

Old-Age Assistance: Plan Provisions on Children's Responsibility for Parents

by ELIZABETH EPLER*

The problem of determining and enforcing the responsibility of adult sons and daughters for the support of their parents has been receiving increasing attention as the States have worked to improve the administration of assistance. The following summary of old-age assistance laws and policies on children's responsibility gives a basis for further consideration of the administrative problems involved and for interpretation of interstate differences in the extent of children's contributions. State procedures for determining children's ability to contribute will be reported in the May Bulletin.

STATE legislatures and assistance agencies have taken many different approaches to the problem of responsibility of adult sons and daughters for support of their parents. Most States—but by no means all—hold that adult children are legally responsible for the support of certain needy parents as defined by law. In some States, chiefly those in which children are not legally obligated to support their parents, the assistance agencies encourage but do not take any steps to require contributions. In other States the assistance agencies seek by various methods to require contributions.

The old-age assistance plan provisions on responsibility of relatives (other than husbands and wives) are concerned largely, but not entirely, with the responsibility of adult children. This article discusses only the plan provisions concerning adult children; the provisions are those in effect in October 1952. "Children," as used in this article, always means adult children.

Although the laws sometimes limit

legal responsibility to children living in the State, they make no distinction between those sharing living arrangements with their parents and those not sharing such arrangements. The distinction is, however, frequently made in agency policies (rules, regulations, and instructions to staff) that, together with the laws, make up the old-age assistance plan provisions. To the extent that the plan provisions differ for the two groups, this article is limited to those concerning children living outside the household. Provisions for considering the extent of the responsibility of children sharing living arrangements with their parents are more complex than the others chiefly because, when child and parent live together, the assistance agency often deals with two problems that are not always clearly differentiated in the State plan. One is the problem of how the joint living expenses shall be divided between the assistance recipient and the child; the other is the problem of whether the child should be expected to contribute to the parent's support, and, if so, what should be counted a contribution as distinct from a just share of the joint living expenses. The provisions are further complicated in that a number of assistance agencies make distinctions between situations in which a child lives in the home of a parent and those in which the parent lives in the home of a child.

The plan provisions summarized here are only a small part of the information needed on the question of

responsibility of adult children for support of their parents. The summary gives some basis for considering the problems encountered in administering the many different kinds of laws and policies in the area of children's responsibility and a limited basis for interpreting interstate differences in the extent to which adult children contribute to parents receiving old-age assistance. Information on the number of recipients getting contributions from adult children and on the types and amounts of contributions will be available from the study of requirements, incomes, resources, and social characteristics of recipients of old-age assistance, made in 1953 by the State agencies in cooperation with the Bureau of Public Assistance.

Information on children's contributions to recipients of old-age assistance is only part of the story of how program expenditures are affected by contributions and by laws and policies on children's responsibility. How many parents not getting old-age assistance but getting contributions from their children would be eligible for aid if the children did not contribute? The possible maximum effect of children's contributions on the number of recipients would be apparent only from a study of the amounts and sources of incomes of aged persons not receiving assistance. Study of the incomes of the aged population in general is not within the scope of the assistance agencies' responsibilities and functions or of their facilities for research.

The total effect of laws and policies concerning children's responsibility is still more difficult to measure than the effect of children's contributions. How many of the contributions to assistance recipients or other old persons are prompted by knowledge of the existence of the laws and policies? Many children's contributions are, of course, entirely voluntary and would be made regardless of any legal obli-

* Division of Program Statistics and Analysis, Bureau of Public Assistance.

Information on the support legislation was compiled by the Office of the General Counsel, Department of Health, Education, and Welfare, and information on the plan provisions by the Bureau of Public Assistance. Summaries of the legal and other plan provisions were sent to the regional attorneys and regional public assistance representatives of the Department for review by the regional office and State agency staffs.

gation. These voluntary contributions are not easily distinguishable from others. How many parents, even though their incomes are somewhat below assistance standards, either do not apply or withdraw their claims for assistance because they do not want to comply with laws and policies on children's responsibility? To answer these questions, and thus to measure the continuing effects on old-age assistance caseloads and payments of any given provision on children's responsibility, would be extremely difficult, if not impossible. The initial, as distinct from the continuing, effects of new or substantially revised policies are measurable to the extent that they are reflected in case closings and reductions in assistance payments.

Whether the children of old-age assistance recipients contribute more or less to their parents than other children in similar circumstances contribute to their parents is among the many unknowns. Nor do we have any measure of differences from the past to the present in the extent of children's contributions to parents; there are only scattered pieces of information for limited geographical areas or for limited segments of the aged population. It has frequently been assumed, probably correctly, that the proportion of aged parents depending entirely or chiefly on their children is lower now than, say, 50 or 25 years ago. Patterns of support and concepts about support of the aged population have changed and are continuing to change, and the problem has increased in size and in complexity. Not only are there more old persons in proportion to the rest of the population, but they are "old" longer because they tend to retire earlier and to live somewhat longer than in the past.

Because children outnumber parents, and often only one or two children in a family take responsibility for their parents, the proportion of adult children contributing, whatever the figure at any given time, is undoubtedly smaller than the proportion of parents receiving such help. As families grow smaller and the number of adult children in relation to the number of aged parents drops, it seems reasonable to assume that rela-

tively fewer aged persons will have one or more children both able and willing to contribute.

