CE2 Approved for 1 hour of CCM, CDMS, and nursing education credit
Exam expires on December 17, 2025

Care Advocacy Within the Elder Law Firm

By Deanna Baez-Rubino, LMSW, LNHA, CECC, DCC; Raina DeDilectis, BSN RN, CECC, DCC; Brian Andrew Tully, Esq.

It was a crisp fall morning when Mr. Anderson stood on his front porch, about to embark on his day. He had recently returned from a wonderful vacation with his family and was planning to take his daily morning stroll around the neighborhood and end up at the deli on the corner of his block, where he would meet two of his neighbors for coffee. Unfortunately, this is not how his day began.

As he took the first step off his porch, Mr. Anderson stumbled. Unable to steady himself, he crashed to the ground. The next thing he knew, he was surrounded by emergency personnel, and all he could hear was the sound of machine alarms. He had suffered a cerebral vascular accident (CVA). He was unable to speak because a tube had been put in his throat and a large oxygen mask covered his nose and mouth. He couldn't feel anything on his entire left side, and he recalls feeling extremely terrified.

After several days in the intensive care unit, placement of a nasogastric tube was necessary, followed by a percutaneous endoscopic gastrostomy (PEG) tube for permanent feeding because he was extubated and removed from the ventilator but unable to swallow safely. He was transferred to a skilled nursing and rehabilitation center where he spent the next few months growing stronger physically and working diligently with therapy. Fortunately, he did regain some of the feeling to his left side but still required hands-on assistance for all his activities of daily living. The social workers at the facility advised the family that rehab was coming to an end, and they needed to plan for his discharge.

Mr. Anderson had a very devoted wife and supportive children. Their main goal was to get him back to the loving environment within the home he worked so hard for. They were understandably devastated and frightened by the thought of losing all he had worked for to pay for the long-term care he now required. The family knew they needed to discuss the legal and financial concerns regarding aging, but, also, they were at a loss as to what options were available to them regarding care, and what programs, if any, he qualified for. They began looking into private pay for caregivers at home and found the costs overwhelming. Not knowing what the next steps would be, they sought the guidance of an elder care attorney.

In this scenario, Mr. Anderson's family ultimately engaged a life care planning (LCP) law firm. An LCP law firm is an interdisciplinary team of elder law attorneys, care coordinators, and support staff that work together to develop an estate plan, protect assets, to determine the client's qualification for public benefits, coordinate care, provide education, offer decision-making support, advocate for high-quality care, and intervene when there are problems with care providers. The estate plan is vital to care and must include the four core basic documents every adult over the age of 18 must have a: (1) Health Care Proxy, (2) Durable Power of Attorney, (3) Last Will & Testament, and (4) Living Will. Depending on a client's situation and their financial goals, an Irrevocable Trust may also be needed. The law firm discusses all the options and strategies at length with the client and their family so that the elder care plan reflects the client's wishes and objectives.

Deanna Baez-Rubino, LMSW, LNHA, CECC, DCC, has been with Tully Law Group, PC since 2021. Her 30 years' experience includes skilled nursing, home care, and assisted living. She is also a certified grief counselor, and volunteer for the Alzheimer's Association where she runs a monthly support group for adult caregiver children of those affected by Alzheimer's disease.

Raina DeDilectis, BSN, RN, CECC, DCC, has been with Tully Law Group, PC since 2021. Her 25 years' experience includes working in hospital settings, skilled nursing facilities, and home care. She has held roles as a nurse educator and supervisor, is a certified PRI Assessor, and volunteers with the Alzheimer's Association.

Brian Andrew Tully, Esq. is the founder and Managing Partner of Tully Law Group, PC. He has been practicing elder care law and estate planning since 1998 and has been certified as an Elder Law Attorney by the National Elder Law Foundation since 2003. He is currently the President of the LCPLFA and has been named to the prestigious Metro New York SuperLawyers list for many years as well as TopLawyers and Lawyers of Distinction.

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What Is Life Care Planning?

