Ch22-A03753 12/7/06 11:05 AM Page 227

Chapter 22
Life Care Planning: Ethical and Legal Issues

Ellen Barker, MSN, APN, CNRN, CICP, ABDA

Definition of Life Care Planning
Life Care Planning Process
The specialty of Life Care Planning
Life Care Planning Certificate and Academic Programs
Professional Life Care Planning Organizations
Professional Life Care Planners
Advantages and Benefits of a Life Care Plan
Physicians and Life Care Planning
Referral Sources
Completion of the Life Care Plan
The Life Care Plan as a Legal Document
Legal and Ethical Principles
Role of the Economist
Conclusion

The life care plan (LCP) is an important and dynamic document with significant value as a clinical and legal tool, a discharge plan, and rehabilitation post-discharge plan for patients with long-term or lifetime disabilities.[1] The LCP document estimates the health services and special needs likely to be required for the lifetime of individuals with disabilities, chronic illnesses and catastrophic injuries. Examples of common diagnoses that currently utilize life care planning include children with special health care needs, e.g., anoxic encephalopathy or cerebral palsy (CP); traumatic injuries, e.g., traumatic brain injury (TBI) and spinal cord injury (SCI); adults with chronic neurological disorders, e.g., stroke, multiple sclerosis (MS); and older adults with conditions, e.g., dementias or Parkinson's disease.

LCP is a trend in care planning that has recently emerged as a specialty associated with catastrophic case management.[2] This chapter depicts the LCP specialty and describes the life care plan process and its history. Published ethics and Scope of practice of LCP will be included.[3] Introduced in the legal system in the 1980s, professional life care planners have successfully expanded the practice to include broader applications. Knowledge of the medical, ethical, and legal issues of life care planning is important for representatives of the medical and legal professions as they encounter life care plans as accepted instruments in the courts and other legal settings.

Life care planning, unlike other medical documents, outlines the present and future lifetime needs of individuals with catastrophic injury or long-term chronic health needs, including associated costs. The LCP assists the clients, their families, and health care providers with a well-defined plan of care to maintain a consistent high level of individualized care with provisions for funding and resources over the expected lifetime of the disabled individual.

DEFINITION OF LIFE CARE PLANNING

The Standards of Practice (SOP) proposed for life care planning are designed to provide guidance and parameters for professional practice. As the specialty practice continues to evolve, life care planners have accepted the following definition that was first published in 2001:

> *The LCP is a dynamic document based upon published standards of practice, comprehensive assessment, data analysis, and research, which provides an organized, concise plan for current and future needs with associated costs for individuals who have experienced catastrophic injury or have chronic health care needs.*[4]

All health care professional who prepare life care plans are accountable to and work within the scope of their individual professional discipline. The standard definition may be used by the transdisciplinary specialists who offer life care planning services to their clients; it encourages adherence to the Standards of Practice for Life Care Planning.

LIFE CARE PLANNING PROCESS

Retaining a Life Care Planner

The LCP process begins with retaining a competent and qualified life care planner. The life care planner should be certified with academic and clinical qualifications that demonstrate specialization in the pediatric or adult management of the disease or injury involving the client. The planner's current curriculum vitae (CV) should list his or her experience, publications, presentations, and involvement in continuing education. In the legal setting, the selection of a life care planner should take into consideration the demeanor and ability to communicate and defend the LCP as an expert witness. Specific steps are followed after the life care planner has been retained to prepare an LCP. The first step in the process is a letter, contract, or verbal agreement with the attorney who is retained for the case.

Compilation of Records

Once both parties have agreed on the terms and conditions, the life care planner next obtains written permission to review

Ch22-A03753 12/7/06 11:05 AM Page 228

all records, contact all members of the client's treating team, attend client visits with physicians and other health care providers, and contact teachers, or employers at work sites. A complete set of medical records is needed from the date of injury/illness to discharge from all facilities, significant past medical records, work records and evaluations, and school records (if the client is a student). All employment and salary records, performance evaluations, attendance records, and sick visits should be made available. Tax records for the past 5 years should be reviewed to establish earnings and assets. Attorneys who request an LCP should submit copies of all legal documents. If certain records are unattainable, if a client refuses to be interviewed, or if a member of the client's treating team ignores requests for information, it should be noted in the LCP. All records are confidential and communications are "privileged."

Personal Interviews

The next step for the life care planner is to schedule personal interviews with the client, family, and attending caregivers as available. This allows the life care planner to assess the impact the injuries have had on the client's family members for future counseling or care needs. The assessment could also include the life care planner arranging to be present at the client's medical appointments with key treating physicians or therapists. It is important for the life care planner to make an independent evaluation and complete collect data that is systematic, organized, and accurately reflects the current state of health and interventions the individual is receiving in the home or an alternative setting. A "record interview" by the life care planner is not advisable and cannot replace the face-to-face interview and client assessment.