Contributing children often were, and are, those sharing living arrangements with their parents, either in the parents' homes or in the children's homes. Presumably the shared living arrangement often was, and is, one of mutual economic necessity or mutual economic advantage or both. As size of families and of dwelling units declines, and as proportionately more adults of all ages are wage earners rather than entrepreneurs, it becomes less easy for parents and children to work out mutually satisfactory and advantageous joint living arrangements and joint participation in family farms or businesses. In addition, the greater variety of employment opportunities, especially for women, and the development of retirement plans and other programs for the support of the aged mean that both parents and children have a wider range of choice. Still, a substantial proportion of all persons over age 65—possibly about a third—live, whether by choice or of economic necessity, with their children in their own or the children's homes. It seems probable that most parents sharing living arrangements with their children either are partly or fully supported by the children or at least get some financial advantage from the sharing of household expenses.

Information is lacking on the number of parents either partly or fully supported by their children. It is known, however, that proportionately few aged parents get full support from their children, since about 4 of every 5 persons over age 65 are known to have some other source of income. Of the 13.5 million persons over age 65 in June 1953, about 4.3 million were drawing old-age and survivors insurance benefits and 2.5 million were getting old-age assistance. Some 4.0 million were earners or the aged wives of earners, and about a million were getting veterans' benefits or benefits under public retirement systems other than old-age and survivors insurance. Some persons received income from more than one of the specified sources. No specific information is available on sources of income of some 2.0-3.0 million aged persons

with a wide range of incomes. Some of them undoubtedly depended on savings or income from investments; others were supported by their children; and still others depended on other sources or various combinations of sources of support. Some aged persons in every group—wage earners, beneficiaries under public retirement systems, old-age assistance recipients, and others—are partly supported by their adult children.

Opinions inevitably differ widely as to the level of living that sons and daughters of aged parents should be able to maintain for themselves and their children before being called upon to contribute to their parents. When the parents are able to get along on income from private sources or from public retirement benefits, which are in no way affected by any other income that the beneficiaries may have, the public generally is not concerned with the extent of children's contributions. Public attention is frequently directed, however, to the question of the extent to which adult children do contribute and should contribute to parents who apply for old-age assistance, since this type of income is available only to aged persons who qualify under State legal and policy definitions of "needy" persons.

Recent Changes in Plan Provisions

Until the late 1940's, contrasting trends were apparent in the changes in laws and agency policies concerning responsibility of adult children. Some changes emphasized the necessity of enforcing children's responsibility, while others tended to relax or eliminate provisions requiring children to support old-age assistance applicants and recipients.

Most of the recent changes, however, have tended to strengthen the provisions that encourage or require children to contribute to their parents to the extent of their ability.¹ The State agencies have made consistently greater efforts to develop more specific and equitable methods of determining ability of the children.

¹ For a summary of laws enacted in the 1953 State legislative sessions see the *Bulletin*, January 1954, pp. 8-9.

A few States have enacted into law income-scale provisions specifying the extent of children's financial liability.

In 1951, Alabama, Arkansas, Georgia, and Nevada all passed laws intended to require certain relatives to contribute to needy, aged applicants and recipients, and assistance agencies in several other States adopted new policies to the same effect. Perhaps the most fundamental change occurred in Nevada, where the 1951 law makes husbands, wives, parents, and children, "if of sufficient financial ability," responsible for support of public assistance applicants and recipients and establishes maximum required monthly contributions from legally responsible relatives with specified numbers of dependents and specified amounts of income. The Nevada law also states that "the liability of a relative to contribute to the support of a recipient of public assistance established by this act shall not be grounds for denying or discontinuing public assistance to any person; provided, however, that by accepting such public assistance the recipient thereof shall be deemed to consent to suit in his name by the county against such responsible living relative or relatives and to secure an order for his support."² This legislation in effect replaced the earlier legal provision for old-age assistance that "no relative of the applicant or recipient shall be in anywise required to contribute to the support and maintenance of said applicant and recipient, and no questionnaire or inquisition whatsoever shall be made or forwarded to any such relative; nor shall applicant or recipient be required to submit the . . . names of any . . . relatives for the purpose of inquiring as to their financial ability to contribute any sum whatsoever to the support and maintenance of said applicant or recipient, it being the intent and purpose of this act to remove all applicants and recipients from the operation, restrictions and provisions of . . . the pauper laws."³

The 1951 Alabama law, like the Nevada law, includes an income scale

for determining the extent of responsibility of husbands, wives, parents, and children for assistance applicants and recipients. It differs substantially from the Nevada law, however, in providing that the amount for which such relatives are liable shall be deducted from the amount of assistance for which an applicant would otherwise be eligible. The needy person is authorized to sue any such relative for "accumulated contributions" and future contributions.⁴ Alabama's earlier general support law, providing for local units of government to recover from the legally responsible relatives the amounts spent for relief of needy persons, had been applied to the administration of certain other assistance programs but not to old-age assistance. Before the 1951 support law was passed, the assistance agency's policy was generally to encourage but not require children to contribute to parents receiving old-age assistance.

In Georgia, where policy had been similar to Alabama's, the new legislation provided: "If any recipient of old-age assistance has any child or children, who, in accordance with income and resources tables established by the State Department of Public Welfare, are able to support him but who fail to provide such support, the amount granted as assistance . . . shall be recoverable from such child or children, provided that judgment in the trial court is rendered during the lifetime of the recipient . . ."⁵

The Tennessee Legislature, during its consideration in 1951 of State policy on relatives' responsibility, repealed⁶ a 1949 provision that only income actually available to applicants or recipients could be considered in determining eligibility for old-age assistance. The State agency then revised its policies so as to deny assistance under certain circumstances when children are determined able to support, whether or not they are actually supporting. Tennessee has no legislation establishing the responsibility of children for support of their parents.

