Filial Support Laws Have Taken Hold in Other States, but Where Does Wisconsin Stand?

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An old series of laws is developing recognition as an avenue for nursing homes and other care facilities to collect from their residents' children for unpaid bills. "Filial support" laws capture a child's legal responsibility to care for his or her indigent parents. Twenty-nine states have filial support laws on their books. At the moment, Wisconsin is an exception—it has no statutory or common law basis for requiring that a child care (financially or otherwise) for a needy parent. But nursing homes and other care facilities, as well as patients, their families and professionals, including attorneys and insurance providers, should nevertheless beware of the possible implications of this potentially expanding law.

The Wisconsin Statutes previously contained a filial support provision, but the law was stricken in 1973. A comparable Wisconsin statute currently holds parents and spouses (but not children) of dependent persons who cannot support themselves legally responsible for providing such support. But Wisconsin's current law is far narrower than its filial support brethren, shown, for example, by the following Pennsylvania statute:

(1) . . . [A]ll 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.

Most appellate-level cases on the subject have involved parents seeking compensation from their children. However, the reach of the ancient law is surely developing and nursing homes are now becoming well-positioned to use such laws. A recent Pennsylvania case demonstrates this development. In that case, an indigent mother entered a nursing home after she was injured in a car accident. She was treated there for approximately six months, after which she fled to Greece. A large amount of the mother's nursing home bills were left outstanding, so the care facility sought repayment from her son. A Pennsylvania appellate court accepted the nursing home's application of Pennsylvania's filial support provision and upheld a trial verdict holding the son liable for $92,943.41.

However, that result could not currently occur in Wisconsin and, in fact, may not occur in every state with existing filial support statutes because the controlling statutory language might not be broad enough to allow a nursing home, as opposed to the parent, to bring a claim, even if one might otherwise exist. Pennsylvania's statute broadly provides that "any other person or public body or public agency having any interest in the care, maintenance or assistance of such indigent person" has standing to bring suit seeking compensation from a child of such person. As the Pennsylvania case clearly indicates, "any other person" could include a nursing home. However, other states provide that recovery may be made by solely the indigent person—hence, not possibly by a nursing home.

In summary, depending on the state, filial support statutes may open up unique collection avenues for nursing homes and similar care facilities. To be sure, possible steps should be taken in those states to prevent children from incurring unexpected legal liabilities. Long-term care insurance and life insurance are two ways to potentially protect children on this front. Currently, Wisconsin lacks any statutory mechanism by which even a parent can bring a claim against their child to provide support, meaning that, for now, in Wisconsin children with indigent parents likely are not responsible for their care. However, this area of the law could expand, so it may be wise to monitor potential legal developments and related protections for interested persons.

2. Previously, Wis. Stat. § 52.01 (1937) provided, "The father, mother, and children, being of sufficient ability, of any
poor person who is blind, old, lame, impotent, or decrepit, so as to be unable to maintain himself, shall, at their own charge, relieve and maintain such poor person in such a manner as shall be approved by the supervisors of the town where such person may be.”

3. 1973 Wis. Act 90, § 296(e).
6. See Pearson (manuscript at 29 tbl.1).
8. Id.