The Business of NLCP
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Welcome to our latest issue on the business of life care planning. Regular readers will know that although we address this theme every three or four years, we strive to include material that isn’t repetitive, because we know nobody wants to read the same thing over and over again.

This issue starts off with a classic for new NLCPs: Top Tips for a Successful Life Care Planning Business, from the estimable Pat Iyer, back by popular demand from its original publish date of Summer 2017.

We also have a quick tutorial on data security, with some updates that may not be familiar. This ties in with the advice on optimizing your social media presence for marketing—always something new there! And for those of us who are considering “What next?” there’s a brief primer on a few considerations for what heteretofore was almost unthinkable: closing your business.

After a year-plus of Zoom meetings in nice blouses or shirts and ties over sweatpants or jammies ($8 at the Dollar Store, cheaper than dry cleaning!), we were really looking forward to schmoozing at the breakfast buffet, networking in the halls and conference rooms, and maybe some sightseeing and party time. Alas, by the time you’re reading this we will all know that our annual forum will be a virtual event. So … more sweats and pets/kids Zoom-bombing. Kudos is due to the planners who will record all the sessions and make them available to all registrants online, so we can keep working (or playing) as desired while still getting great content. Bonus! You won’t have to spend 4 days in your chair staring at the screen.

We’ll all be making some adjustments, though. Personally, what I’ll miss most is networking with people who want to come to play on the JNCLP. I have so enjoyed the many conversations with new and seasoned NLCPs getting them over their FOWA (fear of writing anything), connecting them with folks who have great ideas for them, and enticing them with funny participation ribbons for their nametags. I’ll miss the applause for the Article of the Year authors. My three-plus hour preconf on different ways to write and format plans, critiques of opposing plans, and pieces for publication will morph into three Wednesday Webinars in the Fall, at which I will not be able to toss sugar-free Belgian chocolates or mini-flashlights to participants.

However, all is not lost here in Journal-land. Those brave souls who would like to come over to the dark (chocolate) side can still enjoy meeting new folks at our Zoom meetings, where all NLCPs will get great ideas and share their excitement about what we do, and we can share our hard-won wisdom and pass it along before we slide into retirement of one form or another. It’s not too late to get on the list for holiday brownies and we welcome all comers. New NLCPs have been particularly gratified to discover that they have nothing to fear from the more seasoned folks; we say that one of the best ways to learn how to put your NLCP education to work is to network at our monthly hour.

Finally, I only had one submission to answer the rebus puzzle on the Editorial page in the February issue, and that, alas, was wrong. I will up the ante: go to the trouble of looking it up on the website and send me the correct answer and your name goes in a drawing for a genuine Dr. Fauci bobblehead! No nurse’s home should be without one, beats the Elf On The Shelf all hollow. If you want to learn more about NLCP and can identify potential authors or ideas for our upcoming issues, well, you know what to do. Come play on the Journal. We have brownies.

Stay in touch.

Wendie A. Howland

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Information for Authors

AANLCP® invites interested nurses and allied professionals to submit article queries or manuscripts that educate and inform the Nurse Life Care Planner about current clinical practice methods, professional development, and the promotion of Nurse Life Care Planning. Submitted material must be original. Manuscripts and queries may be addressed to the Editor. Authors should use the following guidelines for articles to be considered for publication. Please note capitalization of Nurse Life Care Planning to be considered for publication. Please use the following guidelines for articles addressed to the Editor. Authors should submit only original manuscript not under consideration by other publications.

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- Manuscript length: 1500 – 3000 words
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- Place author name, contact information, and article title on a separate title page
- Use APA style (Publication Manual of the American Psychological Assoc. current edition)

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- All photos, figures, and artwork must be in JPG or PDF format (JPG preferred for photos).
- Line art must have a minimum resolution of 1000 dpi, halftone art (photos) a minimum of 300 dpi, and combination art (line/tone) a minimum of 500 dpi.
- Each table, figure, photo, or art must be submitted as a separate file, labeled to match its reference in text, with credits if needed (e.g., Table 1, Common nursing diagnoses in SCI; Figure 3, Time to endpoints by intervention, American Cancer Society, 2019). Graphic elements embedded in a word processing document cannot be used.
- Live links are encouraged. Please include the full URL for each.

