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Life Care Planning: Beyond Estate Plans and Living Wills

Bundling Legal and Non-Legal Services, Avoiding Ethical Pitfalls

THURSDAY, APRIL 12, 2012

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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Maria Miskovic, Care Advocate/Coordinator, **Debra K. Schuster**, St. Louis

Miles Hurley, Founding Partner, **Hurley Elder Care Law**, Atlanta

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Strafford Publications

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History of Life Care Planning

- Practice model developed by Timothy Takacs in Henderson, TN in 2006
  - At a NAELA meeting in May, 2007, like-minded elder law attorneys met to discuss forming a law firm association dedicated to Life Care Planning (LCP) – model of practice being holistic, multi-disciplinary with a geriatric specialist, social worker or nurse as a key component to the practice non-hierarchical model
  - Tim Takacs held initial two-day training sessions for attorneys beginning in 2006; the LCPLFA now conducts such training for attorneys, Care Coordinator/Advocates and staff

What is Elder and Disability Law?

- Addresses the legal issues facing individuals who are 60 years of age or older or are disabled
- Involves incapacity planning, health insurance and long term care coverage issues, ability to obtain health and other benefits to which the elder/disabled person is already entitled
- Involves family that are overwhelmed by trying to formulate long-distance care arrangements or local family who are exhausted by being the sole caregiver/responsible person for handling crises
- Recurring, crisis-oriented and time-consuming for family and elder/disabled person

Traditional Elder Law Attorney

- Usually has estate planning background
- Usually focuses on Medicaid planning and eventual need for skilled nursing home care
- May handle guardianship/conservatorship matters, some Medicare issues
- Interaction with client is primarily transactional and episodic

Legal Crisis Issues

- ❑ Medicare skilled rehab/nursing days have been terminated or exhausted
- ❑ LTC insurance refuses to pay claim
- ❑ Financial exploitation/debt issues/lapsed coverage due to dementia
- ❑ Premature discharge from hospital
- ❑ No Advance Directives or revoked
- ❑ Elder Abuse Hotline called

Aging and Long term care issues of Clients

- Loss of functional and mental capacity and independence
- Fear of being a financial and care burden
- May have family that is dispersed, deceased or un-involved
- Emotionally and financially vulnerable if lacks strong support system
- Want to decide where they live
- Age cohort often does not self-advocate or question authority
- Many have liquidity concerns – house rich but cash poor
- Do not know the benefits for which they are eligible
- End of life concerns – will family support; if no family, who will advocate for them

Role of LCP Attorney

- Works collaboratively with care advocate who is a social worker, geriatric specialist, nurse or other professional trained in issues of the elderly
- Builds an office team that works together non-hierarchically and holistically
- Involves as many family members/

  friends/significant others as desired by client
- Develops a long-term legal plan with the care coordinator to address the specific issues of the client
- Makes community contacts, along with care coordinator, to serve as external service providers for client

Role of Care Coordinator

- Focus on Care /Personal Functionality and Needs

Housing

Cognitive/Functional Limitations

Marital Status, Family and Community Support

Resources

Advocacy

Care Planning

How Does Life Care Planning Differ From Elder Law?

- Involves a holistic, multi-disciplinary approach to the legal and life issues of elder and disabled individuals

- Considers where a client is at the time of initial meeting – health, psychological status; financial resources; personal/family support systems; residence/desired environment for needs – and where their care needs are likely to take them

Life Care Planning-
Legal Considerations

- Does the client have an estate plan that meets his/her current needs?
    - Are the appointees willing to act, responsible and responsive to the client's needs, wants and concerns? Will they make decisions in the best interest of the client?
    - If not, is the client still mentally capable to have new documents created?
- What benefits does the client have?
    - Medicare, Medicaid, SSD/SSI, Private health insurance, LTD insurance, Veteran's Benefits?
- What financial resources does the client have?
    - Can they sustain the type of care the client desires?
- Does the client have appropriate health insurance?
- Does the client have any family members with special needs?
- Does the client have family willing to support his/her end of life treatment wishes?

LCP is the necessary evolution of elder law

- Chronic Care Model- motivation, information, skills, and confidence
- Paradigm Shift in Health Care and Elder Law- self-management, care planning with a multi-disciplinary team, and ongoing assessment and follow-up
- Life Care Planning is a comprehensive intersection of legal techniques that embrace the physical, psychological and financial needs of its clients now and into the future.

