

# HEALTH CARE POWER OF ATTORNEY AND LIVING WILLS FOR COLLEGE STUDENTS

*By Erin Anderson, Senior Trust Counsel, and Jennifer Kawicki, Trust Counsel*

For most parents, it's natural to want to protect their offspring as they grow and mature—and when their children are ready to head off to college, it's natural for parents to want that same protection to tag along. However, when your child reaches that milestone 18th birthday (in a few states it's older) he or she is legally an adult allowed to make and face the consequences of their own decisions—including those regarding health matters.

Without your child's written permission, you can no longer access medical records or make medical decisions on your child's behalf unless certain legal documents are put in place—even in the midst of this pandemic, even if your student is covered under your health insurance, and even if you're footing all the bills.

While discussing a young adult's personal health issues sometimes can be challenging and embarrassing, it's worth making every effort to have the conversation. Before your student heads off to college, these documents should be in place to keep you involved in case your child has a medical emergency.

## **DOCUMENT #1: DURABLE POWER OF ATTORNEY FOR HEALTH CARE**

A Durable Health Care Power of Attorney is as applicable and beneficial for young adults as it is for older individuals. Your adult child living away from home will likely want to appoint you as an “agent”, under a health care power of attorney instrument, so you would have authority to receive medical information and make medical decisions if your adult child becomes incapacitated as a result of an accident or medical emergency. Make sure the health care power of attorney includes Health Insurance Portability and Accountability Act (HIPAA) provisions which authorizes medical care providers to disclose your child's protected health information to their agent. Without the HIPAA authorization, health care providers are legally prohibited from sharing information, even with family members. Once the document is completed, make sure to provide a signed copy to your family's primary health care provider, put one copy in a safety deposit box (or a safe alternative), and place a copy in the glove compartment of your child's car. Additionally, if possible, it would be good to include the agent's phone number in the document or attach separately so the agent can be easily reached in the event of an emergency. While these contact numbers may also be saved in your child's phone, accessing them may not be possible when needed.

## **DOCUMENT #2: LIVING WILL**

A Living Will, sometimes also referred to as a Health Care Directive, allows your child to specify his or her wishes regarding end-of-life care. This may be a separate document, but in many instances, it may also be part of the Durable Power of Attorney for Healthcare. A Living Will specifies the medical treatments your child would and would not want to be used to keep them alive, as well as your child's preferences regarding organ donations. The decisions your child makes in this document can provide guidance to the agent designated in the Health Care Power of Attorney and to the health care provider in the case of an emergency or serious health condition.

With both documents, it is best to consult with an experienced attorney-at-law and to have the attorney draft the documents. However, if time does not permit, these documents are generally available as a fillable form on your state bar association website. In such case, it would be recommended that this be used as a stop gap measure and that they be reviewed and updated as necessary with an attorney at the earliest convenience.

Finally, no parent or young adult wants to have this difficult conversation. And no parent or young adult wants to think about being thrust into a medical situation where decisions have to be made regarding this level of care. But as you talk through these sensitive health issues, however, everyone hopefully will realize the importance of having these legal documents in place. It's better to have the authorizations available and not need them versus needing the signed documents and not being able to get them in case the unthinkable happens.

The opinions and other information in the commentary are provided as of July 9, 2020. This summary is intended to provide general information only, and may be of value to the reader and audience.

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