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Preparing for College: Why Your Student Needs a Health Care Proxy and Durable Power of Attorney

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Now that high school graduation season has passed, parents of college students (or of any child who has turned 18 years old) should encourage their adult children to execute a durable power of attorney, health care proxy and HIPAA Authorization.

The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") provides that only the adult child and such child's authorized agents have the right to access such child's medical records. As such, it is important that every newly minted adult executes a HIPAA Authorization, which allows the persons named in the authorization to access the adult child's medical records. Having this authorization in place will allow hospitals and other medical providers to provide parents with information on the condition and care of their college students.

What if your college-age child is incapacitated and you cannot communicate with such child's doctors? To avoid having to ask a court to be appointed as the child's guardian, you can simply have the child sign a health care proxy ahead of time. A health care proxy appoints an agent to make medical decisions for the child if the child is unable to communicate with medical personnel. Only one person at a time may be appointed as the health care agent, but the adult child may also appoint successors to act in the event that the named health care agent is unavailable.

Last, but not least, a durable power of attorney appoints an attorney-in-fact to handle your adult child's financial affairs. Your adult child may appoint more than one person to act as such child's attorney-in-fact and may appoint successors as well. Such power can be immediate or "springing," meaning that an event of incapacity is required in order for the durable power of attorney to be effective. Having an immediate durable power of attorney in place can be useful for simple matters such as assisting your child with banking and filing taxes or otherwise helping them in managing their financial affairs. It will also allow you, as an authorized agent, to access the adult child's billing records, such as tuition payments, and grades. In the event that your adult child becomes incapacitated, the durable power of attorney will allow for an agent to handle their financial affairs without the need for a court appointed conservator.

Students and parents of students heading to college this fall should consult with their Bowditch Estate, Financial & Tax Planning attorney to create these incapacity documents.