Assessing Impairment, Disability, and Handicap

Knowledge of functioning and disability terminology is needed, to include impairment, disability, and handicap. These terms have been defined by the World Health Organization (WHO). Impairments are a loss or abnormality of psychological, physiological, or anatomical structure or function. It is a dysfunction caused by the disease process at the molecular, cellular, tissue, organ, or organ system level. Examples would include pain, weakness, confusion, etc. Disabilities are any restriction or lack of ability to perform an activity in the manner or within the range considered normal for a human being that results from impairment. It is dysfunction recognized at the level of an individual. Examples include impaired locomotion, hygiene, dressing, etc. Handicaps are disadvantages for a given individual resulting from an impairment or disability that limits or prevents the fulfillment of a role that is normal for that individual. It is a dysfunction that is present at the societal level. Examples might include impaired social interactions or employment possibilities.

Estimation of the Short- and Long-Term Prognosis

The prognostic aspect of an LCP is paramount. Disease processes can take a variety of courses including static, progressive, and relapsing. The LCP must include a statement of disease prognosis both in terms of the primary disease and with regard to comorbidities and sequelae. An astute LCP will also address the interaction of the primary disease process with the normal sequelae of aging. For example, a young patient with chronic paraplegia due to spinal cord injury may easily utilize a manual wheelchair for mobility. As this individual experiences normal neuromusculoskeletal aging, a power wheelchair may be required.

Lastly, no prognostic assessment is complete without some estimation of life expectancy. With increasing improvement in medical care, chronically disabled individuals are attaining longer postinjury life expectancy. Estimated life expectancy can be discussed in collaboration with the physicians and documented in the LCP using published government tables.

Future Medical, Nursing, or Facility Care and Rehabilitative Interventions

With the data available, the benefit and need for further medical, nursing, and rehabilitation are itemized and listed in tables that reflect each service, when it is initiated and discontinued, and expected outcomes.

Identify Providers of the Services, Equipment, and Other Needs

The life care planner must develop a comprehensive assessment of a patient's health and functional needs. Assessment includes information about current health, biopsychosocial, financial, educational, and vocational status and future needs. Items that should be considered may include the following: medications (both prescription and over the counter), medical supplies, durable medical equipment such as ambulatory and ADL (adult daily living) devices, orthotics, prosthetics, etc., physician visits, nursing and attendant care at home or facility care, rehabilitative therapies, educational/vocational services, architectural/structural modifications, psychiatric and/or psychological counseling, adapted recreation (hippo therapy, aquatic, or other recreational activities), wheelchairs, case management, transportation, medical care, and identification of potential complications (Table 22-1). This assessment includes anticipated future hospital admissions, prescribed treatments, duration of treatments and therapies, purchase of goods or services, repair and maintenance of equipment, as well as duration, frequency, and intensity of medication supplies, and provider interactions that the client needs for the best quality of life and to prevent complications as a result of the injury.

Narrative Topics	**Purpose**
Introduction	States the purpose of the LCP, demographics of the client, lists the documents reviewed
History	Brief summary of all medical care
Life care planner evaluation	Description of the initial assessment completed by the life care planner
Summary/conclusion	States the life expectancy of the client and summarizes the client's current health status and future needs
Tables	**Purpose**
Future evaluations	List of all future professional evaluations (see Table 22-2)
Future therapeutics	Description of recommended future therapies
Diagnostic/laboratory studies	List of diagnostic tests and laboratory studies
Vocational and educational	Recommended vocational/educational testing and education/schools
Orthotics and prosthetics	Types of orthotic and prosthetic devices to control, correct, or compensate for a disability, to improve function, or replace a missing body part
Aids for independent function	Summary of equipment/devices to help client gain independence in ADLs
Household equipment	List of items and devices to reduce caregiver burden and improve client independence, comfort, and safety
Prescription medications and over-the-counter medications	List of all prescribed medications, OTC medications, and required supplies for personal hygiene and care
Home and/or facility care	Type of nursing care, assistance, and personal care projected over the client's life expectancy
Future routine medical or surgical care	Description of potential medical/surgical care based on the client's diagnosis, severity of condition, and prognosis
Potential complications	List of potential complications and expected outcomes
Transportation	Description of type of transportation and related equipment needed for client who uses a power wheelchair or special transportation considerations for medical follow-up, shopping, school, and recreational activities
Home modifications	Recommended modifications based on client's level of mobility, safety, and degree of independence
Wheelchair needs	Description of wheelchair(s) and associated equipment
Special adaptive clothing and footware	Clothing and footwear (for example with Velcro closures) required for client to achieve independence in dressing and safe ambulation according to disability
Leisure time/recreation	Recreational therapy equipment and programs needed to improve health and strength, coordination, balance, quality of life, stress reduction and relaxation, rest from work or therapy, and participation in sports activities for individuals with disabilities (examples: hippo or aquatic therapy)