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Manuscript Review Process
Submitted articles are peer reviewed by Nurse Life Care Planners with diverse backgrounds in life care planning, case management, rehabilitation, and nursing. Acceptance is based on manuscript content, originality, suitability
Spring is here, at least in my home state of California. The blooming trees and flowers enriching the communities always represent a feeling of hope and new beginnings. And while in many parts of our country and around the world, COVID-19 related restrictions are being lifted, the hope and joy of communities and its citizens is almost palpable.

Our profession and work rely on collaboration, connections and networking. When we get to visit, see and assess the individuals affected by illness, accidents and life changing events, we are making connections and laying the foundation for the Nurse Life Care Plans we develop. We all had to adapt, rethink and modify the way we run our businesses, carry out our assessments, and collaborate with others. Not being able to pick up on the non-verbal communication and observe the individual in their environment due to having to conduct my assessment over a phone call, made me question if I was able to collect all the pertinent data. The anticipation of being able to make those important in-person connections in the near future leaves me excited.

What new ways of running a business have emerged from the need to adapt? What methods have been developed by other Nurse Life Care Planners during the past challenging year? Getting answers to these questions and the opportunity to reconnect, network, and receive support and guidance from fellow Nurse Life Care Planners is almost here! The Association’s annual conference is being held May 20 – 23, 2021!

Yes, after all this time, I wish, like so many of you, that we could actually sit at a table together, share stories, laughter, hugs and experiences. And although this year’s conference will be virtual, the platform offers the ability to connect and network. It will provide the opportunity for initial connections that lead to new beginnings of mentorships and friendships, as well as nurturing existing relationships.

Thank you, members, for your continued participation, enthusiasm and support in our professional community. And a special shout-out of appreciation to all the committee chairs and its members, the executive board members, and the conference speakers who volunteer their time to provide abundant opportunities to learn, teach, and mentor, so we can further develop our knowledge to achieve excellence in our profession as Nurse Life Care Planners.

While we continue to adapt in our profession to the changing pandemic related guidelines, I wish each one of you the flexibility to do so.

Please reach out to me to share your ideas, suggestions, and comments and let me know if you would like to get more involved with the Association. I look forward to hearing from you and I am excited for the opportunity to meet many of you during the conference.

With gratitude,

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“To adapt is to move ahead ” - Byron Pulsfier
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Top Tips for a Successful Life Care Planning Business

Patricia Iyer, MSN, RN, LNCC

What does it take to run a successful practice as a Life Care Planner? You have mastered the fundamentals of Life Care Planning, and you have gotten some cases, but you know you could be doing more to build your business or improve cash flow. Successful Life Care Planners pay attention to five pillars: expertise, marketing, client management, finance, and business development. I call these pillars because they form the foundation of your business. They support you and allow you to grow.

Expertise

Attorneys understand that Life Care Planners are usually needed for large damages cases involving a patient whose survival will depend on complex care. There is a lot at stake in such cases including factors that we may not see. For example, plaintiff attorneys may have taken loans to finance a large case. Defense attorneys are concerned about large settlements or awards and how they might affect their relationship with the carrier. Everyone wants to know, “What are the numbers?” Your expertise affects the answers to that question.

Your Life Care Plan must be well written, well researched and easy to follow. The people who will read your plan are not healthcare providers and thus need adequate explanations and a medical summary written for lay people. Spell out abbreviations and define terms. Use a format with sufficient white space. Be sure your tables are clear and easy to comprehend. Although an attorney may attempt to apply pressure to influence your calculations, remember your role in being impartial. A Life Care Planner hired by the defense attorney may see items a plaintiff’s Life Care Planner missed, items that would improve the quality of the plaintiff’s life.

Whenever you prepare a Life Care Plan, envision yourself being cross-examined about why you included specific elements in a plan. Your expertise is founded on your detail-oriented analysis of the patient’s needs and is rooted in your up-to-date knowledge of medical and nursing care. Remember that your work product is of no value if you do not meet the attorney’s deadlines. You can destroy your Life Care Planning business by gaining a reputation of being undependable.
**Marketing**

Just about every Life Care Planner needs to market to start or maintain a business. This is the second pillar of a sound business. “Push” marketing involves reaching out to attorneys through networking, cold calls and cold visits. “Pull” marketing reverses the dynamics by using methods to attract clients. Both types of marketing have a role in building a business (Lockard, 2016).

