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## Are Your Children Responsible for Your Medical Bills?

Leonard Shober is a partner in Shober & Rock, an elder law, tax and estate planning firm that focuses on the legal needs of the elderly and disabled. Len attended Temple University School of Law and graduated in 1986 with honors. Prior to law school, Len was a social worker and family counselor, a background that has greatly assisted his work with the elderly and families in crisis.

Some 29 states currently have laws making adult children responsible for their parents if their parents can't afford to take care of themselves. These "filial responsibility" laws have rarely been enforced, but 6 years ago, when federal rules made it more difficult to qualify for Medicaid long-term care coverage, some elder law attorneys predicted that nursing homes would start using the laws as a way to get care paid for.

It looks like this is starting to happen. In May 2012, a Pennsylvania appeals court found a son liable for his mother's \$93,000 nursing home bill under the state's filial responsibility law: *Health Care & Retirement Corporation of America v. Pittas* (Pa. Super. Ct., No. 536 EDA 2011, May 7, 2012). In March 2013, the state's Supreme Court declined to hear the case, meaning that the ruling is final.

**Facts of the case**

John Pittas' mother entered a nursing home for rehabilitation following a car crash. She later left the nursing home and moved to Greece, and a large portion of her bill at the nursing home went unpaid. Mr. Pittas' mother applied to Medicaid to cover her care, but that application is still pending.

Meanwhile, the nursing home sued Mr. Pittas for nearly \$93,000 under the state's filial responsibility law, which requires a child to provide support for an indigent parent. The trial court ruled in favor of the nursing home, and Mr. Pittas appealed. Mr. Pittas argued in part that the court should have considered alternate forms of payment, such as Medicaid or going after his mother's husband and her two other adult children.

The Pennsylvania Superior Court, an appeals court,

agreed with the trial court that Mr. Pittas is liable for his mother's nursing home debt. The court held that the law does not require it to consider other sources of income or to wait until Mrs. Pittas' Medicaid claim is resolved. It also said that the nursing home had every right to choose which family members to pursue for the money owed.

**First of a "wave of lawsuits"?**

The Deficit Reduction Act of 2005 made it much more difficult for the elderly to transfer assets before qualifying for Medicaid coverage of nursing home care. With enactment of the law, advocates for the elderly said that nursing homes would likely be flooded with residents who need care but have no way to pay for it and that, in states that have filial responsibility laws, the

nursing homes might seek reimbursement from the residents' children.

In 2005, the National Center for Policy Analysis, a conservative policy group, released an issue brief proposing that states begin enforcing filial responsibility laws in order to reduce long-term care costs.

**Here is the Pennsylvania statute:**

§ 4603. Relatives' liability; procedure.

(a) Liability.

(1) 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.

(2) Paragraph (1) does not apply in any of the following cases:

(i) If an individual does not have sufficient financial ability to support the indigent person.

(ii) 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.

(b) Amount.

(1) Except as set forth in paragraph (2), the amount

of liability shall be set by the court in the judicial district in which the indigent person resides.

(2) For medical assistance for the aged other than public nursing home care, as provided in section 401 of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, the following apply:

(i) Except as set forth in subparagraph (ii), the amount of liability shall, during any 12-month period, be the lesser of:

(A) six times the excess of the liable individual's average monthly income over the amount required for the reasonable support of the liable individual and other persons dependent upon the liable individual; or

(B) the cost of the medical assistance for the aged.

(ii) The department may, by reasonable regulations, adjust the liability under subparagraph (i), including complete elimination of the liability, at a cost to the Commonwealth not exceeding those funds certified by the Secretary of the Budget as available for this purpose.

The best way to avoid this problem is to **MAKE SURE** you understand how nursing homes are paid, both Medicare and Medicaid. Make sure that you prepare early and **NEVER EVER** allow your loved one to run out of assets before considering all planning options for assistance. You need to be proactive. In the past, prior to 2005, we used to try and protect the parents' assets, but we are now equally concerned with the assets of the children. Please see us before you have this happen in your family.



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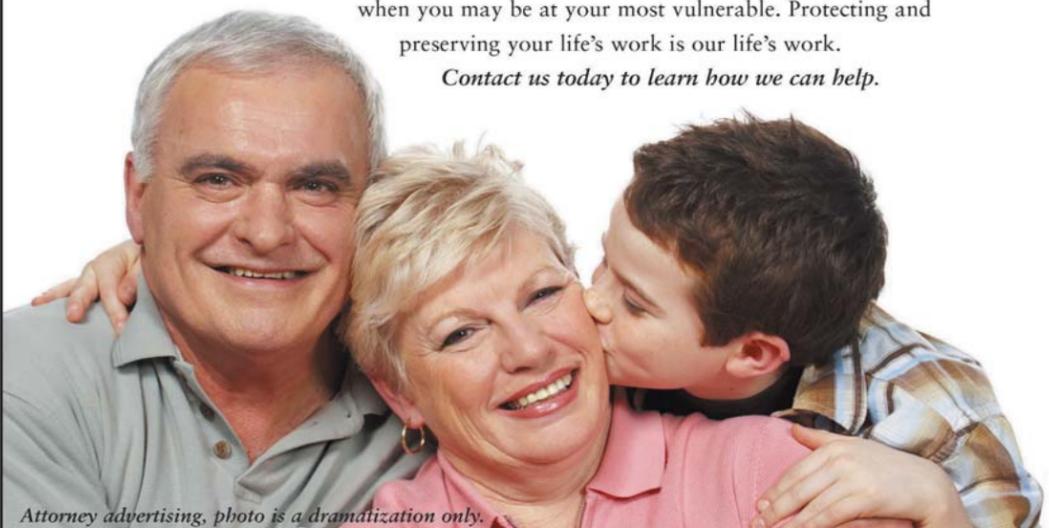
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The attorneys of Shober & Rock have years of experience helping individuals and families with the complex issues of elder law. We are here to help you prepare for and confront what may be the most complex legal hurdles of your life at a time when you may be at your most vulnerable. Protecting and preserving your life's work is our life's work.

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