

KINDER SOLUTIONS TO AN UNKIND APPROACH: SUPPORTING IMPOVERISHED AND ILL PARENTS UNDER NORTH CAROLINA'S FILIAL RESPONSIBILITY LAW

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ABSTRACT

The United States is caught in the crosshairs of skyrocketing health-care costs and a rapidly aging population. Families are buckling under the weight of supporting and caring for aging relatives, especially with the exorbitant costs of long-term care facilities, hospitalization, and chronic illness management. Although the government provides support through programs like Medicare and Medicaid, adult children, acting on an emotional impetus to support parents, often have to organize that support. They may even have a legal duty in over half of the states. These filial responsibility laws impose a duty on adult children to support their parents who cannot otherwise support themselves.

North Carolina is one of these states. State law holds that it is a misdemeanor, punishable by up to a year in jail, for an adult child to fail to support an ill or indigent parent. Much of the scholarship in this space has agreed that filial responsibility laws are inequitable and inefficient, but none have proposed solutions to achieve what these laws originally set out to do. Focusing on aging and poor people in North Carolina, this Note proposes three state-level, nonpartisan ideas to reform the landscape of elder care, providing families with more tools to support the ones they love and cherish. The North Carolina General Assembly should: (1) require employers that offer health insurance with dependent coverage to offer coverage of an employee's uninsured parents; (2) establish a reciprocal beneficiary status that conveys certain

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rights and responsibilities to parent-child caretaking relationships; and (3) expand Medicaid eligibility under the Affordable Care Act.

INTRODUCTION

You know the commandments: “You shall not commit adultery; you shall not kill; you shall not steal; you shall not bear false witness; honor your father and your mother.”¹

Blair grew up in a midsized town in eastern North Carolina as the middle child of three.² As a child, Blair watched her parents struggle with addiction, and the mobile home the family lived in would sometimes go without running water or heat. Once, Blair’s father traded her Wii for methamphetamine. Although Child Protective Services looked into the family, it never acted against Blair’s parents for abuse or neglect. In middle school, Blair left to live with her maternal grandparents and eventually graduated from college debt-free thanks to her grandparents’ financial support and scholarships. Today, Blair lives in Durham, North Carolina, with her husband, Chris, and their minor child, Isabelle. Blair works in consulting, earning roughly \$85,000 per year. This sum alone is more than enough to support Chris and Isabelle, but Blair’s employer-sponsored health insurance also covers them. Blair’s contact with her parents is sporadic and largely unilateral. Her parents are unhoused, bouncing around different shelters and friends’ homes. Neither parent is employed nor insured. Blair wants to help her parents, even if it is only to alleviate some of her grandparents’ guilt for cutting them off; luckily, her financial situation allows her to financially support them. Considering her parents’ neglect, Blair may not have a moral or religious duty to support her parents. But does she have a legal duty to support her parents?

North Carolina’s filial responsibility law³ answers this in the affirmative. Since Blair has sufficient income after reasonably

1. *Luke* 18:20 (New Revised Standard).

2. This fact pattern is lifted from reality, with minor details changed to protect the anonymity of the individuals and reflect the jurisdiction discussed in this Note.

3. The filial responsibility statute reads,

If any person being of full age, and having sufficient income after reasonably providing for his or her own immediate family shall, without reasonable cause, neglect to maintain and support his or her parent or parents, if such parent or parents be sick or not able to work and have not sufficient means or ability to maintain or support themselves, such person shall be deemed guilty of a Class 2 misdemeanor; upon

providing for her own immediate family, if she neglects to support her parents, who are unable to work and cannot support themselves, she could be deemed guilty of a Class 2 misdemeanor.⁴ Blair would likely invoke an affirmative defense that she has “reasonable cause” to neglect her parents, but it is untested whether the childhood neglect she experienced amounts to reasonable cause.⁵ Furthermore, even though the statute states that siblings “equitably” share the duty to support,⁶ Blair is the only one who has sufficient income left over after providing for her own family. At the end of the day, Blair would likely be the only one on the hook for her parents’ living and medical expenses.⁷

Realistically, it is nearly impossible that Blair will be prosecuted under the state’s filial responsibility law. There is no suggestion that North Carolina has ever imposed criminal liability through its filial responsibility statute, but the law remains on the books.⁸ Moreover, the filial responsibility statute is not a phenomenon unique to North Carolina: at the time of this Note’s writing, twenty-four states have a filial responsibility statute.⁹ The American filial responsibility laws

conviction of a second or subsequent offense such person shall be guilty of a Class 1 misdemeanor.

N.C. GEN. STAT. § 14-326.1 (2019).

4. *See id.* (“If any person being of full age, and having sufficient income . . . shall . . . neglect to maintain and support his or her parent or parents, . . . such person shall be deemed guilty of a Class 2 misdemeanor . . .”).

5. *See infra* note 48 and accompanying text for a discussion of North Carolina’s filial responsibility law’s affirmative defenses.

6. § 14-326.1.

7. North Carolina law is silent about whether the children or the parents of indigent adults are first liable for supporting them. In Utah, “[c]hildren shall first be called upon to support their parents,” and if “there are none of sufficient ability, the parents of such poor person shall be next called upon.” UTAH CODE ANN. § 17-14-2 (LexisNexis 2020). In contrast, Delaware specifies that “the duty to support a poor person unable to support himself/herself rests upon the spouse, parents, or children, in that order.” DEL. CODE ANN. tit. 13, § 503 (2020).

8. *Cf.* Kara Wenzl, *Losing Loved Ones and Your Livelihood: Re-Evaluating Filial Responsibility Laws*, 29 LOY. CONSUMER L. REV. 391, 394 (2017) (“[A]lthough many of the states that had filial responsibility laws rarely enforced them, the statutes were still an available tool for courts and state legislatures.”).

9. These states are Alaska, ALASKA STAT. § 25.20.030 (2019), Arkansas, ARK. CODE ANN. § 20-47-106 (2019), California, CAL. FAM. CODE §§ 4400–4405 (West 2019), Delaware, DEL. CODE ANN. tit. 13, §§ 503–506 (2020), Georgia, GA. CODE ANN. § 36-12-3 (2019), Indiana, IND. CODE ANN. § 36-16-17-1 (West 2019), Kentucky, KY. REV. STAT. ANN. § 530.050 (West 2019), Louisiana, LA. CIV. CODE ANN. art. 236 (2016), Mississippi, MISS. CODE ANN. § 43-31-25 (2019), Montana, MONT. CODE ANN. §§ 40-6-214–40-6-301 (2019), Nevada, NEV. REV. STAT. § 428.070 (2019), North Carolina, § 14-326.1, North Dakota, N.D. CENT. CODE § 14-09-10 (2019), Ohio,

impose a legal duty on children to provide financial support for their parents who are unable to support themselves.¹⁰ The codification of filial responsibility laws developed in the 1850s and peaked in the 1950s, when as many as forty-five states had this type of statute.¹¹

In a sense, the filial responsibility law is the converse of the law criminalizing child neglect.¹² Just as child neglect statutes criminalize the dereliction of the caretaking duty flowing from parent to minor child, the filial responsibility law criminalizes the dereliction of the caretaking duty flowing from adult child to parent. Filial responsibility laws, which create the duty for adult children to support their parents, are rarely enforced when compared to other family-relation laws establishing the duty for spouses to support each other and for parents to support their minor children.¹³ Perhaps this underenforcement stems from the fact that state and federal governments have funneled more resources into recognizing and supporting the relationships between parents and their minor children and those between spouses.¹⁴ For instance, the Affordable Care Act (“ACA”) required health insurance

OHIO REV. CODE ANN. § 2919.21 (LexisNexis 2019), Oregon, OR. REV. STAT. § 109.010 (2019), Pennsylvania, 23 PA. CONS. STAT. §§ 4601–4609 (2019), Rhode Island, 15 R.I. GEN. LAWS §§ 15-10-1–15-10-7 (2019), South Dakota, S.D. CODIFIED LAWS §§ 25-7-27–25-7-28 (2019), Tennessee, TENN. CODE ANN. §§ 71-5-103–71-5-115 (2019), Utah, UTAH CODE ANN. § 17-14-2 (LexisNexis 2020), Vermont, VT. STAT. ANN. tit. 15, §§ 202–203 (2019), Virginia, VA. CODE ANN. § 20-88 (2019), and West Virginia, W. VA. CODE § 9-5-9 (2019).

10. Wenzl, *supra* note 8, at 392; Seymour Moskowitz, *Filial Responsibility Statutes: Legal and Policy Considerations*, 9 J.L. & POL’Y, 709, 709 (2001).

11. Wenzl, *supra* note 8, at 393; Hunter Bruton, *Improving Familial and Communal Eldercare in the United States: Lessons from China and Japan*, 102 MINN. L. REV. HEADNOTES 1, 20 (2018).

12. For instance, if Blair neglected Isabelle, she could be convicted of a Class 2 misdemeanor under North Carolina General Statute § 14-322, which punishes the failure to support minor children. N.C. GEN. STAT. § 14-322 (2019).

13. A Westlaw search for child neglect cases in North Carolina returned 184 results, while a Westlaw search for elder neglect cases in North Carolina returned two results. *See* WESTLAW, <https://1.next.westlaw.com> (last visited Aug. 3, 2021) (first search “child neglect,” then search “elder neglect,” with the filter set to North Carolina state cases only). Going back to Blair’s story, she was easily able to add her husband and her child as beneficiaries of her employer-provided health insurance, but she could not add her siblings or her parents due to an artificial limitation on the health insurance unit. *See infra* Part II.B.

14. *See infra* Part III for a discussion of family law’s channeling function. Professor Linda McClain explicates this core purpose of family law in *Love, Marriage, and the Baby Carriage: Revisiting the Channelling Function of Family Law*, 28 CARDOZO L. REV. 2133, 2133–34 (2007).

plans to offer coverage to subscribers' adult children until the age of twenty-six, eight years beyond the age of majority.¹⁵

State filial responsibility laws dropped off in popularity when the federal government rolled out Medicare and Medicaid in 1965.¹⁶ Unlike Medicare, Medicaid is a joint federal and state program that is administered by state and local governments within federal guidelines.¹⁷ Individuals must meet their state's rules based on factors like household size and disability to qualify for Medicaid, unless their state enacted the Medicaid expansion under the ACA, under which they can qualify based on income alone.¹⁸ North Carolina is one of the twelve states that refrained from adopting the Medicaid expansion.¹⁹ The 2020 General Assembly tabled Medicaid expansion in order to prioritize Medicaid's transition to managed care.²⁰ Although Governor

15. *Young Adults and the Affordable Care Act: Protecting Young Adults and Eliminating Burdens on Businesses and Families FAQs*, EMP. BENEFITS SEC. ADMIN., <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/young-adult-and-aca> [<https://perma.cc/P5CS-DR76>].

16. Jared M. DeBona, Comment, *Mom, Dad, Here's Your Allowance: The Impending Reemergence of Pennsylvania's Filial Support Statute and an Appeal for Its Amendment*, 86 TEMP. L. REV. 849, 858 (2014). Medicare is the federal health insurance program for people who are sixty-five or older and certain younger people with disabilities. *What's Medicare?*, U.S. CTRS. FOR MEDICARE & MEDICAID SERVS., <https://www.medicare.gov/what-medicare-covers/your-medicare-coverage-choices/whats-medicare> [<https://perma.cc/779H-RJRD>]. Medicaid is an insurance program that serves low-income people of every age and is the largest source of health insurance coverage in the country. *Eligibility*, U.S. CTRS. FOR MEDICARE & MEDICAID SERVS., <https://www.medicaid.gov/medicaid/eligibility/index.html> [<https://perma.cc/A93C-F72S>].

17. *What is the Difference Between Medicare and Medicaid?*, U.S. DEP'T OF HEALTH & HUM. SERVS., <https://www.hhs.gov/answers/medicare-and-medicaid/what-is-the-difference-between-medicare-medicaid/index.html> [<https://perma.cc/PNG9-Q68V>] (last updated Oct. 2, 2015).

18. *Medicaid Expansion & What It Means for You*, HEALTHCARE.GOV, <https://www.healthcare.gov/medicaid-chip/medicaid-expansion-and-you> [<https://perma.cc/J6V9-CY6P>].

19. *Status of State Medicaid Expansion Decisions: Interactive Map*, KAISER FAM. FOUND. (May 26, 2021), <https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map> [<https://perma.cc/3MCP-A468>].

20. Rose Hoban, *In Late Night Vote, Legislators Wrap Work on Medicaid Bill*, N.C. HEALTH NEWS (June 26, 2020), <https://www.northcarolinahealthnews.org/2020/06/26/in-late-night-vote-legislators-wrap-work-on-medicaid-bill> [<https://perma.cc/88RR-RDHG>].