LCP Services

- Elder Law
- Estate Planning
- Asset Protection
- Medicaid Planning
- Medicare Advocacy
- Veteran's Benefits
- Care Coordination
- Advocacy
- Special Needs Planning
- Guardianships/ Conservatorships
- Trusts
- Long-term care and disability insurance claims and appeals
- Elder mediation

The “In-House” Life Care Planning Team

- Attorney(s)
- Care Coordinators – social workers, nurses, geriatric or disability specialists with experience in the industry, Certified Geriatric Case Managers, etc.
- Support Staff- Paralegals, Medicaid specialists, VA specialists, Administrative and Marketing support

The External Life Care Planning Team

- Geriatric Internists/Psychiatrists
- Counselors
- PT/OT/Speech therapists
- Pharmacists
- Nutritionists
- Home Modification Specialists
- Real estate transition/De-cluttering companies
- Bill-paying services
- Transportation services

What are our Clients' Care Concerns?

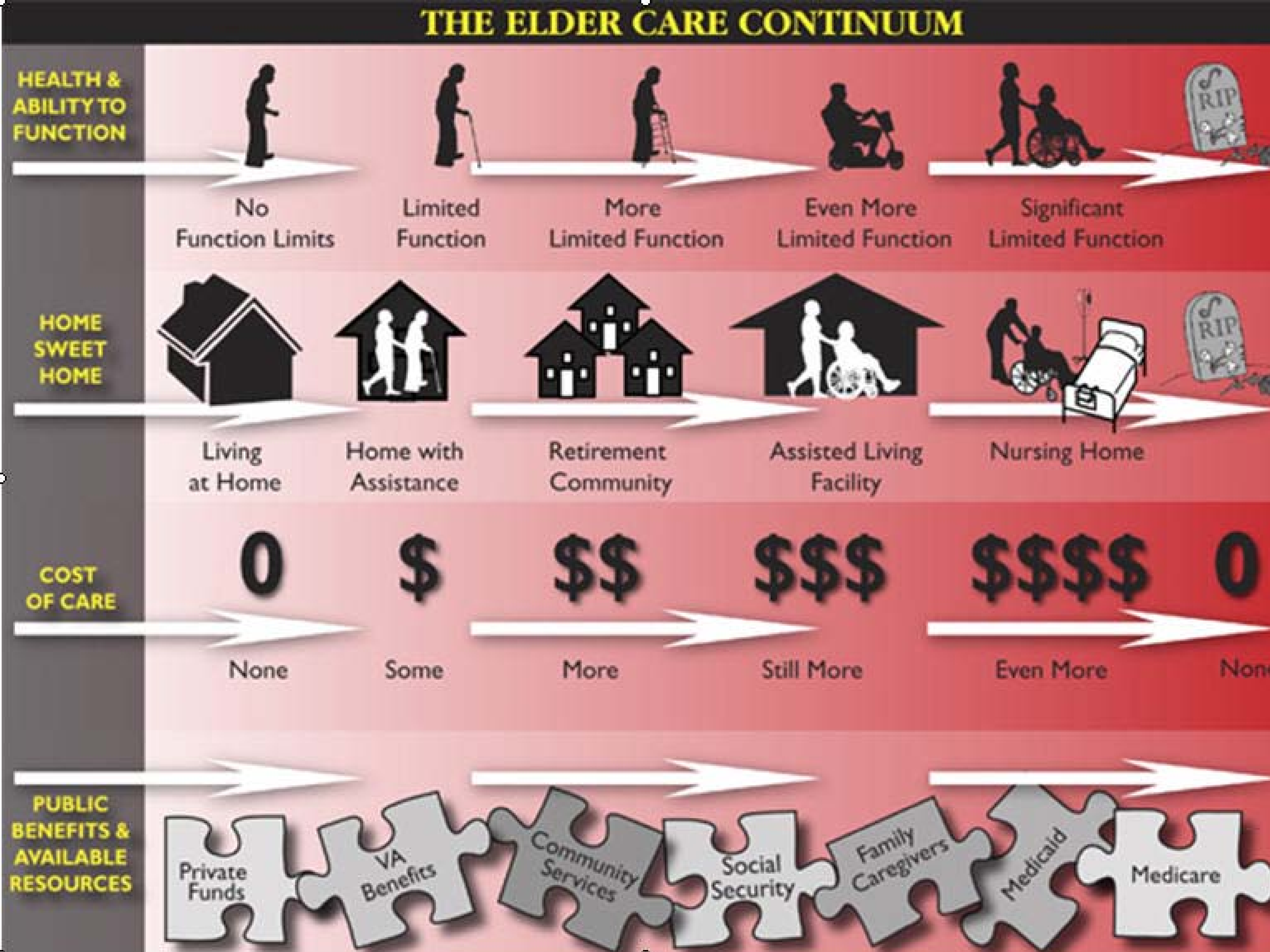
- The system works against them
- Disorganized and Inefficient healthcare
- Too many rules to keep up with or understand
- Chronic care is expensive
- These challenges stifle independence
- Information is rarely shared and care options are confusing

