. Spencer, *supra* note 28.

54. *Id.*

55. Pakula, *supra* note 22. In addition to Pennsylvania, the following twenty-eight states also have filial responsibility laws: Alaska, Arkansas, California, Connecticut, Delaware, Georgia, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Montana, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, and West Virginia. Katherine Pearson, *Family (Filial) Responsibility/Support Statutes in the United States* (Mar. 5, 2012), http://www.law.psu.edu/_file/Pearson/FilialResponsibilityStatutes.pdf [hereinafter Pearson, *Family*].

56. Pakula, *supra* note 22.

57. Ross, *supra* note 26, at 167.

58. Arkansas, Delaware, Georgia, Louisiana, Mississippi, Nevada, New Hampshire, North Dakota, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, and West Virginia impose only a civil cause of action.

Filial responsibility laws may seem burdensome, but some statutes make exceptions that alleviate the burden on qualified individuals.⁶¹ An adult child may be liable only if he or she is financially able to take on the responsibility.⁶² Additionally, the child may not be liable if the indigent parent had abandoned the child for ten years while he or she was a minor.⁶³ Other statutes split the burden between relatives to take care of the individual instead of placing the whole burden upon one relative.⁶⁴

ARK. CODE ANN. § 20-47-106 (West 2001); DEL. CODE ANN. tit. 13, § 503 (West 2011); GA. CODE ANN. § 36-12-3 (West 2006); LA. REV. STAT. ANN. § 13:4731 (2006); LA. CIV. CODE ANN. art. 229 (2009); MISS. CODE ANN. § 43-31-25 (West 2009); NEV. REV. STAT. ANN. § 428.070 (West 2007); N.H. REV. STAT. ANN. § 167:2 (2006); N.H. REV. STAT. ANN. § 546-A:2 (2007); N.D. CENT. CODE ANN. § 14-09-10 (West 2004); OR. REV. STAT. ANN. § 109.010 (West 2007); 23 PA. CONS. STAT. ANN. § 4603 (West 2005); S.D. CODIFIED LAWS § 25-7-27 (2004); TENN. CODE ANN. §§ 71-5-103, 71-5-115 (2004); UTAH CODE ANN. § 17-14-2 (West 2009); W.VA. CODE ANN. § 9-5-9 (West 2012).

59. Kentucky, Maryland, Massachusetts, North Carolina, Ohio, Rhode Island, Vermont, and Virginia impose criminal penalties. KY. REV. STAT. ANN. § 530.050 (West 2012); MD. CODE ANN., FAM. LAW §§ 13-101 to -102 (West 2006); MASS. GEN. LAWS ANN. ch. 273, § 20 (West 2007); N.C. GEN. STAT. ANN. § 14-326.1 (West 2012); OHIO REV. CODE ANN. § 2919.21 (West 2011); R.I. GEN. LAWS ANN. §§ 15-10-1, 40-5-13 (West 2003); VT. STAT. ANN. tit. 15, § 202 (West 2012); VA. CODE ANN. § 20-88 (West 2008).

60. Alaska, California, Connecticut, Indiana, and Montana allow both civil and criminal penalties. ALASKA STAT. ANN. §§ 11.51.210, 25.20.030, 47.25.230 (West 2012); CAL. FAM. CODE §§ 4400, 4403 (West 2012); CAL. PENAL CODE § 270(c) (West 2008); CONN. GEN. STAT. ANN. §§ 46b-215, 53-304 (West 2007); IND. CODE ANN. §§ 31-16-17-1, 35-46-1-7 (West 2012); MONT. CODE ANN. §§ 40-6-301, 45-5-621 (West 1999).

61. See *supra* Part II.B.

62. CAL. FAM. CODE § 4400 (West 2012). “Except as otherwise provided by law, an adult child shall, to the extent of his or her ability, support a parent who is in need and unable to maintain himself or herself by work.” *Id.* See also CAL. PENAL CODE § 270(c) (West 2008); NEV. REV. STAT. ANN. § 428.070 (West 2007); N.H. REV. STAT. ANN. §§ 167:2, 546-A:2 (2006); N.D. CENT. CODE ANN. § 14-09-10 (West 2004); S.D. CODIFIED LAWS § 25-7-27 (2004); UTAH CODE ANN. § 17-14-2 (West 2009); W. VA. CODE ANN. § 9-5-9 (West 1990).

63. 23 PA. CONS. STAT. ANN. § 4603 (West 2005). “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.” *Id.* at § 4603(a)(2). See also R.I. GEN. LAWS ANN. § 15-10-1(b) (West 2003).

64. N.H. REV. STAT. ANN. § 167:2 (2006).

Assistance rendered under this chapter or RSA 161 to anyone having a father, mother, stepfather, stepmother, son, daughter, husband or wife, whose weekly income or other resources are more than sufficient to provide a reasonable subsistence compatible with decency and health, may be recovered in an appropriate proceeding in the superior court brought by the commissioner of health and human services, in the name of the state, from either a father, mother, stepfather, stepmother, son, daughter, husband, or wife, who are declared jointly and severally liable for such assistance.

Id. See also N.D. CENT. CODE ANN. § 14-09-10 (West 2004); R.I. GEN. LAWS ANN. § 15-10-1 (West 2012); 23 PA. CONS. STAT. ANN. § 4603 (West 2005); S.D. CODIFIED LAWS § 25-7-27 (2004); TENN. CODE ANN. § 71-5-115 (2004); UTAH CODE ANN. § 17-14-2 (West 2009); W.VA. CODE ANN. § 9-5-9 (West 1990). Utah’s statute specifies the order in which relatives are liable: children first, then parents, brothers and sisters, grandchildren, then finally grandparents. UTAH CODE ANN. § 17-14-2 (West 2009). West Virginia’s statute also specifies relatives in order: children, father, brothers and sisters, and the mother. W. VA. CODE ANN. § 9-5-9 (West 1990).

B. Filial Responsibility Enforced in Other States

Of the twenty-eight other states that have filial responsibility laws, three other states—Maryland, Rhode Island, and South Dakota—have recent cases pertaining to these laws.⁶⁵ This next section will compare the three states, their statutes, and the recent cases from their courts to the decision in *Pittas*.