Roy Cooper has consistently pushed for Medicaid expansion,²¹ the Republican General Assembly remains unwilling to consider it.²²

Health care, especially long-term care,²³ is a deeply difficult puzzle that most older people and their families need to figure out. The duty to support enshrined in the North Carolina filial responsibility statute exposes the troubling inefficiencies, insufficiencies, and inequities in the state's elder-care system. Like the elder-care systems in other states, North Carolina's is buckling under the pressure imposed by a population that is getting increasingly older, a demographic trend that some commentators have dubbed a "silver tsunami."²⁴ The addition of the COVID-19 pandemic revealed even more cracks and vulnerabilities in the caregiving system for the elderly.²⁵

21. See, e.g., *Gov. Roy Cooper Makes Passionate Plea for Medicaid Expansion While Proposing State Budget*, ABC11 (Aug. 26, 2020), <https://abc11.com/nc-budget-governor-roy-cooper-medicaid-coronavirus/6390400> [<https://perma.cc/5TW3-UCE2>] ("Cooper also put in a plea for Medicaid expansion, which he said would not cost the state anything, but would be covered by federal funds and private health insurance companies. Cooper cited unemployment due to the pandemic as a critical reason why Medicaid expansion is urgent.")

22. Hoban, *supra* note 20. In 2019, 46.3 percent of North Carolinians had health insurance through an employer, 17.9 percent were insured through Medicaid, 15.3 percent were insured through Medicare, 6.7 percent were insured through a policy purchased directly from an insurance company, 11.4 percent were uninsured, and 2.4 percent through the military. *Health Insurance Coverage of the Total Population*, KAISER FAM. FOUND., <https://www.kff.org/other/state-indicator/total-population> [<https://perma.cc/54TV-P3F8>].

23. Long-term care includes in-home care and residential care, such as an assisted living facility or nursing home, that addresses the activities of daily living (such as bathing or eating). OFF. OF THE ASSISTANT SEC'Y FOR PLAN. & EVALUATION, U.S. DEP'T OF HEALTH & HUM. SERVS., *LONG-TERM SERVICES AND SUPPORTS FOR OLDER AMERICANS: RISKS AND FINANCING 1* (2016), <https://aspe.hhs.gov/system/files/pdf/106211/ElderLTCrb-rev.pdf> [<https://perma.cc/9GZW-MUWL>]. Approximately 50 percent of people turning sixty-five today will need long-term care. *Id.*

24. See, e.g., Francesca Flood, *Silver Tsunami of Retirement: Implications for Consideration*, in *GLOBAL ENCYCLOPEDIA OF PUBLIC ADMINISTRATION, PUBLIC POLICY, AND GOVERNANCE* (Ali Farazmand ed., 2020) ("Given the record number of these individuals we are facing a global silver tsunami of retirement and aging."). The silver or gray tsunami refers to the rapid aging of the world, driven in part by longer life expectancies and lower fertility rates. David Rotman, *Why You Shouldn't Fear the Gray Tsunami*, MIT TECH. REV. (Aug. 21, 2019), <https://www.technologyreview.com/2019/08/21/133311/why-you-shouldnt-fear-the-gray-tsunami> [<https://perma.cc/C48H-S7CY>].

25. See Liz O'Donnell, *Balancing Work and Elder Care Through the Coronavirus Crisis*, HARV. BUS. REV. (Mar. 31, 2020), <https://hbr.org/2020/03/balancing-work-and-elder-care-through-the-coronavirus-crisis> [<https://perma.cc/P33D-E53W>] (reporting that there are "millions of people who are juggling work and elder care in the midst of" the COVID-19 pandemic). Not only are adults aged 60 and older especially vulnerable to COVID-19, those in nursing homes and other long-term care facilities are at increased risk for infection and severe illness. *People Who Live in a Nursing Home or Long-Term Care Facility*, U.S. CTRS. FOR DISEASE CONTROL &

Fortunately, it “is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”²⁶ North Carolina is well-positioned to serve as a model for other states’ elder-care policymaking as it grapples with the impending silver tsunami.²⁷ First, North Carolina can enact legislation requiring private employers to allow employees to add their parents as beneficiaries of their employer-provided health insurance. Second, North Carolina can offer a voluntary reciprocal beneficiary status that allows an adult child and their parent to enjoy a select subset of the rights and responsibilities traditionally flowing from marriage. Third, North Carolina could take full advantage of federal resources offered by the ACA’s Medicaid expansion.²⁸ Above all, the state must

PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-in-nursing-homes.html> [<https://perma.cc/4WU8-WRLN>] (last updated Sept. 11, 2020).

26. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting); see also Bradley A. Blakeman, Opinion, *States Are the Laboratories of Democracy*, HILL (May 7, 2020, 7:30 AM), <https://thehill.com/opinion/judiciary/496524-states-are-the-laboratories-of-democracy> [<https://perma.cc/55T9-GKDD>] (“A state that finds a better way of doing something for their own population can be a model for dealing with similar challenges by other states.”).

27. A quarter of North Americans will be sixty-five or older by 2050. Rotman, *supra* note 24. Commentators are divided on the precise impact of the silver tsunami on health-care systems and costs, but they agree that governments should look at reform measures in anticipation of the stress on health-care systems. René Amalberti, Wendy Nicklin & Jeffrey Braithwaite, *Preparing National Health Systems To Cope with the Impending Tsunami of Ageing and Its Associated Complexities: Towards More Sustainable Health Care*, 28 INT’L J. QUALITY HEALTH CARE 412, 413 (2016); see also Mitchell T. Heflin, *Surviving the Silver Tsunami: Training a Health Care Workforce To Care for North Carolina’s Aging Population*, 77 N.C. MED. J. 102, 103, 106 (2016) (“By 2034, the number of people in [North Carolina] over 65 years of age will approach 2.5 million and will make up just over 20% of the total population.”).

28. This Note focuses on Medicaid instead of Medicare or Social Security for a few reasons. First, Medicare is federally administered while Medicaid is run by state and local governments within federal guidelines. *Differences Between Medicare and Medicaid*, MEDICARE INTERACTIVE, <https://www.medicareinteractive.org/get-answers/medicare-basics/medicare-coverage-overview/differences-between-medicare-and-medicaid> [<https://perma.cc/FX6W-R5XR>]. This Note does not argue for changes to a federal scheme, but instead suggests changes that North Carolina can make statewide. Second, Medicare primarily serves people over the age of sixty-five, while Medicaid serves low-income people at every age. *Id.* Medicaid expansion would capture the indigent and ill adults in the fifty-five to sixty-four age range, who cannot qualify for Medicare based on their age. See TARA STRAW, JESSE CROSS-CALL, GIDEON LUKENS & MATT BROADDUS, CTR. ON BUDGET POL’Y & PRIORITIES, RECOVERY LEGISLATION SHOULD BUILD ON AFFORDABLE CARE ACT IMPROVEMENTS IN COVERAGE FOR ADULTS OVER 55, at 1 (2021), <https://www.cbpp.org/sites/default/files/5-13-21health.pdf> [<https://perma.cc/5G4R-EQYN>] (describing how the ACA’s Medicaid expansion decreased the uninsured rate of adults ages fifty-five to sixty-four by one-third). Accordingly, it is unnecessary to discuss dual-eligible beneficiaries: those who are eligible for full Medicare benefits and different levels of benefits from

move from the antiquated filial responsibility statute toward novel, contemporary solutions that account for the state's increased role in family life. This Note does not take a stance on whether the filial responsibility statute should be repealed; it merely lays out the above three ideas that build on existing vehicles for elder-care and health-care access.

Part I of this Note will discuss the general landscape of filial responsibility laws before diving into North Carolina's filial responsibility statute. Part II will describe other forms of private and public support in contemporary America for parents. Part III will explore three potential solutions that the North Carolina General Assembly has the authority to implement. Each of the proposals has its own strengths and weaknesses, and it is up to the legislature to use its fact-finding function²⁹ to settle on the best option or combination of options.

state Medicaid programs. Third, Medicaid covers long-term care services, which may include a home health aide, assisted living facility, or nursing home, while Medicare does not. Richard Eisenberg, *Medicare, Medicaid And Long-Term Care: Your Questions Answered*, FORBES (Nov. 21, 2017, 1:04 PM), <https://www.forbes.com/sites/nextavenue/2017/11/21/medicare-medicare-and-long-term-care-your-questions-answered/?sh=4bf4f80776c9> [<https://perma.cc/JVW3-N6CU>]. Hence, changes to Medicaid can most precisely help the indigent and ill parents that the filial responsibility law aims to support. Social Security also exceeds the scope of this Note. The people who qualify for Social Security are unlikely to be the population protected by the filial responsibility statute, as they would receive Supplemental Security Income payments, which are, in theory, enough for subsisting. See *Supplemental Security Income*, SOC. SEC. ADMIN., <https://www.ssa.gov/benefits/ssi> [<https://perma.cc/W552-THHX>] (“The Supplemental Security Income (SSI) program provides monthly payments to adults and children with a disability or blindness who have income and resources below specific financial limits. SSI payments are also made to people age 65 and older without disabilities who meet the financial qualifications.”). More importantly, Social Security payments are low, and likely insufficient for covering medical expenses, including long-term care. See Kimberly Johnson, *Here's How Much NC Social Security Payments Will Be in 2020*, PATCH (Dec. 19, 2019, 11:44 AM), <https://patch.com/north-carolina/charlotte/here-s-how-much-nc-social-security-payments-will-be-2020> [<https://perma.cc/N9Y6-HUTW>] (explaining that the average Social Security payment in 2020 in North Carolina is \$18,330 per year, or \$1,527.50 per month).

29. See Caitlin E. Borgmann, *Rethinking Judicial Deference to Legislative Fact-Finding*, 84 IND. L.J. 1, 1 (2009) (“It is traditionally assumed that the role of ascertaining and evaluating the social facts underlying a statute belongs to the legislatures.”).

I. BACKGROUND OF FILIAL RESPONSIBILITY LAWS

A. *General History of Filial Responsibility Laws*

The fifth of the Ten Commandments reads: “Honor your father and your mother, so that your days may be long in the land that the Lord your God is giving you.”³⁰ This is perhaps the earliest articulation of children’s duty to support their parents.³¹ However, this Note focuses on children’s legal—not moral or religious—obligation to support their parents.

Like many laws, American filial responsibility laws are imported from England.³² The Elizabethan Poor Relief Act of 1601 required that “*the children of every poor, old, blind, lame, and impotent person*’ support that relative to the extent of his or her ability.”³³ A 1705 Pennsylvania law similarly imposed the duty of support upon “*the children of every poor, old, blind, lame, and impotent person*.”³⁴ These laws shift the state’s burden of financing the indigent to relatives.³⁵ Enforcement of filial responsibility statutes fizzled out in the mid-twentieth century.³⁶ When the country’s economy urbanized, life expectancies increased, and women entered the workforce, elder care shifted from a strictly familial obligation to an obligation shouldered by families and the government.³⁷ Some states repealed their filial responsibility laws,³⁸ but in the twenty-four states that kept the laws,³⁹ courts have generally upheld these statutes from constitutional attacks

30. Amy Zietlow & Naomi Cahn, *The Honor Commandment: Law, Religion, and the Challenge of Elder Care*, 30 J.L. & RELIGION 229, 232 (2015) (quoting *Exodus* 20:12 (New Revised Standard)).

31. See Moskowitz, *supra* note 10, at 710 (listing ancient legal rules requiring the support of parents that started with early Roman law and Jewish and Christian scripture).

32. Shannon Frank Edelstone, *Filial Responsibility: Can the Legal Duty To Support Our Parents Be Effectively Enforced?*, 36 FAM. L.Q. 501, 502 (2002).

33. Moskowitz, *supra* note 10, at 711 (footnote omitted) (quoting Poor Relief Act, 43 Eliz. c. 2).

34. *Id.* at 711–12 (emphasis added).

35. See Sylvia Macon, Comment, *Grow Up Virginia: Time To Change Our Filial Responsibility Law*, 51 U. RICH. L. REV. 265, 275 (2016) (“The strongest and primary justification for filial responsibility laws is to shift the burden of financing the indigent into the private sector . . .”).

36. Bruton, *supra* note 11, at 20.

37. *Id.* at 7–8.

38. *Id.* at 20.

39. See *supra* note 9 for a list of states with a filial responsibility statute.

alleging violations of the Due Process and Equal Protection Clause of the Fourteenth Amendment.⁴⁰

Filial responsibility laws vary significantly from state to state: some only impose the caregiving duty⁴¹ while others require direct financial support.⁴² Of those “that require direct financial support, some consider” the adult child’s financial ability and some do not.⁴³ Most notably, the filial responsibility statutes in twelve states impose criminal penalties.⁴⁴

B. North Carolina’s Filial Responsibility Law

North Carolina is among the significant minority of states that impose criminal liability.⁴⁵ Under §14-326.1, it is a Class 2 misdemeanor for an adult child to neglect to support their parent who is sick or not able to work and lacks sufficient means or ability to support themselves.⁴⁶ The statute explicitly provides a defense for children who are unable to provide support because they lack sufficient income after reasonably providing for their immediate family.⁴⁷ The statute also has a “reasonable cause” affirmative defense, which may

40. *E.g.*, *Americana Healthcare Ctr. v. Randall*, 513 N.W.2d 566, 572–74 (S.D. 1994) (reasoning that South Dakota’s filial responsibility statute does not violate equal protection and does not deprive individuals of due process); *Swoap v. Superior Court*, 516 P.2d 840, 852 (Cal. 1973) (holding that California’s filial responsibility statute is constitutional, as it “rests soundly on our Anglo-American legal tradition”); *see also* Terrance A. Kline, *A Rational Role for Filial Responsibility Laws in Modern Society?*, 26 *FAM. L.Q.* 195, 209–10 (1992) (describing how constitutional challenges to filial responsibility statutes have been unsuccessful). For instance, the California Supreme Court held that, although the Old Age Security Law “may involve harsh results in certain instances,” it does not violate equal protection to legally require adult children to support their parents. *Swoap*, 516 P.2d at 852.