Table 22-1 Contents of a typical life care plan to include narrative topics and tables

Calculation of Costs

Once the required components of the LCP are identified, the incurred costs must be researched and quantified. The options and costs for care are based on resources that are reasonable and available to the client. The determination of content and the cost research components of life care planning require a consistent, valid, and reliable approach to research, data collection, analysis, and planning. The life care planner determines the current standards of care and clinical practice guidelines from reliable resources, e.g., current literature or other published sources, collaboration with other professionals, education programs, and personal clinical practice. [4]

Client information is organized to follow a written format to present both a narrative and pertinent data in tables for easy reference, future reevaluations, and for the economist (see Table 22-1). The completed LCP is submitted to the requesting party for review and discussion. Life care planners may be requested to provide expert witness sworn testimony at legal proceedings regarding the development of content of the life care plan, meet with families who have requested a life care plan for a minor child or disabled parent, or submit the LCP to insurance or other providers who will implement and finance the LCP.

THE SPECIALTY OF LIFE CARE PLANNING

Deutsch and Raffa introduced the term "life care plan" into the legal literature in 1981 in the publication *Damages in Tort Actions*. This publication identified guidelines for specifying damages in civil litigation cases.[5] In 1985, Deutsch and Sawyer introduced the concept to the rehabilitation profession when they published the classic *Guide to Rehabilitation*. They identified an LCP as a part of the rehabilitation evaluation to project the impact of catastrophic injury on an individual's future.[5] Rehabilitation professionals recognized the value of an LCP. Following numerous requests, Deutsch offered the first educational program to a group of 100 professionals in the fall of 1986 in Hilton Head, South Carolina.

Following the pioneering efforts of Deutsch and others, there were demands for a formalized curriculum and program. Requests came from health care professionals representing various disciplines throughout the United States to

Ch22-A03753 12/7/06 11:05 AM Page 230

enroll in a program that would prepare them as a "life care planner." In 1992, a group of rehabilitation professionals developed the first educational curriculum designed for the life care planning process. An eight-tract, 180-hour training program included tenets, process, methods, medical basics in catastrophic cases, forensic issues, and business and ethical practice.[5] After a successful trial period of course offerings, the founding group of rehabilitation professionals gave this program to the University of Florida. Horace Sawyer, from the faculty, developed the program into a joint public–private relationship between the Rehabilitation Training Institute and the University of Florida. The program was called Intelicus. The Intelicus program from the University of Florida was the first organization that offered a program with a Certificate in Life Care Planning. Intelicus is no longer in the business of providing education for life care planners. MediPro bought the life care planning course.

As with any new and rapidly expanding specialty in health care, life care planners identified a need for certification. In legal proceedings, the term "certified" represents written evidence of fulfilling certain requirements and standards of professional practice. In some jurisdictions, certification implies that the health care professional has met the minimum standards of a certifying body with a dated and signed document of certification.

In 1994, the Commission on Disability Examiner Certification (CDEC), an internationally recognized agency, completed research and evaluation on life care planning. In 1996, the CDEC offered the first eligible students the opportunity to sit for the certification examination. Strict guidelines apply to applicants.[5] The CDEC is registered as a certifying agency located in Midlothian, Virginia. They recently changed their name to more accurately reflect their role in certification and today are known as the Commission on Health Care Certification (CHCC). The American Association of Nurse Life Care Planners (AANCLP) also offers a certification process for nurse life care planners.

According to the CHCC there are five criteria that are required to qualify to take the examination:

- A minimum of 120 hours of postgraduate or postspecialty degree training in life care planning or in areas that can be applied to the development of a life care plan or pertain to the service delivery to life care planning, all obtained within 5 years of taking the examination.
- A minimum academic requirement of a designated health-care-related profession, certification, or license to meet the legal mandates of the state that allows the individual to practice service delivery within the definition of a health-care-related profession.
- Submission of one life care plan authored or coauthored by the candidate.
- Supervision of 1 year with a Certified Life Care Planner (CLCP) who must submit quarterly supervision summaries with details and dates of meetings and a summary discussion.
- Graduation from an accredited training program that includes the practicum or internship, or that requires the development of an independent life care plan for review and critique by a faculty member who is a Certified Life Care Planner (CLCP).

Many health care professionals are now certified by the CHCC in life care planning. A current list of CLCPs is available at http://www.cdec1.com. Certification must be renewed every 3 years through continuing education credits in life care planning or through reexamination.

The American Association of Nurse Life Care Planners (AANCLP) located in Holladay, Utah, was founded in 1998 by and for nurses to promote the specialization of registered nurses (RNs) in the practice of life care planning. The AANCLP states that nurses are highly qualified because they have experience in patient care, patient advocacy, and the use of the nursing process with a body of knowledge and expertise not found in any other profession. This organization of nurses promotes education, research, and certification to its growing number of members that can be found at www.aanlcp.org.