1. Family Values Are Reciprocal in Maryland

Maryland's statute places a mutual responsibility upon parents and their children.⁶⁶ Specifically, "[i]f a destitute parent is in this State and has an adult child who has or is able to earn sufficient means, the adult child may not neglect or refuse to provide the destitute parent with food, shelter, care, and clothing."⁶⁷ The same applies to a destitute adult child who has a parent who can sufficiently support the child.⁶⁸ Maryland is one of the states that imposes criminal liability if an individual does not support the individual's destitute relative.⁶⁹

The most recent case involving Maryland's statutory duty towards family is *Corby v. McCarthy*, decided in 2003.⁷⁰ In *Corby*, the court dealt with a parent's duty toward an adult destitute child.⁷¹ The mother, Corby, was trying to extend parental support from the father, McCarthy, of her disabled adult child, Kelly.⁷² The court noted that although a parent had no common law duty to care for an adult child, a parent had a statutory duty to care for a disabled, destitute adult child.⁷³ "[T]he primary purpose of F.L. § 13-102(b) is . . . to remove from public support destitute and disabled people whose relatives are financially able to support them."⁷⁴ However, the parent must be sufficiently able to provide support for the adult child.⁷⁵ Thus, because McCarthy was able to provide support, the court held that McCarthy had a duty to support Kelly.⁷⁶

Corby differs from *Pittas* mainly because the former involves a parent caring for a disabled adult child.⁷⁷ However, the court was confirming the statute, which covers both parental and filial responsibility.⁷⁸ Therefore,

65. Pearson, *Family*, *supra* note 55.

66. See MD. CODE ANN., FAM. LAW § 13-102 (West 2006).

67. *Id.*

68. *Id.*

69. *Id.* Violation of this statutory duty is a misdemeanor and upon conviction can result in either a fine of up to \$1,000, imprisonment for up to a year, or both. *Id.*

70. See generally *Corby v. McCarthy*, 840 A.2d 188 (Md. Ct. Spec. App. 2003).

71. *Id.* at 209.

72. *Id.* at 195.

73. *Id.* at 209.

74. *Id.* (quoting *Freeburger v. Bichell*, 763 A.2d 1226, 1233 (Md. Ct. Spec. App. 2000)).

75. *Id.*

76. *Id.* at 216.

77. *Id.* at 192; *Health Care & Ret. Corp. of Am. v. Pittas*, 2012 Pa. Super 96, 46 A.3d 719, 723.

78. *Corby*, 840 A.2d at 209.

although the issues may have differed, both cases have reconfirmed each state's support statute.

2. Family Neglect Is Criminal in Rhode Island

Rhode Island's filial responsibility statute imposes criminal liability upon any individual "who unreasonably neglects or refuses to provide for the support and maintenance of his or her parent."⁷⁹ The statutory duty kicks in when the parent, "through misfortune, and without fault of his or her own, is destitute of means of sustenance and unable by reason of old age, infirmity, or illness to support and maintain himself or herself."⁸⁰ Violation of this duty could result in a fine, imprisonment, or both.⁸¹

The most recent case out of Rhode Island was *Landmark Medical Center v. Gauthier*, which was decided in 1994.⁸² In *Gauthier*, the court reemphasized the validity of Rhode Island's support statute.⁸³ The court stated that it has repeatedly held that the "plain language [of] this statute imposes a clear legal duty, with severe punishment for its nonperformance, upon an adult son or daughter to support an indigent parent in certain circumstances."⁸⁴ It also noted the "obligation is 'real and existent.'"⁸⁵ Therefore, although the court did not impose liability on the adult children, it reconfirmed the validity of the support statute.⁸⁶

Much like *Pittas*, the *Gauthier* decision reconfirms the filial support statute.⁸⁷ The main difference between *Pittas* and *Gauthier* is the issue of responsibility.⁸⁸ In *Pittas*, the court did not require other family members to assist Pittas in paying off his mother's debt.⁸⁹ The court held that it is not required to consider other sources of assistance before placing the entire obligation on Pittas.⁹⁰ Moreover, although Pittas had the option to join other members of his family to help relieve him of full responsibility, he chose not to do so.⁹¹ However, in *Gauthier*, the adult children's duty to care for a parent

79. R.I. GEN. LAWS ANN. § 15-10-1 (West 2003).

80. *Id.*

81. *Id.*

82. *Landmark Med. Ctr. v. Gauthier*, 635 A.2d 1145, 1145 (R.I. 1994).

83. *Id.* at 1155.

84. *Id.* at 1154 (quoting *Ankney v. Pettine*, 90 A.2d 430, 432 (R.I. 1952)).

85. *Id.*

86. *Id.* at 1155. Because the wife was still alive and possibly able to cover her husband's debt, the court noted that the question of the adult children's responsibility should be answered only if the wife is found unable to cover her husband's death. *Id.* If this question were to come up, the court must consider the ability of each adult child before imposing liability. *Id.*

87. *Health Care & Ret. Corp. of Am. v. Pittas*, 2012 PA Super 96, 46 A.3d 719, 723; *Gauthier*, 635 A.2d at 1155.

88. *Gauthier*, 635 A.2d at 1154; *Pittas*, 46 A.3d at 723.

89. *Pittas*, 46 A.3d at 723.

90. *Id.*

91. *Id.*

only fell on them if the parent's spouse could not take full responsibility.⁹² Although both cases emphasize the obligation each statute places on adult children, the differing outcomes demonstrate the slight differences in each state's statute.

3. *Bare Necessities Only in South Dakota*

South Dakota's filial responsibility statute requires an adult child to "provide necessary food, clothing, shelter, or medical attendance for a parent who is unable to provide for oneself."⁹³ This statute also does not require an adult child to take on responsibility unless the adult child is financially able to do so.⁹⁴ Moreover, the statute gives adult children the right to receive contribution from their sisters and brothers, so it does not place the entire burden upon one child.⁹⁵ However, South Dakota's statute differs slightly because it requires written notice before any claims are made against adult children for not supporting their parent.⁹⁶

In 1998, the Supreme Court of South Dakota affirmed the support statute in *Prairie Lakes Health Care Systems, Inc. v. Wookey*.⁹⁷ In *Wookey*, the hospital brought suit against the adult son, Dwight, for a \$76,537 hospital bill incurred by his father.⁹⁸ The court emphasized that the support statute "require[d] an adult child to provide support for an indigent parent only when that child has the financial ability."⁹⁹ Thus, the court held that Dwight could be held responsible for his father's medical bill if he was financially able to pay the bill.¹⁰⁰

Both *Wookey* and *Pittas* emphasize that adult children must support their indigent parent if he is financially able.¹⁰¹ However, in *Wookey*, the court ruled that even if Dwight could not pay the entire bill at once, he could pay it off in installments.¹⁰² The court briefly mentioned Dwight's "compelling moral and legal duty" to support his wife and children, but suggested an installment

92. *Gauthier*, 635 A.2d at 1155.