41. Bruton, *supra* note 11, at 21 (citing Usha Narayanan, Note, *The Government’s Role in Fostering the Relationship Between Adult Children and Their Elder Parents: From Filial Responsibility Laws to . . . What?, A Cross-Cultural Perspective*, 4 *ELDER L.J.* 369, 384 (1996)). Alaska characterizes this caregiving duty to mean that each child must “maintain the child’s parents.” ALASKA STAT. § 25.20.030 (2020).

42. Bruton, *supra* note 11, at 21.

43. *Id.*

44. *Id.* Massachusetts punishes “neglect or refusal to support parent” with a fine not exceeding \$200 and/or imprisonment up to a year. MASS. GEN. LAWS ch. 273, § 20 (2020). Similarly, Vermont’s penalty for an adult child who neglects or unreasonably refuses to support a destitute parent is a fine not exceeding \$300 and/or imprisonment up to two years. VT. STAT. ANN. tit. 15, § 202 (2020).

45. Moskowitz, *supra* note 10, at 717 n.42.

46. N.C. GEN. STAT. § 14-326.1 (2019).

47. *Id.*

allude to situations where the child was not supported by their parents during their minority.⁴⁸

The North Carolina General Assembly enacted § 14-326.1 on May 19, 1955.⁴⁹ On June 26, 1969, the General Assembly amended the statute to impose a punishment for a first offense consisting of a fine not exceeding five hundred dollars or imprisonment not exceeding six months, or both, in the discretion of the court.⁵⁰ Then, in 1993, the General Assembly amended the punishment for a first offense to be a Class 2 misdemeanor and for a second or subsequent offense a Class 1 misdemeanor.⁵¹ The General Assembly's final word on the matter came in 1998, where it noted that "a decree of emancipation shall not alter the application of G.S. 14-326.1."⁵² The statute's legislative history is limited. The 1977 General Assembly noted that children, who often lived in three-generation families, "were regarded legally and socially as responsible for the other members of the family. They fulfilled their filial duties, expecting to be cared for in turn by their own offspring."⁵³

48. Cf. Moskowitz, *supra* note 10, at 718 (noting that for statutes imposing criminal liability, "a defense is explicitly provided by many states for children who were not supported by their parents during their minority, or are unable to provide the support" (footnotes omitted)). North Carolina's filial responsibility statute explicitly carves out a defense for adult children who are unable to provide the support, but it is unclear whether the "reasonable cause" clause is meant to provide an out for children who were not supported by their parents during their minority. In comparison, Virginia's similar criminal filial responsibility statute explicitly provides a defense based on childhood neglect: "This section shall not apply if there is substantial evidence of desertion, neglect, abuse or willful failure to support any such child by the father or mother." VA. CODE ANN. § 20-88 (2009).

49. 1955 N.C. Sess. Laws 1083. The 1955 statute reads,

If any person being of full age, and having sufficient income after reasonably providing for his or her own immediate family shall, without reasonable cause, neglect to maintain and support his or her parent or parents, if such parent or parents be sick or not able to work and have not sufficient means or ability to maintain or support themselves, such person shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined or imprisoned in the discretion of the court.

Id.

50. 1969 N.C. Sess. Laws 1197.

51. 1993 N.C. Sess. Laws 2441. A misdemeanor that has a specific punishment but is not assigned a classification by the General Assembly with a maximum punishment greater than 30 days but not more than six months imprisonment is a Class 2 misdemeanor. N.C. GEN. STAT. § 14-3(a) (2008). A misdemeanor with a maximum punishment greater than six months imprisonment is a Class 1 misdemeanor. *Id.*

52. 1998 N.C. Sess. Laws 862.

53. LEGIS. RSCH. COMM'N, REPORT TO THE 1977 GENERAL ASSEMBLY OF NORTH CAROLINA, SECOND SESSION: AGING 3 (1978), <https://www.ncleg.gov/Files/Library/studies/1978/st11088.pdf> [<https://perma.cc/CBW7-NGVY>].

In 2020, four decades later, children still have responsibilities for their parents.

Naturally one may wonder, if § 14-326.1 has lain dormant for so long, why does it matter now? For starters, the expressive function of law is inherently valuable.⁵⁴ The law can reflect existing social norms and “change the social meaning of action through a legal expression or statement about appropriate behavior.”⁵⁵ Laws shape how people allocate their money, including saving for children or for retirement.⁵⁶ In that regard, states can use a filial responsibility statute to encourage both parents to plan for their eventual retirement and for children to save money for the chance that their parents will depend on them for support.

The filial responsibility statute also encapsulates the moral duty for children to care for their parents. The statute “reinforces these informal norms and serves an important role . . . that could, and should, be strengthened since caring for aging and ill parents can impose burdens on the caretakers that secular laws often fail to alleviate.”⁵⁷ On the other hand, as a whole, fewer people know about filial responsibility statutes than about other laws governing domestic relations, so its expressive function may be limited as well as its deterrent value.⁵⁸

Finally, although § 14-326.1 is not enforced,⁵⁹ in two twentieth-century cases, North Carolina courts referenced it when discussing the child’s duty to support their parent.

54. See Maggie Wittlin, Note, *Buckling Under Pressure: An Empirical Test of the Expressive Effects of Law*, 28 YALE J. REG. 419, 419 (2011) (explaining the expressive function of law, which holds that “when a legislature passes a statute or a court hands down a decision, it communicates social values. In this way, law affects behavior not only by what it *does* but also by what it *says*”).

55. Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2031 (1996).

56. *Id.* at 2041–42.

57. Zietlow & Cahn, *supra* note 30, at 232.

58. Compare Term Search in Forum, CITY-DATA.COM, <http://www.city-data.com/forum> [<https://perma.cc/2KL2-CJTX>] (within North Carolina City-Data Online Forum, a search for “Filial Support” yields only four results), with Term Search in Forum, CITY-DATA.COM, <http://www.city-data.com/forum> [<https://perma.cc/WD72-939X>] (within North Carolina City-Data Online Forum, a search for “Child Support” yields over 500 results).

59. Leon Abbas, *Paying for Your Parents’ Long-term Care: Filial Responsibility Law in North Carolina*, TOWNSEND ASSET MGMT. CORP (Nov. 14, 2019), <https://www.assetmgr.com/blog-01/paying-your-parents-long-term-care-filial-responsibility-law-north-carolina-0> [<https://perma.cc/2SFX-BWKP>]; *Support Your Parents or Go to Jail?*, BRINKLEY WALSER STONER (Nov. 21, 2014), <https://brinkleywalsersoner.com/support-parents-filial-responsibility> [<https://perma.cc/>

In *Shealy v. Associated Transport, Inc.*,⁶⁰ the North Carolina Supreme Court affirmed a workers' compensation judgment that divided the award equally between the mother and widower of the deceased employee.⁶¹ The North Carolina Industrial Commission found that the deceased employee's mother "was wholly dependent on the employee for support" and "had been wholly dependent for more than three months, actually for several years."⁶² Thus, citing § 14-326.1, the court concluded that the deceased employee "had the legal duty to support her" mother.⁶³

Then, in *Stutts v. Addair*,⁶⁴ the only other case interpreting § 14-326.1, the Court of Appeals of North Carolina held that there is "a more liberal evidentiary standard for proving reasonable expectations to income when the decedent is an adult child."⁶⁵ Adult children do not typically support their self-sufficient parents.⁶⁶ But, when parents need financial assistance, the "average adult child intends" and the "average parents reasonably expect" that the child will provide whatever monetary support they are able to provide.⁶⁷ This expectation that an adult child with sufficient income will maintain and support their parents who are unable to support themselves, or otherwise face a fine or imprisonment for dodging this duty, is enshrined in North Carolina's filial responsibility law.⁶⁸ Although the case law interpreting § 14-326.1 is sparse, it indicates that the state judiciary is aware of the statute's existence and its legislative purpose.⁶⁹

XS7X-DXB3]; see also Allison E. Ross, Note, *Take Care of Our Caretakers: Using Filial Responsibility Laws To Support the Elderly Beyond the Government's Assistance*, 16 ELDER L.J. 167, 168 (2008) ("Nearly thirty states have enacted either criminal or civil filial responsibility laws requiring adult children to financially support their parents in financial need. Yet eleven states have never enforced these laws, and most of the other states only rarely do so." (footnotes omitted)).

60. *Shealy v. Associated Transp., Inc.*, 114 S.E.2d 702 (N.C. 1960).

61. *Id.* at 703.

62. *Id.* at 706.

63. *Id.*

64. *Stutts v. Addair*, 380 S.E.2d 411 (N.C. Ct. App. 1989).

65. *Id.* at 418.

66. *Id.* at 417.

67. *Id.*

68. *Id.* at 417-18.

69. Although two cases are a small sample size, the parental dependency on the female child presents a familiar picture. This reflects the continuing trend of women being in the sandwich generation, where they have practical, if not legal, responsibility to care for their children and

II. HEALTH CARE IS THE MAIN PROBLEM FOR INDIGENT AND ILL PARENTS

A. *The Confluence of an Aging Population and Poverty in North Carolina*

North Carolina is aging and poor.⁷⁰ North Carolina ranked ninth nationally in the number of people over the age of sixty-five.⁷¹ In 2019, the state had more people over the age of sixty than under the age of eighteen; by 2025, one in five North Carolinians will be older than sixty-five.⁷² As the baby boomer generation ages, the population over sixty-five is projected to grow 61 percent in the next two decades, straining the state's long-term care services and supports.⁷³ Of the adults aged sixty-five and older, 8.7 percent lived below the poverty level in 2020.⁷⁴ However, the poverty level likely underestimates the true burden because it does not adjust for expenses such as housing and out-of-pocket medical expenses.⁷⁵ Sixty-three percent of adults ages sixty-five and older have at least two chronic conditions, leading to higher out-of-pocket medical expenses.⁷⁶ Even before the devastating impact of the COVID-19 pandemic, the elderly homeless population was expected to triple.⁷⁷ Section § 14-326.1 covers North Carolina's elderly poor, who are the focus of this Note.

their parents. Elizabeth Conradson Cleary, *Childhood Obesity, Baby Boomers and the Echo Boom*, 7 MARQ. ELDER'S ADVISOR 137, 148-49 (2005).

70. *North Carolina is Aging!*, N.C. DEP'T OF HEALTH & HUM. SERVS., <https://files.nc.gov/ncdhhs/documents/files/NC%20State%20Aging%20Profile%202018.pdf> [<https://perma.cc/V34E-YF6Y>] [hereinafter *North Carolina is Aging!*]; Brian Kennedy, *North Carolina's Poverty Rate Remains 15th Highest in the Nation*, N.C. JUST. CTR. (Sept. 30, 2019), <https://www.ncjustice.org/publications/north-carolinas-poverty-rate-remains-15th-highest-in-the-nation> [<https://perma.cc/9TLP-5KPZ>] ("1.4 million North Carolinians lived in poverty, making North Carolina the state with the 15th highest poverty rate.").

71. *North Carolina is Aging!*, *supra* note 70.

72. *Id.*

73. *Id.*

74. Trend of Poverty - Ages 65+ in North Carolina, AM.'S HEALTH RANKINGS, https://www.americashealthrankings.org/explore/senior/measure/poverty_sr/state/NC?edition-year=2020 [<https://perma.cc/4KAY-MNR6>].

75. *Id.*

76. *Id.*

77. Fernanda Santos, *Elderly and Homeless: America's Next Housing Crisis*, N.Y. TIMES (Sept. 30, 2020), <https://www.nytimes.com/2020/09/30/magazine/homeless-seniors-elderly.html> [<https://perma.cc/U7HJ-U5Z5>].