LIFE CARE PLANNING CERTIFICATE AND ACADEMIC PROGRAMS

Multiple academic institutions and professional organizations offer expanded programs in life care planning with high standards and well-designed curricula. Examples of groups that offer postgraduate or graduate training program in life care planning include the University of Florida, MediPro Seminars LLC, the University of North Carolina, Georgia State University, and the Medical College of Virginia.

PROFESSIONAL LIFE CARE PLANNING ORGANIZATIONS

The need for a professional organization emerged as graduates and certified life care planners searched for opportunities to meet, network, and keep abreast of their specialty with continuing professional education. An international organization, known as the International Academy of Life Care Planners (IALCP), was established in 1997, with the development of a nationally accepted definition of an LCP and published Standards of Practice.[3] IALCP is a transdisciplinary professional organization of life care planners, which as of 2005 joined with the International Association of Rehabilitation Professionals (IARP) as a "section" under the umbrella of IARP. Professional associations providing endorsement and sponsorship are listed under Resources at the end of this chapter.

PROFESSIONAL LIFE CARE PLANNERS

Life care planners are health care professionals from various health care fields. Although no comprehensive list of life care planners is available, the field of life care planners has expanded to include a multidisciplinary group of health care professionals. In a recent survey, 48% of life care planners

Ch22-A03753 12/7/06 11:05 AM Page 231

were registered nurses, 33% rehabilitation counselors, and 19% listed “other” to include physicians, occupational therapists, physical therapists, psychologists, social workers, and speech therapists. The survey also indicated that 41% practice as solo proprietors, 29% in owner/independent practice settings, and 29% in private rehabilitation or case management companies.[6]

ADVANTAGES AND BENEFITS OF A LIFE CARE PLAN

The completed LCP organizes extensive data and condenses multiple reports from complicated, complex medical cases into a concise plan of care. According to Riddick, the LCP is particularly useful to reduce errors and omissions, allow fewer clients to “drop through the cracks,” and reduce the failure to take into account various aspects that would have an effect on the ultimate outcome of the client’s medical care.[6]

The daunting task of a medical expert to explain the need for sophisticated medical/surgical interventions, pharmacological prescriptions, diagnostic tests, or medical equipment to judges, attorneys, and jurors is simplified using the tables of an LCP compared to traditional testimony. In negotiating an injured client’s settlement, attorneys and mediators are able to sift through pages of information and negotiate the rationale for specific items, e.g., a power wheelchair or accessible housing costs. It can be an “eye-opening” experience for attorneys when the life care planner presents the collective lifetime needs of a spinal injured patient detailing the recommended requirements included in the LCP necessary to maintain a client’s quality of life (QOL) and to prevent complications.

Without the research necessary to prepare the LCP and inclusion of appropriate services, treatments, and resources for the client’s life expectancy, the disabled individual could be prevented from receiving care and supportive therapies for survival. Without an LCP, a family with limited funds and knowledge could be left struggling to provide 24 hours a day care for their disabled loved one. Over time, “caregiver burnout” could escalate to the point of exhaustion, illness, or even desertion/abandonment. The financial benefits of an appropriate LCP maximize rehabilitation and recovery outcomes and include the premature aging that occurs after injury.

PHYSICIANS AND LIFE CARE PLANNING

Life care plans are a comprehensive resource that provide physicians with a single reference document describing the current and future needs of patients.[7] As noted above, rehabilitation physicians and physiatrists are most commonly employed in the management of chronic neurological disabilities that include conditions, e.g., cerebral palsy (CP), spine and brain injury and/or dysfunction, stroke, or multiple sclerosis (MS). Thus, the physicians most likely to be exposed to these documents are rehabilitation physicians, physiatrists, and neurorehabilitationists.[8,9] Despite their inherent value, LCPs are underutilized as an adjunct for patients requiring long-term rehabilitation. Life care plans can begin to be integrated into the rehabilitation process as early as the acute hospitalization. They can be refined during the recovery and acute rehabilitative phase. Each phase of rehabilitation requires assessment (which includes definition of functional problems), setting of functional goals, ongoing progress reports addressing current status, and an estimation of trajectory for goal attainment.

The rehabilitation physician’s roles in the life care planning process may include medical interventions toward the disease process or “symptom management,” integration and leadership of a multidisciplinary team, patient/family education, and communication with external providers (payers, referring physicians, etc.). The LCP may be reevaluated and modified several times during the patient’s disease course and in multiple settings (acute hospital, rehabilitation center, outpatient, or home). The LCP can be potentially finalized with a reasonably comprehensive plan in place by the patient’s time of discharge from an acute rehabilitation center.

Life care plans should undergo regular revisions through routine evaluative assessments. Rehabilitation physicians or other physician input into a life care plan can ascertain the medical necessity of the entities defined within the LCP that provide the legal system with the required degree of medical expertise.[10]

At subsequent physician visits that continue for the remainder of the individual’s lifetime, the LCP provides physicians with an organized, comprehensive plan and summary of care that promotes continuity of care. Clients with severe deficits may have treating physicians from multiple specialties, as indicated in Table 22-2.