The goal of any marketing is to establish rapport with the prospect, to help that person know, like and trust you, as well as remember you when a case comes in that needs a Life Care Plan. Who do you want to work with? It is far easier to get cases when you have a clear picture of who needs your services. Who is your ideal client?

What market do you best serve? What types of cases are the ones where you have the deepest knowledge? How can you get known as the go to Life Care Planner for that type of case?

Both attorneys and legal nurse consultants hire Life Care Planners. They may find out about your services through list serves, networking, word of mouth referrals, your web site, publications, or a booth at a trade show. Legal nurse consultants may hire you as a subcontractor or refer you to an attorney. This is often an ideal arrangement if subcontracting provides you with support such as organized medical records and report proofreading services.

Marketing requires persistent, consistent effort. Consider your referral sources. Who else markets to the attorneys who have cases that require Life Care Plans? Get to know the engineering firms that handle accident investigations. Network with the vocational experts, demonstrative evidence firms, and economists who get involved in cases with medical damages. Request introductions to attorneys who may be able to use your services.

Analyze how you stay in touch with clients to remind them of your existence. Do you have a website with a blog? Blogging is a way for an expert witness to demonstrate expertise and get the attention of those who are in hiring positions. After doing the work to formulate a thoughtful, informative blog, don’t stop there. Repurpose your blog posts in a newsletter that you send out a minimum of once a month. Provide helpful tips in a form that is quickly digestible.

Ask your own clients for referrals. Give them specific language to use in a phone call or email to a colleague to pave the way for your conversation with the prospect (Newman, 2013). For example, ask your client to say, “Bob, I want to introduce Grace Galley, a Life Care Planner who has been helpful to me in my personal injury cases. I know you handle similar cases and think it would be of value to have a conversation with her. She will be calling you. Please take a moment to talk to her.”

**Client Management**

Maintaining sound relationships with clients is the third pillar of a sound business. It costs five times more to market to a new prospect than it does to retain satisfied clients (Saleh, n.d.). Your reputation and ability to establish strong relationships with attorneys will make or break your business. In general, attorneys are quick, intelligent, and great negotiators. They are trained to win. They need your help to do so. They like stability. When they find a great Life Care Planner, they prefer to stay with that person.

Encourage client loyalty by taking a hard look at how you care for customers. Everyone is increasingly aware of the power of social media to spread both complaints and compliments about your services. Attorneys are networked in ways that may be invisible to you. They participate on list serves and share recommendations with each other.

Look at each step of your process of handling your clients. What can you do to make them feel even more cared for, respected, and valued (Sandler, 2015)? Do you acknowledge receipt of records? Do you ask for feedback on your Life Care Plan? Do you ask your clients what they should stop doing, start doing, or continue doing? We are often surprised by the answers we get when we ask our clients these questions.

You’ve heard that 80% of your work comes from 20% of your clients. Who are your best clients? What do you do to make them feel even more special? People love to be appreciated and acknowledged. How often do you connect with them or send them a small gift to show appreciation?

**Finance**

Life Care Plans can consume dozens of hours of your time; some attorneys are surprised by the size of the invoice. Head off collection problems by following some best practices. First, set the expectations at the beginning of the case regarding the sizes of invoices. Although it is never possible to make precise predictions of how many hours it will take to prepare your plan, you should, with experience, be able to give a range of hours.

Secondly, obtain a retainer. Require at least 10 hours. You can double that amount for most involved Life Care Plans. I also recommend you ask the attorney to replenish the retainer before you exhaust it. Asking for another retainer when you have used 75% of the existing one is a great plan that keeps cash flowing.
A practice of asking for replenishing retainers demands that you keep on top of the total number of hours you have spent on the case and anticipate when you will be depleting the retainer. You have the option of stopping work while waiting for the new retainer. Being proactive in requesting additional money is essential when the client is new or has an uneven payment history.

There are several opportunities in the life of a case when you can use leverage. You have leverage when the attorney needs the report submitted by a certain date or when you are noticed about a deposition or asked to analyze opposing counsel’s Life Care Plan or to appear at trial. Use leverage to obtain payment.

If you are not working from retainer to retainer, don’t allow large numbers of hours to accumulate without payment. And don’t avoid or delay collection efforts. Sometimes it is easy to put off collection efforts in the hopes the check will appear in the mail or because you are distracted by cases. Your bills won’t wait, though. The most important financial best practice is to know your profit and loss, your expenses, and your accounts receivable. Know your numbers.