Health-care spending is a huge cost for the elderly and for their children. As life expectancies increase, more and more children will have to shoulder the concern, physical labor, and expense of caring for their parents.⁷⁸ A 2019 study found that seniors alone withdrew an estimated \$22 billion from their long-term savings in a twelve-month period for health-care-related expenses.⁷⁹ This figure does not account for any financial contributions from seniors' relatives. If a parent requires residential care, a family can expect to spend \$6,950 per month on average for a semiprivate nursing home room or \$7,711 per month on average for a private nursing home room.⁸⁰ Medicaid covers nursing home care, unlike Medicare.⁸¹ Families may also turn to purchasing long-term care insurance⁸² to help cover the costs of a nursing home, assisted living, or in-home care.⁸³

B. Private Health Insurance and Its Limitations

Although the parents who are covered by § 14-326.1 are unlikely to have private insurance,⁸⁴ it is still relevant as an avenue for adult

78. Moskowitz, *supra* note 10, at 725.

79. Michelle Singletary, *Seniors Report Spending \$22 Billion from Savings To Cover Health-Care Costs*, WASH. POST (Apr. 22, 2019, 7:08 AM), <https://www.washingtonpost.com/business/2019/04/22/seniors-report-spending-billion-savings-cover-health-care-costs> [<https://perma.cc/G7N8-FVR5>].

80. Scott Witt & Jeff Hoyt, *Nursing Home Costs*, SENIORLIVING.ORG, <https://www.seniorliving.org/nursing-homes/costs> [<https://perma.cc/57V5-WEZU>] (last updated June 24, 2020).

81. *See How Can I Pay for Nursing Home Care?*, U.S. CTRS. FOR MEDICARE & MEDICAID SERVS., <https://www.medicare.gov/what-medicare-covers/what-part-a-covers/how-can-i-pay-for-nursing-home-care> [<https://perma.cc/2VN6-KMWN>] (stating that most nursing homes accept Medicaid, but individuals may need Medicare to pay for medical supplies and doctor care while in the nursing home).

82. *See What is Long-term Care Insurance?*, U.S. DEP'T OF HEALTH & HUM. SERVS., <https://acl.gov/ltc/costs-and-who-pays/what-is-long-term-care-insurance> [<https://perma.cc/4APP-DB46>] (last updated Feb. 18, 2020) (“Unlike traditional health insurance, long-term care insurance is designed to cover long-term services and supports, including personal and custodial care in a variety of settings such as [the] home, a community organization, or other facility.”).

83. *How Can I Pay for Nursing Home Care?*, *supra* note 81.

84. *See* Matthew Rae, Daniel McDermott, Larry Levitt & Gary Claxton, *Long-Term Trends in Employer-Based Coverage*, PETERSON CTR. ON HEALTH CARE (Apr. 3, 2020), <https://www.healthsystemtracker.org/brief/long-term-trends-in-employer-based-coverage> [<https://perma.cc/3E74-QL5H>] (“The workplace has long been a significant source of coverage for those in working families, although its importance has been declining over the long-term, particularly for those in lower and moderate-income households.”).

children to fill in the gap for their parents.⁸⁵ Private, employer-provided health insurance comes with a slew of inherent limitations that make it difficult for older people to afford health care.

The most glaring problem is that a worker becomes uninsured the moment they are terminated or laid off,⁸⁶ a consequence unique to a system where health insurance is tied to employment status. The United States is the only developed country without universal health insurance;⁸⁷ in 2019, 49.6 percent of Americans received insurance coverage through an employer.⁸⁸ Due to the COVID-19 pandemic, over three million workers lost health insurance coverage between February and April 2020,⁸⁹ and a staggering 27 million Americans could lose their employer-sponsored insurance.⁹⁰ Workers between the ages of fifty and sixty-four and elderly workers are the most vulnerable, due in part to employer-perpetrated age discrimination to avoid the higher cost to insure older people.⁹¹ Furthermore, older workers also

85. In 2019, employer-sponsored plans covered 46.3 percent of North Carolinians. KAISER FAM. FOUND., *supra* note 22.

86. Annie Nova, *The Next Big Steps To Take After Quitting Your Job*, CNBC (July 2, 2021, 11:46 AM), <https://www.cnbc.com/2021/07/02/just-quit-your-job-heres-what-you-should-do-next.html> [<https://perma.cc/PN7Y-W8UG>] (“Most people who quit will lose their employer-sponsored health insurance at the end of the calendar month . . .”). Individuals who lost job-based coverage and do not qualify for Medicaid can apply for a special enrollment period through the ACA Marketplace or sign up for COBRA coverage, which can be used for up to eighteen months. *If You Lose Job-Based Health Insurance*, HEALTHCARE.GOV, <https://www.healthcare.gov/have-job-based-coverage/if-you-lose-job-based-coverage> [<https://perma.cc/4ZCR-6HFL>]. See generally *As Unemployment Skyrockets, KFF Estimates More than 20 Million People Losing Job-Based Health Coverage Will Become Eligible for ACA Coverage Through Medicaid or Marketplace Tax Credits*, KAISER FAM. FOUND. (May 13, 2020), <https://www.kff.org/coronavirus-covid-19/press-release/as-unemployment-skyrockets-kff-estimates-more-than-20-million-people-losing-job-based-health-coverage-will-become-eligible-for-aca-coverage-through-medicaid-or-marketplace-tax-credits> [<https://perma.cc/4ZCR-6HFL>] (noting that most people will not be able to afford COBRA).

87. Bruce Vladeck, *Universal Health Insurance in the United States: Reflections on the Past, the Present, and the Future*, 93 AM. J. PUB. HEALTH 16, 16 (2003).

88. KAISER FAM. FOUND., *supra* note 22.

89. Josh Bivens & Ben Zipperer, *Health Insurance and the COVID-19 Shock*, ECON. POL’Y INST. (Aug. 26, 2020), <https://www.epi.org/publication/health-insurance-and-the-covid-19-shock> [<https://perma.cc/7N68-59WA>].

90. Sophie Burkholder, *The Loss of Employer-Sponsored Health Insurance Can Be a Serious Concern for Older People*, PITTSBURGH POST-GAZETTE (Sept. 3, 2020, 7:00 AM), <https://www.post-gazette.com/business/healthcare-business/2020/09/03/employer-sponsored-health-insurance-loss-serious-concern-older-people/stories/202009020011> [<https://perma.cc/5LFN-SARU>].

91. See *id.* (“[L]oss of insurance among people in the age range of 45 to 64 can be dire, as they often have greater health costs in medications or chronic conditions. . . . And that added cost could be ‘an extra incentive to get rid of them.’”); *Health Insurance Costs and Coverage for 50- to*

pay significantly higher premiums for the same insurance coverage, which can be harder to fit into a limited monthly budget.⁹² Even with the ACA, premiums for people between the ages of fifty and sixty-four are allowed to be up to three-times higher than premiums for younger people.⁹³ Without the ACA's limits, older beneficiaries would once again face premiums that are five-times higher or more than premiums for younger people.⁹⁴

Furthermore, another weakness of private health-care coverage is the ability of employers to artificially constrain who employees may add to their plans.⁹⁵ Although the Census Bureau defines a family as “all related members of a household,” a health insurance unit (“HIU”) is defined as a health insurance subscriber and their dependents.⁹⁶ A HIU would exclude nondependent family members like grandparents or adult siblings even if they reside at the same address.⁹⁷ This “HIU

64-Year-Olds, AARP (Feb. 2012), <https://www.aarp.org/health/health-care-reform/info-02-2012/health-insurance-costs-for-older-adults-before-medicare.html> [<https://perma.cc/Y889-EC2W>] (noting that “adults in the 50-to-64 age group have difficulty securing health insurance coverage,” but the ACA may “help adults age 50 to 64 access affordable health coverage”).

92. Sterling Price, *How Age Affects Health Insurance Costs*, VALUEPENGUIN, <https://www.valuepenguin.com/how-age-affects-health-insurance-costs> [<https://perma.cc/S83L-2SZ3>] (last updated July 27, 2020) (“Health insurance rates go up as a policyholder gets older, with the largest increases after age 55.”); see also Julie Appleby, *Health Insurance: How Much More Should Older People Pay?*, KAISER FAM. FOUND. (Aug. 31, 2009), <https://khn.org/news/age-rating> [<https://perma.cc/R4VB-56TA>] (stating the same principle, but before the passing of the ACA).

93. *How Insurance Companies Set Health Premiums*, HEALTHCARE.GOV, <https://www.healthcare.gov/how-plans-set-your-premiums> [<https://perma.cc/5LNR-C9K7>]. This protection saves older adults thousands of dollars per year. Nicole Rapfogel, *The Trump Administration Treats Seniors as Expendable*, CTR. FOR AM. PROG. (Oct. 29, 2020, 11:58 AM), <https://www.americanprogress.org/issues/healthcare/news/2020/10/29/492541/trump-administration-treats-seniors-expendable> [<https://perma.cc/PA2N-2F8Q>].

94. Rapfogel, *supra* note 93.

95. See Lynn Burbeck, *How To Add Your Elderly Parent to Your Health Insurance*, POCKETSENSE (July 27, 2017), <https://pocketsense.com/how-to-add-your-elderly-parent-to-your-health-insurance-13590668.html> [<https://perma.cc/V22Z-6YKL>] (“Generally, the decision is up to the employer, not the health insurance company. Because of the increased risk and cost of covering elderly individuals, many companies are hesitant to add them.”).

96. Sara R. Collins, David C. Radley & Jesse C. Baumgartner, *Trends in Employer Health Care Coverage, 2008–2018: Higher Costs for Workers and Their Families*, COMMONWEALTH FUND (Nov. 21, 2019), <https://www.commonwealthfund.org/publications/2019/nov/trends-employer-health-care-coverage-2008-2018> [<https://perma.cc/9Y2H-4K4Y>].

97. STATE HEALTH ACCESS DATA ASSISTANCE CTR., UNIV. OF MINN., *DEFINING “FAMILY” FOR STUDIES OF HEALTH INSURANCE COVERAGE 1* (2012), https://www.shadac.org/sites/default/files/Old_files/shadac/publications/SHADAC_Brief27.pdf [<https://perma.cc/ZW7S-6AQ8>].

definition yields much higher estimates of the number of non-elderly adults in poverty.”⁹⁸ Accordingly, insurance plans generally do not include children’s parents as eligible enrollees, even though “[p]rotecting the health of your loved ones with quality health coverage is one of the most important things you can do for them.”⁹⁹ But, some employers may allow for an elderly or disabled parent to be added as a dependent if the plan subscriber can prove a certain set of conditions, which includes, but is not limited to: the parent does not file a W-2 with the Internal Revenue Service, the subscriber provides at least half the means of support, and the parent resides with the subscriber.¹⁰⁰ This avenue of adding a parent to a health plan is far from guaranteed, especially if the plan explicitly excludes parents from the list of dependents who can be added. The path for adding a parent as a health insurance beneficiary also is far more difficult than the path for adding an adult child, and is frequently nonexistent.¹⁰¹

C. Medicaid Expansion Under the Affordable Care Act

The ACA “require[d] States to expand their Medicaid programs by 2014 to cover *all* individuals under the age of 65 with incomes below 133 percent of the federal poverty line.”¹⁰² However, in *National Federation of Independent Business v. Sebelius*,¹⁰³ the Supreme Court ruled that the ACA’s Medicaid expansion provisions were unconstitutionally coercive because Congress may not threaten to withdraw all federal Medicaid funding if states do not expand

98. *Id.* at 3.

99. *Who Can Be Added as a Dependent on My Health Insurance Plan?*, EHEALTH, <https://www.ehealthinsurance.com/resources/individual-and-family/can-added-dependent-health-insurance-plan> [<https://perma.cc/YZB9-2ZYJ>] (last updated Nov. 23, 2020).

100. Michelle Barry, *How To Add Your Elderly Parent to Your Health Insurance*, NEST, <https://budgeting.thenest.com/add-elderly-parent-health-insurance-33013.html> [<https://perma.cc/7W35-QTXZ>].

101. Chelsea Levinson, *How Can I Put My Mother on My Health Insurance?*, NEST, <https://budgeting.thenest.com/can-put-mother-health-insurance-32312.html> [<https://perma.cc/2HME-HYBG>] (last updated Apr. 5, 2019).

102. Nat’l Fed’n of Indep. Bus. v. Sebelius, 567 U.S. 519, 576 (2012) (citing 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII)). In 2020, the federal poverty level income was \$12,670 for individuals, \$17,420 for a family of two, and \$26,500 for a family of four. *Federal Poverty Level (FPL)*, HEALTHCARE.GOV, <https://www.healthcare.gov/glossary/federal-poverty-level-FPL> [<https://perma.cc/L8KW-5PCQ>].

103. Nat’l Fed’n of Indep. Bus. v. Sebelius, 567 U.S. 519 (2012).

Medicaid.¹⁰⁴ Accordingly, states may choose whether to participate in the Medicaid expansion.¹⁰⁵ The federal government funds most of the cost of expanding Medicaid, with a small portion paid by the participating states.¹⁰⁶

As of July 23, 2021, thirty-eight states and Washington, D.C., have expanded Medicaid but twelve states have not.¹⁰⁷ North Carolina is one of the twelve states that has refused to adopt the Medicaid expansion,¹⁰⁸ even though it has the ninth highest uninsured rate at 10.7 percent.¹⁰⁹ Stakeholders have called on the North Carolina General Assembly to expand Medicaid.¹¹⁰ However, the Republican-dominated General Assembly's continued opposition to Medicaid expansion appears to be firmly rooted in partisan ideology, not the state's balance sheet.¹¹¹

States that have not expanded Medicaid have an average uninsured rate of 11.44 percent, while states that have expanded Medicaid have an average uninsured rate of 7.46 percent.¹¹² Not only would over four hundred thousand North Carolinians obtain health

104. *Id.* at 581. Indeed, Chief Justice Roberts, writing for the majority, goes so far as to call Congress's terms for continued Medicaid funding a "gun to the head." *Id.*

105. *Id.* at 587; Medicaid Expansion, healthinsurance.org, <https://www.healthinsurance.org/glossary/medicaid-expansion> [<https://perma.cc/8Q6D-MGMQ>].

