# Ethics Interface

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Columnist's Note: In this issue, a unique dilemma is featured and one that has importance for all practicing life care planners. Dr. Mary Barros-Bailey has guest authored this column. Our next column will address the issue of electronic communications and ethical use and disposal.

This column is a collaborative effort with Nancy Mitchell, Mary Barros-Bailey, Dorajane Apuna, Dianne Simmons-Grab and the editorial support of Roger Weed and Tyron Elliot. The author is grateful for their wisdom and collective experience. The column is meant to be an educational forum for life care planners. It is not designed to offer an authoritative opinion from the editor or editorial board of the Journal of Life Care Planning, the board of the International Academy of Life Care Planners (IALCP), or the board of its parent organization, the International Association of Rehabilitation Professionals (IARP), nor is it designed to represent or replace official opinions from the certifying body or other organizations associated with the practice of life care planning.

**Ethical Dilemma**

Recently, one of my life care planning colleagues passed away. This colleague had a vibrant practice and was a single practitioner. I was called by several of the referral sources to take over the life care plans on which this colleague was working. However, neither the referral sources nor I knew how to obtain copies of the working records of my colleague. What are our responsibilities as life care planners and single practitioners to the maintenance of records should we become disabled or pass on?

**Response**

Through personal or natural tragedy, the issues of records retention and maintenance are the resounding issues in this dilemma, and something to which the Code of Ethics governing those in practice settings most likely to feed into the specialty of life care planning are beginning to take notice … some directly, others implied.

The Commission on Rehabilitation Counselor Certification (CRCC) states in the Code of Professional Ethics for Rehabilitation Counselors (2010) that rehabilitation counselors must, in the disclosure process, inform those receiving services of "… contingencies for continuation of services upon the incapacitation or death of the rehabilitation counselor..." (A.3.a.(5), p. 4). Likewise, the Certification of Disability Management Specialists Commission (CDMSC) states in their Code of Professional Conduct (with Disciplinary Rules, Procedures, and Penalties) (2009) that certificants "… make reasonable efforts to ensure continuity of services in the event that services are interrupted by factors such as unavailability, relocation, illness, disability, or death of any party involved in the case" (Rules of Professional Conduct 2.04, p. 9).

This whole topic calls attention to how records are kept and maintained and the notification of the parties as well as an In Case of Emergency (ICE) policy and provision that could be included in disclosure to clients/evaluees as well as referral sources.

**ICE Provisions**

Who will be responsible for such administrative issues as records and finances in the event you cannot perform the functions of a life care planner? Have you designated a reliable

records custodian? Do they know how to access the records and what kinds of records security provisions need to be in place, such as appropriate releases? These questions call for the need to develop a business disaster/emergency plan. An online search engine query will assist you with checklists of what to include in such a plan tailored to your needs.

When a person dies, there should be either an administrator or executor responsible for that person's estate. If, as described in the above dilemma, you have been asked to "take over" a colleague's caseload (either in part or in whole) upon his/her death, verify how far you can go with a transfer of documents, work product, etc. unless the executor has given approval. Mention of the desire of the life care planner in his or her will to have a certain person or agency take over that function should satisfy an executor. Where there is no will and you are dealing with an administrator, no such prearrangement can be made and the matter would have to be negotiated with the administrator. This is an important reason to make a will. If the life care planner is incapacitated, an advanced medical directive is about the only way to transfer records. If a guardian is appointed, the consent of that person or from the court through that person may be necessary.

Appointing an ICE contact for your practice and caseload would be a good first step in developing such a plan. A formal appointment letter that could be sent to the life care planner's case list, referral sources, and/or other individuals with the need to know such information identifying the ICE business contact at the time of incapacitation/death is good business practice. Notifying evaluees/clients of the existence of this program or policy at time of disclosure assists in meeting the provisions indicated in practice codes of ethics.