Business Development

Business development is the last pillar. It encompasses examining your operations and looking for opportunities to add new services or improve your efficiency. Are there aspects of your business that pose roadblocks? Are there services your clients are asking for that you should add? Listen to what your clients are saying and be open to ways to expand.

Some Life Care Planners grow by adding research assistants, who may be effective in collecting the data you need for the plan, and thus improve your efficiency. Subcontractors expand your capability to respond to new cases. Although there is a degree of training and supervision needed to work with another person, the rewards are great. Subcontractors enable you to accept the case you might have had to turn away because you were already committed to another case. Without subcontractors, your ability to generate income is limited to the number of hours you can work.

Conclusion

The five pillars work together to grow your business. You show your expertise in your work product and use it to attract clients and cases. You manage your clients to satisfy their requirements and generate repeat business. You handle your invoicing and retainer requirements so that you maintain a healthy cash flow. And you use business practices that enable you to leverage your time.

RESOURCES


Generating sales is critical to every business, and statistics like “82% of small business fail within 5 years of launch” magnify the importance of identifying every means to find your ideal clients.

At first, using social media sounds like incredible opportunity. It offers large audiences who are “on” multiple times per day, platforms that appeal to different users, it’s free (at least at the basic levels), and it allows easy access 24/7 from your phone, tablet, or laptop. However, in practise, social media often doesn’t live up to the hype. Most companies either find social media a waste of time that gathers no—or few—new leads, or they ignore it completely because they aren’t sure what to do with it.

But it isn’t all grim. Social media is an important tool you should use for your life care planning business. First, it can help make you visible. Small business owners cannot generate sales if they are invisible to their target audience. If attorneys or insurance companies don’t know that you are available, how can they possibly hire you? One client told me she was struggling to generate clients in Houston, Texas, the 3rd largest city in the United States. There are over 24,000 personal injury attorneys in Houston. The problem wasn’t that there weren’t an adequate number of attorneys; the attorneys didn’t know she existed. Her business was invisible. Her website didn’t show up in “Life Care Planner” Google search results until page four. Nobody ever gets to page four. Social media can raise visibility.

My company was involved in a research project focused on how professional services companies purchased professional services. I recently had an opportunity to speak to 200+ attorneys in a wide variety of practices as part of the research that included 2,300 participants.

One question I found interesting was: How does a professional service company find companies to hire?

Here are the top search methods for a professional firm:
1. Network referral - 45.2%
2. Search online - 21.6%
3. They came to us - 21.5%
4. In Person events - 8.2%

With the lack of in person events currently taking place, attorneys who need services either look to their networks, search online, or have proactive sales options presented to them. Social media can help you grow your visibility to your target audience. It is also a valuable tool to demonstrate your expertise.

A second interesting piece of research is that attorneys weren’t confident that they could pick the right consultant for their needs. Think about the issue this way, were you going to hire an accountant for your business and did an internet search, what criteria would you use to determine if that accountant is any good? I know I am not qualified to judge the difference. I would look for clues whether the accountants I found demonstrated expertise in their area of speciality.

The two keys for growing sales are increased visibility (your target audience needs to know you are out there) and demonstrating why you are the best person to solve client problems. With the right strategies, social media can help you do both.
Rule One: Pick the Right Platforms
Not every social media platform is right for your business. Spend time on the tools that provide high return on investment. Look at what the user is going to the social media platform to accomplish. No one goes to Facebook to find a doctor, attorney, or Life Care Planner. Users go to Facebook to get away from things. Facebook users mindlessly scroll from post to post, seeing what friends and family are doing. They occasional share interesting posts. With over a billion users, it is tempting to think your target audience is on Facebook (yes there are a lot of attorneys on Facebook), but Facebook ads work better for Business to Consumer providers. LinkedIn, however, has different user intentions. LinkedIn is a business networking site. Users are motivated differently. Think of LinkedIn as more of a virtual networking event, where Facebook is more of a house party. Different behaviors and purpose.

Recommendations:
LinkedIn – It is a business-oriented website with over 376,000 personal injury attorneys in the United States. Profiles on LinkedIn are searchable by location, job title, and industry, so you can quickly find a list of prospects near you.

YouTube - Online video is growing exponentially, with over 4 billion videos viewed daily. YouTube is the 2nd largest search engine (behind Google) and the 3rd most visited site on the web behind only Google and Facebook. Google owns YouTube, and marketing on YouTube will help you “get found” on Google. Google’s search algorithm causes video to show up more often in search results. Video is as important as text-only pages.