⁴ Code of Alabama, 1940, (Pocket Supplement), title 49, secs. 109-116.

⁵ Georgia Code Annotated, secs. 99-626 and 99-627.

⁶ Public Acts of Tennessee, 1951, ch. 104.

Types of Legislation

Since, under common law, children have no responsibility for the support of their parents, legal responsibility is established by statute or not at all. Twelve States have no legislation of any kind (public assistance, general support, or criminal legislation) establishing the duty of children to support their parents (table 1); thus, whatever their moral obligations may be, children are not legally responsible for the support of their parents in these States. The old-age assistance law in one of these States specifically provides that children shall not be held legally responsible for the support of their parents.

Six States have some type of general support legislation, in the tradition of the old poor laws, that establishes the duty of children to support certain indigent parents but that has not been specifically applied in any way in the administration of old-age assistance. In these six States, the old-age assistance laws make no reference to responsibility of relatives. The only legal remedy specifically authorized by the support laws in four of these six States is for local units of government to recover from the legally responsible relatives the amounts spent for the relief of needy persons. Since no local funds are provided for old-age assistance in these four States, the laws would seem to have no possible applicability to the administration of old-age assistance. In the other two States, the legal remedy is for the "poor" person to bring suit for support against his legally responsible relatives. Some but probably not all persons eligible for old-age assistance in these States would be "poor" or "in necessitous circumstances" within the meaning of the support laws and thus would have recourse to the courts if they chose, on their own initiative, to seek support from their children.

In 18 States, then, either children are not legally responsible for their parents or their legal responsibility has no specific relationship to the administration of old-age assistance.

The other 33 States (including Alaska, Hawaii, and the District of Columbia) have either public assistance legislation establishing respon-

² Nevada Compiled Laws, 1929, 1949 Supp., sec. 5146. 12a (added by ch. 197, 1951).

³ Ibid., sec. 5158.06 (amended by ch. 315, 1951).

Table 1.—Selected provisions on responsibility of adult sons and daughters for support of OAA applicants and recipients, 51 States, October 1952

State and type of basic legislation	OAA plan provisions on responsibility of children outside the household			
	Eligibility and payment—			Income scale or other prescribed method of determining ability
	Affected only as contributions are actually available	May be affected if children found able to contribute, whether or not contributing	May be affected if children fail to give information on ability	
Number of States.....	37	13	10	27
I. States with no legislation (PA, general support, or criminal) establishing duty of sons and daughters to support their parents:				
Arizona.....	x			
Florida.....	x			
Kansas.....	x			
Missouri.....	x			
New Mexico.....	x			
North Carolina.....	x			
Oklahoma.....	x			
South Carolina.....	x			
Tennessee.....		x	x	x
Texas.....	x			
Washington.....	x			
Wyoming.....	x			
II. States with general support legislation establishing duty of sons and daughters to support that has not been applied in any way to OAA:				
Aged person may bring civil suit for support:				
Louisiana.....	x			
South Dakota.....	x			
Aged person not specifically authorized to bring suit for support:				
Colorado.....	x			
Idaho.....	x			
Mississippi.....		x	x	x
Utah.....	x			
III. States with legislation establishing duty of sons and daughters to support that is clearly applicable to OAA:¹				
Aged person may bring civil suit for support, and assistance agency² may bring suit for—				
Support only:				
Connecticut.....		x	x	x
Delaware.....	x			x
Hawaii.....	x			x
Michigan.....		x		x
Pennsylvania.....	x			x
Support and recovery:				
Illinois.....		x	x	x
Indiana.....	x			
Iowa.....		x		x
Maine.....		x	x	x
Nebraska.....			x	
New Hampshire.....		x		
New Jersey.....	x			x
New York ³	x			x
Oregon.....	x			x
Recovery only:				
Minnesota.....	x			x
Montana.....	x			
Aged person not specifically authorized to bring civil suit; assistance agency² may bring suit for—				
Support only, Nevada:	x			x
Support and recovery:				
Massachusetts.....	x			x
Rhode Island.....	x			x
West Virginia.....	x			x
Wisconsin.....	x			
Recovery only:				
Alaska.....	x			
Arkansas.....	x			x
California.....	x			x
District of Columbia.....		x		x
Georgia.....	x			x
North Dakota.....	x			
Aged person may bring civil suit; assistance agency may not bring suit:				
Alabama.....		x	x	x
Vermont.....			x	
Provision for criminal action only:				
Kentucky.....		x	x	x
Maryland.....	x			x
Ohio.....		x	x	x
Virginia.....	x			x

¹ Legislation authorizing the assistance agency (or other government unit acting for the agency) to bring suit for support and/or recovery, legislation naming children as responsible for OAA applicants or recip-

ients, or legislation that is the basis for an OAA plan provision on enforcement of support by children.

² Or other government unit acting for the agency.

³ Parent may bring suit only in New York City.

sibility of children for support of old-age assistance applicants and/or recipients or some other type of legislation establishing the responsibility of children for parents that is applicable to the administration of the program. In this group are States with (1) any type of legislation authorizing the assistance agency (or another government unit acting for the assistance agency) to bring suit against legally responsible children for support of the parent or for recovery of assistance granted, (2) any other type of public assistance legislation naming children as responsible for support of old-age assistance applicants and recipients, or (3) any legislation that is the basis for an old-age assistance plan provision concerning enforcement of children's responsibility for parents.