93. S.D. CODIFIED LAWS § 25-7-27 (2004).

94. *Id.*

95. *Id.*

96. *Id.*

97. *See generally* *Prairie Lakes Health Care Sys., Inc. v. Wookey*, 1998 SD 99, 583 N.W.2d 405 (S.D. 1998).

98. *Id.* at ¶ 2, 583 N.W.2d at 409. The main issue in this case was in regard to a fraudulent transfer of property from Wookey from his father. *Id.* at ¶ 4, 583 N.W.2d at 409. The hospital sought to void this transfer, and the court held that the transfer was fraudulent as a matter of law. *Id.* at ¶ 4, 583 N.W.2d at 410.

99. *Id.* at ¶ 34, 583 N.W.2d at 418 (quoting *Americana Healthcare Ctr. v. Randall*, 513 N.W.2d 566, 571 (S.D. 1994)).

100. *Id.* at ¶ 35–36, 583 N.W.2d at 419.

101. *Id.* at ¶ 34, 583 N.W.2d at 418; *Health Care & Ret. Corp. of Am. v. Pittas*, 2012 PA Super 96, 46 A.3d 719, 723.

102. *Wookey*, 1998 SD ¶ 35, 583 N.W.2d at 419.

payment option within the same sentence.¹⁰³ However, in *Pittas*, the court merely held Pittas liable for the \$92,943.41 bill, without suggesting any payment options.¹⁰⁴ Thus, *Wookey* seems to consider the adult child's financial ability more than in *Pittas*, at least on its face. At the same time, by suggesting an installment option, the court in *Wookey* seems to adhere more strictly to the statutory responsibility by requiring a payment from less financially able individuals.¹⁰⁵

IV. ARE FILIAL RESPONSIBILITY LAWS A GOOD IDEA?

With filial responsibility statutes coming back into the spotlight, both proponents and critics have expressed strong feelings regarding these statutes.¹⁰⁶ Arguments both for and against the statute range widely, from moral obligations to reducing government spending.¹⁰⁷ This section will focus on the various arguments given in favor of and against filial responsibility laws.

A. Arguments in Favor of the Law

1. Filial Responsibility Statutes and the Family Relationship

One argument regards the parent-child relationship much like a contract.¹⁰⁸ Because a parent took care of a child, an implicit contract for the child to support and care for a parent in return exists between the two.¹⁰⁹ In addition, filial responsibility is a moral obligation deeply rooted in “[l]ong established norms of family loyalty and obligation[,]” stemming from Jewish and Christian scripture.¹¹⁰ Parents invest in their children; thus, children should repay this debt when their parents age.¹¹¹ Allowing a child to escape liability for parents would cause the child to be “unjustly enriched” and leave the government to

103. *Id.* The court also mentioned Wookey's “recent acquisition”—his parents’ farm. *Id.* However, because the court also ruled the transfer of the farm void, Dwight's financial ability must be reexamined. *Id.* at ¶ 36, 583 N.W.2d at 419. Upon remand, “if the Hospital satisfies its judgment against Harold and Merna, the case against Dwight would be moot.” *Id.*

104. *Pittas*, 46 A.3d at 723.

105. *See Wookey*, 1998 SD ¶ 35, 583 N.W.2d at 419.

106. *See infra* Part IV.

107. *See infra* Part IV.

108. Matthew Pakula, *A Federal Filial Responsibility Statute: A Uniform Tool to Help Combat the Wave of Indigent Elderly*, 39 FAM. L.Q. 859, 868 (2005) [hereinafter Pakula, *Federal*].

109. *Id.*

110. Moskowitz, *supra* note 23, at 721.

111. *See id.* at 711.

That is why it would seem that a son does not have the right to disown his father, whereas a father has the right to disown his son. A debtor must pay his debt, but nothing a son may have done (to repay his father) is a worthy return for everything the father has provided for him, and therefore he will always be in his debt.

Id. at 710–11.

“honor[] a contract to which it never agreed.”¹¹² Thus, some proponents argue that this “unique relationship between parents and children” requires each to be responsible and supportive of the other.¹¹³

Filial responsibility statutes also strengthen family bonds.¹¹⁴ This idea comes from the moral obligation that exists between family members.¹¹⁵ Requiring the adult child and parent to converse regularly about “filial duties and limits can clarify the respective positions of the family members” and “cultivat[e] a healthy relationship.”¹¹⁶ This healthy relationship creates a positive family environment, which helps maintain autonomy by making the elderly feel more supported and important.¹¹⁷ Additionally, having a positive family relationship could motivate parents to start saving and budgeting for their own future health costs so they will not be a burden on their children.¹¹⁸

Additionally, proponents point out that decisions like the *Pittas* decision will encourage people to keep up with long-term care bills and not allow them to accrue.¹¹⁹ In addition, it may cause adult children to be more involved in aiding parents with their finances.¹²⁰ Moreover, it could encourage family members to be more diligent in cooperating with facilities when applying for medical benefits.¹²¹ By being more involved in the application process, family members can ensure the process goes more smoothly and the benefits can be approved without any delay.¹²²

2. Filial Responsibility and Long-Term Care Costs

Possibly the strongest argument in favor of enforcing filial responsibility is that it could lower Medicaid costs.¹²³ The cost of Medicaid is rising quickly.¹²⁴ Federal spending on Medicaid and CHIP was \$265 billion in 2012.¹²⁵ This equaled almost 45% of federal grants given to states.¹²⁶ Additionally, long-term

112. Vance Mcbrayer, *Should Adult Children be Responsible for the Care of Their Elderly Parents?*, HELIUM (Feb. 9, 2008), <http://www.helium.com/items/851092-should-adult-children-be-responsible-for-the-care-of-their-elderly-parents>.