Holistic Approach

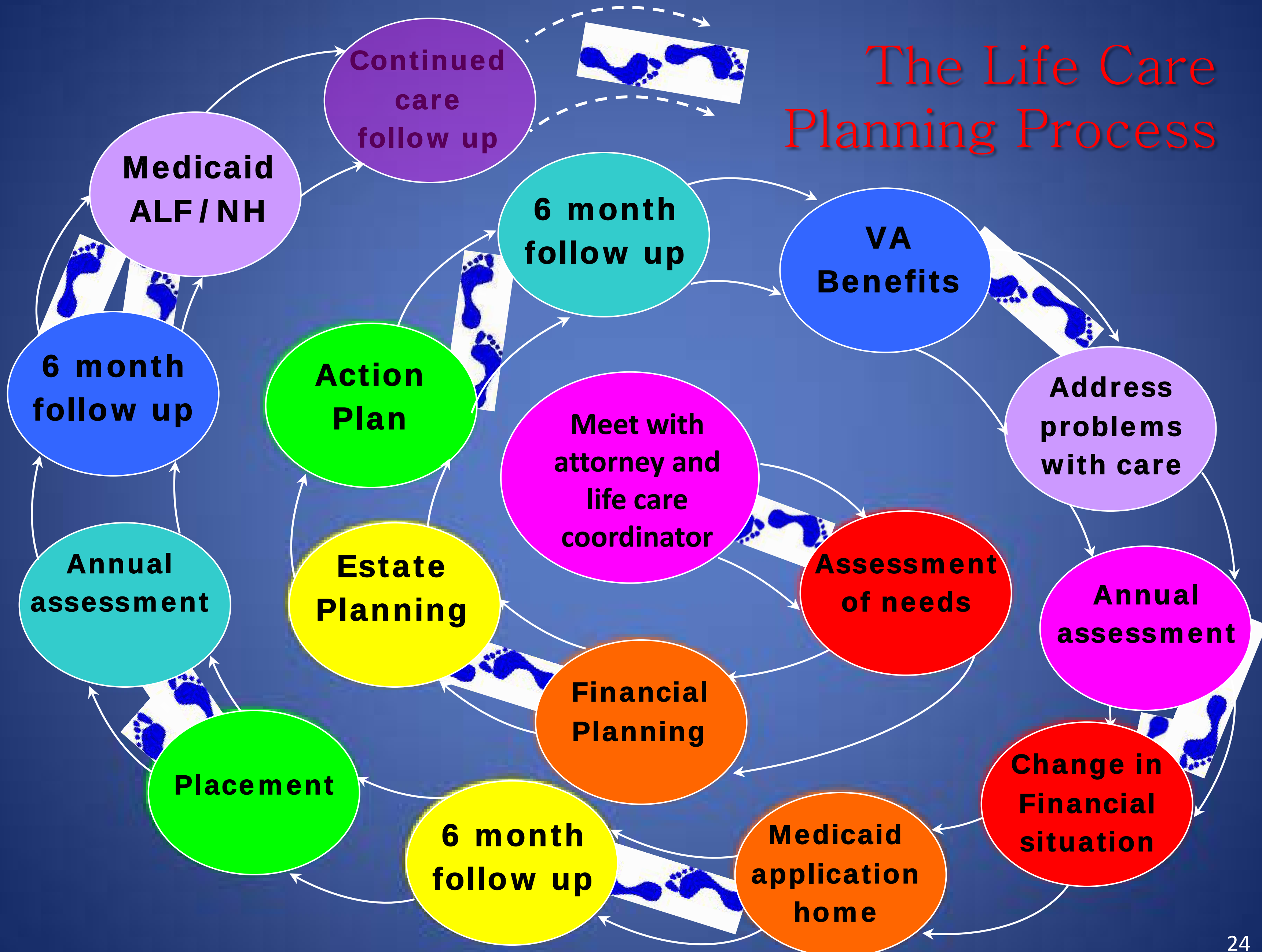
- Client Centered Models
- System/process oriented
- Relationship Focused
- Goal driven with Follow-Up
- Services based on a continuum
- Flat Rate and longer-term contracts