Provisions for enforcement of children's responsibility—court action by the assistance agency or other government unit or by the parent—may be included in old-age assistance laws (or public assistance laws applicable to old-age assistance and other assistance programs), general support laws, or criminal laws. Enforcement provisions appearing only in general support or in criminal statutes are not ordinarily the basis for old-age assistance plan provisions unless the public assistance laws include some reference to children's responsibility for parents.

Types of Plan Provisions (Laws and Agency Policies)

Almost all the old-age assistance plan provisions concerning the responsibility of children outside the household for supporting or contributing to the support of old-age assistance applicants and recipients may be classified, in broad and oversimplified terms, in one of three groups.

(1) Provisions that may encourage contributions from children able to contribute, but that do not include any means of seeking to require support from children who do not contribute voluntarily. These provisions take into account, in determining eligibility and the amount of assistance payments, only such contributions as are clearly and voluntarily made available to applicants and recipients.

(2) Provisions that seek to require support, by some type of court action initiated by the agency or the recipient, from children determined by the agency to be able to support, but that take into account in determining eligibility and payments only such contributions as are clearly available.

(3) Provisions that take into account, in determining eligibility and payments, contributions that the agency determines that the children are able to make, whether or not the contributions are actually available at the time of the agency determination. The wording of several of these plan provisions indicates that they seek to require support by denying assistance. They sometimes include a plan for reconsideration by the assistance agency if the child continues to fail to support, but once assistance has been denied the initiative in seeking support or in proving that support is not forthcoming rests essentially with the aged person. The assistance agency does not take responsibility either for bringing court action or for meeting the needs of the applicant pending actual receipt of contributions.

Within each of these three broad groupings there are many differences of detail. Also, the old-age assistance plan in a given State may include two or even all three of these general types of provisions, each relating to a different group of children.

In the District of Columbia, for example, only children living in the District are legally responsible for their parents. The assistance agency encourages but does not require contributions from children living elsewhere. When, however, children live in the District, the following plan provisions apply: (1) Assistance is denied to applicants whose children are determined, according to an income scale, to be able to support fully, whether or not they are actually supporting; and (2) assistance payments that take into account only actually available contributions are made to *applicants* whose children can support in part only or to *recipients* whose children can support either fully or partly. If, however, the children do not contribute to the full extent of their determined ability, court action may be taken to recover

from them whatever part of the assistance granted they are able to contribute.

The plan in the District of Columbia rests on two separate provisions of the old-age assistance law. One specifies that assistance may be granted only if the applicant has no child or other person financially able to support him and legally responsible for his support.⁷ The other specifies that "if at any time during the continuance of old-age assistance the Board of Commissioners or its designated agency has reason to believe that a spouse, father, child, or grandchild [living in the District of Columbia] is reasonably able to assist [the recipient], it shall be empowered to bring suit . . . against [any such relative] to recover the amount of assistance provided . . . or such part thereof as [the relative] was reasonably able to pay."⁸

Because many State plans include more than one type of provision, a count of the States with any given type of provision is subject to many qualifications. Some generalizations are nevertheless possible.

Sixteen States⁹ have only the first type of plan provision—that is, children are not required to contribute; the mere determination of their ability to support is not a basis for denial of assistance, and there is no provision for any type of court action against children who fail to support. These 16 States include 11 of the 12 States with no laws of any kind establishing a duty of children to support their parents and five of the six States with general support laws that have not been specifically applied to old-age assistance. Thus, in these States, any plan provisions that seek to encourage children to contribute rest on agency policies.

In 21 States,¹⁰ the plans include the

⁷ *District of Columbia Code*, sec. 46-202 (f).

⁸ *Ibid.*, sec. 46-211.

⁹ Arizona, Colorado, Florida, Idaho, Kansas, Louisiana, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, South Dakota, Texas, Utah, Washington, and Wyoming.

¹⁰ Alaska, Arkansas, California, Delaware, Georgia, Hawaii, Indiana, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Jersey, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, Virginia, West Virginia, and Wisconsin.

second type of provision—for court action against children able to support who fail to do so—but do not include any provision for denying assistance merely on the basis of a determination of children's ability to support. The plan provisions in all these States rest both on laws and on agency policies. The plans typically make some distinction based on the residence of the child. When children live in other States, the first type of provision—encouraging but not requiring support—generally applies.

Plans in the other 14 States¹¹ include the third general type of provision, basing eligibility and payments, under specified circumstances, on the ability of children to contribute, without regard to actual contributions. In Mississippi and Tennessee the plans rest on agency policies only; in the other 12 States, on both laws and agency policies. The laws in some but not all of the 12 States include provisions, similar to that of the District of Columbia, specifying that assistance may be granted only if no legally responsible children are able to support; in all of them, however, children are legally responsible for the support of their parents. Most of the 14 States have plans that include more than one type of provision. When children live out of the State, the first type of provision—encouraging but not requiring support—often applies. When children live in the State, only the third type of provision—denying assistance without regard to actual contributions—may be applicable, or the plan, as in the District of Columbia, may include both the second and third types of provisions.

Plans Not Requiring Contributions

In the 16 States with no plan provisions requiring contributions, the eligibility of applicants and the amount of the assistance payments for recipients are in no way affected by the ability of the children outside the household to contribute except as

¹¹ Alabama, Connecticut, the District of Columbia, Illinois, Iowa, Kentucky, Maine, Michigan, Mississippi, Nebraska, New Hampshire, Ohio, Tennessee, and Vermont.

contributions are actually available. Laws in four of these States (Colorado, Idaho, Texas, Utah) and administrative regulations in the others prohibit presumption of contributions not actually available. Any regular contributions made by the children are, of course, taken into account in the same way as any other income in determining eligibility and payment.

