Would the strict enforcement of state filial responsibility laws bring solvency to
government entitlement programs?

Filial responsibility laws have their origins in antiquity, most notably the
Elizabethan Poor Relief Act of 1601. This Act stipulated that “the Father and
Grandfather, and the Mother and Grandmother, and the Children of every poor, old,
blind, lame, and impotent Person or other poor Person not able to work, being of a
sufficient Ability, shall, at their own Charges, relieve and maintain every such poor
Person.”i This tradition carried over from England to the American colonies and laid the
foundation for the current filial responsibility laws.

Currently 30 states have filial responsibility laws on the books. These laws differ
from state to state but generally describe the responsibility of children to financial
support their indigent parents. For example, the Virginia Code § 22-88 states:

“It shall be the joint and several duty of all persons eighteen years of age or over,
of sufficient earning capacity or income, after reasonably providing for his or her own
immediate family, to assist in providing for the support and maintenance of his or her
mother or father, he or she being then and there in necessitous circumstances.”ii

While Virginia limits these responsibilities to the children of the indigent, other
states impose a broader duty. For example, in Utah:

“Children shall first be called upon to support their parents, if they are sufficient
ability; if there are none of sufficient ability, the parents of such a poor person shall be
next called upon; if there are neither parents nor children, the brothers and sisters shall
be next called upon; and if there are neither brothers nor sisters, the grandchildren of
such poor person shall next be called upon, and then the grandparents.”iii
Some of these filial responsibility laws carry exceptions, and civil and/or criminal penalties for non-compliance. The Virginia Code notes that its filial responsibility law “shall not apply if there is substantial evidence of desertion, neglect, abuse, or willful failure to support any such child” or “if a parent is otherwise eligible for and is receiving public assistance or services under a federal or state program.” Interestingly, Virginia is one of the few statutes that provide for such exceptions. Most of the other statutes make no provision for the aid to conditional upon how the parent’s treated their children. Also, Virginia filial responsibility laws carry with the possibly of both civil and criminal penalties. The violator “shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $500 or imprisonment in jail for a period not exceeding twelve months or both.”

There are two major theories justifying the implementation of filial responsibility laws: the moral theory and the reciprocation theory. The moral theory justifies filial support laws because they promote good and right behavior and punish the bad. In other words, it is morally good and right for a child to support their indigent parents and those who do not should be punished.

The reciprocation theory suggests that there is a contract-like relationship between parents and their children. Under this theory, parents are required to financially support their children and children must in turn support their parents if they become indigent. A major criticism of the reciprocation theory is its treatment of the parent-child relationship. One could argue that since parents choose to have children, it is right for them to be required to support them. However, children do not choose to be born and do not legally owe any duty to their parents. Another criticism of the reciprocation theory
is the element of duration. In most cases, parents are only legally obligated to financially support their children to their eighteenth birthday. However, under filial support laws, a child may be required to financially support their indigent parents indefinitely.

Another criticism of strict enforcement of filial responsibility laws deals with fairness. Only-children would bear a greater support burden than families that have multiple children. For example, a child in a family of four children would be liable for 25% of support while an only-child would be liable for 100% of support. This inequality could lead to constitutional challenges under the equal protection guarantee. Another constitutional challenge could include arguments about due process. One could argue that filial responsibility statutes are unconstitutional because they deprive citizens of property without due process of law and illegally. The Constitution allows the government to tax, but does this encompass requiring children to pay their parent’s financial obligations?

