



Have a kid in college or about to?

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As a soon-to-be college freshman many many years ago, I was preoccupied with selecting roommates, finding bacteria-resistant shower shoes, and dreaming about the incredible freedom my 18-year-old adult self would have. Of course, it never occurred to me that it would have been prudent to have certain legal documents in place to make sure my parents could intervene on my behalf if I were injured, ill or incapacitated while I was away at school. This never occurred to my parents either! In fact, my mother and father did not fully appreciate that when I turned 18, at least in the eyes of the law, they no longer had any dominion over me.

Now that I am an estate planning attorney of 23 years with college age children of my own, I realize how lucky my parents and I were that I made it through four years of undergrad and three years of law school unscathed. In hindsight, my parents and I would have enjoyed much greater peace of mind had we taken the following advice.

Parents are strongly advised to, at least, get these simple documents in place before your adult child goes to or returns to/from college this summer.

HIPAA Authorization Form

Once a child turns 18, the child is legally a stranger to you. You, as a parent, have no more right to obtain medical information on your legal-age son or daughter than you would to obtain information about a stranger on the street. And that's true even if a young adult is covered under his or her parents' health insurance, and even if the parents are paying the bill. A medical provider can choose to disclose protected health information to a family member, even without the patient's authorization, if, in her professional judgment, it serves the best interest of the patient. But providers often come down on the side of patient privacy, particularly if they have never met the family member.

It's not an easy scenario to think about, but let's imagine that your 19-year-old son, while away at school in Seattle (like the story I shared this morning), is involved in a severe car accident and is rushed to the hospital. When you find out about the accident, you immediately call the hospital to check on your son's condition. You are horrified when the nurse says, "Sorry, due to HIPAA, I am not authorized to provide you with any information."

HIPAA, or the Health Insurance Portability and Accountability Act of 1996, exists for good reason; it is a federal law that safeguards who can access an adult's private health data. In the above situation, the nurse is prohibited by law from revealing health information to you – or anybody else – about your adult child; healthcare practitioners could face lofty fines and jail time if they violate HIPAA laws.

This situation illustrates why a HIPAA authorization, signed by your adult child and naming you as an authorized party, is so critical. It gives you the ability to ask for and receive information from healthcare providers about your son or daughter's health status, progress and treatment. This is particularly important in the event your adult child is unconscious or incapacitated for a period of time. Without a HIPAA authorization in place, the only other way to obtain information regarding your child's health would be to have a court appoint you as his or her guardian.

Keep in mind, too, that the above scenario is not far-fetched. Accidents causing "unintentional injuries" are the leading cause of death for young adults ages 18 to 24, and each year more than 250,000 Americans between ages 18 and 25 are hospitalized with non-lethal injuries.

2. Healthcare Power of Attorney

Let's say that your daughter, an 18-year-old freshman at a college on the opposite end of the country, is unconscious in the hospital following an accident. If she has signed a Healthcare Power of Attorney naming you as her "medical agent," you will have the ability to view her medical records and make informed medical decisions on her behalf. Without this document or a court-appointed guardianship, healthcare decisions concerning your daughter's diagnosis and treatment will be solely in the hands of healthcare providers. While this is not always a bad thing, a physician's primary duty is to keep the patient alive. So, a healthcare provider might not pursue a risky or experimental course of treatment at the risk of exposure to liability.

Keep in mind that doctors prefer to see one medical agent named rather than multiple medical agents. The concern is that multiple medical agents may not agree on the medical course of action to take on behalf of the incapacitated adult. As a best practice, it's prudent to name multiple agents in priority order with single authority; for example, the adult child's mother might be listed first as the medical agent; if the mother is unable or unwilling to serve in that capacity, the second person listed—say the child's father—would be empowered to step in.

3. General Durable Power of Attorney

If your adult child were ever incapacitated, you would also benefit greatly from having a General Durable Power of Attorney in place, where you were named as the "agent" authorized to make financial decisions on his/her behalf. This would allow you as the named agent to manage bank accounts, pay bills, sign tax returns, apply for government benefits, break or apply for a lease, and conduct similar activities relating to your child's financial and legal affairs. Otherwise, you will not be able to assist your child in managing his or her financial affairs without a court-appointed conservatorship.

Important Considerations

There are some important considerations to keep in mind regarding these documents:

- ***Update these forms yearly.*** Be prepared to have your adult child re-sign and re-execute these documents every couple of years. This is especially critical for Powers of Attorney. The institutions where you would be most likely to use these documents – such as hospitals and banks – might refuse to honor them if they perceive them to be outdated.
- ***These documents are only as good as the institutions that will accept them.*** Making sure these documents are properly executed is half the battle; whether they will be accepted by the involved institutions is the other half of the battle—one you don't have complete control over.
- ***These documents can be revoked at any time by your adult child either orally or in writing.*** Your adult child retains control of the ongoing validity of these documents; therefore, your best bet is to maintain a trusting relationship with your child so he/she sees the benefit of giving you the access and control these documents afford.

- ***For adult children attending college at an out-of-state university, parents might want to execute separate documents in both the student's home state and college state.*** If your daughter is from Oregon but is attending college in Los Angeles, you might explore preparing one set of documents prepared governed by Oregon law and a second set of documents prepared governed by California law.

What Else Changes When Your Teen Turns 18

When your child reaches the age of 18, even though you may still think of them as children, under the law they have now achieved adult status. That status allows them to vote, serve in the military, serve on a jury, sign a contract and get married without your consent. Although they still can't do certain things, like drink alcohol or rent cars, their legal status is decidedly different than it was at 17.

1. All males with US citizenship (with very few exceptions) must register for the selective service upon reaching the age of 18.
2. Although not required, this is a great time for your kids to register to vote.
3. Despite the fact that you are paying for their education, [the FERPA law](#) says you no longer have access to your child's grades once they turn 18. That's right, you can call the registrar and ask to see your 18-year-old's transcript and they will not share it with you even though you're the one signing the tuition checks.

Resources:

<http://www.jedfoundation.org/wp-content/uploads/2016/07/student-mental-health-and-the-law-jed-NEW.pdf>