Life care planning is the future of elder law: it offers the traditional elder law firm services of asset protection, estate planning, and Medicaid qualification with the expanded area of care coordination and advocacy. LCP offers a holistic approach that helps families with every aspect of caring for someone with a chronic illness. In essence, LCP legal services help people find, get, and pay for good long-term health care by bundling the legal and financial aspects of aging with long-term care services' coordination, community and nursing home advocacy, and crisis intervention. It is typically a one-year engagement, which allows the team to develop and cultivate supportive relationships with the family and clients to better assist them along their journey. As the first year of services end, families and clients can renew for continued services and on an annual basis. This concept was first introduced in the 1990s and was later adopted by multiple firms nationwide that saw the benefit of the comprehensive approach. Soon after, the firms practicing this model developed the Life Care Planning Law Firms Association (LCPLFA) to share knowledge and promote LCP as an alternative to traditional Elder Law. More can be learned about the association at www.lcplfa.org. These unique law firms are "elder-centered," which means that the elder is this primary focus, and the finances and family are secondary. The mission of the LCPLFA is to "empower LCPLFA as they provide legal, financial, and healthcare advocacy services." There are approximately 80 LCP firms nationwide at present.

An LCP provides the road map that allows an elder to achieve their desired quality of life, care and long-term care financing goals. There are three principal goals of the LCP that allow the firm to help the elder and family develop and implement this road map:

1. We help make sure that the elder gets good care, whether that care is at home or outside the traditional home setting. This is the most important of all goals because it goes to the very heart and quality of life in the later years. The LCP is focused first on the elder's good health, safety, and well-being.
2. We help the elder and involved family make the best possible decisions relating to the needed long-term care and special needs. As objective advisors, we are the resource for experience, support, and knowledge.
3. We help the elder and family find sources to pay for good long-term care. We work with all concerned through the maze of choices and options to find the best, or often, the most comfortable solution to financing the needed care, which is often through the complicated Medicaid program.

Who Benefits from Life Care Planning?

Any senior with a health condition that has the potential to impact their ability to care for themselves benefit from an LCP. Caregivers also benefit from the continual support offered through the law firm's elder care coordinator (ECC).

What Is an Elder Care Coordinator?

An ECC is a professional, such as a social worker, counselor, nurse, or gerontologists who specializes in assisting older people and their families to attain the highest quality of life given their circumstances. An ECC will:

- Help clients and families identify care problems and assist in solving them
- Assist families in identifying and arranging in-home help or other services
- Coordinate with medical and healthcare providers
- Review medical issues and offer referrals to other geriatric specialists to provide appropriate care while conserving financial resources
- Provide support, guidance, and advocacy during a crisis
- Help coordinate transfer and transportation of an older person to or from a retirement complex, assisted care living facility, or a nursing home
- Provide education
- Offer counseling and support

After the Anderson family retained the LCP law firm, the ECC and other team members immediately started work to assist Mr. Anderson's family with the rehabilitation/discharge process and to ensure the necessary care was in the home when Mr. Anderson arrived. The team and family determined that Community-based Medicaid Assistance (also called Home and Community-Based Services–HCBS) would be the best option to provide Mr. Anderson with the home care he so desperately needed. Having the cost of the care covered by Medicaid ensures the Anderson family he would be able to stay at home safely without depleting the family of their life savings. Once approved financially, his ECC then attended

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the necessary Medicaid assessments and advocated for Mr. Anderson. The result was a weekly award of 168 hours of home health aide services. Due to the complexity of his case and the presence of a PEG tube feeding, traditional home care was not an option. With extensive education and ECC guidance, his children learned how to administer medications and feedings, and ultimately were able to be enrolled as Consumer Directed Personal Assistance Program workers under the Medicaid program, allowing them to be financially compensated for their caregiving work. This was a hardship for his children because they needed to apply for Family and Medical Leave Act (FMLA) leave from their employment to ensure their father was receiving the safe care he needed at home. Additionally, the ECC was able to assist with obtaining necessary durable medical supplies and coordinate other home care services, such as transportation, home visit doctors, physical, occupational, and speech therapy as well as delivery of personal protective garments and a life alert system.

Remarkably, through extensive testing and work with speech therapy, Mr. Anderson was diagnosed with a condition called Zenker's dysphagia. Fortunately, this is a repairable condition, and once he was stable enough to undergo the necessary procedure, the repair permitted him to eventually have the PEG tube removed and resume a normal diet.

While dealing with the complex medical concerns of the case, Mr. Anderson's ECC knew that the services were limited. The awarded hours were temporarily placed and were in danger of being reduced by his Medicaid Managed Long Term Care Plan. She decided to explore other options for him and ultimately guided the family to apply for a waiver program for individuals who have suffered a traumatic brain injury. Once the PEG tube and feedings were no longer a concern, the ECC assisted the family with finding a reputable home care agency under his Medicaid benefit to provide the personal care assistance who would allow the family to return to work.