In Texas—one of the States with no legislation making children liable for support of their parents—the old-age assistance law prohibits any inquiry into the financial ability of children in determining an applicant's eligibility. The law provides further that "the applicant's child or other relative, except husband or wife, is to be treated by the State Department [of Public Welfare] in the same way as any other person not related to the applicant; any aid or contributions to the applicant from such child or other relative, except husband or wife, must actually exist in fact, or with reasonable certainty, be available in the future to constitute a resource to the applicant."¹²

Utah's old-age assistance plan limits agency consideration of responsibility and ability of children to those sharing living arrangements with their parents; there is no provision for seeking contributions from other children.

Plans in most of the other States in this group include some type of general provision instructing workers to discuss with parents and children the ability and willingness of children outside the household to contribute to their parents.

The Oklahoma agency, for example, instructs its workers through its staff manual that "it is considered that adult children have a moral obligation for the support of their parents. This obligation represents a potential resource which it is the Department's policy to develop to the fullest extent possible. Discussion of the ability and willingness of adult children to assist the client is essential to a full understanding of the situation."¹³

The North Carolina agency manual states that "assistance should supplement, not replace, aid from relatives. On the other hand relatives are not expected to make contributions which force their own families below a level of living compatible with decency or health, deprive their children of an opportunity for education, or make it impossible for them to provide against their own dependency. . . . The decision as to which relatives should be contacted should be made on a selective basis with due regard for the circumstances involved."

The Kansas agency suggests consultation with relatives with whom the clients shares living arrangements or who have assisted the client in the past, and with other relatives if the agency believes they may contribute or the agency can help strengthen family ties.

Obviously, such general provisions leave a wide area of administrative discretion. The extent to which the question of children's ability to support is discussed with the children depends largely on the judgment of local staff.

Plans Denying Aid If Children Can Support

Circumstances in which assistance may be denied if children are determined to be able to support and/or if they fail to give information on ability to support, whether or not they are actually supporting, differ widely among the 14 States with this type of plan provision.

In four States assistance may be denied under specified circumstances when children are determined to be able to support, but the children's failure to provide information is not a basis for denial of assistance. In one State a child's failure to give information may lead to denial of assistance, but otherwise only actual contributions are counted in determining eligibility and payment. Nine States provide that assistance may be denied in some circumstances when a child fails to give information on ability to support, as well as when a child is determined to be able to support. Under some plans, when the children do not give information the agency seeks reliable information from other sources and grants assist-

ance if it can be established that the children are unable to support. Under other plans the burden of proof rests with the applicant and the children.

Differences based on residence of the children.—Of the 14 states, only Alabama, Mississippi, and Tennessee follow the same policy whether the child lives in or out of the State. These three States, except under limited specified circumstances, deny assistance when children are able to support fully and take the expected contributions into account in determining payments when children are able to support only in part.

The other 11 States all make some distinction based on the residence of the child. Except in Nebraska, assistance is not denied when children live outside the State. In Nebraska, assistance may be denied on the basis of a determination of ability of children living either in Nebraska or in another State with legislation providing for reciprocal enforcement of support laws. If local staff, through the "usual investigation," cannot make a determination of the children's ability or inability to contribute, the children may be called to a hearing before the county assistance committee.

Other differences.—Some States in this group deny assistance under specified circumstances if children are found able to support fully but do not take into account ability to support in part only (except as contributions are actually available). Still another distinction sometimes made is that between applicants and recipients, as in the District of Columbia, where, as noted earlier, assistance is denied if children of applicants are able to support fully, but otherwise assistance payments are not affected by the children's ability to contribute.

Ohio also makes some distinction between applicants and recipients; when an *applicant's* children who are living in Ohio are determined by the assistance agency, under its income-scale provisions, to be able to support fully or partly, the application is denied or the amount of the expected contribution is taken into account in determining the payment. When a *recipient's* children living in Ohio are found able to support fully or partly, local agency staff in consultation with the State field representative may

¹² *Vernon's Civil Statutes Annotated*, title 20A, art. 695c, sec. 20 (5).

¹³ The source of this quotation and all other quotations not otherwise identified is plan material on file with the Department of Health, Education, and Welfare.

decide either to continue full assistance or to deny assistance (or take the expected contribution into account in determining the payment). "They shall take into consideration whether support will probably be forthcoming, even though it is not promised by the relative. They shall not cancel Aid if this will cause suffering or hardship to the recipient." If assistance is continued, local agency staff and the field representative consider whether the case should be referred to the county prosecuting attorney. The resource of court action "should be explored according to the local situation."

Illinois, Iowa, and New Hampshire also permit denial of assistance as a matter of administrative discretion when children living in the State are clearly able to provide full support and it is believed that they will do so. In each of these three States, as in Ohio, court action may be initiated by the assistance agency against legally responsible children as an alternative to denial of assistance.

The applicants' legal remedy.—When assistance is denied on the basis of determined ability to support, whether or not support is actually available, the question of the applicant's legal remedy is perhaps especially important. Several of the plan provisions indicate that policies are based on the assumption that ordinarily the children will support if assistance is denied.

What happens if the children still do not support? In the District of Columbia, Mississippi, and Tennessee there is no statutory provision specifically giving the aged persons themselves legal recourse against the children. The Mississippi and Tennessee agencies have, however, adopted policies on "hardship cases" intended to prevent suffering if the children still do not support after assistance is denied. An agency decision to deny or discontinue assistance or cut the assistance payment may be reversed if, 3 months after the applicant or recipient has exhausted his own resources, it can be established that, because of continued failure of the children to contribute, he has been dependent on some other agency or organization or on neighbors or has suffered real privation.