113. Pakula, *Federal*, *supra* note 108, at 868.

114. Sharon Frank Edelstone, *Filial Responsibility: Can the Legal Duty to Support Our Parents be Effectively Enforced?*, 36 FAM. L.Q. 501, 504 (2002).

115. *Id.*

116. *Id.*

117. See Mcbrayer, *supra* note 112.

118. Ross, *supra* note 26, at 189.

119. See Scott Alan Mitchell, *McNees Wallace & Nurick LLC: Filial Support and Mr. Pittas*, LEXIS NEXIS COMMUNITIES (August 27, 2012), <http://www.lexisnexis.com/community/estate-elderlaw/blogs/elder-lawblog/archive/2012/08/27/mcneese-wallace-amp-nurick-llc-filial-support-and-mr-pittas.aspx>.

120. Mcbrayer, *supra* note 112.

121. See Mitchell, *supra* note 119.

122. See *id.*

123. Ross, *supra* note 26, at 189.

124. Sarah Kliff, *The State of Medicaid (in Charts!)*, WASH. POST (July 21, 2012, 2:10 PM), available at <http://www.washingtonpost.com/blogs/ezra-klein/wp/2012/07/17/the-state-of-medicaid-in-charts>.

125. *Id.*

126. *Id.*

care accounts for “22.0% to 63.7% of total Medicaid expenditures in the states, 33.3% on average.”¹²⁷ The government could drastically reduce spending on Medicaid if adult children paid down the long-term care costs of their indigent parents.¹²⁸

The rising cost of long-term care is becoming a larger issue as more Americans grow older and require long-term care.¹²⁹ Unfortunately, not only is the number of elderly requiring care growing, the rate of care is steadily increasing.¹³⁰ In 2012, the national median rate for a private room in a nursing home was \$222 daily, a 4.23% increase from 2011, with rates ranging from \$100 to \$950.¹³¹ The national median rate for a semi-private room was \$206 daily, a 3.7% increase from 2011, with rates ranging from \$90 to \$998.¹³² For assisted living communities, the national median rate was \$3,324 monthly, a 2.1% increase from 2011, with rates ranging from \$780 to \$1,020.¹³³ Moreover, in 2010, almost 3.5 million elderly were below the poverty level and 2.3 million were near-poor.¹³⁴ With such varying high rates, it is becoming harder for “poor and near-poor” elderly individuals to keep up with the cost of long-term care without help.¹³⁵ Thus, supporters insist that financially able adult children should be obligated to contribute to their parents’ long-term care to help lessen financial burdens on the public.¹³⁶

Finally, filial responsibility statutes could encourage individuals to purchase long-term care insurance.¹³⁷ Long-term care insurance covers care that lasts longer than three months, whether the care is given at home or in a facility.¹³⁸ Typically, regular health insurance or Medicare does not cover such long-term needs.¹³⁹ However, many individuals do not realize that Medicare

127. Stephen A. Moses, *Save Medicaid LTC \$30 Billion Per Year AND Improve the Program*, CENTER FOR LONG-TERM CARE REF. (2011), [http://www.centerltc.com/pubs/Save_Medicaid_LTC_\\$30_Billion_Per_Year_AND_Improve_the_Program.pdf](http://www.centerltc.com/pubs/Save_Medicaid_LTC_$30_Billion_Per_Year_AND_Improve_the_Program.pdf).

128. Ross, *supra* note 26, at 185.

129. See William Galston, *Live Long and Pay for It: America's Real Long-Term Cost Crisis*, ATLANTIC (Sept. 12, 2012), available at <http://www.theatlantic.com/business/archive/2012/09/live-long-and-pay-for-it-americas-real-long-term-cost-crisis/262247/>. Types of long-term care include “long-term care at home or in a hospice, adult day care center, nursing home, or assisted living center.” *Long-Term Care Insurance Rate Guide*, TEX. DEP’T OF INS., <http://www.tdi.texas.gov/pubs/consumer/lrg01.html> (last visited May 21, 2013) [hereinafter *Guide*].

130. See Galston, *supra* note 129.

131. *Market Survey of Long-Term Care Costs*, METLIFE MATURE MKT. INST. (Oct. 2011), <https://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-market-survey-nursing-home-assisted-living-adult-day-services-costs.pdf>.

132. *Id.*

133. *Id.*

134. *A Profile of Older Americans: 2011*, ADMIN. ON AGING, http://www.aoa.gov/aoaroot/aging_statistics/Profile/2011/10.aspx (last modified Feb. 10, 2012).

135. See Galston, *supra* note 129.

136. See Pakula, *Federal*, *supra* note 108, at 867–68; Mcbrayer, *supra* note 112.

137. See Sandy Harris, *So How You Doin’? How Y’all Doin’? Part 3: When It’s Time to Disobey Your Parents to Take Care of Them*, HUFFINGTON POST (Sept. 27, 2012, 4:39 PM), available at http://www.huffingtonpost.com/sandy-harris/long-term-care-insurance_b_1626083.html.

138. *Id.*

139. *Id.* Medicare and health insurance usually pays for short-term recovery, which lasts only a few

does not cover long-term care.¹⁴⁰ Thus, elderly individuals could suddenly require a long-term caregiver and not have any funds to support themselves.¹⁴¹ In a state with filial responsibility, adult children could then find themselves stuck paying for their parents' bills.¹⁴² By purchasing long-term care insurance in advance, individuals could avoid the sudden financial burden of supporting an ill parent's continuing care needs.¹⁴³

3. *Filial Responsibility May Discourage Fraud*

Moreover, enforcing filial responsibility statutes may lower the occurrence of fraudulent transfers from parents to children.¹⁴⁴ In *Wookey*, the court held that a transfer of a farm from father to son was fraudulent.¹⁴⁵ The father, Harold, had deeded his home and approximately 1,360 acres to his son, Dwight, after incurring substantial medical bills.¹⁴⁶ Among other reasons, the court held that the transfer was fraudulent due to the timing of the transfer because it "occurred at a time when a lawsuit [from the hospital] was imminent."¹⁴⁷ Supporters of filial responsibility argue that enforcing these laws would remove any incentives for the elderly to transfer assets to family members to be eligible for Medicaid.¹⁴⁸ If filial responsibility laws were enforced, these fraudulent transfers would make family members more financially able and assure that they are liable for support.¹⁴⁹ Thus, fewer fraudulent transfers would leave the elderly more financially able to care for themselves and lessen the financial burden on the public.¹⁵⁰