Rule Two: Watch How It Works
Every social media platform has a unique etiquette. What works on one platform does not work on another, so do not just dive in the pool and immediately blast messages. Spend a little time watching how it all works. See what others do and what gets attention, views, and interaction. Ask: Would this work for you and your type of business?

Rule Three: Social Media Requires an Investment
Any business development activity requires investment. With advertising and events, this means money; with social media it means time. To succeed, you must invest time learning the best way to use the platforms; what works and what doesn’t. Remember the 3 C’s:

1. Making Connections
2. Creating Content for posting
3. Engaging in Conversations

To succeed, expect to spend an hour a day doing these things. The nice thing is you do not have to do it during the prime part of your workday; I use LinkedIn early in the morning. I get more connections and conversations started between 6 am and 7 am, when prospects are starting their days. Posting tools, like Hootsuite or PromoRepublic, allow me to schedule content in advance. I can set up a month’s worth of content to post at different times.

Rule Four: Have Proper Expectations
Social media is marketing, not sales, so you must be measured in your approach to it. Your goal is always to get an initial appointment (in person, telephone, or Zoom) to see if you might be a fit for what the prospect needs. Too often, people connect with a prospect and jump right to asking if they have any cases to send. A new prospect relationship is like dating. Showing up to the first date wearing a wedding dress is too much, too soon. Earlier conversations are your opportunity to understand more about the prospect’s business. Get them to talk about themselves, their work, and how the firm operates.

Here’s an example. A client contacted a prospect at a local law firm. She asked what type of law they worked on. The prospect said mostly corporate law, but occasionally they get a personal injury case. The prospect shared that they usually farm out this work to another firm. After a little more conversation, she determined who the other firm was and the prospect even offered to make an introduction to the Managing Director on her behalf. The attorney’s final words to her were, “I would be happy to make the introduction because you’re not pushy like some people I meet on LinkedIn.” Remember, you are in this for the long play.

Rule Five: Make it About Them
Here is a hard truth: The prospect does not care about you nor your business. They only care about their own stuff, their business, their problems, and their own situation. As I grew my own business, what I realized early on is nobody needs a sales consultant, they need more sales! They need help finding new prospects or growing sales in existing accounts. Attorneys don’t need a Life Care Planner, they need accurate future medical costs for an upcoming settlement meeting. They need to understand if the costs of outlined by the plaintiff’s Life Care Planner are overstated. These are problems you can help the attorney solve! So, instead of telling them all about
your services, talk about how you help attorneys like them to get what they ultimately need. Your focus should always be on your prospect’s problems.

**Rule Six: Demonstrate Your Expertise**

At this point I imagine you are thinking, “This is fine, but what the heck should I post?” Great question! Refer back to my earlier statement that attorneys often struggle with how to pick the right consultant for their needs. This being the case, the content you post should focus on explaining your expertise for determining future medical costs. If you title a post “The 10 Reasons an Attorney Should Hire a Life Care Planner,” I promise, no one will read it. No offense, but it is self-serving and promotional. Instead, think of the questions attorneys often ask you. What do they need? Write about things like:

1. The 3 most common medical expenses overlooked in a life care plan.
2. Why your client should never attend an independent medical exam alone.
3. What are the differences between medical cost projection and a Life Care Plan?
4. How future medical costs are calculated.

The idea behind content is to demonstrate your expertise and explain what it would be like to work with you. Who do you want to work with: someone who just talks about the services they offer or someone who demonstrates they are an expert in their field? I know who I would hire.

Raising visibility through using the right platforms to meet your goals and demonstrating your expertise along the way will help you get a handle on the tremendous opportunities social media holds.
Introduction

Nurses are thoroughly familiar with the Health Insurance Portability & Accountability Act (HIPAA), enacted in 1996 to protect individually identifiable health information. The U.S. Department of Health & Human Services defines protected health information (PHI) as information, including demographic data, that relates to:

• the individual’s past, present or future physical or mental health or condition
• the provision of health care to the individual, or
• the past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual. Individually identifiable health information includes many common identifiers (e.g., name, address, birth date, Social Security Number).