106. Susan L. Hayes, Akeiisa Coleman, Sara R. Collins & Rachel Nuzum, *The Fiscal Case for Medicaid Expansion*, COMMONWEALTH FUND (Feb. 15, 2019), <https://www.commonwealthfund.org/blog/2019/fiscal-case-medicoid-expansion> [<https://perma.cc/2GU4-6LAA>]. In 2020, the federal government provided 90 percent of the funding, and it will remain there barring a statutory change. *Id.*

107. *Status of State Action on the Medicaid Expansion Decision*, KAISER FAM. FOUND. (May 19, 2021), <https://www.kff.org/health-reform/state-indicator/state-activity-around-expanding-medicoid-under-the-affordable-care-act> [<https://perma.cc/BL7Y-J9E7>].

108. *Id.*

109. Morgan Haefner, *10 States with the Highest Uninsured Rates*, BECKER'S HOSP. REV. (Sept. 12, 2019), <https://www.beckershospitalreview.com/payer-issues/10-states-with-the-highest-uninsured-rates.html> [<https://perma.cc/WJN9-FFWN>].

110. *North Carolina Docs Urge Medicaid Expansion, End to Politically Driven Healthcare Sabotage*, CASWELL MESSENGER (Oct. 9, 2020), http://www.caswellmessenger.com/news/article_24a2953a-0a27-11eb-87bf-ff8e4e29689d.html [<https://perma.cc/2CAY-KJG4>].

111. Rose Hoban, *The Federal Pandemic Relief Bill Contains a Big Carrot To Expand Medicaid. Will North Carolina Bite?*, N.C. HEALTH NEWS (Mar. 18, 2021), <https://www.northcarolinahealthnews.org/2021/03/18/medicaid-expansion-incentives-pandemic-relief-bill> [<https://perma.cc/PU4V-9MRK>] ("This is . . . an ideological opposition that can't be swayed by the numbers one way or the other because this is clearly going to be a big net win for the state in terms of its budget . . .").

112. John S. Kiernan, *2020's State Uninsured Rates*, WALLETHUB (Oct. 7, 2020), <https://wallethub.com/edu/uninsured-rates-by-state/4800> [<https://perma.cc/U965-SWYK>].

insurance,¹¹³ but the state would also receive an additional \$7.42 in federal funding for each dollar spent on expansion, additional funding that would otherwise not be given.¹¹⁴ Public health researchers argue that the state's failure to expand Medicaid is "violence against the poor," with an immense human toll and harm to the North Carolina health-care system and economy.¹¹⁵ Due to the state's failure to expand Medicaid, "1,400 North Carolinians between the ages of 55 and 64 died" in the first four years that the expansion was nationally available.¹¹⁶ Finally, the states that have expanded Medicaid "are better positioned to respond to the COVID-19 public health emergency and to prevent the ensuing economic downturn from worsening access to care, financial security, health outcomes, and health disparities."¹¹⁷

III. NEW FORMS OF FAMILY STATUS

Family law serves a channeling function¹¹⁸ by creating social institutions, such as marital and parental status, to serve desirable purposes.¹¹⁹ The law recognizes and supports the institutions of marriage and parenthood by giving them various benefits and

113. Mackenzie Wicker, *Advocates Call for Medicaid Expansion as NC Unemployment Increases Health Insurance Gap*, ASHEVILLE CITIZEN TIMES (Sept. 3, 2020, 2:04 PM), <https://www.citizen-times.com/story/news/local/2020/09/03/5682796002> [<https://perma.cc/N7UX-E996>]; Rachel Garfield, Kendal Orgera & Anthony Damico, *The Coverage Gap: Uninsured Poor Adults in States that Do Not Expand Medicaid*, KAISER FAM. FOUND. (Jan. 21, 2021), <https://www.kff.org/medicaid/issue-brief/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid> [<https://perma.cc/AXV2-HHHL>].

114. Donald H. Taylor, *The Case for Medicaid Expansion in North Carolina*, 78 N.C. MED. J. 43, 43 (2017).

115. ALLYSON M. CORBO, SARA Y. CORREA, ROSA GREENBERG, PAIGE LOGAN & HEATHER HUNT, *VIOLENCE AGAINST THE POOR: THE CONSEQUENCES OF NORTH CAROLINA'S FAILURE TO EXPAND MEDICAID 1* (2020) (footnotes omitted), <http://www.ncpolicywatch.com/wp-content/uploads/2020/06/Violence-Against-the-Poor-Medicaid-Expansion-report.pdf> [<https://perma.cc/FWU2-FQF9>].

116. *Id.*

117. JESSE CROSS-CALL & MATT BROADDUS, *CTR. ON BUDGET AND POL'Y PRIORITIES, STATES THAT HAVE EXPANDED MEDICAID ARE BETTER POSITIONED TO ADDRESS COVID-19 AND RECESSION 1* (2020), <https://www.cbpp.org/research/health/states-that-have-expanded-medicaid-are-better-positioned-to-address-covid-19-and> [<https://perma.cc/2GV5-CWH7>].

118. *See generally* Curtis Bridgeman, *Default Rules, Penalty Default Rules, and New Formalism*, 33 FLA. ST. U. L. REV. 683, 690 (2006) (explaining that, in its channeling function, the law creates "formalities [that] serve to provide a public mark of legal rights and duties").

119. Carl E. Schneider, *The Channelling Function in Family Law*, 20 HOFSTRA L. REV. 495, 498, 500 (1992).

obligations along with the necessary social and legal support.¹²⁰ Over the years, family law's role in channeling socially beneficial institutions has increased, while criminal law's role in sanctioning socially punishable behavior within the private realm of the family has decreased.¹²¹ It is high time to move elder care away from the punitive claw of the filial responsibility statute and toward the channeling function of family institution creation.

A. Nontraditional Kinship Families Also Provide Caregiving Support

As contemporary society evolves and its needs change,¹²² nontraditional caregiving relationships are becoming more frequent.¹²³ Justice William Brennan recognized this departure from the nuclear family model as early as 1977 in his concurrence in *Moore v. City of East Cleveland*,¹²⁴ where he argued that extended family and friends have proven to provide more economic and emotional support than nuclear families, especially for generations of minority communities at lower income levels.¹²⁵ Despite this longstanding trend, the law has inconsistently kept up with this development; some caregiving relationships are legally recognized and supported while others are not. Namely, the horizontal caregiving relationship between a husband and wife¹²⁶ and the vertical caregiving relationship from a parent to a minor child receive social and legal advantages,¹²⁷ while the caregiving

120. *Id.* at 502–04.

121. See Linda C. McClain, *Love, Marriage, and the Baby Carriage: Revisiting the Channelling Function of Family Law*, 28 *CARDOZO L. REV.* 2133, 2153 (2007) (describing how the criminal law's role in rewarding marriage and legitimate parenthood has shrunk with the repeals of laws against sodomy, adultery, and similar crimes).

122. See Cambia Health Solutions, *Wired for Care: Evolution of Modern Caregivers*, AM.'S HEALTH INS. PLANS (Apr. 15, 2020), <https://www.ahip.org/wired-for-care-evolution-of-modern-caregivers> [<https://perma.cc/SZ7K-JNPT>] (“[T]he traditional definition of a caregiver is also evolving. No longer focused on only elder or palliative care, . . . caregiving is provided to children and adults of every age, and to loved ones with a range of chronic or serious health conditions . . .”).

123. Sacha M. Coupet, “Ain’t I a Parent?”: *The Exclusion of Kinship Caregivers from the Debate over Expansions of Parenthood*, 34 *N.Y.U. REV. L. & SOC. CHANGE* 595, 597 (2010).

124. *Moore v. City of E. Cleveland*, 431 U.S. 494 (1977).

125. *Id.* at 508–10 (Brennan, J., concurring).

126. This Note employs heteronormative language to reflect the reality that most spousal caregiving is between a husband and a wife, in part due to same-sex marriage not being legalized nationally until 2015. See *Obergefell v. Hodges*, 576 U.S. 644, 681 (2015) (holding that same-sex couples have the right to marry in all states).

127. McClain, *supra* note 121, at 2154; see Jennifer Sroka, Note, *A Mother Yesterday, but Not Today: Deficiencies of the Uniform Parentage Act for Non-Biological Parents in Same-Sex*

relationship from an adult child to a parent lacks any significant benefits.¹²⁸ The law should evolve to support the upwardly vertical child-to-parent relationship, not merely the downwardly vertical parent-to-child relationship. As familial obligations shift and migrate away from the idealized nuclear family, legislators need to create new solutions.¹²⁹

For instance, in 2018, Congress provided substantive and symbolic legal support to the 2.5 million grandparents who have assumed responsibility as the primary caregivers for their grandchildren due to the opioid epidemic.¹³⁰ The Supporting Grandparents Raising Grandchildren Act arose from the concern that the opioid crisis led to an unprecedented number of grandparents and other relatives stepping in for parents to care for children.¹³¹ The Act created a federal advisory council to provide grandparents with information on issues like navigating the school system, addressing mental health issues, and building social and support networks.¹³² The grandparent-grandchild

Relationships, 47 VAL. U. L. REV. 537, 583 (2013) (“A parent’s legal status implicates numerous legal benefits for both the parent and child, including inheritance, medical decisions, and most importantly custody.”).

128. See Lucille M. Ponte & Jennifer L. Gillan, *From Our Family to Yours: Rethinking the “Beneficial Family” and Marriage-Centric Corporate Benefit Programs*, 14 COLUM. J. GENDER & L. 1, 42–43 (2005) (“[M]arriage-centric policies have elevated husbands and wives over all other relationships in such key areas as housing, estate administration, bankruptcy, taxation, immigration, workers and unemployment compensation, insurance policies, tort liability, and Social Security benefits.” (footnotes omitted)).

129. For instance, to address the high rate of uninsured young adults, the ACA required plans with dependent child coverage to keep the coverage available until the age of 26. U.S. CTRS. FOR MEDICARE & MEDICAID SERVS., *Young Adults and the Affordable Care Act: Protecting Young Adults and Eliminating Burdens on Families and Businesses*, https://www.cms.gov/CCHIO/Resources/Files/adult_child_fact_sheet [<https://perma.cc/H7VC-DSEF>]. This dovetails with complaints alleging that young adults are more dependent on their parents than in generations past. Ian Shapira, *Now It’s a Law: 26 Is the New 21*, HERALD-TRIBUNE (Sarasota) (Mar. 28, 2010, 12:01 AM), <https://www.heraldtribune.com/article/LK/20100328/News/605208157/SH> [<https://perma.cc/S29F-APQH>].

130. See Jaia Peterson Lent & Adam Otto, *Grandparents, Grandchildren, and Caregiving: The Impacts of America’s Substance Use Crisis*, 42 J. AM. SOC’Y ON AGING 15, 16, 20 (2018) (explaining that the Supporting Grandparents Raising Grandchildren Act will “will create an advisory council to identify best practices and gaps in services to grandfamilies”).

131. DOUGLAS E. ABRAMS, NAOMI R. CAHN, CATHERINE J. ROSS & LINDA C. MCCLAIN, CONTEMPORARY FAMILY LAW 18 (5th ed. 2019) (citing Supporting Grandparents Raising Grandchildren Act, Pub. L. No. 115-196, 132 Stat. 1511 (2018)).

132. Press Release, U.S. Senate Special Comm. on Aging, Collins, Casey Urge HHS To Swiftly Implement New Law To Support Grandparents Raising Grandchildren (Sept. 14, 2018), <https://www.aging.senate.gov/press-releases/collins-casey-urge-hhs-to-swiftly-implement-new-law-to-support-grandparents-raising-grandchildren> [<https://perma.cc/BM7B-8GLN>].

relationship is a vertical relationship, not unlike the parent-child relationship. The Act suggests that it is within the legislative power to venerate new caregiving duties spurred by contemporary circumstances, but nothing suggests recognition of the downwardly vertical relationship is on the table for now.