Two years have passed since Mr. Anderson's CVA. The family has continued to annually renew the LCP services with the elder care law firm and continue to work regularly with the ECC to maintain the needed care hours and advocate for more care when needed. In addition, the legal team also continues to assist by helping Mr. Anderson maintain financial and legal eligibility for the Medicaid program and handle the annual Medicaid recertifications. They have expressed gratitude for all the hard work and dedication and state they would not have been able to keep their husband and father at home without the comprehensive support and guidance along the way.

ECCs working in an LCP law firm must continue to educate themselves and remain aware of new innovations in care management. The LCPLFA offers a certificate in ECC, in collaboration with The Stockton Center on Successful Aging at the Richard Stockton College of New Jersey. This program affords ECCs within an LCP firm to receive comprehensive training of the multifaceted and complex challenges involved with the role of ECC. This certification comprises a 15-week online program that is designed to provide the tools and support needed to promote best practices. The course works to enrich the ECC's abilities to help clients and families identify care problems and assist in solving them. It is not necessary to complete the course to perform the role of an ECC; however, completion provides professional recognition for their role within the law firm and the community as well as a solid foundation in the law behind LCP and community caregiving, knowledge of the aging process, public benefits, appropriate treatment options, and referrals.

Elder care coordinators function in various roles across the continuum of care within the law firm. When an LCP retains a new client, they set a meeting with the client and their family within their own environment to discuss care concerns, assess their current situation, develop goals and make recommendations. The clients are provided the ECC's contact information, and depending on the client's individual circumstances, schedule additional meetings. For clients at home, there may be evaluations for care qualifications through their long-term care insurance or with an independent Medicaid assessor at the state level. The ECC attends the meetings with the client as an advocate. For clients placed in facilities, ECCs can participate in care plan meetings and provide the much-needed support and guidance the families require. Throughout the initial year of engagement, the ECC is in regular contact with the client and family and is continually assessing the care, evaluating the plan and modifying as needed, and providing resources and support. Given the multitude of circumstances that may arise for a client regarding their health, the ECC's goal is to hold their client's hand and assist with referrals for falls, hospitalizations, rehab stays,

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day programs, and community resources. Moreover, there are times when a client's previously authorized care comes under scrutiny, and Medicaid then looks to reduce the benefit. The ECCs, in turn, assist the families in the appeal process and advocate for the needed care.

When the initial year ends, clients can renew their annual services with the LCP who provides an additional year of assistance and access to the ECCs and legal team at the firm. This ongoing relationship with the clients allows the firm and ECC to continually assess, evaluate, and adjust the plan, as needed, to ensure that the client's and family's goals are at the forefront and are the deciding factor when it comes to care.

The LCP model is unique and holistic in contrast to a traditional fee-for-service elder law model, in which clients pay work done on an hourly or transactional basis. An LCP model functions on an annual engagement, allowing clients to be in contact with their trusted team and not be billed per interaction, which ensures that the clients communicate their concerns and needs on a regular basis, and team intervention is immediate.

Elder care coordinators are an integral part of the success of clients achieving their financial and health care goals. ECCs attend ongoing educational programs and are members of professional networking groups and organizations such as the Case Management Society of America (CMSA) and National Aging in Place Council (NAIPC). In addition to the clinical aspect of helping clients, a vital aspect of the ECCs' role is networking and providing education to community programs, hospitals, caregiver support groups, skilled nursing/rehabilitation facilities, and other organizations, which helps to inform and provide resources not only for the community but to clients as well. LCPs receive referrals from a multitude of sources, both community and other senior professionals, but the greatest referral comes from clients who are happy with the provided services and then refer to their friends and family.

In conclusion, the LCP uses an elder care continuum approach that connects the client's long-term care concerns and needs as they age to the knowledge and expertise of an elder care law firm and an ECC with the purpose of helping them find, get, and pay for good care.

For those looking for more information about what LCP law firms are in their area, they can search at www.lcplfa.org.

"My family and I had a great experience with [our LCP law firm]. They were with us from beginning to end, helping us with a trust and Medicaid. Our questions and concerns were answered immediately. Everyone [was] so friendly and knowledgeable. The whole process with Medicaid was overwhelming and daunting, and the staff were with us every step of the way. Big shout out to our ECC. She was so kind and understanding and answered all our questions and concerns. We would highly recommend our LCP law firm."

–L.C., May 2024 CE2