SKILLED vs. UNSKILLED HOME CARE SERVICES
IN LIFE CARE PLANNING
Danielle Mayer RN LNC, MSCC, CNLCP

One of the most argued recommendations/costs, presented in a Life Care Plan, is "Home Care" services. Whether it be for a child or an adult, this is the area where the majority of the damages in a medical malpractice case are argued and debated by both plaintiff and defense counsel.

The cost for Home Care services, over the life expectancy of an individual, especially a child, may reach millions of dollars. The question for Nurse Life Care Planners in projecting the future cost of Home Care services is: When are "Skilled" services vs. "Unskilled" services appropriate?

Life Care Planners may refer to their experience and opinions when it comes to this very important and crucial area of the Life Care Plan. Nurse Life Care Planners have the option of utilizing the American Nurses' Association (A.N.A.) and the Nurse Practice Act (N.P.A.) to support their decisions or to defend their use of "Skilled" services in a Life Care Plan. Unfortunately, neither of these entities offers a definition, explanation or criteria for "Skilled" services. What these organizations do provide is the "Scope of Practice", or "Rules and Guidelines of Practice" for registered nurses, licensed practical nurses, attendants, home health aides, certified nursing assistants, high-tech aides, etc. They do not differentiate between "Skilled" and "Unskilled" services.

The Centers for Medicare and Medicaid Services (CMS) published criteria every Nurse Life Care Planner should be familiar with. "Skilled Services Criteria for Home Health Care" is published by CMS, in the Home Health Manual, CMS Publication 11, Chapter II - Coverage of Home Health Services, Section 205. This publication can be found at the CMS website: http://www.cms.hhs.gov/manuals. When defending your Life Care Plan, accepted published criteria can help to support your plan recommendation.

The CMS criteria may also be helpful in determining the appropriate amount of payment for a family caregiver. By understanding the definition of "Skilled" services, the Nurse Life Care Planner can recommend the level of care payment to a family member providing care, in lieu of an agency. The actual amount paid to the agency caregiver is differentiated from the cost the agency charges, in these situations. A recent Michigan, Oakland County Circuit Court verdict in the case of Blaszeyk v. Liberty Mutual Company, decided that the family caregiver (wife) should be awarded $12.00/hr, which was the hourly rate the agency caregiver receives, rather than the agency fee of $25.00/hr.

The CMS criteria is a printable document, which can be provided to counsel, as an exhibit, during a deposition in support of the Nurse Life Care Planner's recommendations for level of care with associated costs. This published documentation can support the Nurse Life Care Planner's recommendation and provide education to the legal community in this regard.

The CMS published Skilled Services Criteria (or CMS-Based Criteria) is the benchmark for all health insurance carriers in the United States. Each state then applies their own home health agency regulations/laws/rules using the CMS criteria as the "standard/base/benchmark".

There are three components to consider when referring to "Skilled" services vs. "Unskilled" services for Home Care Providers:

- CMS Published Criteria for Home Health Care
- Individual State Regulations/Laws/Rules/Guidelines
- Individual Agency Liability Contracts/Agreements/Staffing

When referring to the cost of Home Care Services in a Life Care Plan, the local agency and/or home care provider in the specific region/state/county concerned should be contacted in order to clarify how that agency applies the CMS published skilled services criteria.

By definition, "Skilled" services are those nursing functions or interventions that must be performed by (at minimum) a licensed practical nurse (LPN) or by a registered nurse (RN) vs. certified home health aide (HHA), certified nursing assistant (CNA) or attendant. Some examples of "Skilled" services would be; tracheostomy care, Stage IV decubitus ulcer care, or I.V. medication administration.

It should be noted the American Nurses' Association (A.N.A.) has provided a definition or scope of practice for the use of high-tech aides. These are individuals who are certified home health aides who have been trained by a specific home care agency to perform services which, by CMS definition, are "Skilled" services; such as G-tube feedings and care. In some states, a trained high-tech aide can provide this service at a much lower cost through some agencies. Not every state has adopted this practice, but it is an important question to ask a home health care provider when calculating costs and recommending the level of service for an individual's life expectancy.

About the Author: Danielle Mayer RN, LNC, MSCC, CNLCP is a Certified Nurse Life Care Planner, for medical malpractice, worker's compensation and auto no-fault cases, as well as a Certified Medicare Set-Aside Consultant in Michigan. She can be reached at: 7 West Square Lake Road, Bloomfield Hills, Michigan, 48302, or by e-mailing: DanielleMayerRN@AOL.com.