In addition, adding narrative language or provisions to a retainer agreement as to the ICE contact, policies, and procedures continues disclosure and allows for the transition of services upon incapacitation or death. An example of a retainer letter provision is:

In Case of Emergency (ICE): In the event of death or incapacitation of Mr. or Ms. Life Care Planner, the administrative responsibilities of the business are transferred to XXXX, secretary/treasurer of the corporation, who will work closely with you to assist in financial matters and records access and maintenance provided that an appropriate release for records is submitted.

**Records Retention and Maintenance**

Availability, access, and maintenance of records has previously been addressed in this column as these pertain to a variety of codes of ethics for life care planners and specific professions including occupational therapists, disability managers, rehabilitation counselors, and related disciplines. The Standards of Practice for Life Care Planners (2006), promulgated by the IALCP, provides very broad guidance in this regard stating, "Appropriate confidentiality is a sensitive and important concept" (IV.A.1., p. 80). In addition, the Code of Professional Ethics for the Commission on Health Care Certification Standards and Examination Guidelines (2007) state, "Disability examiners and life care planners will safeguard the maintenance, storage, and disposal of patient records so that unauthorized persons shall not have access to these records" (R6.4, p. 39). Further, the CRCC (2010) states, "Rehabilitation counselors are aware that electronic messages are considered to be part of the records of clients. Since electronic records are preserved, rehabilitation counselors inform clients of the retention method and period, of who has access to the records, and how the records are destroyed" (J.6.a., p. 29). Similarly, occupational therapists are called to "Maintain the confidentiality of all verbal, written, electronic, augmentative, and non-verbal communications, including compliance with HIPAA regulations" (Occupational Therapy Code

of Ethics and Ethics Standards, Principle 3.H, p. 6).

Beyond the provisions in these professional Codes, and the HIPAA provisions we have been aware of as life care planners since 1996 (U.S. Department of Health and Human Services, 1996), as of January 13, 2010 additional Federal guidelines through Part III, 45 CFR Part 170 of the Department of Health and Human Services will also guide the maintenance and transference of our records (U.S. Department of Health and Human Services, 2010). This interim rule, sometimes referred to as the HITECH Act, includes standards that update some of the provisions in HIPAA for protected health information (PHI). In particular, HITECH requires that those covered by the Act ensure that the systems they use are secure, can maintain data confidentiality, and can work with other systems to share information. If security breaches are detected, patients must be notified. In addition, the Act calls for ensuring access by the patient to electronic records and the accounting of disclosure of PHI to patients.

Yes, this is a lot of technology information to learn for those who are accustomed to working in a hard copy world. What can you do, and what resources are available to you right now, likely at your fingertips or in your office? In addition to the above-cited Codes of Ethics, the United States Attorney General's office recommends some of the following provisions (Simmons-Grab, n.d.):

Laptops, hard drives, flash drives, CDs, and floppy disks employ hard drive encryption
Security and other applications are kept updated
Mobile computing devices use anti-viral software and host-based firewall mechanisms
Removable media and hard drives are processed (sanitized, degaussed, destroyed) when no longer needed
Contracting firms keep an accurate inventory of devices

Some resources available may include secured off-site back up or communication systems. Examples include mozy.com, zipcorp, and Network Solutions or Pointsec encryption. Remember that password management protocols or programs, such as revolving and randomly-selected passwords from a list of 20 or 30 strong passwords, might also be helpful.

Now, for how long should you keep your records? It depends on a variety of potential criteria. For example, HIPAA requires records retention for six years. However, there may be other jurisdictions, systems, or programs in which you provide services that may have shorter or longer time periods. Best practices recommendations suggest that you become familiar with the records retention requirements of those systems or jurisdictions in which you practice and adhere to those, or select the most conservative of those time periods and adopt it as your company policy.

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**New Dilemma**

The new dilemma for the next issue will cover electronic communications and ethical use and disposal.

The Journal of Life Care Planning welcomes the submission of real world ethical dilemmas. Submissions will be altered to promote confidentiality and be kept in strict confidence. Please send submissions to nancymitchell4574@yahoo.com