B. *Arguments Against the Law*

1. *Filial Responsibility May Break Down Families*

One criticism is that a statutory obligation to family may lead to "family stress, dissention, and the breakdown of the family unit."¹⁵¹ Instead of

weeks. *Id.* Another option is Medicaid, but "[i]f Medicaid pays, the state expects to get paid back at the death of the second spouse. This process is called estate recovery and is required by the federal government." *Id.*

140. *Id.* Because of this confusion, a "statement has been added to the Social Security benefit estimate that we receive each year: 'Medicare does not pay for long-term care, so you may want to consider options for private insurance.'" *Id.*

141. *See id.*

142. *See id.*

143. *See id.*

144. Mcbrayer, *supra* note 112.

145. *See* Prairie Lakes Health Care Sys., Inc. v. Wookey, 1998 SD 99, ¶ 27, 583 N.W.2d 405, 417.

146. *Id.* at ¶ 2, 583 N.W.2d at 409.

147. *Id.* at ¶ 25, 583 N.W.2d at 416.

148. Mcbrayer, *supra* note 112.

149. *Id.*

150. *Id.*

151. Ross, *supra* note 26, at 188.

strengthening bonds, as supporters believe, it may actually break apart more families.¹⁵² The effect could be even worse if creditors or nursing homes begin suing the children for reimbursement.¹⁵³ Likely, filial responsibility suits will occur in families with rocky relationships.¹⁵⁴ If a family's relationship was already unstable, forcing adult children to pay for their parent's care could be the last straw and "end any real possibility of the family reuniting."¹⁵⁵ Additionally, most parents will likely not consider suing their children for support, so filial responsibility laws could be useless.¹⁵⁶

Moreover, an adult child could be forced to pay a parent's outstanding nursing home bill even if it causes the child to go into debt.¹⁵⁷ One Pennsylvania man, Don Grant, was sued for his estranged mother's nursing home bills.¹⁵⁸ Grant is in his fifties and struggling to pay both his mortgage and his daughter's \$100,000 student loans.¹⁵⁹ When sued, Grant could not afford a lawyer, so he represented himself in court against the nursing home and lost.¹⁶⁰ Thus, he was left in a dilemma: "Go into debt to pay his mother's debt, or ignore it and brace for the worst."¹⁶¹ While the filial responsibility law is a "noble theory" to try and require families to take responsibility for members, cases like Grant's show how it can also push family members farther apart.¹⁶²

2. *Filial Responsibility Is a Moral Obligation*

In addition, many believe that filial responsibility should only be a moral obligation, not a legal one.¹⁶³ Usually, parents only have a legal duty to care for their children for eighteen years, so it would be unfair to force adult children to support their parents for the rest of the children's lives.¹⁶⁴ Moreover, American culture stresses independence and "the importance of separation of children from their parents."¹⁶⁵ Elderly may not want to accept any help from their children, regardless of any moral obligation, because of a social stigma that could come from relying on their adult children for care.¹⁶⁶ It could also

152. Edelstone, *supra* note 114, at 506.

153. *See id.*

154. *See* Monica Yant Kinney, *If Mom Can't Pay, Adult Child Must*, PHILA. INQUIRER (July 12, 2009) available at www.freerepublic.com/focus/f-news/2291249/posts.

155. *Id.*

156. *See* Edelstone, *supra* note 114, at 506.

157. *See* Kinney, *supra* note 154.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *See id.*

163. Edelstone, *supra* note 114, at 505.

164. *Id.* at 506.

165. *Id.* at 511.

166. *See* Ross, *supra* note 26, at 193.

become a stigma for the adult children, who may feel they are unable to escape from and achieve independence from their parents.¹⁶⁷

Filial responsibility laws should not force a moral obligation onto adult children by creating a legal burden to pay for their aging parents.¹⁶⁸ Opponents insist that no justification exists for making parental support a legal obligation.¹⁶⁹ In fact, by creating a legal obligation, the law is also discriminating against adult children based on their finances.¹⁷⁰ The law requires financially adept children to assume their parents' bills while letting financially inept children off the hook.¹⁷¹ Moreover, filial responsibility laws may place a burden on children to pay their parents' long-term care costs even before the parents are eligible for Medicaid.¹⁷² While this may help to shift the costs from states to families, it will likely become burdensome upon families.¹⁷³

The idea of an implicit contract between parents and children is overbroad.¹⁷⁴ It is unfair to enforce filial responsibility "because parents voluntarily decide to bring their children into the world[,]" and it is impossible for children to have a choice or any say in this decision.¹⁷⁵ Therefore, children should not owe any sort of duty to their parents, and there should not be an implicit contract.¹⁷⁶

3. *Filial Responsibility May Be Hard to Enforce*

Enforcing filial responsibility laws could become an "administrative nightmare."¹⁷⁷ Although filial responsibility laws could save the government a substantial amount of money, administrative costs of enforcement may cost even more, which would significantly reduce overall savings.¹⁷⁸ To enforce these laws, the government would need to determine exactly how large the elderly population is and establish how many of those elderly individuals need some kind of assistance.¹⁷⁹ Afterward, the government would need to obtain a vast amount of additional information about each elderly individual's family including "whether there are [adult] children, where they live, if they work and

167. See Edelstone, *supra* note 114, at 511.

168. See generally Carolyn Rosenblatt, *Son Hit With Aging Parent's \$93k Nursing Home Bill*, FORBES (May 21, 2012, 12:03 AM), <http://www.forbes.com/sites/carolynrosenblatt/2012/05/21/son-hit-with-aging-parents-93k-nursing-home-bill/> ("You can't legislate morality.").

169. See *id.*

170. See Edelstone, *supra* note 114, at 510.

171. *Id.*

172. Lloyd Lofton, *Filial Responsibility and Long Term Care*, LIFEHEALTHPRO (May 22, 2012), <http://www.lifehealthpro.com/2012/05/22/filial-responsibility-and-long-term-care>.