REFERRAL SOURCES

An LCP can originate in the rehabilitation setting as described above, or be requested by a family member with a disabled child, spouse, or parent; an insurance company with the need to establish a reserve fund for insurance compensation or workers’ compensation claims; or an attorney for civil litigation or mediation purposes who represents clients who have sustained severe injuries or illnesses.[1] An LCP may be also be appropriate for the following: health insurance companies; long-term disability cases; special needs trust for children or impaired adults; workers’ compensation; elder or older adult care facilities; acute or subacute rehabilitation facilities and long-term facilities with special populations, e.g., dementia units or supervised living programs.

A child, for example, born with severe congenital deficits may remain in the home setting until adulthood with parents and caregivers providing 24-hour services. As the parents become older adults with the realization that their child’s life expectancy is greater than their own, they often seek legal counsel to prepare for the child’s future care after their death. In this scenario, a life care planner can work closely with the attorney and family to prepare an LCP.

Ch22-A03753 12/7/06 11:05 AM Page 232

Specialist	Evaluation	Date and Age to Initiate and Discontinue	Costs Per Evaluation	Frequency of Treatment	Expected Outcomes	Economic Growth Trends
Rehabilitation physician	Physical medicine and rehabilitation	Age 16/2006 Life expectancy	$269	1–2 × per year	Evaluate progress and need for therapies	$14,767
Primary internist for general medical care	Internal medicine for wellness checks, preventive care beyond routine care	Age 16/2006 Life expectancy	$50–$150	1 × beyond routine care	Prevent complications; early detection of illness for prompt treatment	$3,360
Neurologist	Neurological management of seizures and central nervous system (CNS) complications	Age 16/2006 Life expectancy	$250	2 × per year	Prevent breakthrough seizures; early detection of CNS complications for prompt treatment	$18,298
Neuropsychologist	Evaluation of cognitive functioning	Age 16/2006 to 2008	$53 for 15 minutes or $212 per hour	2 evaluations per year	Evaluate for cognitive impairments	$395
Ophthalmologist	Visual deficits from brain injury	Age 16/2006 Life expectancy	$200	1 × every 5 years	Prescribe corrective therapy for visual deficits	$1,541
Orthopedic surgeon	Surgery: tendon and heel cord lengthening or release of contractures	Age 16/2006	$260	2 × per year	Facilitate mobility and ambulation	$485
Gastrointestinal multidisciplinary clinic	Monitor nutritional status, PEG tube site	Age 16/2006 Life expectancy	$350–$600 for team evaluation	2 × per year	Monitor weight loss or gain, feedings and need for PEG tube replacements	$34,766
Dermatologist	PEG tube wound and skin care	Age 16/2006 Life expectancy	$250–$350	1 × per year	Monitor skin to prevent pressure ulcers or detect early skin breakdown for treatment	$10,979
Family counseling	Evaluate client, family coping	Age 16/2006	$212	Every 10 years for life expectancy	Monitor client's response to therapy and family's coping with special needs family member	$783

Table 22-2 Example of life care plan for future evaluations for 16 year-old client with severe traumatic brain injury (TBI) and spastic quadriplegia.

The LCP can be reviewed and approved by the parents with the reassurance that all the necessary provisions and funds are in place for the child's life expectancy. For many children with catastrophic injuries, the greatest losses reside in their inability to perform or experience activities that were once an integral part of life. Attorneys may mistakenly retain a life care planner to address only the future costs of medical or rehabilitative treatment, but many children require regular follow-up with both physician and therapy teams. Therefore, in addition to identifying these health-related services, the life care planner should also address quality-of-life and psychosocial and behavioral needs, as well as educational, vocational, recreational, home, and community support systems. [11]

Attorneys who specialize in medical malpractice, workers' compensation insurance carriers, and insurance companies are the most common sources of referrals.[6] For example, when an attorney has a client who has suffered an acute SCI, he can rely on a life care planner for the following: (1) comprehensive client and family assessment; (2) development of a plan to ensure a "quality of life" after the injury; and (3) strategies to prevent complications and unnecessary rehospitalizations.

COMPLETION OF THE LIFE CARE PLAN

The LCP continues to emerge as an effective method for the prediction of future care costs. In civil litigation, plaintiff and defense attorneys have increasingly turned to the use of an LCP in medical malpractice for trial preparation. The role and responsibilities of life care planners in litigation, rehabilitation, and other situations described above will continue to evolve and grow. The researched and completed LCP is unparalleled in compiling the most comprehensive

assessment and plan of care for disabled individuals. Implementation by the health care providers and continuing case management maximizes continuity of care and quality of life.

