

YOUNG ADULTS AND THE ADVANCE HEALTH CARE DIRECTIVE

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A child turning 18 is a big deal for both parents and child, not just from an emotional standpoint, but from a legal standpoint as well. Your child is now legally an “adult.”

Consider these two real-life scenarios which have been brought to our attention by clients:



A college senior crashed his vehicle while driving home from his part-time job at the university’s rec center. Upon hearing the news, his parents immediately jumped in the car to make the three-hour drive to the hospital where he was being treated. While Dad drove, Mom frantically tried to contact the doctor who was treating their son. Upon reaching the doctor, Mom was shocked to learn that the doctor was unwilling to reveal any information concerning their son’s condition because he is an adult. When they reached the hospital, their son provided his signed consent to reveal his condition and treatment to his parents. Luckily, their son’s injuries were not life-threatening, and he was conscious and able to give his permission. But, it was an agonizing three hours for his parents.

A daughter, still living at home, had bipolar disorder. At one point, she suffered an extreme

episode and was admitted to the hospital for treatment. Unlike the scenario above, she refused to give consent to her doctor to discuss her condition with her parents. At a time when she was the least equipped to be making decisions about her care, her medications and her discharge from the hospital, privacy laws prohibited her doctor from sharing any information with her parents. They could only stand by helplessly because their live-at-home daughter was an adult.

Help Your Adult Child in a Medical Emergency

Even if you are still supporting your “adult child,” Federal and State laws protect an adult patient’s right to medical privacy *unless* he/she has given written permission to the medical team to share that information. The document which provides you with that permission is an Advance Health Care Directive (“AHCD”), which is prepared for all Trainor Fairbrook estate planning clients. For young adults who are not ready to seek out a complete estate plan, at minimum, creating an AHCD is recommended. Without an AHCD, a parent may have to go to court, which can take weeks at great expense, to be included in treatment decisions of their adult child.

These situations can be avoided by having your child sign an Advance Health Care Directive immediately upon turning 18 (or now, if that milestone has passed). In the AHCD, your child can authorize you, or another adult, to make medical decisions on his/her behalf when he/she is unable to do so. It can also give you the authority to access your child’s medical records.

Although this advisory relates to an AHCD for your child, remember that spouses are not exempt from the medical privacy laws (which is why our estate planning documents include AHCDs for each spouse). If your child is married, or you are married, be aware that a spouse also needs an AHCD in order to make medical decisions and have access to medical records for a spouse.

If you have an adult child, and do not have an AHCD in place, or need one for you and your spouse, please contact Hannah Shakin or Jeanette Salkin in our estate planning department to make arrangements to obtain an Advance Health Care Directive. Written authorization is the only way to be certain that you are able to make decisions for your child or spouse should he or she need you to do so.