LCP Process

- Identify the client on the continuum
- Identify available resources
- Identify Supports
- Identify Legal and Non-Legal Issues
- Develop a Plan
- Make Decisions based on Client's Goals
- Implement the Plan
- Monitor, Reassess, and Adjust


THE ELDER CARE CONTINUUM
HEALTH & ABILITY TO FUNCTION
No Function Limits
Limited Function
More Limited Function
Even More Limited Function
Significant Limited Function
RIP
HOME SWEET HOME
Living at Home
Home with Assistance
Retirement Community
Assisted Living Facility
Nursing Home
RIP
COST OF CARE
0
$
$$
$$$
$$$$
0
None
Some
More
Still More
Even More
None
PUBLIC BENEFITS & AVAILABLE RESOURCES
Private Funds
VA Benefits
Community Services
Social Security
Family Caregivers
Medicaid
Medicare

The Life Care Planning Process



Life Care Planning Goals/Outcomes

- Clients with whom a long-term relationship (1+ years) is fostered to be pro-active to life changes
- Enable client to live where they desire that is the least restrictive, economical and commensurate with their needs
- Improve communication between health care providers/client & client and family/S.O.
- Increased understanding of health information and ways to improve client's self care
- Simplify health care situations (home care set up, hospital check in, etc.)
- Help ensure that client's legacy goals are met – legal and quality of life
- Empower clients and families to better self-advocate
- Maximize benefits to avoid unnecessary expenditures
- Reduce ER, hospital visits and crises > lower costs to client
- Enhance peace of mind and quality of life
- Enable adult children to be family rather than "crisis responder"

Professional Ethical Considerations

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Professional Ethical Considerations

A. Maintaining Professional Independence as a practitioner

Issue: Can the attorney's advise be influenced by other professionals in the practice?

