

Are You on the Hook for Mom's Nursing-Home Bill?

By KELLY GREENE WSJ



Thought you were immune from your parents' debts? Not so fast. Twenty-nine states have "filial support" laws that could be used to go after patients' adult children for unpaid long-term-care bills.

In at least one of those states, Pennsylvania, nursing homes have started routinely using the law to prod families into paying their elders' bills or completing Medicaid paperwork on their behalf.



Michal Dziekan

Usage in other states has been rare. Legal experts point to a few cases in South Dakota in the past decade. But these powers exist and could be employed by providers and states getting more desperate for payment from overstretched Medicaid programs.

Under Pennsylvania's filial-support law, the parents have to be considered "indigent," and the child has to have the means to pay the bill. Neither threshold is specifically defined, which gives courts a lot of leeway.

In many cases, care providers in Pennsylvania are using the law as leverage to get children to round up financial information for frail parents who can't do so themselves—or to disclose any

assets their parents transferred into the children's names, says John Kennedy, a Harrisburg, Pa., lawyer who has represented long-term-care facilities in hundreds of such cases.

But a panel of three state-court appellate judges ruled May 7 that an Allentown nursing home owned by HCR ManorCare could collect an unpaid bill of \$92,943 from the son of a patient who received care from September 2007 through March 2008.

"This is the first time we've had a court of appeals impose a major financial liability on an adult child in the absence of fault on the child's part in creating the debt," says Katherine Pearson, a law professor at Pennsylvania State University and director of its Elder Protection Clinic. "What's happening in Pennsylvania could excite nursing homes in other states."

The case, involving the Pittas family of Schwenksville, Pa., started when Maryann Pittas, now 65 years old, and her husband, Andrew, 79, a retired restaurateur, were injured in a head-on collision by a driver who crossed into their lane, says their son, John.

Mr. Pittas was in a coma for more than two weeks, the son says. Both of his mother's legs and one wrist were broken. While in rehab, she had a stroke that sent her back to the hospital and finally to the facility where she racked up the large bill. The family later moved her to Greece to be with other relatives, and is suing the rehab facility—which also is owned by HCR ManorCare—for malpractice.

A few weeks after his mother left, Mr. Pittas received the nursing-home bill. He says he doesn't understand why the facility tried to collect from his family before it tried to collect from Medicaid, the state- and federal-funded program that generally covers long-term care for elderly people who have run out of money.

HCR ManorCare, in a statement, said, "We do expect to receive payment for services provided. We work with patients and families to help them understand their options and responsibilities." It also said that "family members that are responsible parties for financial issues are responsible to gather needed documents per State guidelines for their loved ones care."

The company declined to comment further due to the pending litigation.

Often, when families admit an older loved one to a nursing home, the patient has suffered from a general decline in health during which the adult children increasingly get involved with finances and treatment. Mr. Pittas's transition to caregiver, by contrast, was sudden.

"At the time, I didn't even know that they were very poor and basically living off of my father's Social Security check," says the son, who adds that he doesn't know why Medicaid didn't pay the bill.

The case has been dragging on for years. First, Mr. Pittas won in arbitration in 2008, but then the nursing home appealed to a state court, where a judge found in favor of the facility. So did the appellate panel, which ruled that Mr. Pittas should be able to pay the bill given his 2008 income of \$85,000.

His attorney, John Karoly III, has filed an application for a reargument by the full appeals court, which is pending.

The Pittas family's experience serves as a warning for middle-aged children with parents who are racking up long-term-care bills. In many states, including Pennsylvania, the filial-support law doesn't require lack of cooperation or asset shielding on the children's part. They simply have to be deemed by a judge to have the means to pay the bill, Ms. Pearson says.

The best defense against such laws, elder-law experts say, is planning. "If your parents aren't multimillionaires, then you need to get some advice way early, maybe when they're 65," says Carolyn Rosenblatt, a San Francisco mediator, elder-law attorney and registered nurse. "By the time they're in their 80s, most people need some help. How would you pay for that?"

Among the possible strategies: buying long-term-care insurance before health problems begin or building an in-law unit that you could rent out, perhaps to a child in college or starting a first job, until your parents need it.

But if your parent does wind up with a nursing-home bill he or she can't pay, "the key is not allowing a gap to form" between private and public payments "that later becomes a claim against the family members," says Ms. Pearson, the law professor.

She recommends that families who run into trouble with Medicaid issues seek help from an elder-law attorney familiar with the process. There are directories at Naela.org, ElderLawAnswers.com and FindLegalHelp.org.

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Kelly Greene writes about retirement planning and aging issues. With editor Glenn Ruffenach, she co-authored "The Wall Street Journal Complete Retirement Guidebook: How to Plan It, Live It and Enjoy It," a New York Times Bestseller. In 2005, she received the American Society on Aging's National Media Award for her body of work. In 2007, she received a New York Association of Black Journalists award for her coverage of African-American police retirees' efforts in Georgia to get the same pensions as white colleagues. Ms. Greene joined the Journal in 1996 after working for newspapers in North Carolina and Atlanta.