173. See *id.*

174. See Pakula, *Federal*, *supra* note 108, at 868.

175. Edelstone, *supra* note 114, at 506.

176. See *id.* at 505–06; Pakula, *Federal*, *supra* note 108, at 868–69.

177. Ross, *supra* note 26, at 189.

178. See *id.*

179. See *id.*

how much income they earn, and the extent of the support necessary for the elderly person.”¹⁸⁰ If government enforcement of these laws becomes standard, the number of lawsuits will increase.¹⁸¹ The cost of litigating these lawsuits could become pricey as well.¹⁸² Thus, the cost of implementing and enforcing support statutes may not be worth the potential reduction in government spending.¹⁸³

V. TEXAS AND FILIAL RESPONSIBILITY

Texas is one of several states that does not currently have a filial responsibility statute.¹⁸⁴ In fact, courts have refused to place any duty of support on adult children.¹⁸⁵ In *Missouri-Kansas-Texas Railroad Company v. Pierce*, the court held that “an adult has no legal obligation to contribute to the support of his parents.”¹⁸⁶ Additionally, unless parents and their children enter into an enforceable agreement, able, adult children have only a moral obligation to support their parents.¹⁸⁷

A. Long-Term Care Costs Increasing Quickly

1. Medicaid

The elderly population is increasing as the baby boomers age.¹⁸⁸ In 2011, individuals sixty-five and over comprised 10.5% of the Texas population.¹⁸⁹

180. *Id.*

181. *See id.* at 190.

182. *See id.*

183. *See id.* at 189.

184. *See* Pearson, *Family*, *supra* note 55.

185. *See, e.g.,* Mo.-Kan.-Tex. R.R. Co. v. Pierce, 519 S.W.2d 157, 159 (Tex. Civ. App.—Austin 1975, writ ref’d n.r.e.); Rogers v. Gonzales, 654 S.W.2d 509, 515 (Tex. App.—Corpus Christi 1983, writ ref’d n.r.e.) (holding that a twenty-year-old son was under no legal obligation to support his parents).

186. *Pierce*, 519 S.W.2d at 159.

187. *See* 15 TEX. FORMS LEGAL & BUS. § 34:55.

[T]he fact that the adult child is a member of the parents’ family does not alone render the child liable for necessities sold to the head of the family. However, an agreement by an adult child to support his or her parents, in consideration of transfer by the parents to the child of real or personal property, is enforceable.

Id.

188. *See, e.g.,* Galston, *supra* note 129. In 2010, individuals over the age of sixty-five comprised 13% of the total U.S. population; by 2050, this number is projected to increase to over 20% by 2050. *See id.* In 2010, individuals over eighty-five comprised 1.8% of the total U.S. population, a percentage that is projected to jump to 4.3% by 2050. *See id.* Currently, the U.S. population is approximately 315 million. *See* U.S. Dep’t of Commerce, U.S. CENSUS BUREAU, <http://www.census.gov/main/www/popclock.html> (last visited May 21, 2013).

189. *See* U.S. Dep’t of Commerce, U.S. Census Bureau, *State & County QuickFacts: Texas*, CENSUS.GOV, <http://quickfacts.census.gov/qfd/states/48000.html> (last modified Mar. 14, 2013, 10:17 AM). In 2010, the estimated population in Texas was approximately 25 million. *See id.* Texas ranks third among the states for the highest number of individuals age sixty and up. *See* U.S. Dep’t of Health & Human Servs., Admin. on Aging, *The 60+ and 70+ Population and Territories*, ADMIN. ON AGING, <http://www.aoa.gov/>

The number of Texans enrolled in Medicaid is also growing quickly.¹⁹⁰ Before 2008, around 3 million Texans were enrolled in Medicaid.¹⁹¹ From 2008 to 2011 this number rose to 3.5 million and could rise to 6.2 million by 2020.¹⁹² Because of this increase in enrollment, by 2023 the percentage of Medicaid funding could potentially rise to 37%.¹⁹³ In 2010, Medicaid spending exceeded \$27 million for Texas residents.¹⁹⁴ Long-term care totaled over \$6 million, which was 23.3% of the total spending amount.¹⁹⁵

2. Medicare

In Texas, Medicare costs are also rapidly increasing.¹⁹⁶ “Texas Medicare costs have increased [at] . . . an average growth rate that is 16% higher than the national average.”¹⁹⁷ In fact, McAllen, Texas, has higher Medicare spending than anywhere else in the country.¹⁹⁸ In Texas, the number of Medicare beneficiaries was around 2.9 million in 2010.¹⁹⁹ Of these Medicare beneficiaries, 78.9% were over the age of sixty-four.²⁰⁰

The estimated out-of-pocket costs in one city—Houston—illustrate how expensive health care can be, even with Medicare.²⁰¹ The annual estimated out-of-pocket costs for Medicare members vary greatly depending on an individual’s health.²⁰² For individuals with good health, the average out-of-

AoARoot/Aging_Statistics/Census_Population/census2010/Index.aspx (last modified Dec. 5, 2011). Only California and Florida rank higher; California has 6 million, and Florida has 4.4 million. *See id.* California has a filial responsibility statute, but Florida does not. *See supra* Part III.

190. Bill Conrad, *Texas Comptroller Warns of Increased Medicaid Spending*, PEGASUS NEWS (May 1, 2012), <http://www.pegasusnews.com/news/2012/may/01/texas-comptroller-increased-medicaid-spending/?refscroll=293>.

191. *See id.*

192. *See id.* Part of the reason for the sharp increase in the number of Texans enrolled in Medicaid may be due to the recession. *See id.*

193. *See id.* In 2001, Medicaid spending totaled 14% of state spending. *See id.* By 2011, the percentage of Medicaid funding was 20%. *See id.*

194. *See Texas & United States: State Medicaid Fact Sheets*, HENRY J. KAISER FAM. FOUND., <http://www.statehealthfacts.org/mfs.jsp?rgn=45&rgn=1> (last updated May 21, 2013).

195. *See id.*

196. *See Restricting Patient Rights Does Not Lower Health Costs: Spending Increases Faster in Texas*, TEX. WATCH, <http://www.texaswatch.org/wordpress/uploads/2010/10/MedicareSpending-HealthCosts.pdf> (last visited May 21, 2013).

197. *Id.*

198. *See* Jordan Rau, *Texas Town—Famous for High Medicare Costs—Has a Cheaper Side*, KAISER HEALTH NEWS (Dec. 7, 2010), <http://www.kaiserhealthnews.org/stories/2010/december/07/texas-medicare-costs-mcallen.aspx>.