Finally, because filial responsibility laws exist in only 30 states, strict enforcement could run into full faith & credit issues. For example, could the government require a citizen of a non-filial law state to support his parent who lives in a filial law state? Or vice-versa? Could the government require a citizen of a filial law state to support a parent who is the citizen of a non-filial law state? Some state laws provide answers to these questions. For example, Kentucky limits its reach to its own citizens. It filial law states that:

“Any person who is eighteen (18) years of age or over, residing in this state and having in this state a parent who is destitute of means of subsistence and is unable because of old age, infirmity, or illness to support himself or herself, has a duty to provide support for such parent and, for the purposes of this section, is presumed to know of that duty.”
The Kentucky law also stipulates that the child is presumed to know of their duty to their indigent parents. In contrast, the South Dakota law requires that “no claim may be made against such adult child until the adult child is given written notice that the child’s parent is unable to provide for oneself, and such adult child has refused to provide for the child’s parent.” Such differences are major and commonplace among the 30 states with filial support laws. These are complex issues that are not easily resolved and will stand in the way of strict enforcement.

Due to the inherent difficulties in enforcement, there is very little case law surrounding filial support laws. In the case of Savoy v. Savoy, 641 A.2d 596 (Pa. Super. 1994), citing Pennsylvania’s filial responsibility laws, a mother brought suit against her son for financial assistance. The mother received Social Security benefits in the approximately $900 per month. She owed past medical bills of $10,000. The son challenged the lower court’s order requiring him to pay $125 per month to mother’s medical care providers for past medical expenses. He argued that she was not indigent because of her Social Security benefits. However, the court held that the mother was indigent because her Social Security benefits did not meet her “reasonable and maintenance expenses or her past medical expenses.”

In enforcement the courts have balanced the needs of the parents and the ability of the children to pay while still maintaining their immediate family. This maintenance of the child’s immediate family goes further than the bare necessities. As a New Jersey court has held, he “is entitled not only to enough for the immediate support for himself and his dependents but also to reasonable savings for sickness and old age.” The reasoning being “there would be less inducement to save a reasonable sum for old age
or perhaps even for the education of children if the fund could be wiped out if public assistance is rendered to a parent."

Finally, state filial laws differ as to whom has standing to bring a claim for enforcement. In addition to the indigent parents, some states allow government agencies to bring suit for reimbursement for the provision of medical expenses. For example, the Mississippi statute provides that relatives of an indigent can be liable to the county for $150 per month of care.\textsuperscript{xi}

Advocates of filial responsibility laws argue that strict enforcement will lower financial burden on taxpayers by shirting care expenses from the government (Medicaid) to the families of the indigent elderly. In theory, this argument is valid. Government spending on nursing care for the elderly is significant. In FY 2007, total Medicaid spending in the United States was over $319 billion dollars.\textsuperscript{xii} The individual states contributed over $138 billion to that figure.\textsuperscript{xiii} By strictly enforcing filial laws, states stand to save a tremendous amount of Medicaid dollars. For example, according to the AARP, Virginia spends $2.4 billion annually on nursing home care and 60% of which is funded by Medicaid.\textsuperscript{xiv} Louisiana spends $1.6 billion, 74% of which is funded by Medicaid. Georgia spends $2.3 billion, 74% of which is funded by Medicaid. All three states have filial responsibility laws. Imagine the savings Medicaid would see if these state’s filial responsibility laws were strictly enforced. The non-filial law state of New York spends $13.4 billion annually on nursing home care, 72% of which is funded by Medicaid.\textsuperscript{xv} Should it enact a filial support statute? Would/could it be enforced?

To some, Medicaid has been considered an “inheritance protector”. In other words, any elderly person might give their wealth to their children knowing that the
Medicaid program would cover their healthcare. Thus ensuring that their wealth would pass to their heirs without being depleted by their needed medical expenses. Strict enforcement of filial responsibility laws could help bring this practice to an end. If there were no longer a benefit to transferring their wealth to their children, the elderly would likely pay their medical expenses without relying on Medicaid.