Legal scholars have also proposed giving stronger legal recognition to relationships that are largely focused on caregiving. These relationships can include senior citizens living together, adult children caring for their elderly parents, or friends looking after a friend.¹³³ “[F]amily law should not privilege marriage over other forms of companionate relationships that engage in dependent caregiving, which is generally performed by women.”¹³⁴ In *Beyond Same-Sex Marriage: A New Strategic Vision for All Our Families and Relationships*,¹³⁵ a group of legal scholars and LGBT activists urged for governmental recognition and support of the “many other ways in which people actually construct their families, kinship networks, households, and relationships,” including adult children living with and caring for their parents.¹³⁶

B. Reciprocal Beneficiary Status

For adult children to reap the benefits accorded to traditionally recognized caregiving relationships, it is important to legally venerate nontraditional caregiving relationships. The reciprocal beneficiary status can channel adult child caregivers into a legal status that comes with some of the useful rights and responsibilities attached to heterosexual marriage. But since the status comes with limitations,¹³⁷ North Carolina can better serve its families by creating its own variant as opposed to an identical copy. Two states’ approaches provide useful bases for analysis.

133. Jane E. Cross, Nan Palmer & Charlene L. Smith, *Families Redefined: Kinship Groups that Deserve Benefits*, 78 MISS. L.J. 791, 805 (2009).

134. Laura A. Rosenbury, *Friends with Benefits?*, 106 MICH. L. REV. 189, 197–98 (2007) (citing Vivian Hamilton, *Mistaking Marriage for Social Policy*, 11 VA. J. SOC. POL’Y & L. 307, 368–70 (2004)).

135. *Beyond Same-Sex Marriage: A New Strategic Vision for All Our Families & Relationships*, MR ONLINE (Aug. 8, 2006), <https://mronline.org/2006/08/08/beyond-same-sex-marriage-a-new-strategic-vision-for-all-our-families-relationships> [<https://perma.cc/B35R-8YMH>].

136. McClain, *supra* note 121, at 2137 (quoting *Beyond Same-Sex Marriage: A New Strategic Vision for All Our Families & Relationships*, *supra* note 135).

137. See *infra* Part IV.B for an analysis of these limits.

1. *Hawaii*. In Hawaii, two consenting adults, who are legally prohibited from marrying under state law, may enter into a reciprocal beneficiary relationship.¹³⁸ Established in 1997,¹³⁹ a reciprocal beneficiary relationship offers many—but not all—of the rights and responsibilities associated with marriage.¹⁴⁰ Reciprocal beneficiaries have the same right as spouses to make health-care decisions for each other, can take unpaid emergency leave off work to provide care, and receive health coverage from public health-care plans.¹⁴¹ However, reciprocal beneficiaries are not legally required to be covered by private employer health plans.¹⁴² The status also does not impose support-related responsibilities, like alimony.¹⁴³

When the Hawaii General Assembly established the reciprocal beneficiary status, it justified extending the rights and benefits of marriage to others because “[m]any individuals, however, who are not married have significant personal, emotional, and economic relationships with other individuals they are prohibited by law from marrying. For example, two individuals who are related to one another, such as a widowed mother and her unmarried son.”¹⁴⁴ The statistics are

138. See HAW. REV. STAT. § 572C-1 (2019) (“The purpose of this chapter is to extend certain rights and benefits which are presently available only to married couples to couples composed of two individuals who are legally prohibited from marrying under state law.”).

139. Sarah M. Love, Comment, *Extending Loss of Consortium to Reciprocal Beneficiaries: Breaking the Illogical Boundary Between Severe Injury and Death in Hawai‘i Tort Law*, 28 U. HAW. L. REV. 429, 433 (2006).

140. *Registering as Reciprocal Beneficiaries: Here’s How It Works, What It Means and How To Do It!*, LAMBDA LEGAL (Apr. 27, 2010), https://www.lambdalegal.org/sites/default/files/publications/downloads/fs_registering-as-reciprocal-beneficiaries_0.pdf [<https://perma.cc/7UEQ-E4CF>].

141. *Id.*; see STATE OF HAW. DEP’T OF HUM. RES. DEV., SUMMARY OF EMPLOYEE BENEFITS FOR STATE OF HAWAI‘I EXECUTIVE BRANCH EMPLOYEES 3 (2016), <https://dhrd.hawaii.gov/wp-content/uploads/2016/04/Benefit-Summary-Booklet-FINAL-042016.pdf> [<https://perma.cc/8JPG-CE5S>].

142. *Id.*; see Love *supra* note 139, at 433–34 (noting that the Reciprocal Beneficiaries Act affords “the potential right to have private employers to supply health-care benefits to reciprocal beneficiaries”).

143. Jessica R. Feinberg, *The Survival of Nonmarital Relationship Statutes in the Same-Sex Marriage Era: A Proposal*, 87 TEMP. L. REV. 47, 52 (2014).

144. David Orgon Coolidge, *The Hawai‘i Marriage Amendment: Its Origins, Meaning and Fate*, 22 U. HAW. L. REV. 19, 46 (2000) (quoting H.R. 118, 19th Leg., Reg. Sess. (Haw. 1997)). Although Governor Cayetano ultimately signed the bill, he stated, “[w]hen you see in the preamble of the bill where it talks about a widowed mother and her son could qualify, that wasn’t the intent of what I wanted to see accomplished.” *Id.* at 102 (alteration in original) (quoting William Kresnak, *Partner Benefits Bill Now State Law*, HONOLULU ADVERTISER, July 9, 1997, at A1).

not available on how many people have registered as reciprocal beneficiaries, and of those, how many are family members, as envisioned by the Hawaii General Assembly when it drafted this bill.

2. *Vermont.* Vermont offered a similar reciprocal beneficiary status to its residents who are related to each other.¹⁴⁵ “Lawmakers likely assumed that there would be different expectations accompanying this type of relationship than those accompanying romantic relationships and thus structured the status such that the accompanying rights center on health-care-related decision making,”¹⁴⁶ and like Hawaii’s reciprocal beneficiary status, “dissolution requires only the filing of a declaration with the state by one of the parties.”¹⁴⁷ The “stated purpose” of the reciprocal beneficiary status is “to provide two persons who are blood-relatives or related by adoption the opportunity to establish a consensual reciprocal beneficiaries relationship so they may receive the benefits and protections and be subject to the responsibilities that are granted to spouses in specific areas.”¹⁴⁸ But, effective May 28, 2014, the Vermont General Assembly took this option off the table, citing its disuse.¹⁴⁹ Since its enactment in 2000, no reciprocal beneficiary status had been established in Vermont.¹⁵⁰ According to Vermont Law School’s Professor Susan Apel, “It appears that reciprocal beneficiary legislation was a conservative response to the possibility of same sex unions or marriage. Same sex marriage advocates might therefore have seen it as insulting. Other non-gay couples (because it supposedly applied to any two adults) perhaps felt no need for it.”¹⁵¹ Thus, the ideological baggage undergirding Vermont’s reciprocal beneficiary may have rendered it an unappealing option for both same-sex couples and parents and their adult children. Despite the repeal of this status, Vermont’s legislative purpose to recognize a nonmarital legal relationship accords with the channeling function of family law and provides expressive value. In

145. Jessica R. Feinberg, *Avoiding Marriage Tunnel Vision*, 88 TUL. L. REV. 257, 303–04 (2013).

146. *Id.* at 303.

147. *Id.*

148. VT. STAT. ANN. tit. 15, § 1304(a) (repealed 2014).

149. *Id.* § 1301 (2021).

150. *Id.*

151. E-mail from Susan B. Apel, Professor of L. Emerita, Vt. L. Sch., to author (July 24, 2021, 11:16 PM) (on file with author).

sum, these reciprocal beneficiary statutes provide value as a starting point for actions North Carolina can take.

IV. PROPOSED SOLUTIONS FOR NORTH CAROLINA

As a whole, filial responsibility statutes are a relic of a bygone era with lower health-care costs, shorter life expectancies, and greater reliance on criminal law, rather than family law, to serve an expressive value and channeling function. North Carolina's filial responsibility law does not benefit residents, especially given the paucity of financial and legal support for adult children caregivers. It would be inequitable and inefficient to enforce this dormant criminal law as a method for assisting the elderly poor. Instead, this Note contributes three ideas about how the North Carolina General Assembly can help the indigent and ill parents that § 14-326.1 aims to support.

The elder-care literature is awash with arguments for revisions to tax benefits under the Internal Revenue Code to encourage caregiving,¹⁵² but virtually all local, state, and federal levels neglect to implement these suggestions. This shows that tax policy is not where legislators are looking and thus is not where the scholarship should focus.

Some legal commentators have raised universal health care as a way to address the high cost of health care and long-term care that sick and older people frequently require. Professor Donna Harkness argued that the adoption of universal health care to cover basic health needs and required medical services is an alternative to enforcing filial responsibility laws that will effectively increase support of the elderly

152. See, e.g., Daniel H. Brown, *Picking up the Tab for Mom and Dad: The Clash of Filial Laws with Liberty, Morality, and Culture*, 11 J. COMPAR. & INT'L AGING L. & POL'Y 1, 25–26 (2020) (“To help alleviate the indigent elderly population, the government should consider expanding existing dependent tax deductions and exemptions which would include individuals outside of blood or adoptive relations.”); Nancy Shurtz, *Long-Term Care and the Tax Code: A Feminist Perspective on Elder Care*, 20 GEO. J. GENDER & L. 107, 112 (2018) (suggesting “tax changes . . . to improve the quality of elder care and honor the wishes of the care-receiver”); Wenzl, *supra* note 8, at 406 (“Giving tax benefits to adults who care for an elderly neighbor or friend would encourage not only financial assistance and donations, but also an opportunity to declare services as a charitable contribution.”); Andrea Rickles-Jordan, *Filial Responsibility: A Survey Across Time and Oceans*, 9 MARQ. ELDER'S ADVISOR 183, 203 (2007) (“Perhaps the best answer is to create a system in the United States, similar to that in Japan, which uses positive programs and incentives including tax deductions or exemptions, institutional care, and support for institutions interacting with families to encourage familial support.”).

and indigent.¹⁵³ Although universal health care is ideal, it is unlikely that the United States will establish a national health-care system anytime soon.¹⁵⁴ As such, North Carolina will need to adopt a piecemeal approach that fills gaps in the existing elder-care and caregiving patchwork.

A. *Allow Adult Children to Add Parents to Employer-Provided Health Insurance*

Perhaps one of the more streamlined solutions is for the General Assembly to pass a bill mandating that private employers who offer health insurance automatically include parents in the HIU.¹⁵⁵ Most private insurance plans define a “family” for the purposes of the HIU quite differently from the federal and lay person’s conception of “family.”¹⁵⁶ The HIU usually only accounts for the parent to minor child vertical relationship and spouse to spouse horizontal relationship. This is a major contraction of the typical conception of “family,” which necessarily includes the parent to adult child vertical relationship and other horizontal relationships like those between siblings and cousins. This artificially constrained HIU captures one direction of caregiving within the vertical parent-child relationship at the expense of excluding the flow of care from adult child to parent. By legislating a definition of the HIU that allows insurance subscribers to add their parents as beneficiaries, the North Carolina General Assembly would support the intragenerational caregiving relationship that it recognized almost half a century earlier in the filial responsibility statute.¹⁵⁷

153. See Donna Harkness, *What Are Families For? Re-Evaluating Return to Filial Responsibility Laws*, 21 ELDER L.J. 305, 339, 341 (2014) (“Although it is doubtful that [universal healthcare] will ever be fully achieved, it is hoped that the [ACA], with its inclusion of such senior-friendly provisions . . . will provide at least a transition towards this goal.”).

154. See *A Brief History: Universal Health Care Efforts in the US*, PHYSICIANS FOR A NAT’L HEALTH PROGRAM, <https://pnhp.org/a-brief-history-universal-health-care-efforts-in-the-us> [<https://perma.cc/7JVX-QSV5>] (describing the history of opposition against a national health-care system, including longstanding lobbying efforts by private insurance companies).

155. See *supra* Part II.B for a discussion of the HIU, or health insurance unit.

156. See U.S. CENSUS BUREAU, *Subject Definitions*, <https://www.census.gov/programs-surveys/cps/technical-documentation/subject-definitions.html> [<https://perma.cc/2FPB-39W5>] (last updated Aug. 27, 2020) (“A family is a group of two people or more (one of whom is the householder) related by birth, marriage, or adoption and residing together; all such people (including related subfamily members) are considered as members of one family.”).

157. See *supra* notes 49–53 and accompanying text.

Expanding the HIU to include parents would have a powerful impact, and it is not without some precedent. There are corporate benefit schemes allowing employees “to allocate pre-tax contributions in flexible spending accounts to the out-of-pocket expenses or premium costs for any member of their households, not just to spouses or dependent children” and “to designate any household member as the beneficiary of their death or pension benefits, not just spouses.”¹⁵⁸ These types of employee benefits largely did not exist half a century ago, yet some sprung into being to reflect the realities of the current state of elder care and employee expectations.¹⁵⁹ To prevent private employers and insurance companies from shouldering too much of the financial burden, the General Assembly should consider modestly changing the tax code to create tax incentives for companies to provide these benefits.¹⁶⁰ Employers may vigorously oppose this legislation, as they have opposed previous proposals to increase the federal minimum wage from \$7.25 per hour,¹⁶¹ arguing that a legally mandated HIU expansion would indirectly drive up labor costs. However, employers should consider the price of expanded elder-care benefits as part of the cost of retaining and attracting talent. In fact, the COVID-19 pandemic has led to an unprecedented labor shortage¹⁶² causing employers to

158. Ponte & Gillan, *supra* note 128, at 82.

159. See Walter W. Kolodrubetz, *Two Decades of Employee-Benefit Plans, 1950-70: A Review*, SOC. SEC. BULL., Apr. 1972, at 10, 17; see also Peggie R. Smith, *Elder Care, Gender, and Work: The Work-Family Issue of the 21st Century*, 25 BERKELEY J. EMP. & LAB. L. 351, 376 (“[S]ome segments of the business community have . . . voluntarily provid[ed] workers with retirement benefits in the form of pensions Pensions functioned as a tool to stifle strikes, encourage worker loyalty, and decrease labor turnover Pensions also enabled companies to foster an ethic of care for their employees” (footnotes omitted)).

