

Senate Bill 187
Civil Actions-Health Care Malpractice Claims
(Life Care Act)
Before the Senate Judicial Proceedings Committee

POSITION: SUPPORT

Life care planning is a vocation created by litigants. There is no oversight, licensing, board certification, or established educational pathway to become a life care planner. One need not be certified, but can be. The certification for life care planning is through an organization, the CNLCP (Certified Nurse Life Care Planner Certification Board). This organization has no association with any medical association such as the American Hospital Association or American Nursing Association.

In the real world, a patient who has sustained a catastrophic injury will have their care managed through a case manager.¹ Case managers are certified by the CCMC², a certification organization endorsed by both the National Society of Social Workers and the Case Management Society of America, an international, non-profit multi-disciplinary professional association. Case managers work closely with the patient's treating health care providers to ensure that the patient receives all of the medical care/treatment/equipment the patient requires. Case managers have ongoing contact with the patient to ensure that the patient is receiving the care that the case manager and patient's care team have determined is necessary, and to ensure that the care is effective. Contrast this to the life care planner.

The life care planner, operationalized only once litigation is pending, may see the litigant one time, or may merely interview a litigant over the telephone. The life care planner will review medical records, and may send a questionnaire to the litigant's treating providers. The life care planner will then put together a life care plan. Many of the life care plans generated on behalf of the litigant contain items that the treating provider of the litigant has not deemed necessary and has never recommended. The life care plan is then sent to a physician paid by the litigant's attorney to review and "bless" the life care plan. This physician may or may not have seen the patient. It is not required. This physician, although she may bless the life care plan, is not a treating physician of the litigant and therefore never orders the treatment/therapies contained in the life care plan. Once written the life care plan is then sent to an economist hired by the litigant's attorney to "price out" the cost of the life care plan. This costing out is done by utilizing not what has historically been paid for these treatments/therapies, but by what is charged as estimated by the life care planner³ and the amounts of these life care plans are staggering. In cases closed in Fiscal Years 2018 and 2019, the University of Maryland Medical System received life care plans

¹ Certified case managers (CCM) must meet certain educational requirements and need to hold licensure in a health or human services discipline such as an RN, LCSW, LPC, CRC or CDMS credential or have a bachelor's or graduate degree in social work, nursing or another human services related field. They are required to complete at least 80 hours of continuing education credits every 5 years.

² Commission for Case Manager Certification.

³ The life care planner chooses which resources she includes in her report. As with any product available for purchase, the price of one item can vary dramatically depending on a number of factors. The life care planners do not provide an average cost of an item; they provide an arbitrary cost that they alone determine to be THE cost.

submitted by the plaintiff in cases alleging catastrophic damages in amounts of \$19 Million⁴, \$45 Million⁵, \$26 Million⁶, and \$46 Million⁷. Why does this matter? It matters because these estimates of future care needs and costs are a fiction having no evidentiary foundation and have been a direct cause in the skyrocketing medical malpractice costs experienced by health care providers in Maryland and Nationwide.⁸

Currently there is no mechanism and no process for validating the accuracy of the contents of the life care plan. Life care planners do not go back and “check their work” to determine if their plan has been implemented as recommended or to see if their costs estimates are accurate. Life care plans are not reviewed or assessed for consistency. The Foundation for Life Care Planning Research has recognized this deficiency as fatal to the business of life care planning, **“In light of the recent challenges presented by the Daubert rulings, the future of life care planning as a forensic tool is dependent upon validating the Life Care Planning process in the eyes of the court.”**

⁹ This book chapter was written in 2004. Since this time the “vocation” of life care planning has done nothing to ensure the trustworthiness, exactness and validity of this industry. This bill seeks to bring reliability and accuracy into the life care plans by requiring these plans to be the “product of reliable principles and methods” and the expert has “reliably applied the principles and methods to the facts of this case”.

The difference between the real world of health care and that which is presented in litigation is the fiction of a plan projecting “necessary future medical care” and placing an arbitrary and false estimation of the cost of that care. This fiction is the life care plan. This bill takes the life care plan (a tool created by litigants) and puts it in more in line with how things work outside of the courtroom. This bill brings to the courtroom the real life process by which future medical care needs are identified and the cost of those needs is determined so that the litigant can be made whole in a fair and reasonable manner. It does so by requiring these plans to be the product of reliable principles and methods and not just the unsubstantiated opinion of an individual who has no health care relationship to the litigant.

For these reasons, we urge a favorable report on this important bill, SB 187.

Respectfully submitted,

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⁴ Defendants’ future cost of care estimate was \$4.2Million.

⁵ Defendants’ future cost of care estimate was \$9.2Million.

⁶ Defendants’ future cost of care estimate was \$2.8Million.

⁷ Defendants’ future cost of care estimate was \$5.1 Million.

⁸ A survey of Maryland hospitals found that medical malpractice payouts have increased 140% since 2008. Zurich, a medical malpractice liability insurer that once had a prominent presence in Maryland but pulled out of Maryland in 2019 cites Maryland as having “ultra-high” lost costs when compared to other states. Other states within this “ultra-high” category include known outrageous medical malpractice venues such as Illinois, New York and Pennsylvania. See Zurich 2019 Benchmark Stud of Healthcare PH Claims Report.

⁹ (See attached excerpt of text contained in Deutsch, P., Allison L., & Kendall, S. (2004). *Research design and statistics: A practical guide to reading research, literature and practice guidelines*. In P. Deutsch & H. Sawyer (eds.), *A guide to rehabilitation*, pp. 9B. 1-9B, 88. White Plains, NY: Ahab Press, Inc.).