In Alabama a few aged persons might be left without legal recourse. Here applicants and recipients are advised of their right to bring civil suit under the reciprocal enforcement-of-support legislation as well as under the Alabama support law; there is, however, no practical remedy when legally responsible children live in one of the States with no applicable reciprocal support legislation.¹⁴

The other 10 States provide a legal remedy when the children fail to support. In Ohio and Kentucky the only legal remedy is action under criminal law. The Ohio agency speaks of the special reluctance of both law-enforcement officials and parents to initiate criminal action as one reason for placing greater reliance on denial of assistance than on court action as a means of requiring support: "Ohio's support statute is a criminal statute insofar as support of aged parents by children is concerned and as a general thing, prosecutors and judges are rather reluctant to actually enforce the statute, which fact coupled with the reluctance of aged persons to file complaints against their children makes it necessary for the Division [of Aid for the Aged] to take an affirmative stand . . . in the hopes that by keeping persons who have relatives able to support them off the rolls it will . . . require the relatives to . . . support . . . , without having to process the case through the local courts."¹⁵

Although it seems reasonable to accept the Ohio agency's assumption that special reluctance attaches to bringing criminal action, the outcome of either criminal or civil action is likely to be the same. In criminal actions, support orders are commonly

¹⁴ *Atkins v. Curtis*, 66 So. (2d) 455 (1953), upheld the constitutionality of the Alabama support law and the validity of deducting from the assistance payment the expected contribution from a child living in another State but held to be legally responsible because he had been in Alabama after the support law was passed. A dictum indicates that limiting an assistance payment because of the existence of relatives not supporting and not legally liable for the support of a needy person might violate the duty of the legislature, under the Alabama Constitution of 1901, to require counties to make adequate provision for maintenance of the poor.

¹⁵ Letter on file with the Department of Health, Education, and Welfare.

issued and criminal penalties are imposed only if the support orders are not paid. Some criminal statutes specifically provide for civil remedies. Following civil actions, children ordered to support but failing to do so might eventually be held in contempt of court and thus be subject to criminal penalties. A basic difference is, of course, that in a criminal action a criminal penalty might be immediately imposed.

To sum up—in three of the 14 States where assistance may under some circumstances be denied because of a determination of children's ability to support, no legal remedy is specifically provided. In two States, only criminal action can be taken. In the other nine States the parents can initiate civil action against children determined able to support but failing to do so (with possibly a few exceptions in Alabama). In three of these nine States, criminal action is also available.

The States in which the parents have legal recourse against the children would ordinarily grant assistance if support is not actually forthcoming after there is an indication that a legal remedy is not available in the particular case. Since court action is at best likely to be slow, it is debatable whether the legal recourse in practice gives any more protection to applicants denied assistance than do the administrative provisions on "hardship cases" in Mississippi and Tennessee.

Plans Calling for Court Action but Not Denying Aid

The rest of the States all have some type of provision for court action when legally responsible children are able to support but fail to do so; these 21 States count only actual contributions in determining eligibility and payments. Thus, in these States the otherwise eligible aged person can always get assistance so long as his children do not actually support him, if he is willing to comply with the plan provisions on determination of children's responsibility and ability to support and on enforcement of their responsibility.

Laws in five of these States (California, Massachusetts, Nevada, North Dakota, Oregon) specifically prohibit

denial or discontinuance of assistance because of a mere presumption that children are able to support. Oregon law, for example, provides that "the liability of a relative to contribute to the support of a recipient of public assistance established by this act shall not be grounds for denying or discontinuing public assistance to any person; provided, however, that by accepting such public assistance the recipient thereof shall be deemed to consent to the recovery of an amount equal thereto from any responsible living relative or relatives by the State public welfare commission . . ." ¹⁶

Differences in types of court action.—Laws in 19 of the 21 States authorize the assistance agency (or another government unit acting for the agency) to initiate civil suit against the legally responsible children; in nine ¹⁷ of the 19 the aged person also is specifically authorized by law to initiate civil suit. The other two States (Maryland and Virginia) have provisions for criminal action only, but civil remedies are provided as alternatives to the criminal remedies.

Agency policies in only five (Delaware, Hawaii, Maryland, Pennsylvania, Virginia) of the 21 States provide for initiation of court action by the recipient. The policies in four of these five States provide for either the recipient or the agency to initiate action; in the other (Maryland) the initiative rests with the recipient. In Rhode Island either the agency administering old-age assistance or the recipient may take the first step toward court action by referral to the local director of public welfare, who is responsible for administering general assistance and for initiating support actions.

The aged person is ordinarily authorized to bring suit for support only. The assistance agency is authorized to bring suit for support of the recipient, for recovery of assistance granted, or for both support and recovery. Amounts recovered from children are, of course, paid not to the parent but to the assistance agency

or to the State or local government.¹⁸ Support ordered by the court may be ordered paid directly to the parent or through the court to the parent or to the assistance agency.

Other differences in plan provisions for court action.—The plan provisions for court action vary substantially from State to State. No plan calls routinely for court action against all children who are or may be able to support. Usually, court action is to be considered only after every effort has been made to persuade the children to contribute voluntarily. In a number of States, contributions are not necessarily expected from, and thus court action is not taken against, sons and daughters not supported or cared for in childhood by their parents, as well as other sons and daughters who have been estranged from their parents for some time. In some States, sons and daughters not supported in childhood are not legally responsible; in others, agency policy is to take no steps to enforce their responsibility. The plans for court action typically make some distinction based on the child's residence.