THE LIFE CARE PLAN AS A LEGAL DOCUMENT

When attorneys for personal injury litigation request an LCP, the life care planner prepares the document using a format that will be acceptable in the jurisdiction where the LCP is to be presented at trial. Life care planners are listed as either the plaintiff or defense expert and must be fully aware of the legal rules of the court. Before trial, the attorney can assist the life care planner in defining legal terms that may have a different meaning in a courtroom than in the health care system.

Plaintiff and defense attorneys may retain the services of a life care planner. A life care planner may be retained by an attorney to review and critique the LCP of the opposing side. From the perspective of evaluating the needs of the client, the two life care plans may appear very similar if the published standards of life care planning have been applied. Opinions of the life care planner should not be biased on whether the testimony is a plaintiff or defense case.

After the life care planner has presented testimony regarding their education, credentials, and background information, the court may be asked to accept the witness as a qualified expert. During testimony the life care planner will educate the court about the client's unique and individualized needs. Regardless of whether it is a plaintiff or defense life care plan, the life care planner should be able to testify in a persuasive manner. During testimony the life care planner can explain to the jury the rationale for items included in the LCP and be prepared to defend the LCP against tough questioning during cross-examination. Various methods for exhibits from the LCP can be used during courtroom testimony. Charts can be prepared from the LCP to allow the jury and members of the court to follow the items described during testimony (see Table 22-2). PowerPoint presentations are possible in some of the newer courtrooms equipped with sophisticated electronic technology. The life care planner should explore the most effective options with the attorney and follow the rules of evidence.

Important legal considerations include the individual's life expectancy, guardianship to control the funds, implementation of the LCP, delineation of health care providers, and how the needs and services will be funded.

LEGAL AND ETHICAL PRINCIPLES

Legal or ethical conflicts of life care planning can be avoided by considering the following:

- Maintain honesty and trustworthiness in all matters. Patient and client confidentiality are an increased area of liability.
- Maintain strict client confidentiality of all records and client information.
- Obtain informed consent or permission in writing from the client before initiating the LCP.
- Store the LCP for a minimum of 5 years.
- Never inflate costs in order to increase the overall cost of the LCP when researching the cost of services and equipment.
- Physicians or other individuals should not be contacted for opinions or information unless the client has signed written permission forms that can be presented in person or by mail.
- Immediately identify and report any conflicts of interest during the preparation of the LCP.
- Complete the LCP within the agreed-upon time frame to avoid delaying any court or legal proceedings. A "tickler file" should be maintained for all deadlines and completion of the LCP.
- Consider developing written policies or procedures for defining and describing the preparation of an LCP that can be provided to an attorney or individuals requesting services.
- Establish a fee schedule that is mutually accepted by the life care planner and the client retaining the services.

In litigation, life care plans prepared by certified life care planners are used to determine the duration and cost of future medical care. Case examples include *Balance v. Wal-Mart Stores*.[12] Courts frequently rely on life care plans to determine future damages (see, e.g., *Osborne v. United States*).[13] Texas courts have recognized the validity and usefulness of life care plans in *Exxon Corp. v. Starr*.[14] These and other legal citations can be reviewed in an amicus curiae brief prepared by Richard N. Countiss, an attorney in Houston, Texas.[15]

ROLE OF THE ECONOMIST

Economists have developed a methodology for projecting the cost of each category at various growth rates. The role of the economist is to determine how many dollars would have to be invested today at the prevailing interest rates so that in future years, amounts can be withdrawn to pay the annual life care expenses. This process has a number of names. It can be called "discounting," "valuing," or "pricing" the LCP. In the economic literature, it is most often called "calculating the present value" of the LCP and the resulting number is in today's dollars. In order for the economist to be able to determine the value of the plan, there are several critical requirements that must be provided by the life care planner.

First, the life care planner should have a clear definition of the current cost, and the frequency and the duration of each item in the plan. Avoid statements in the LCP such as "two evaluations over expected lifetime," or "one time per year for five evaluations over expected lifetime," etc. These frequencies of treatment do not define when the service will be required. That is, it could be next year or halfway between the end of a person's expected lifetime, e.g., 10 years. Because medical inflation exceeds interest rates, the further out in time the treatment occurs, the higher is the present value. If the economist arbitrarily selects the future

dates, that selection is a medical opinion and outside the economist's expertise.

Second, the economist is interested in valuing only the incremental increase in costs associated with the injury. For example, if a van or wheelchair lift is required, only the cost of the lift may be valued if the van or equivalent transportation would have been purchased regardless of the injury. However, if the case involves a family that could not afford a car, but now needs a car because of the injury, then the life care planner should specify to the economist that the entire cost of the transportation (e.g., a van and a lift) should be valued. Examples of how a specific expense would be valued differently between cases are possible. If the injured party needs special transportation but will never be able to drive or no family member can drive, an alternative approach is necessary. In this situation, the life care planner might show the cost necessary to hire a private company that provides transportation for individuals with disabilities.

