FOCUS ON EMPLOYEE BENEFITS & INSURANCE

Old law's rebirth another reason for long-term care insurance

By JOHN ROSSI

Special for Lehigh Valley Business

Long-term care insurance for those older than 50, and who can survive underwriting, is an excellent option.



Ross

Among the many reasons to consider buying long-term care insurance is the resurrection of filial laws, which can blindside close family members (usually a spouse, adult child or parents) with a

potentially significant financial burden.

Just what are filial laws and how can close family members be affected by them?

Filial laws impose a legal responsibility upon a close family member for the support of an indigent relative.

Filial laws are not the same thing as the requirement to look back five years for anyone applying for Medicaid to ensure that his or her assets were not fraudulently diverted to qualify for government assistance.

Close family members need to be aware that they might be legally compelled to pay for the care of an indigent relative under the filial laws.

LONGER LIFESPANS

Americans are living longer - par-



In a Pennsylvania case, a son was held liable for his mom's past due nursing home bills even though he was not on the contract and was not accused of any wrongdoing. He did, however, have the ability to pay.

ticularly as baby boomers move into retirement – and fewer people have the financial resources to support themselves through all of their retirement years.

They will be increasingly unable to pay for the cost of health care and long-term care. So, there may be greater incentive among states and private businesses in resurrecting the dormant and old filial laws to go after a close relative (usually a spouse, adult child or parents) for payment.

These laws are designed to minimize the burden on the state's welfare system. A state government or private business may have standing to seek reimbursement under the filial laws.

LAWS RESTORED IN PA. IN 2005

Filial laws (filial support laws or filial piety laws) have been part of states' stat-

utes since colonial times. More than half of the states have these laws on the books and enforced them until the middle of the 20th century.

Filial laws make close relatives with sufficient financial resources legally responsible for indigent family members. Fraudulent financial activity does not have to occur before filial laws can be enforced.

In most states, filial laws rarely have been used; however, there is one exception, Pennsylvania. The biggest problem with Pennsylvania's law is that almost no one knows about it.

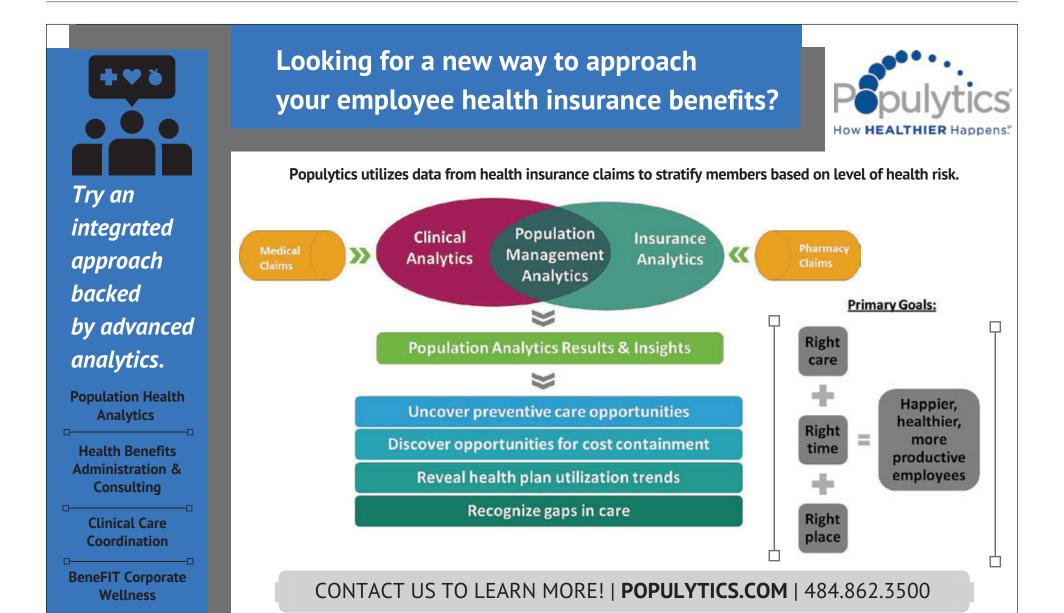
Pennsylvania Act 43 of 2005 resurrected the old filial laws that can make close family members financially responsible for indigent relatives. Filial laws have been on the books for decades; their resurrection has focused debate and legal decisions on who is responsible for these costs.