199. *See Texas: Distribution of Medicare Beneficiaries by Age, 2010*, HENRY J. KAISER FAM. FOUND., <http://kff.org/medicare/state-indicator/beneficiaries-by-eligibility-category/?state=TX> (last visited May 21, 2013).

200. *See id.*

201. *See* Health Metrix Research, Inc., *2013 Medicare Advantage Costshare Report: Houston (Harris County) Area Comparisons*, MEDICARENEWSWATCH.COM, <http://www.hmos4seniors.com/costcomparison/cities/houston.html> (last updated Oct. 15, 2012).

202. *See id.*

pocket cost for Medicare is \$345.²⁰³ For individuals with fair health, the average out-of-pocket cost for Medicare jumps to \$2,001, and for individuals with poor health, the average out-of-pocket cost for Medicare is \$5,623.²⁰⁴ Most elderly who require long-term care likely fall into the fair-to-poor health range.²⁰⁵ With such a large range of different expenses, these elderly individuals will likely need some form of aid to pay for health care.²⁰⁶

3. Long-Term Care Insurance

Long-term care insurance can help with the high costs of long-term care.²⁰⁷ If purchased while an individual is young, long-term insurance is less expensive and will ease the burden of future care costs.²⁰⁸ However, for elderly individuals who struggle financially, long-term-care insurance may not be an option.²⁰⁹ Unfortunately, long-term care is expensive and “70 percent of [adults] age 65 or older will need long-term care services [during] their lifetime.”²¹⁰ In Texas, the current median cost of a semi-private nursing home room is \$47,450, and the current median cost of a private room is \$61,503.²¹¹ At an assisted living facility, the rate for a private one-bedroom is \$38,400.²¹² Therefore, unless an elderly individual purchased insurance at a young age, the only option left for that individual may be governmental assistance.²¹³

B. Adopting a Filial Responsibility Statute Could Be Beneficial

Texas should adopt a filial responsibility statute. Children already have a moral obligation to support their parents, but they should have a legal duty as well.²¹⁴ The government should provide necessary care for the indigent elderly; however, the duty to care for the indigent elderly should first rest within the financially able family members.²¹⁵ Creating this familial duty could relieve the

203. *See id.*

204. *See id.*

205. *See* Marilyn Geewax, *Long-Term-Care Insurance: Who Needs It?*, NPR (May 8, 2012, 3:13 AM), <http://www.npr.org/2012/05/08/151970188/long-term-care-insurance-who-needs-it>.

206. *See generally* Doug Short, *U.S. Median Household Incomes by Age Bracket: 2011 Was a Bleak Year*, ADVISOR PERSP. (Sept. 18, 2012), <http://www.advisorperspectives.com/dshort/updates/Household-Incomes-by-Age-Brackets.php>. In 2011, for individuals ages sixty-five and up, the median household income was \$33,118. *See id.* In comparison, the median household income for ages thirty-five to forty-four was \$61,916 and for ages forty-five to fifty-four, the median household income was \$63,861. *See id.*

207. *See Guide, supra* note 129.

208. *See id.*

209. *See id.* “You might have to pay for your care out of pocket until you spend down your assets enough to qualify for Medicaid.” *Id.*

210. *Survey, supra* note 3.

211. *See id.*

212. *See id.*

213. *See Guide, supra* note 129.

214. *See discussion supra* Part IV.A.1.

215. *See Edystone, supra* note 114, at 505.

government's burden of caring for the indigent by drastically lowering the amount of funds currently spent on long-term care.²¹⁶ Moreover, implementing a support statute could bring more awareness to the indigent elderly's needs and push children to better plan for the care of their aging parents.²¹⁷

Strong enforcement is necessary for a filial responsibility statute to be effective.²¹⁸ An effective filial support statute should include the following components: allow only civil action, require notice before any action, define the term indigent, and require certain age and financial prerequisites.²¹⁹

First, Texas's filial responsibility statute should only allow civil action.²²⁰ Some states allow criminal penalties, but this may be detrimental, especially if many are opponents of this law.²²¹ Imposing a criminal penalty makes successful enforcement difficult because the penalty would "actually inhibit the adult child's ability to earn a living to support the parent," particularly if it places the child in jail.²²² Criminal penalties could also cause problems within the family, especially if the relationship is already rocky.²²³

Additionally, the civil action should include a component requiring notice to a child before commencing a suit.²²⁴ South Dakota's filial responsibility statute could provide some guidance for notice.²²⁵ Under that statute, a party may not make a claim against adult children unless the party gives the children written notice of parents' inability to support themselves.²²⁶ The party must give the notice "within ninety days after the necessary food, clothing, shelter, or medical attendance, claimed in the notice, was first provided for the parent" by another party, such as a nursing care facility.²²⁷ Texas's statute should implement both requirements as well. If a child is warned of a potential lawsuit, the child will likely take steps to solve the issue before being sued for the cost of care.

216. See *supra* Part IV.A.

217. See *supra* Part IV.A.1–2.

218. See Joan Medeiros, *Filial Responsibility Laws*, L. OFF. JOAN MEDEIROS: EST. PLAN. BLOG (Dec. 1, 2012), http://sacramentoestateplans.com/lawyer/2012/12/01/Elder_Planning/Your_Legal_Obligation_to_Care_for_your_Elderly_Parents_bl4478.htm#.UQK-Lt7UgM (explaining why states often do not enforce filial responsibility).

219. See *supra* Part IV.B.

220. See ARK. CODE ANN. § 20-47-106 (West 2001); DEL. CODE ANN. tit. 13, § 503 (West 2012); GA. CODE ANN. § 36-12-3 (West 2012); LA. REV. STAT. ANN. § 13:4731 (2012); LA. CIV. CODE ANN. art. 229 (2012); MISS. CODE ANN. § 43-31-25 (West 2012); NEV. REV. STAT. ANN. § 428.070 (West 2011); N.H. REV. STAT. ANN. §§ 167:2, 546-A:2 (2013); N.D. CENT. CODE ANN. § 14-09-10 (West 2011); OR. REV. STAT. ANN. § 109.010 (West 2012); 23 PA. CONS. STAT. ANN. § 4603 (West 2012); S.D. CODIFIED LAWS § 25-7-27 (2012); TENN. CODE ANN. §§ 71-5-103, -115 (2012); UTAH CODE ANN. § 17-14-2 (West 2012); W. VA. CODE ANN. § 9-5-9 (West 2012).