However, there are major issues that could occur if filial responsibility laws were strictly enforced. In order to enforce the laws, the government must monitor the composition of families and the income levels and financial responsibilities of each member. While the government through Census and tax records already collects some of this information, a dedicated government agency would be required to effectively collect and consolidate the necessary information. Thus, strict enforcement of filial responsibility laws would likely require the creation of a new, massive governmental bureaucracy. Therefore the expense to strictly enforce these laws may outweigh potential benefits and governmental cost savings. Another consideration is how the program would be administered. Would the savings be enough to motivate the Congress to enact a federal filial support law? If a federal law were adopted, would it receive a similar reaction from the states as the current healthcare reform bill enjoys? It would be likely, perhaps even more so. Such a federal filial support law would most likely be challenged by those 20 states that currently do not have them. Their argument: 10th amendment concerns that the regulation of domestic relations is the realm of the states, not the federal government.

Another consideration is that strict enforcement of filial responsibility laws would lessen the amount of Medicaid funds that states receive from the federal government.
Because the amount of Medicaid funding a state receives is tied to its poverty level, if children financially supported their indigent parents that amount would likely be reduced. While to many, this would be a welcome development. However, history has shown that recipients of government funding are reluctant to reduce or cease that relationship. Therefore if states seek to strictly enforce their filial support laws, their share of Medicaid funding would decrease. Since Medicaid funding is more reliable than money raised through enforcement of filial laws states are unlikely to shift their policy. In other words, everyone wants their piece of the government pie.

Finally, the strict enforcement of filial responsibility laws may discourage parents from applying for governmental aid (i.e. Medicaid) for fear that their children may be sued. Once the indigent parent begins receiving aid, the government might pursue the children through legal means for reimbursement. One would think that most parents would not want to bring this burden upon their children.

From a biblical perspective filial responsibility is supported, even commanded. The Fifth Commandment tells us to “Honor your father and your mother, so that your days may be long in the land.”\textsuperscript{xvi} The Catholic Church believes that this commandment delineates the order of charity.\textsuperscript{xvii} They believe that “God has willed that, after him, we should honor our parents to whom we owe life and who have handed on to us the knowledge of God.”\textsuperscript{xviii} In 1st Timothy 5:4, the Apostle Paul commands that “if a widow has children or grandchildren, these should learn first of all to put their religion into practice by caring for their own family and so repaying their parents and grandparents, for this is pleasing to God.” The consequences of which is described in 1st Timothy 5:8: “Anyone who does not provide for their relatives, and especially for their own
household, has denied the faith and is worse than an unbeliever.” In other words, if one does not support their relatives, they have not followed the teachings of Christ. They are not they same as an unbeliever but worse than an unbeliever. This distinction may be based on who is committing the act. For example, charity is not expected from an unbeliever. However, for a believer (someone who carries the title "Christian") to let their relatives suffer is abhorrent.

Filial responsibility laws codify what most would consider to be a moral responsibility. In theory, strict enforcement of filial responsibility laws would decrease both federal and state Medicaid spending. However desirable, strict enforcement is not a practical alternative. There would be constitutional issues (due process and full faith & credit) and would require the creation of a massive government bureaucracy to administer and monitor the program. Besides its financial consequences, filial responsibility laws promote good and moral behavior. But is this the role of government? Are filial responsibility laws nothing more than “blue laws” imposing religious/cultural values on society? If they cannot be enforced, why should these laws remain on the books? These are the questions that must be discussed and debated in living rooms and state houses across America. There is a great hope that Americans will make good and moral choices concerning their families without the assistance of government.
i Elizabethan Poor Relief Act of 1601
ii Virginia Code § 22-88
iii Utah Code Ann. § 17-14-2
iv Virginia Code § 22-88
v Id.
vi Kentucky Revised Statutes § 530.050 (4)
vii S.D. Codified Law § 25-7-27
ix Id.

xi Miss. Code Ann. § 43-31-25
xii The Henry J. Kaiser Family Foundation-statehealthfacts.org,

  http://www.statehealthfacts.org/comparemaptable.jsp?ind=636&cat=4
xiii Id.
xiv AARP-Who pays for nursing home care?,

xv Id.

xvi Exodus 20:12
xvii Catechism of the Catholic Church, paragraph 2197
xviii Id.