SON HELD LIABLE FOR \$92K

Nursing homes have been successfully using the law to sue adult children for their parent's past due bills.

For example, in the case in Pennsylvania several years ago, the Health Care & Retirement Corp. of America vs. Pittas, a son was held liable for more than \$92,000

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LAW

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of his mother's past due nursing home bills.

The son was not on the contract and was not accused of any wrongdoing. The son was held liable because he had the ability to pay.

With the Pittas ruling and the state of the economy, health care providers and nursing homes may turn to the filial laws more often to recover past due bills.

MEDICAID ABSOLVES FUTURE LIABILITY

Filial laws do not apply:

- If an individual does not have sufficient financial ability to support the indigent close relative
- If an adult child was abandoned or abused as a minor child.

Once an indigent person qualifies for Medicaid, under existing law, there should be no liability for future care under the filial laws. Federal law requires a nursing home to accept the Medicaid payment in full satisfaction of the cost.

For this reason, helping a person qualify for Medicaid eligibility is the most important thing a close relative can do to avoid being sued by a nursing home for past due bills. Once an indigent person is in a nursing home and qualifies for Medicaid, the close relative should have no reason to be concerned about liability for future care.

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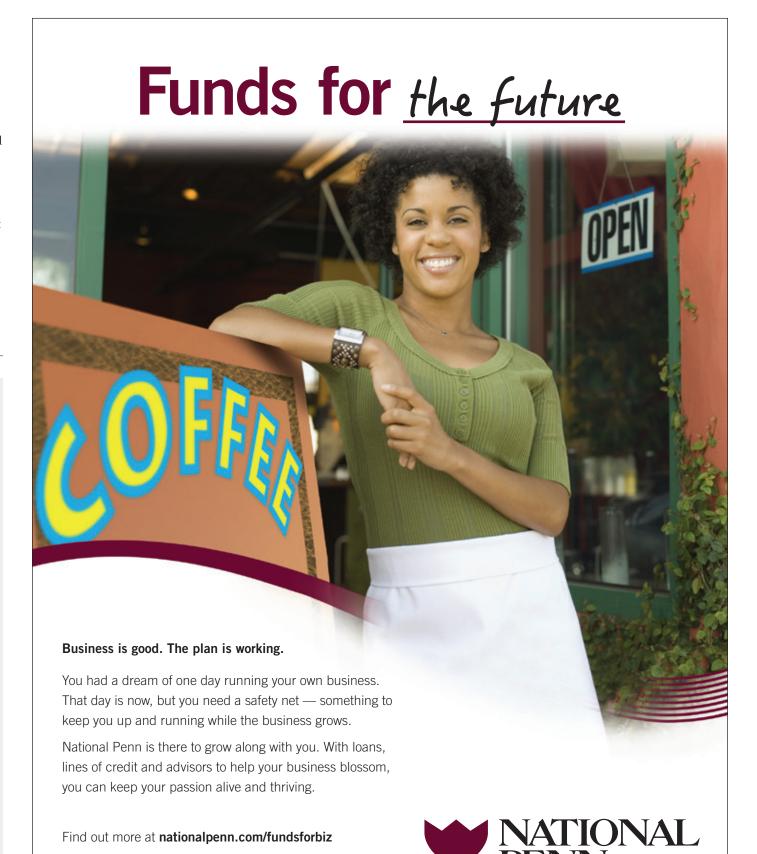
FAMILY MEMBERS VULNERABLE

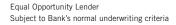
With the ever-increasing costs of longterm care and tight state budgets, the new era of imposing financial responsibility for close relatives' care may be in the near future. Nursing homes and other health care providers now appear to have an incentive to use the courts to receive financial support for indigent people.

A health care provider or nursing home in Pennsylvania can file a suit

against any family member who is financially able to pay the past due bill.

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