Nurses are generally aware of HIPAA restrictions on PHI as relates to patient care entities such as hospitals, clinics, and physician offices. However, HIPAA also covers business associates who may not have been involved in creating PHI, such as entities handling PHI for purposes of reimbursement, utilization review, quality improvement/risk management, billing, and other reasons, including one who is “a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of the business associate...If a legal nurse consultant (e.g., a nurse life care planner) is working for a lawyer or law firm that has health care clients and has entered into a business associate agreement with the health care client, the legal nurse consultant falls under HIPAA and must adhere to the privacy and security provisions set forth in HIPAA and the business associate agreement.” (Freedman and Rattigan, 2018)

Life Care Planners also have security needs for their businesses, using various online programs and accounts for this. You should use additional security measures beyond a username and password for your online accounts, to protect business data, as well as client PHI.

Two-factor Authentication

Two-factor authentication (2FA, ‘two-step,” “verification”) is an extra layer of protection for your data, protecting the program, accounts, and PHI from unauthorized use.

According to The National Institute of Standards and Technology (NIST), Applied Cybersecurity Division:

2FA is a security enhancement that allows you to present two pieces of evidence – your credentials – when logging in to an account. Your credentials fall into any of these three categories: something you know (like a password or PIN), something you have (like a smart card), or something you are (like your fingerprint). Your credentials must come from two different categories to enhance security – so entering two different passwords would not be considered multi-factor.

An app called an “authenticator” is linked to each account, and the app displaces a constantly rotation set of codes. Once username and password are entered, there is a prompt to input the code provided by the authenticator app, which changes every 30-60 seconds, depending on the app.

Examples of 2FA Apps:
• Google Authenticator
• Twilio Authy
• Duo Mobile
• LassPast Authenticator

Avoid Public WiFi

Avoid using any Wi-Fi not at your home or business, such as offered by a hotel, library, restaurant, or coffee shops. If you are away from home or office and must go online, use a VPN tunnel to protect your data from fraudulent use, such as hacking, as well as protect PHI.
**VPN Tunnel**

A virtual private network (VPN) tunnel in an encrypted link between your computer or mobile device and an outside network. The VPN tunnel hides your IP address and shields your online activity. The type of VPN tunnel depends on the device and device. There are different VPN Tunnel apps for iPhone vs Android devices, as well as Microsoft vs Mac computers/laptops.

**Examples of iPhone VPN**
- TunnelBear
- Hotspot Shield
- VPN by Surf Easy
- Betternet

**Examples of Android Phone VPN**
- ExpressVPN
- Surfshark
- NordVPN

These simple steps will help protect your client PHI and your personal and business data.

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**RESOURCES**


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Introduction

Life care planners include short and long-term provisions for the delivery of “holistic care and optimal health and function” (AANLCP, 2015) in the life care plan. Keeping abreast of federal and state laws affecting the individual’s ability to obtain these is increasingly difficult due to changing political influences on Affordable Care Act (ACA), rules for Medicare and Medicaid, and the Children’s Health Insurance Program (CHP), among others.

Since most such policy changes affect the poorest and most disenfranchised people, it is important to foresee and attempt to mitigate potential resource limitations. “When financial constraints are in place, the services and expertise nurse life care planners provide for the most vulnerable is even more important” (AANLCP, 2015). The special needs trust is one way to help protect these vulnerable individuals.

Problem

Any settlement award could place an individual who currently receives public benefits over a means-tested threshold for eligibility, therefore rendering the individual at risk of losing or seeing a great reduction in certain public benefits. Public benefits that could be affected by a personal injury settlement include:

- Supplemental Security Income (SSI)
- SSI-based Medicaid
- Food Stamps via the Supplemental Nutritional Assistance Program
- Federally Assisted Housing (HUD Section 8 housing, Section 202 Supportive Housing for the Elderly, and Public Housing)

Therefore, settlement could become punitive for the injured party as losing public benefits forces the recipient to replace goods and services at market rate. The individual could have to use settlement funds to maintain the pre-settlement standard of living. Money earmarked in the life care plan for healthcare could then be needed for food and rent. If the injury rendered the individual unable to work, the depletion could be even more rapid. And once a public benefit is lost, there is no guarantee that a person would meet the means-tested eligibility criteria for immediate re-enrollment.