Some plans allow much more flexibility than others. The more flexible permit court action but do not specifically require it, or they suspend for an indefinite period a decision as to whether court action is to be taken. Georgia agency policy, for example, does not include any plan for initiation of court action but provides only that local agencies shall refer to the State office those cases in which children fail to submit information or able children fail to contribute. Georgia law, as noted earlier, authorizes recovery action against financially able children within the lifetime of the recipient.

In North Dakota, when a legally responsible relative refuses or neglects to contribute, "the county agency will notify the relative that a suit for recovery of assistance . . . may be made against him at some time in the future." If this notice brings no

action on the part of the relative, "it will be the responsibility of the county agency, in a reasonable length of time, to refer the case with full and complete information to the States attorney of the county for initiating legal action for recovery of assistance granted to the recipient from such date as it can be shown that the relative was or became able to provide for the full or partial support of the client."

Plans in some other States specifically provide that under given circumstances court action must be initiated against children if assistance is granted; some of these policies include definite time limits. An example is the New Jersey provision that, when a legally responsible relative "fails or refuses to make available to the client all or any portion" of the contribution he is found able to make, the agency "shall, within 30 days, take appropriate action in accordance with available procedure to compel contribution." Similarly, failure or refusal to furnish information shall be deemed failure to support, and the agency "shall take appropriate action within 30 days . . . to secure judicial determination of . . . ability to support."

The Rhode Island plan specifies a series of time limits within which certain steps are to be taken by the recipient (or the agency) to secure information from children or to secure support from children determined able to contribute. The last of these steps is to request the local director of public welfare to take court action against children still failing to contribute. If the recipient does not take (and does not want the agency to take) any one of these steps within the specified time, he becomes ineligible for assistance.

The Maryland agency manual indicates that a determination of a child's ability to contribute and "the clear decision as to how this affects eligibility and the amount of the grant would leave the parent and the child able to work matters out between themselves. If, however, the parent is claiming that the child does not or will not support or that he will not submit the required information, he [the parent] has the choice of taking court action. Assistance shall not

¹⁸ If a Federal grant was made with respect to the assistance payment, the pro rata share of the recovery to which the United States is equitably entitled is deducted from subsequent Federal grants to the State (Social Security Act, sec. 3(b)(2)(B)).

¹⁶ Oregon Laws 1949, ch. 590, sec. 4.

¹⁷ Delaware, Hawaii, Indiana, Minnesota, Montana, New Jersey, New York (in New York City only), Oregon, and Pennsylvania.

be withheld while the availability is being tested through the Court." Thus, in Maryland, if children are found able to support wholly or partly but fail to do so, either the parent must take court action or assistance is denied or the payment cut.

In Pennsylvania, the parent, as a condition of eligibility, must initiate court action if legally responsible children fail to give information or to make the contributions they are determined to be able to make (except that, in some instances, the agency rather than the parent may initiate the action). "If the client takes required court action, assistance is granted pending a court decision, if he is eligible in all other respects; if he refuses to take court action assistance is denied." Assistance may thus be denied even when the expected contribution would meet only a small part of the parent's needs according to assistance standards. In such instances, to avoid the necessity of either taking court action or doing without assistance altogether, the parent might say he gets a contribution that he actually does not get. He would then receive some assistance, though not as much as if he had no children able to help.

In these States, then, assistance may be denied if the applicant or recipient refuses to take (or permit the agency to take) court action, or the recipient may withdraw his claim for assistance rather than risk the possibility that the agency may take court action at some later date. The fact remains, however, that in all 21 States the aged person not actually supported by his children can get assistance if he is willing to comply with the plan provisions.

In two of these States (California and Rhode Island) responsibility is explicitly limited by law to children living in the State, and in several other States, agency policies similarly provide for court action only when children live in the State. A few agencies specifically provide for court action against children living in other States with legislation authorizing reciprocal enforcement of support. Most States have enacted such legislation, but the extent of its applicability to enforcement of children's support of aged parents is not entirely clear.

These reciprocal support laws are relatively new (the first were enacted in 1949), and they have not been fully tested by the courts. Their primary purpose is to compel fathers to support their minor children.

Some of the types of problems arising under attempts to use such legislation to compel support of a parent living in one State by children living in another are illustrated by the case of *Vincenza v. Vincenza et al.*¹⁹ This was a proceeding in the domestic relations court of New York City by Guiseppe Vincenza, 70 years old, living in New York (the "initiating State"), against five adult children living in New Jersey (the "responding State"). The New York City Department of Welfare was the "real party in interest." The court held that the New York Uniform Support of Dependents Law of 1949 does not provide for proceedings against the children of a needy parent, "and even assuming that it did under the circumstances, the petition would be denied as a matter of judicial discretion." Each of three of Mr. Vincenza's children was a married housewife "and as such not chargeable with her parent's support except out of personal earnings or individual property." Furthermore, support orders against any of the children "would doubtless be strongly contested because the father . . . allegedly abandoned respondents during childhood . . . ; and such misconduct of a father would in New Jersey free the wronged off-spring from obligation to contribute to his support . . . Even though no such exemption is recognized in New York, [where] an order for support of a needy parent is predicated wholly on exoneration of the public purse, . . . nevertheless, this is not the type of case which a 'responding' State Court should be asked to handle, at least during the initial stage of evolving satisfactory cooperation in the administration of a novel statute designed in any event primarily to alleviate the evils of desertion of wives and children."