160. See Bruton, *supra* note 11, at 42–43 (“The number of American companies delivering paid time off for caregiving, elder-care services, or other elder-care benefits continues to grow steadily. Increasing tax incentives for companies to provide these services and benefits could further increase their prevalence.” (footnote omitted)).

161. See, e.g., Thomas Buckley, *Walmart’s Fight Against a \$15 Minimum Wage Could Thrust It into the Inequality Debate*, BLOOMBERG BUSINESSWEEK (Apr. 27, 2021, 5:00 A.M.), <https://www.bloomberg.com/news/articles/2021-04-27/walmart-wmt-fights-against-15-minimum-wage-as-inequality-debate-rages> [<https://perma.cc/S8AW-CG39>] (describing how Walmart, the largest employer in the United States, has continually opposed raising the minimum wage to \$15 per hour).

162. Lauren Jackson, *Why Aren’t People Going Back to Their Jobs?*, N.Y. TIMES: THE DAILY NEWSLETTER (Aug. 6, 2021), <https://www.nytimes.com/2021/08/06/podcasts/jobs-report-labor-shortage.html> [<https://perma.cc/LX9U-QLDK>]. A caveat is that the labor shortage is predominantly concentrated in the retail and service industries, where employees typically do not expect to receive full-fledged benefits like robust health insurance. See, e.g., Anneken Tappe, *Job Openings in the US Soar to Record 9.3 Million*, CNN BUS., <https://www.cnn.com/2021/06/08/>

raise wages and increase benefits in an attempt to entice workers.¹⁶³ If Congress—a body responsive to political lobbyists from all states—can muster the political will to impose the employer mandate through the ACA, requiring employers to provide health insurance to full-time employees, then the General Assembly likely can muster the political will to impose a HIU change, expanding employer-provided health insurance to include parents. Just as the government partially picked up the tab of elder care in the mid-twentieth century, employers may have to help pick up the tab now. If they do not, someone has to, and the current state of elder care shows that patchwork familial and governmental support is far from sufficient.

But fewer than half of North Carolinians are insured through their employer, with low-income people the least likely to be insured through an employer and the most likely to require caregiving through the family.¹⁶⁴ Indeed, most private health insurance plans do not cover long-term care,¹⁶⁵ so those who require long-term care will still have to look to Medicaid or long-term care insurance. Plus, the COVID-19 pandemic's economic instability and record unemployment and underemployment expose this arrangement as a weak option during economic downturns.¹⁶⁶ Accordingly, this solution may not be as immediately powerful as offering a reciprocal beneficiary status or

economy/jobs-openings-april/index.html [https://perma.cc/D7D7-RFRH] (last updated June 8, 2021, 2:08 PM) (“Job openings . . . [set] a record for the most . . . added in a month and the highest overall number since the Bureau of Labor Statistics started tracking the data in December 2000.”).

163. Tappe, *supra* note 162; *see, e.g.*, Steve Grove, *Red Wing Shoes, Jennie-O, Other Minn. Companies Take Steps To Stem Worker Shortage*, STARTRIBUNE (Aug. 15, 2021, 2:00 PM), <https://www.startribune.com/red-wing-shoes-jennie-o-other-minn-companies-take-steps-to-stem-worker-shortage/600088102> [https://perma.cc/X4NP-M76H] (describing new employer benefits like funded child care and flexible work schedules); Laura Pellicer, *NC Business Owners Get Creative To Recruit Staff Amid Worker Shortage*, N.C. PUB. RADIO (July 15, 2021, 9:08 AM), <https://www.wunc.org/news/2021-07-15/nc-business-owners-get-creative-to-recruit-staff-amid-worker-shortage> [https://perma.cc/YE3H-SH3G] (describing how some North Carolina businesses are offering additional benefits and bonuses to attract staff).

164. Bruton, *supra* note 11, at 43.

165. *Who Pays for Long-Term Care?*, ADMIN. ON AGING, <https://acl.gov/ltc/costs-and-who-pays/who-pays-long-term-care> [https://perma.cc/2VTL-6PQ7] (last updated Feb. 18, 2020).

166. See Richard Craver, *Unemployment Claims in N.C. Top 2.5 Million for COVID-19 Pandemic*, WINSTON-SALEM J. (Oct. 7, 2020), https://journalnow.com/business/local/unemployment-claims-in-n-c-top-2-5-million-for-covid-19-pandemic/article_0713f2ce-08a7-11eb-ba4a-e78e4bd8a1bd.html [https://perma.cc/QE9Y-LBE8] (reporting that the North Carolina Division of Employment Security reported that 2.51 million unemployment claims were filed during the pandemic).

expanding Medicaid, but of the three proposals, it may face the least partisan friction in making its way through the halls of the North Carolina General Assembly. Unlike Medicaid expansion, HIU expansion would not be weighed down by the ideological battle tainting the ACA. So, although companies may vigorously and actively lobby against an expansion, this proposal may face less fierce Republican resistance—the main obstacle to Medicaid expansion¹⁶⁷—inside the General Assembly.

B. Offer a Reciprocal Beneficiary Status

Along with directly supporting the elderly, North Carolina should build on reciprocal beneficiary status models to enable adult children to support their parents.¹⁶⁸ While North Carolina's filial responsibility statute is a coercive enforcement mechanism, the reciprocal beneficiary relationship is a voluntary, affirmative action.¹⁶⁹ It does not impose criminal liability upon an adult child who would have a good excuse, whether financial or relational, for not supporting their parent. In sister states with filial responsibility laws carrying a criminal penalty, the "reasonable cause" exception has been interpreted to encompass neglect or abuse perpetrated by the parent during the adult child's childhood.¹⁷⁰ The reciprocal beneficiary relationship status law would not need this exception due to its voluntariness, which means an estranged parent would likely not enter into these agreements. But that parent would still be covered by the Medicaid expansion—a better situation than the current one without the Medicaid expansion.¹⁷¹

However, this Note does not propose adopting the Hawaii statute wholesale because its eligibility criteria are too restrictive: Hawaiian

167. See Hoban, *supra* note 20 ("Thirty-seven other states, including the District of Columbia, have embraced [Medicaid expansion]. But with the state legislature run by Republicans who are facing down a Democratic governor, the votes just haven't added up.").

168. As a sidenote, the proposed reciprocal beneficiary status does not implicate the same values that are behind the animus against same-sex marriage, despite the status's origin being inextricably entwined with the marriage equality movement in Hawaii and Vermont. In fact, as the honor commandment of the Ten Commandments illustrates, honoring parents plays a central role in the normative framework of the Judeo-Christian tradition. Zietlow & Cahn, *supra* note 30, at 233–34. Hence it likely would not face pushback from a moral or religious standpoint in North Carolina's conservative General Assembly.

169. *Registering as Reciprocal Beneficiaries: Here's How It Works, What It Means and How To Do It!*, *supra* note 140.

170. *Supra* note 48 and accompanying text.

171. See *infra* Part IV.C for further discussion of expanding Medicaid.

adults who are married or already in a reciprocal beneficiary relationship may not enter another reciprocal beneficiary relationship.¹⁷² This would automatically bar a significant number of caregivers from entering into a reciprocal beneficiary relationship with their parents.¹⁷³ Thus, it is imperative that the General Assembly create a carveout for married adult children. For example, the law may stipulate that a person above the age of eighteen may enter into a reciprocal beneficiary relationship while married if and only if (1) the individual is entering into a reciprocal beneficiary relationship with a parent, as “parent” is defined under North Carolina law,¹⁷⁴ and (2) that the person has achieved freely given and informed consent, in writing,¹⁷⁵ from the person’s spouse.¹⁷⁶ That way the reciprocal beneficiary status avoids running into the problems associated with bigamy or polygamy yet does not unnecessarily block people from entering into this status with relatives.¹⁷⁷ The legislature may also consider imposing a limit on the maximum number of reciprocal beneficiary relationships an adult may enter into. One potential eligibility requirement is that an adult child can only take on two reciprocal beneficiaries if both are their parents,¹⁷⁸ and a parent may

172. *Reciprocal Beneficiary Relationships*, STATE OF HAW., <https://health.hawaii.gov/vitalrecords/reciprocal-beneficiary-relationships> [<https://perma.cc/6G2T-HLQL>].

173. See AARP PUB. POL’Y INST., *THE TYPICAL CAREGIVER 1* (2015), https://www.aarp.org/content/dam/aarp/ppi/2015/AARP1001_Typical_CGProfileAug26.pdf [<https://perma.cc/Y6QS-93NL>] (stating that the typical caregiver is married or living with a partner).

174. There are multiple sections defining “parent,” but one possible definition is “biological parent, adoptive parent, legal guardian, or legal custodian,” from N.C. GEN. STAT. ANN. § 14-321.2 (West 2016), the provision criminalizing the unlawful transfer of the custody of a minor child.

175. This requirement of freely given and informed consent in writing is stricter than the required consent for marriage, which is consent that is “freely, seriously and plainly expressed by each in the presence of the other.” N.C. GEN. STAT. § 51-1 (2020). Through its investigative and fact-finding function, the General Assembly may determine that this stricter level of consent is not necessary, but the Note proposes a stricter consent requirement to prevent bad faith manipulation of a new status.

176. Since the reciprocal beneficiary status comes with obligations, including the duty to support, it is important for the reciprocal beneficiary’s spouse to know what that entails. Because of the potential for obligatory financial support, the spouse should be aware that marital assets may be used towards that end. Otherwise, it could be inequitable if a person dissipates marital funds on this vertical adult child to parent caregiving relationship when the person’s primary obligation is the horizontal spousal relationship.

177. Bigamy is a felony in North Carolina. N.C. GEN. STAT. § 14-183 (2020).

178. Although some states like California have recognized by statute that a child may have more than two parents, CAL. FAM. CODE § 3040(e) (West 2020), North Carolina has not, so this numerical limitation is appropriate for now.

only enter into a reciprocal beneficiary relationship with their children. This condition accommodates individuals who are taking care of both parents. Furthermore, for an elderly parent who may lack the capacity to give the consent required to enter into a reciprocal beneficiary relationship, the law may permit the parent's legally appointed guardian¹⁷⁹ to consent on their behalf, under strict judicial approval.¹⁸⁰

Hawaii's model also errs in not requiring private employers to provide health insurance coverage to an employee's reciprocal beneficiary.¹⁸¹ Since health-care costs are one of the biggest strains on older people,¹⁸² it is imperative that North Carolina explicitly requires employers to automatically permit its employees to add their reciprocal beneficiary to their insurance plan. Employers will probably oppose this due to likely cost increases. But increased cost does not render this proposal dead on arrival, as there is a compelling moral and equitable argument for requiring employers to provide this fringe benefit, and this increase in coverage can be framed as one of the costs of doing business, similar to the ACA's employer mandate.¹⁸³ Furthermore, despite the potential objection due to cost, many employers voluntarily extended benefits to same-sex partners long before *Obergefell v.*

179. In North Carolina, “[a] guardian is a surrogate decision maker and advocate for an individual (the ward) who has been adjudicated incompetent by the court.” *Guardianship*, N.C. JUD. BRANCH, <https://www.nccourts.gov/help-topics/guardianship/guardianship> [<https://perma.cc/VT7Z-CSU6>].

180. The General Assembly will have to thoroughly evaluate whether this is an option that should remain on the table, given the recent discourse on abusive guardianships and conservatorships. See Ronan Farrow & Jia Tolentino, *Britney Spears's Conservatorship Nightmare*, NEW YORKER (July 3, 2021), <https://www.newyorker.com/news/american-chronicles/britney-spears-conservatorship-nightmare> [<https://perma.cc/G5M6-H7MJ>] (describing Britney Spears's abusive conservatorship).

181. For instance, Hawaii's UHA Health Insurance Company requires that the “Employer Group requests in writing that UHA extend eligibility to Reciprocal Beneficiaries of its employees.” UHA HEALTH INS., GROUP ADMINISTRATOR HANDBOOK 14 (2018), https://uhahealth.com/uploads/forms/handbook_group_admin.pdf [<https://perma.cc/NU5F-7NYD>].