Professional Ethical Considerations

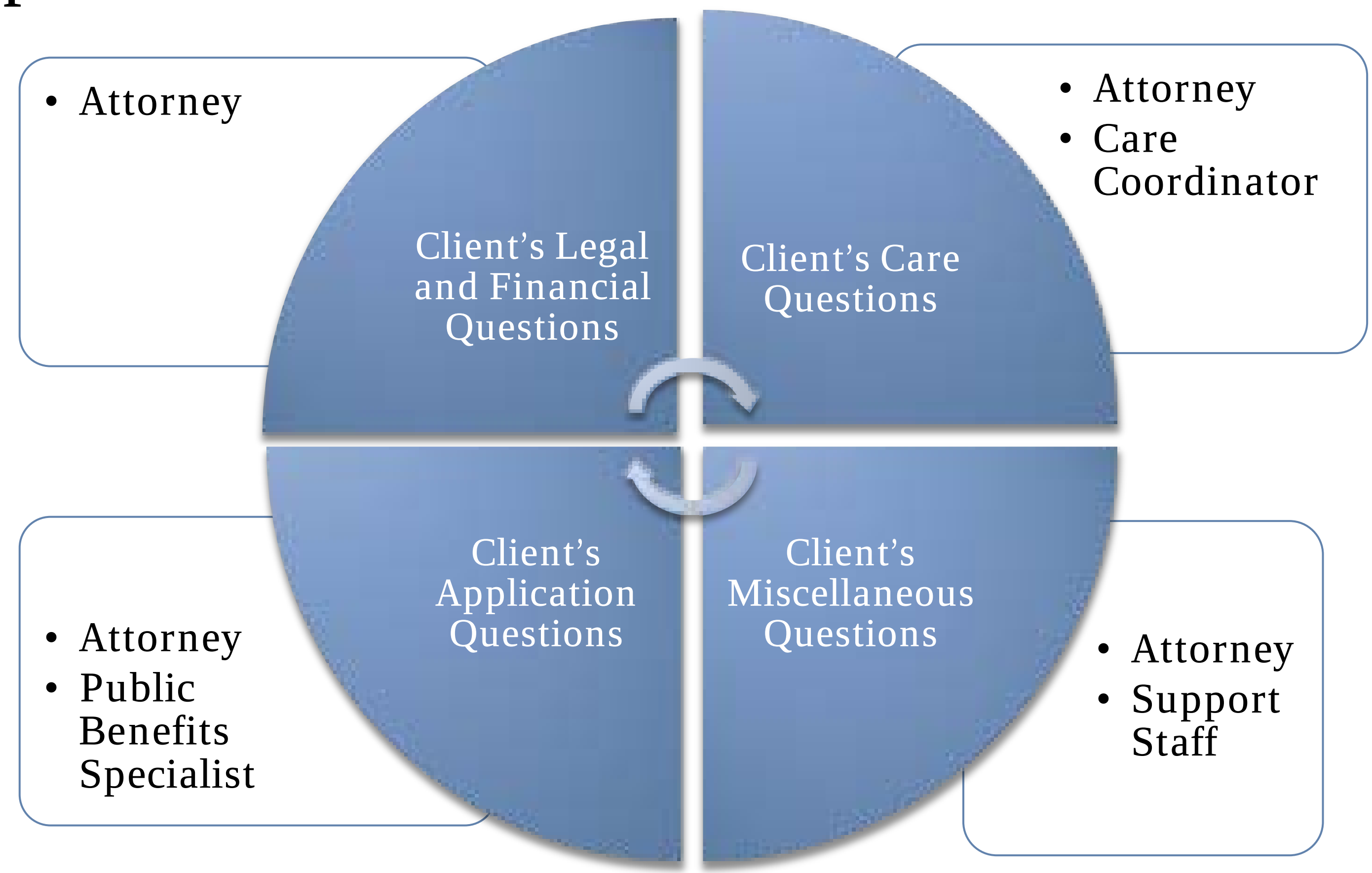
A. Maintaining Professional Independence as a practitioner

Solution:

- Each practitioner works within the scope of their practice
- Attorney's advice is based on clients' situation—Care Coordinators only adds insight into situation, not recommendations to the attorney
- Care Coordinator does not provides hands-on care
- Care Coordinator only provide education to family/clients

Professional Ethical Considerations

A. Maintaining Professional Independence as a practitioner



Professional Ethical Considerations

B. Fee-Splitting

Issue: Are you paying the care coordinator a part of the fees intended only for legal fees?

Professional Ethical Considerations

B. Fee-Splitting

Solution:

- Not an issue if the care coordinator is an employee.
- Care Coordinators are not being paid a percentage of what is being brought in but a salary. Their status is the same as other support staff members.

Professional Ethical Considerations

C. Conflicts of Interest

Issue: Who is the client?

Professional Ethical Considerations

C. Conflicts of Interest

Solution:

- Attorney must express to the families in the beginning that the client is the older adult.
- The client is not the family member nor any of the care providers in the community.
- Law office does not sell products. Attorney's advice is not influenced by a commission or kick-back.
- Law office does not accept referral fees for placement or home care services.
- Guardianship clients are the guardian, not the ward. This distinction should be made clear at the beginning.

Professional Ethical Considerations

D. Client Confidentiality

Issue: Are clients more at risk of having their right to confidentiality violated in a LCP law firm?

Professional Ethical Considerations

D. Client Confidentiality

Solution:

- Permission to disclose information to community providers should be granted by client before any of the law firm's employees discuss their case with non-employees (as in the event of trying to help the client find placement).
- All employees of the law firm will be held to the standard of the law firm.
- Attorney-client privileges are maintained, even when in conflict with mandated-reporting statutes.
- Nurses and social workers are trained in maintaining client confidentiality.

Professional Ethical Considerations

E. Advertising

Issue: Does the marketing efforts of the firm comply with state bar's regulations?

Professional Ethical Considerations

E. Advertising

Solution

- Each state's bar determines the rules for advertising and making promises on their website.
- The work of the care coordinator should be stated clearly and honestly in all advertisements. They should never claim to provide hands-on care.