Third, the economist needs a clear statement of whether or not there is a decrease in life expectancy. Often an LCP specifies an expense through "life expectancy." The economist typically relies on federal life tables that show life expectancy for an average population versus an individual with a catastrophic injury who may have a reduced life expectancy. A serious injury may shorten life expectancy and if so, the life care planner should request a medical opinion specific to the case under review and advise the economist.

One of the important issues facing the economist is the rate of medical inflation that will prevail over the duration of the LCP. The economist can rely on federal forecasts of future inflation and modify those forecasts to fit the various categories of expenses in the LCP. That is, the rate of inflation for prescribed medications, over-the-counter supplies, physician services, therapies, household modifications, etc., are different. Figure 22-1 shows the historic relationship of increasing costs among those categories. To do this process correctly, it is necessary for the life care planner to clearly state the name of the expense, avoid abbreviations not understood outside the medical profession, and categorize expenses into similar groups.

Presenting the LCP information in a clear and concise format is extremely important to the economist. Because of the irregular frequency of many expenses, the pattern of those expenses can be quite complex. Figure 22-2 shows the complexity of these patterns in a typical case.

Lost wages may also be considered in a legal case. In those situations, the economist relies on the opinion of a vocational expert. The vocational expert examines the medical records of the injured party and will often conduct a personal interview. Based on the age, education, and nature and extent of the injury, the vocational expert is able to determine what work and wage the injured individual would have commanded in the labor market had the injury not occurred as well as what work and wage, if any, the injured individual can now command. The difference between these two streams of income, expressed in present value, represents the loss.

Cases involving young children without an earnings history can also be valued for lost wages. Federal tables are available that show average earnings by age, gender, race, and level of education. The child's ultimate level of education is the most critical factor in this process. Often the level of the parent's education is considered. It is not unusual for an attorney to request the valuation of lost wages at two levels of education, e.g., high school and an undergraduate degree, to determine a reasonable range of the value of the loss.

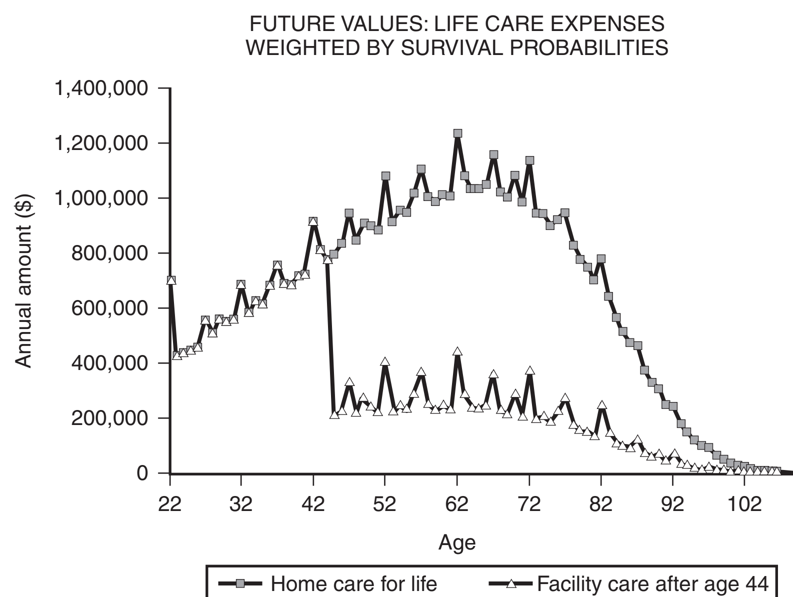


Figure 22-1 The historic relationship of future values for two categories recommended in a client's life care plan: home care for the client's life expectancy and facility care for the life expectancy after the client reaches the age of 44.