221. See Ross, *supra* note 26, at 193.

222. Pakula, *Federal*, *supra* note 108, at 864.

223. See Ross, *supra* note 26, at 193.

224. See Pakula, *Federal*, *supra* note 108, at 871.

225. See S.D. CODIFIED LAWS § 25-7-27 (2012).

226. *Id.*

227. *Id.*

An adult child should only be required to assist a parent if the parent falls within the definition of indigent.²²⁸ The term indigent should be fully defined within the statute to avoid confusion.²²⁹ Indigent generally means “suffering from extreme poverty” or “totally lacking in something specified.”²³⁰ However, elderly individuals should not be required to be completely destitute before the statutory duty kicks in.²³¹ An individual should be considered indigent if he or she is unable to provide for one’s own necessities, including food, shelter, clothing, and medical needs.²³² Therefore, indigent would encompass individuals who are also “poor and unable to work to maintain themselves.”²³³

Moreover, the duty should only be enforced if an individual is financially able to support the indigent family member.²³⁴ Enforcement of the statute should not require a single payment of support costs; if necessary, installment payments should be allowed to lessen the burden on the supporters.²³⁵ Opponents of filial responsibility express concern over the possibility that adult children may need to support their parents for over fifty years.²³⁶ Parents are usually only required to support their children until the age of eighteen.²³⁷ However, life expectancy of adults continues to rise and is currently 78.7 years.²³⁸ To address this problem, the statute could include age requirements for the duty to take effect.²³⁹

VI. A FEDERAL FILIAL RESPONSIBILITY STATUTE

Another option would be a uniform federal filial responsibility statute.²⁴⁰ Federal support programs such as Medicare and Social Security “are predicted

228. See *supra* Part II.B.

229. See Pakula, *Federal*, *supra* note 108, at 873.

230. *Indigent*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/indigent> (last visited May 21, 2013).

231. See *supra* Part II.C.

232. See CAL. PENAL CODE § 270c (West 2012); IND. CODE ANN. § 31-16-17-1 (West 2012); S.D. CODIFIED LAWS § 25-7-27 (2012).

233. OR. REV. STAT. ANN. § 109.010 (West 2012).

234. See CAL. FAM. CODE § 4400 (West 2012); CAL. PENAL CODE § 270c (West 2012); NEV. REV. STAT. ANN. § 428.070 (West 2011); N.H. REV. STAT. ANN. § 167:2 (2011); N.H. REV. STAT. ANN. § 546-A:2 (2013); N.D. CENT. CODE ANN. § 14-09-10 (West 2011); S.D. CODIFIED LAWS § 25-7-27 (2012); UTAH CODE ANN. § 17-14-2 (West 2012); W.VA. CODE ANN. § 9-5-9 (West 2012).

235. See Tory Prasco, *Can You be Liable for Your Parent’s Nursing Home Bills?*, BURKE COSTANZA & CARBERRY LLP BLOG (Nov. 1, 2012, 9:25 AM), <http://www.bcclegal.com/business-blog/2012/11/1/can-you-be-liable-for-your-parents-nursing-home-bills.html>.

236. See Edelstone, *supra* note 114, at 512.

237. TEX. FAM. CODE ANN. § 154.006(a)(4)(A) (West 2011).

238. *Life Expectancy*, CDC, <http://www.cdc.gov/nchs/fastats/lifexp.htm> (last updated Jan. 11, 2013).

239. See Edelstone, *supra* note 114, at 512–13. Currently, those sixty-five or older are usually considered elderly. *The Elderly Need to be Redefined*, GLOBAL ACTION ON AGING (Sept. 19, 2005), <http://www.globalaging.org/elderrights/world/2005/redefined.htm>.

240. See Pakula, *Federal*, *supra* note 108, at 870. A federal filial responsibility statute existed before the 1960s, prior to the start of Medicare. *Id.* at 870–71.

to fail as early as 2019.”²⁴¹ Other government programs, while helpful, have not been enough to assist the indigent elderly.²⁴² By creating and enforcing a uniform federal statute, more awareness of this issue could bring the change needed to better help the elderly with long-term care costs.²⁴³

VII. CONCLUSION

As long-term care costs continue to grow and additional government funds are used to provide the care, more attention is focusing on filial responsibility laws.²⁴⁴ Although they may be obscure and unenforced, turning to these support laws may be a necessary remedy to reduce government spending on long-term care for the elderly.²⁴⁵

Many opponents fear the contractual obligation that filial responsibility statutes may place on them.²⁴⁶ However, if a family is able to provide support for its elderly, why should the government be the sole party to take on this responsibility? Some reciprocity should occur between parents and children, and adult children should feel the obligation to care for their parents, especially if the parents qualify as indigent.²⁴⁷

Texas should join the other twenty-eight states that already have a filial responsibility statute. Placing the duty of support on able family members first is a centuries-old obligation that has managed to survive into the present day despite opposition.²⁴⁸ While filial responsibility may seem harsh, it is simply making families care for each other. With the number of indigent elderly quickly rising, long-term care costs are likely affecting many families.²⁴⁹ Instead of ignoring the issue and hoping the government will shoulder this burden, maybe it is time for families to step up and take responsibility.

“Parents were the only ones obligated to love you; from the rest of the world you had to earn it.”²⁵⁰ Perhaps it is time to repay these parents in a simple way—by taking responsibility and providing for their needs. By implementing a filial support statute, Texas could lower governmental spending

241. *Id.* at 870.

242. *See id.* at 876.

243. *See id.*

244. *See* Craig Reaves, *Ask the Expert: Parental Support and the Law*, N.Y. TIMES HEALTH BLOG (Feb. 26, 2010, 2:16 PM), <http://newoldage.blogs.nytimes.com/2010/02/26/ask-the-expert-parental-support-and-the-law/>.

245. *See supra* Part III.A.

246. *See supra* Part III.B.2.

247. *See supra* Part III.A.

248. *See supra* Part II.B.

249. *See supra* Part IV.A.

250. ANN BRASHARES, *FOREVER IN BLUE: THE FOURTH SUMMER OF THE SISTERHOOD* 263 (Random House Digital, Inc. 2007).

on long-term care and provide for the indigent elderly simply by placing responsibility where it naturally should occur, within the family.

by Mari Park