A personal injury settlement could also be subject to multiple liens and subrogation claims. If Medicare, Medicaid, the Veterans’ Administration, or other insurance provided care for the compensable injury, they are entitled to reimbursement for all claims paid for related care and services under 42 U.S.C. §1395y(b)(2)(A), (B) and the Veterans’ Administration Federal Medical Care Recovery Program, respectively. Depending on state laws, other entities providing benefits such as subsidized housing, in-home supportive services, and food stamps may also have subrogation rights to recover their outlays.

Congressional Remedy: Special Protections

Recognizing these penalties, in 1995 Congress passed Title 42 USC 1396p(d)(4)(A)&(C) (Under the Public Health and Welfare Act of 1944) which afforded special protections for people with disabilities, allowing them to retain public benefits after receiving a personal injury settlement or inheritance which would otherwise put them over the income threshold for eligibility.

Furthermore, Title 42 USC 1396p(d)(4)(A)&(C) delays public entities from exercising their subrogation rights until after the individual’s death, thus allowing the entire proceeds of the personal injury settlement to be used to benefit the
injured party for life expectancy. The way by which this is accomplished is via the Special Needs Trust (SNT).

Special Needs Trusts for Personal Injury Awards

In a special needs trust, the assets are not owned by the beneficiary and are not included in the calculation of assets or income to determine financial eligibility for public benefits. The SNT establishes a fiduciary relationship between the person or entity creating the trust (the “grantor” or “settlor”) and a person who is chosen to manage the trust (the “trustee”) who must hold and manage the assets in the SNT solely to benefit the individual. There are various types of special needs trusts each having different regulations for establishment, use of funds, subrogation rights, and disposition of assets following the death of the beneficiary. The laws and rules governing special needs trusts are complicated and are outside the general knowledge base and scope of practice of the nurse life care planner. However, it is within the Nurse Life Care Planner’s purview to assess circumstances that may jeopardize the individual’s health and well-being. Loss of access to basic human needs such as food, shelter, and medical care, whether publicly or privately procured, is undoubtedly deleterious to an individual’s health and well-being and, in this respect, germane to the overall life care plan.

Nurse Life Care Planning Implications

Public Benefits Assessment It may be prudent for nurse life care planners to consider incorporating a public benefits assessment in their assessments. This may be as simple as asking the individual about receiving any public assistance or public benefits as listed above. If a public benefit is identified, calling them to the retaining attorney’s attention would fall within the scope of NLCP practice. Counsel from the attorney (preferably with a trusts and estate planning attorney with specialized knowledge in special needs trusts) can then determine whether or not a monetary settlement can jeopardize benefits and how they may be safeguarded via SNT or other means, such as specific components of a demand or negotiated settlement.

Current & Future Costs for SNT

If the attorney and individual decide that an SNT is indicated, the nurse life care planner should include the costs associated with establishing and maintaining the SNT in the life care plan. Such provisions may include:

- Attorney services and corresponding fees for establishing the SNT in the outset of year 1 of the life care plan. These should be researched by calling several firms with this specialty in the geographic area. Common estimated costs run between $5,000 to $8,000, depending on location.
- Including trustee services and corresponding fees for the life of the settlement asset. Trustee fees vary and may be paid annually, usually based either on a small percentage of the current asset or as an hourly rate paid monthly or quarterly.
- The estimated expenditure rate of the SNT asset, i.e., the estimated rate in which the asset will be depleted. This rate will vary by client’s needs. This would dictate the life of the asset to determine how long trustee services are needed.

Collateral Source Rules Some state laws allow certain public and private benefits to be considered collateral sources (a benefit or payment characterized as an offset or reduction of personal damages). Standards of life care planning practice generally preclude using collateral sources such as insurance or public benefits to offset costs in a plan. However, life care planners should know the collateral source rules of their state even if how they are to be applied in a given case is within the scope of legal practice. Rulings of motions in limine may determine the admissibility or preclusion of collateral sources in a specific case.

Disclaimer: The author of this article makes no judgment nor possesses any predetermined opinions or philosophy regarding the disposition of personal injury settlement proceeds. This article is for informational purposes only.

RESOURCES


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SELLING YOUR NLCP BUSINESS?

Jessica H. Urie, RN, BSN, CLCP

Introduction
We work hard to get much business as possible until we don’t want to do it anymore. But then what? Do we just retire and stop working? It appears the most common course of action for nurse life care planning (NLCP) is to retire slowly, decreasing cases and commitments until we ride off into the sunset of retirement. While this is an acceptable way to leave a career, there are alternatives.