Ch22-A03753 12/7/06 11:05 AM Page 235

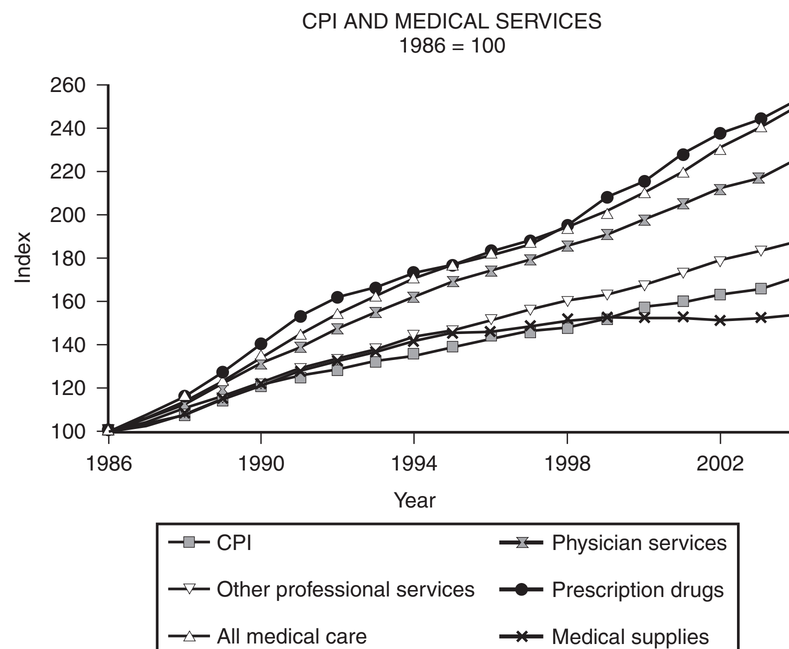


Figure 22-2 An example of the complexity of patterns for six common services receommended in a life care plan.

The economist is expected to ensure that the final projection conforms to local jurisdictional rulings. The combined testimonies and exhibits of the life care planner, the vocational expert, and the economist can be very involved. It is important to present these findings in a clear and easily understandable way to the jury.

CONCLUSION

Life care planning is a new specialty in health care and rehabilitation. A valid LCP has many benefits for an individual who is ill or disabled with permanent and lifelong disabilities that require expensive and complicated care. An LCP gives caregivers and families a clear, well-defined, individualized plan of care. Major considerations in the cost of funds for an LCP focus on the individual's life expectancy, the level of care needed, where the care will be provided (home versus facility care), whether the individual will ever work, and the need for a barrier-free environment for safety and functional livability. Unlike a typical discharge plan, an LCP includes a detailed plan of care with associated costs that continues across the life expectancy of the client. Additional benefits of an LCP may also include prevention of complications, prevention of future medical emergencies, enhanced quality of life and self-esteem, security in financial planning, availability of funds and resources, and cost-effectiveness for future physical and psychosocial care.

Acknowledgement

Contributions to this chapter were made by Economist Richard B. Edelman, PhD, Professor Emeritus, The American University, Washington, D.C.

Resources

The Commission on Health Care Certification (CHCC), http://www.cdec1.com

International Academy of Life Care Planners, www.ialcp.com

Neuroscience Nursing Consultants, www.neuronurse.com

The American Association of Nurse Life Care Planners, www.aanlcp.org

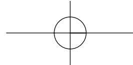
The Commission on Health Care Certification (CHCC), 804-378-7273

Life Care Planning Journals: *Journal of Life Care Planning* (800-893-4977); *Journal of Nurse Life Care Planning* (888-575-4047).

Endnotes

1. E. Barker, *Legal Issues and Life Care Planning*, in E. Barker (ed.), *Neuroscience Nursing: A Spectrum of Care* (St. Louis: Mosby, 2002).
2. E. Barker, *Evolution/Revolution: The Life Care Plan*, 62(3) R.N. 58–61(1999).
3. S.L. Reavis, *Standards of Practice*, 1(1) Journal of Life Care Planning 49–58 (2002).
4. P. McCullom, *Field Review: Revised Standards and Practice for Life Care Planners*. 4(2–3) Journal of Life Care Planning 67–743 (2005).
5. P. McCollom & R. Weed, *Life Care Planning: Yesterday and Today*, 1(1) Journal of Life Care Planning 3(2002).
6. A.T. Neulicht, S. Riddick-Graham, et al., *Life Care Planning Survey 2001: Process, Methods, and Protocols*, 1(2) Journal of Life Care Planning 97–148 (2002).
7. D.M. Lowell, C. Madison & B. Sibley, *Pediatric and Adult Life Care Planning: The Benefits of a Physician-Driven Clinical Model*, Medical Case Management Convention (MCMC XIV), Denver, CO (Sept. 26, 2002).
8. R. Katz & G. Delancey, *Life Care Planning*, 13 Physical Medicine and Rehabilitation Clinics of North America 287–308 (2002).
9. R.L. Kirby, *Impairment, Disability, and Handicap*, in J. Delisa (ed.), *Rehabilitation Medicine: Principles and Practices*, 2d ed., 40–50. (Philadelphia: Lippincott Co., 2002).

Ch22-A03753 12/7/06 11:05 AM Page 236



10. R.P. Bonfiglio, *The Role of Physiatrist in Life Care Planning*, in R. Weed (ed.), *Life Care Planning and Case Management Handbook*, 15–22 (Boca Raton: CRC Press, 1999).
11. B. Stern, *Use of the Life Care Plan in a Lawsuit Involving a Child,* in S. Reddick-Grisham (ed.), *Life Care Planning and Case Management* (Boca Raton: CRC Press, 2004).
12. 178 F. 3d 1282 (4th Cir. 1999).
13. 166 F. Supp. 479, 494 (S.D. W.Va. 2001).
14. 790 S.W. 2d 883 (Tex. App.-Tyler 1990, no writ).
15. R.N. Countiss, 1(1) Journal of Life Care Planning 9–33 (2002).