The court further held that certain "considerations seem to me to justify, and indeed require, careful selectivity

¹⁹ 98 *New York Supplement* (2d) 470 (1950).

in asking another State to open the doors of its Courts to non-residents of that State under a novel statute rooted in a concept of comity. Adoption of a come-one-come-all policy toward petitioners who may turn to the over-publicized new legislation as a panacea, which, of course, it is not, would doom the experiment to failure. Better, therefore, to err on the side of circumspection against extending the new law during the experimental initial stage beyond its primary and original motivation and to avoid sending to a 'responding State' cases of doubtful merit."

Conclusion

All of the several types of plan provisions, of course, involve problems of administration and questions of equitable treatment of recipients, their children, and the other taxpayers who support the assistance programs.

When there is no provision for legal enforcement of support of parents by their children, the assistance agency has, in the final analysis, little choice but to accept the children's judgment as to whether they can contribute. The only alternative, if permitted by State law, is to deny assistance on the basis of a presumption that the children will support. Denial of assistance on this basis obviously may result in inequitable treatment of applicants and in actual hardship in some cases. Acceptance of the children's judgment also leads to many kinds of inequity. Children clearly able to support may or may not do so. On the other hand, children only marginally able to contribute may sometimes be persuaded to do so at considerable sacrifice.

Even when there is provision for legal enforcement, problems of equity arise. Attempts to enforce such provisions are generally limited to children living in the State or to children in the State and in other States with provisions for reciprocal enforcement of support laws. Some local law-enforcement authorities are hesitant, others diligent, about undertaking legal action against children of aged recipients. Court decisions in apparently similar cases often differ widely. In any event, court procedures are timeconsuming and costly, and even when support orders are issued, the

support actually may not be forthcoming.

A report of the Minnesota Commission on Aging discusses the difficulties, by no means peculiar to the State, of enforcing provisions for court action. Old-age assistance legislation in Minnesota provides that a "cause of action" for recovery of assistance shall exist against a recipient's child who is "reasonably able to contribute without undue hardship to himself or his immediate family" but who fails or refuses to contribute according to his ability.²⁰ The agency has established income scales to determine the extent of ability to contribute. A form that serves as official notice to the relative to contribute is to be prepared by the county attorney at the formal request of the county welfare board. The Committee on Economic Welfare (members of which were appointed by the Governor's Commission on Aging from public and private organizations, the State legislature, labor, and industry) recommended "that a more uniform and equitable method of securing support from relatives be studied and developed," and further stated:

²⁰ *Minnesota Statutes Annotated*, sec. 256.26, subdivision 1.

The problem of securing support from legally responsible relatives is one of the more puzzling aspects of meeting dependency among our aging. There are some assertions that if relatives' responsibility provisions in the law were strengthened or if the present regulations were more rigidly enforced, the public economic burden of our aging population could be very substantially reduced. There are others who hold that it is impossible, inadvisable or inequitable to try to enforce [them] at all, and that we should face reality and drop the provisions entirely . . .

The relatives' responsibility provisions of the statute have been exceedingly difficult to administer . . . The County welfare board is given the responsibility for administering these provisions, but has little real power to do much more than collect facts. The real enforcing power lies in the hands of other officials, particularly the county attorney, who because of the broad political implications of the problem, are extremely reluctant to act. Court decisions on present legislation indicate that the judicial interpretation of 'reasonably able to support' is such that if county officials took a vigorous approach to enforcement, most such cases would be defeated when brought to the courts . . . The present procedures work an inequity among relatives. There is no

effective legal way for enforcement among children living out of the state. Among those in the state, the relatives most easily reached by the administrative process are those living with the recipient, and those are frequently the ones who have been doing the most to discharge their family responsibilities toward the recipient and have sometimes made the most sacrifices.

It is clear that concrete facts are lacking in the area of relatives' responsibility. Until these facts can be determined, studied, and proposals developed, the Commission recommends no specific changes in the present statutes to provide a more uniform and equitable method of securing support for aged dependent persons.²¹

New legislation and consideration of legislation, studies undertaken by State agencies and legislative committees, and revisions of agency policies—all indicate that the States are increasingly concerned with the problem of relatives' responsibility in old-age assistance and are seeking to improve the methods of dealing with it.

²¹ *Minnesota's Aging Citizens*, Minnesota Commission on Aging, St. Paul, Minnesota, January 1953, pp. 61, 62.

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Social Security Administration

CHILDREN'S BUREAU. *The Care of Children in Institutions: A Reading List.* Washington: The Bureau, 1954. 45 pp. Processed. Limited free distribution; apply to the Children's Bureau, Social Security Administration, Washington 25, D. C.

General

THE AMERICAN ASSEMBLY. *Economic Security for America: An Appraisal of the Progress Made from 1900 to 1953.* (3d Assembly, Arden House, Harriman, N. Y., Nov. 5-8, 1953.)

* Prepared in the Library of the Department of Health, Education, and Welfare. Orders for items listed should be directed to publishers and booksellers; Federal publications for which prices are listed should be ordered from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C.

New York: Columbia University, Graduate School of Business, 1953. 158 pp.

Among the reports and background papers are Economic Security: A Look Back and a Look Ahead, by Frederick L. Allen; The American Social Insurance System: Structure, Coverage, and Current Problems, by Arthur Larson; The Economic Insecurity, by Shepard B. Clough; Private Enterprise Pension Plans: History, Purposes and Problems, by B. F. Patton; and Significant Contemporary Issues in the Expansion and Consolidation of Government Social Security Programs, by Eveline M. Burns.

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