Where Do You Start?
Many NLCPs are diploma nurses who earned BSNs late in our careers. We likely have had limited to no exposure to business or finance classes in those programs. The thought of possibly selling a business probably never crossed our minds! As a newer NLCP doing my best to meet as many people as possible, foster new business connections, and provide excellent service to attract repeat business, I’ve been working hard to build a business.

Many new NLCP professionals would love the opportunity to purchase an existing business. Some NLCP buyers may be newer NLCPs looking to start or expand an existing nurse consulting business, and add to it by buying a seller’s business relationships. If you think that someone would be interested in purchasing your contacts, etc., then how would you position yourself to be in the market to sell?

What Are You Selling?
First, you need to understand that NLCP is a services consulting business: we deliver a service, not tangible items. Every day we use other service-based businesses, some
good, some bad. If a service-based business is good, you will likely continue using that same provider with the expectation of getting the same treatment and service each time.

Your business relationship with attorneys is based on your ability to provide good service. How do you ensure repeat business? Easy: by doing great work on time and on budget. When an firm hires an NLCP, after the first case, it expects the same level of communication, expertise, and report quality. Consistency brings repeat business.

Most NLCPs accomplish this with a personal connection with the attorney client. However, this can make it difficult for the firm to distinguish between you and your business. They do not see a separate business; they see a nurse expert. Doing this can bring you tremendous success, and there is nothing wrong with this approach. But if you are interested in selling your business, rather than just retiring into the sunset by winding down, then you need to think differently. Your goal is to help your attorney client to stop seeing you not as a person but as a business organization/enterprise.

Next, consider what you can offer a buyer. When the firm hires XYZ Consulting, they need to receive the same service and work product for each case, regardless of the person providing the report. Those of you who use subcontractors are already doing this.

If you have consistent referrals from a group of attorneys, what would it take for them to consider using your successor when you are no longer in the picture? Don’t forget, each firm thinks they are unique (and most are), so they market themselves as service providers. If you have spent your whole career making sure your client firms know only your name and focus only on you as the services provider, it will be difficult for them to transition. Who is going to want to buy your business without knowing that your referral attorneys would continue with them without you?

**Goodwill**

If your clients focus on the result, work product, and consistent attention regardless of who provides them, then they will see your business as a reliable source of work product. They would no longer be focusing on you as an individual, and would now see you as one of the authors of that work product. This then would be something that you can sell because it should result in predictable results, regardless of the owner.

Attorneys call this goodwill, which is the process, procedure, and ability to produce predictable, consistent results. This is what you are selling if you sell your NLCP business: your relationships, goodwill, and track record. When transitioning to a new owner, be sure you are able to say that this new owner will deliver XYZ Consulting’s historical standard.

**The Sale**

The next step is to find a buyer. There are two primary ways: on your own: asking around for interested parties by word of mouth, or hiring a business broker. If you go it alone, you are limited by the number of people you know; your reach will only be so far. A business broker can access databases and other tools to expand the reach of likely targets. The broker will review your finances, client list, and other vital factors, determine a realistic value, and then put together a marking circular. They will also vet prospective purchasers and help “sell” the concept of buying a consulting business. Just as the seller will be in uncharted territory, so too will likely be the buyer.

Once you locate a buyer, retain an experienced transactional attorney to help with sale documentation and closing, consider tax implications, and other financial aspects.

**Transition period**

For most consulting business sales, the seller typically contracts to stay on as a consultant for six to twelve months to foster business relationships and mentor the new owners into their business practice. A new owner will undoubtedly want to put their touch on things. Still, they should apply your business practices to ensure consistent results and regularly meet and exceed client expectations if they want to keep your book of business. Your presence “emerita” on the letterhead and website will ease the client transition too.

**At Last**

Now you can retire into that glorious sunset, hopefully with a bit more cash than just winding down.

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**RESOURCES**

Colin Parker, Lonestar Sales Performance, personal communication, January 2021. colin@lonestarsalesperformance.com

James Urie, Clarion Law LLC, personal communication, February 2021. jurie@clarionlaw.net
For our 2021 VIRTUAL Conference, AANLCP is asking its members to help recruit conference sponsors and vendors. If you have a sponsor or vendor you would like to see at our 2021 conference, and they have no prior affiliation with AANLCP, we are offering a discount toward your conference registration. Go to the AANLCP website https://www.aanlcp.org/corporate-partnership/

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