182. The bankruptcy filing rate for older Americans has more than doubled in the past twenty-five years. David Lord, *Bankruptcy Rate Has More than Doubled for Seniors*, CREDIT.COM (Oct. 28, 2020), <https://www.credit.com/blog/bankruptcy-rate-has-doubled-for-seniors-187765> [<https://perma.cc/733K-38UT>]. This is caused in part by extremely high health-care costs; one older adult said, “[M]y bankruptcy started with back surgery.” *Id.*

183. *Employer Shared Responsibility Provisions*, INTERNAL REVENUE SERV., <https://www.irs.gov/affordable-care-act/employers/employer-shared-responsibility-provisions> [<https://perma.cc/6SQC-TNEJ>] (last updated Dec. 29, 2020) (describing the mechanics of the “pay or play” payment that employers must make to the government if they fail to offer minimum affordable coverage to employees and their dependents).

Hodges,¹⁸⁴ and many employers extended unpaid leave policies to same-sex partners beyond what the Family Medical Leave Act requires.¹⁸⁵ With state tax incentives and societal pressure, North Carolina likely has the leverage to incentivize employers to include reciprocal beneficiaries in company-sponsored health insurance plans.

Additionally, the Vermont model is instructive in that it bore no registrants for reciprocal beneficiary status, which led to its eventual repeal a little more than a decade after it was introduced.¹⁸⁶ The disuse could have been due to confusion about what the status entailed compared to civil unions or about whether it was meant for same-sex couples or caregiving relationships, as well as not enough publicity for residents to know it was an option. To the former point, Vermont's reciprocal beneficiary status could have been a conservative response that attempted to derail efforts to introduce more comprehensive legislation granting rights to unmarried same-sex couples, with the provision encompassing blood relatives included "to avoid looking 'pro-gay.'"¹⁸⁷ But since the cultural and constitutional landscape has changed with the *Bostock v. Clayton County*¹⁸⁸ ruling, a new reciprocal beneficiary status will not carry the same baggage as the defunct Vermont status, which may have included family members as a token.

Here, adults who wish to legally recognize their caretaking relationship with a parent would not view the reciprocal beneficiary status as something that is actually a second-rate status for same-sex couples. Of course, North Carolina will also have to adequately inform and educate its residents about what the reciprocal beneficiary status offers and does not offer, how to register for or terminate the relationship, and how to know whether it is right for their family

184. Ponte & Gillan, *supra* note 128, at 66.

185. See Lauren E.M. Russell, *Marriage Equality and Federal Benefits*, DEL. EMP. L. LETTER, MAR. 2015, at 1, 1 (concluding that "[e]mployers that have already voluntarily extended [Family Medical Leave Act] leave to employees in same-sex marriages will not experience any change" from the U.S. Department of Labor's recognition of same-sex marriage); Anton L. Janik, Jr., Brian A. Vandiver & Tod Yeslowa, *Several Key Impacts of United States v. Windsor on Federal Tax and Benefits Laws Affecting Arkansans and Arkansas Businesses*, 49 ARK. LAW. 20, 22 (2014) ("[S]ome employers are opting to voluntarily extend FMLA benefits to employees with same-sex spouses company-wide.").

186. See *supra* notes 149–151 and accompanying text.

187. Thomas F. Coleman, *Reciprocal Beneficiary Laws Mask a Larger Political Battle*, UNMARRIED AMER. (Mar. 13, 2006), <http://www.unmarriedamerica.org/column-one/3-13-06-reciprocal-beneficiaries.htm> [<https://perma.cc/Q9V3-JDPD>].

188. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020).

situation. This could involve an educational campaign targeting caregivers and low-income families. With proactive governmental outreach, people short on time or money would only face a low barrier to entering a reciprocal beneficiary relationship.¹⁸⁹

C. Implement the ACA's Medicaid Expansion

“What the country deems worthy of funding is important to whether intergenerational caregiving and multigenerational living find support within state legislatures”¹⁹⁰ Although easier said than done, the General Assembly should rise above the partisan gridlock to approve the Medicaid expansion and take on more responsibility for support of the elderly. When Congress enacted public support programs like Medicaid and Medicare, it intended to shift the burden of supporting the elderly from the private family to the state.¹⁹¹ The Senate Committee on Finance even alluded to state filial responsibility laws when describing eligibility for medical assistance.¹⁹² The committee approved imposing an expectation for parents to support their minor children, as well as requiring spouses to support each other, but found it “destructive and harmful” to the family group to impose requirements beyond those specific relationships.¹⁹³ Because of this, “[s]tates may not [require] contributions from relatives other than a spouse or the parent of a minor child or children over 21 who are blind or permanently and totally disabled.”¹⁹⁴ This requirement dramatically

189. Vermont required “presenting a signed, notarized declaration of a reciprocal beneficiaries relationship to the commissioner and paying a filing fee of \$10.00.” VT. STAT. ANN. tit. 15, § 1304 (2013). Hawaii requires “filing a signed notarized declaration of reciprocal beneficiary relationship with the director” and paying a filing fee of eight dollars. HAW. REV. STAT. § 572C-5 (2015).

190. Jessica Dixon Weaver, *Grandma in the White House: Legal Support for Intergenerational Caregiving*, 43 SETON HALL L. REV. 1, 72 (2013).

191. See DeBona, *supra* note 16, at 858 (“The advent of the Social Security system, Medicare, and Medicaid reduced the need for children to financially support their indigent parents and, as a result, diminished the need for filial support statute enforcement.”). Of course, as Justice Scalia loved to say, relying on legislative history is like “entering a crowded cocktail party and looking over the heads of the guests for one’s friends.” Stuart Minor Benjamin & Kristen M. Renberg, *The Paradoxical Impact of Scalia’s Campaign Against Legislative History*, 105 CORNELL L. REV. 1023, 1046 (2020) (citation omitted).

192. S. REP. NO. 89-404, at 78 (1965) (“The committee has heard of hardships on certain individuals by requiring them to provide support and to pay for the medical care needed by relatives.”).

193. *Id.*

194. *Id.*

minimizes the proportion of the familial contribution to family members' necessary medical care and shifts responsibility to the states.¹⁹⁵ Therefore, it is entirely appropriate to expect the state—and not the immediate family alone—to take on some responsibility for supporting indigent and elderly parents.¹⁹⁶

Additionally, North Carolina voters across the political spectrum support the Medicaid expansion. An August 2020 poll found that 57 percent strongly favor expansion, 20 percent somewhat favor expansion, 6 percent somewhat oppose expansion, and 11 percent strongly oppose expansion.¹⁹⁷ Strikingly, 60 percent of voters who identified as “very conservative” and 66 percent of voters who identified as “somewhat conservative” supported expansion.¹⁹⁸ Given such broad bipartisan support, North Carolina gravely wrongs its residents by keeping health care out of the reach of hundreds of thousands of low-income people. North Carolina should follow in the steps of Oklahoma and Missouri,¹⁹⁹ two other Republican-led states that expanded Medicaid through voter referendum since the start of the COVID-19 pandemic.²⁰⁰

Besides fulfilling popular will, providing health-care cost savings to families will increase their ability to act as caregivers. “Greater resources in the form of household income, education, net worth, and

195. See Margaret F. Brinig, *The Family Franchise: Elderly Parents and Adult Siblings*, 1996 UTAH L. REV. 393, 411 (noting that adults are less likely to support parents today given Social Security and Medicare).

196. “State . . . policymakers must continue to recognize that the public sphere has an invaluable role to play in the support of family caregiving and should continue to develop constructive programs to assist adult children who care for their aging parents.” Katie Wise, *Caring for Our Parents in an Aging World: Sharing Public and Private Responsibility for the Elderly*, 5 N.Y.U. J. LEGIS. & PUB. POL’Y 563, 598 (2002).

197. Rose Hoban, *Large Swaths of NC Voters Favor Medicaid Expansion, Poll Shows*, N.C. HEALTH NEWS (Sept. 10, 2020), <https://www.northcarolinahealthnews.org/2020/09/10/large-swaths-of-nc-voters-favor-medicaid-expansion-poll-shows> [<https://perma.cc/6JZN-V4PZ>].

198. *Id.*

199. In 2019, Oklahoma was the second most uninsured state in the country, with 16.28 percent of its adult residents uninsured, and Missouri was fourteenth on the list, with 11.13 percent of its adult residents uninsured. Kiernan, *supra* note 112.

200. Hoban, *supra* note 197. Expansion coverage in Oklahoma and Missouri will begin by July 1, 2021. *Status of State Medicaid Expansion Decisions: Interactive Map*, *supra* note 19. Over two hundred thousand residents in each state are expected to gain Medicaid access. Louise Norris, *Missouri and the ACA’s Medicaid Expansion*, HEALTHINSURANCE.ORG (July 22, 2021), <https://www.healthinsurance.org/missouri-medicaid> [<https://perma.cc/545N-E5C5>]; Louise Norris, *Oklahoma and the ACA’s Medicaid Expansion*, HEALTHINSURANCE.ORG (June 3, 2021), <https://www.healthinsurance.org/oklahoma-medicaid> [<https://perma.cc/2STA-45PU>].

participation in the labor force increase the likelihood of providing support to older parents.”²⁰¹ If adult children have fewer worries about the other moving parts and financial burdens in their lives, they will be more inclined to voluntarily take on the burden of supporting their parents.²⁰² In healthy families, people *want* to take care of their parents if they can—awareness of filial responsibility laws generally is not a motivating factor in providing care.²⁰³

Furthermore, since most nursing homes accept Medicaid,²⁰⁴ Medicaid is better than long-term care insurance for older people who may need in-home or custodial care.²⁰⁵ Even though long-term care insurance generally covers the cost of skilled and non-skilled nursing home care,²⁰⁶ it can be inaccessible to the indigent or ill elderly. Long-term care insurance is expensive, and the price can be prohibitive if people wait too long to purchase it.²⁰⁷ Most importantly, insurers frequently decline to insure applicants with preexisting conditions.²⁰⁸ Under North Carolina’s Long-Term Care Insurance Act,²⁰⁹ long-term care insurers cannot use a definition of “pre-existing condition” that is “more restrictive than . . . a condition for which medical advice or treatment was recommended by, or received from a provider of health-care services, within six months preceding the effective date of

201. Merril Silverstein, Aviad Tur-Sinai & Noah Lewin-Epstein, *Intergenerational Support of Older Adults by the ‘Mature’ Sandwich Generation: The Relevance of National Policy Regimes*, 20 THEORETICAL INQUIRIES L. 55, 71 (2019).

202. This form of support can vary. For example, a person who lives in North Carolina might not be able to provide daily caregiving to a parent who lives in New York. But that person could help in other ways, such as arranging or subsidizing long-term care or assisting with estate planning.

203. Zietlow & Cahn, *supra* note 30, at 231.

204. *How Can I Pay for Nursing Home Care?*, *supra* note 81.

205. See *supra* note 82 for the definition of long-term care insurance.

206. See *supra* notes 82–83.

207. Maryalene LaPonsie, *The High Cost of Long-Term Care Insurance (and What To Use Instead)*, U.S. NEWS & WORLD REP. (Sept. 16, 2019, 4:48 PM), <https://money.usnews.com/money/personal-finance/family-finance/articles/the-high-cost-of-long-term-care-insurance-and-what-to-use-instead> [<https://perma.cc/R4UH-GRXX>].

208. *Understanding Long-Term Care Insurance*, AARP, <https://www.aarp.org/health/health-insurance/info-06-2012/understanding-long-term-care-insurance.html> [<https://perma.cc/SZ3C-GR44>] (last updated May 2016). For instance, the American Association for Long-Term Care Insurance categorizes people who use a multi-pronged cane or have schizophrenia as “not insurable.” *Long-Term Care Insurance Health Qualifications. Are You Even Insurable?*, AM. ASS’N FOR LONG-TERM CARE INS., <https://www.aaltci.org/long-term-care-insurance/learning-center/are-you-even-insurable.php#jump> [<https://perma.cc/3HVY-W97H>].

209. N.C. GEN. STAT. § 58-55-1 (1987).

coverage of an insured person.”²¹⁰ All of this limits the accessibility and actual utility of long-term care insurance, which was ostensibly designed for the older adult who needs more intensive or regular care. In sum, Medicaid expansion would significantly help older and poorer adults in general and it conforms to the role that the state should play in keeping elderly parents above the poverty line.

CONCLUSION

Even though the 1977 General Assembly recognized that children have a legal duty to support their parents, the state of North Carolina still owes its aging and poor population a sense of security and stability. North Carolina’s filial responsibility statute illustrates the legislature and society’s recognition of the fundamental importance of supporting parents who lack the financial resources or ability to support themselves. The statute’s dormant enforcement shows that state intervention is unnecessary because children largely want to support their parents who are unable to support themselves. But it is imperative that the state steps in to provide real, concrete tools for children to help out their parents. Just as the central provision of the Ten Commandments dictates that children must honor their fathers and mothers, North Carolina should honor the financial needs of these filial caretakers by mandating that private employer insurance plans allow the addition of parents, regardless of dependency status; introducing the modified reciprocal beneficiary status; and expanding Medicaid through the ACA.

210. *Id.* § 58-55-30 (1993).