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The Caregiving Gap: Legal Documents Every Family Needs Before a Crisis

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One challenge about caregiving is that being a close family member does not automatically give you the legal authority to step in. Without the right documents, a caregiver may be willing and able to help but unable to speak with a doctor, access an account, sign paperwork, or make an urgent decision.

Closing this part of the caregiving gap starts with putting legal authority in place before it is needed.

A DURABLE FINANCIAL POWER OF ATTORNEY

A durable financial power of attorney allows someone you trust to handle financial and legal matters if you become unable, or simply need help, to manage them yourself.

Depending on how the document is written, the appointed person may be able to pay bills, communicate with financial institutions, manage investments, file tax returns, address insurance matters, and handle property. The word “durable” is important because it generally means the authority continues if the person who created the document becomes incapacitated.

Without a valid power of attorney, family members may need to ask a court to appoint a guardian or conservator before they can manage someone else’s finances. That process can be time-consuming, expensive, and emotionally difficult. The Consumer Financial Protection Bureau recognizes powers of attorney as one of the primary ways a financial caregiver may receive authority to manage another person’s money and property.

Your parents should have their own documents, but so should you and your adult children. A parent does not automatically have authority over an adult child’s accounts simply because the child is unmarried or still receives occasional financial assistance.

A HEALTH CARE PROXY AND ADVANCE DIRECTIVE

A health care proxy, sometimes called a medical power of attorney, names the person who can make medical decisions when you cannot communicate or make those decisions yourself.

An advance directive or living will provides guidance about the care you would want in serious medical circumstances. It may address life-sustaining treatments, comfort care, organ donation, and other personal wishes.

These documents serve different but complementary purposes. The advance directive explains your preferences, while the health care proxy identifies the person who can interpret and apply those wishes in a real situation.

Choosing the right person matters. Your health care agent should understand your values, remain calm under pressure, and be willing to advocate for your wishes, even when other family members disagree.

A HIPAA AUTHORIZATION

A health care proxy does not always provide broad or immediate access to medical information. A separate HIPAA authorization can allow doctors, hospitals, insurers, and other health care providers to speak with the people you name.

Federal privacy rules do not require a provider or health plan to share information with family members unless they are legally recognized personal representatives. Providers may sometimes share limited information with people involved in a patient’s care, but families should not assume access will automatically be granted.

This document can be particularly valuable when several family members share caregiving duties. One person might be the official health care agent, while siblings or other caregivers are also authorized to receive updates and help coordinate care.

A WILL, AND GUARDIANSHIP PLANNING FOR MINOR CHILDREN

A will explains how property should be distributed after death and names the person responsible for administering the estate. For parents of minor children, it also provides an opportunity to nominate a guardian.

Without a guardian nomination, a court may have to determine who should care for the children. The court will act according to state law and the children’s best interests, but its decision may not match what the parents would have chosen.

Parents should also consider whether temporary guardianship or medical-consent documents are appropriate. These may be helpful when children regularly stay with grandparents, travel without their parents, or are cared for by someone else for an extended period.

The guardian who raises a child does not necessarily need to be the same person who manages the child’s inheritance. A trust can allow parents to name a trustee to oversee financial assets and establish instructions for how and when money should be used.

LEGAL DOCUMENTS FOR ADULT UNMARRIED CHILDREN

A milestone that often surprises families occurs when a child turns 18. At that point, the child is legally an adult, even if they are living at home, attending college, covered by a parent’s health insurance, or receiving financial support.

Parents no longer have automatic authority to make medical decisions, access health information, manage financial accounts, or sign documents for that adult child. This is especially important for adult children who are unmarried because they do not have a spouse who might otherwise be available to assist.

An unmarried adult child should generally consider creating:

- A health care proxy naming a parent, sibling, partner, or trusted friend.
- A HIPAA authorization allowing selected people to receive medical information.
- A durable financial power of attorney for emergencies or periods of incapacity.
- A basic will, particularly if the child owns property, has meaningful savings, has a pet, or wants certain people to receive personal belongings.
- Updated beneficiary designations on retirement accounts, life insurance, and other applicable accounts.

College students may also want to complete the school's authorization for releasing education and billing information. Under FERPA, rights involving education records generally transfer to the student when the student turns 18 or attends a postsecondary institution, although certain exceptions may apply.

These documents do not take independence away from an adult child. They allow the child to decide who may help if an emergency occurs.

KEEP BENEFICIARY DESIGNATIONS AND ACCOUNT TITLES CURRENT

A will is an important foundation, but it does not necessarily control every asset. Retirement accounts, life insurance policies, transfer-on-death accounts, and certain jointly owned assets may pass according to their beneficiary designations or ownership arrangements.

Families should periodically review these designations, especially after a marriage, divorce, death, birth, significant health change, or change in family relationships. An outdated beneficiary form can override what someone intended to accomplish through a will.

It is also helpful to maintain a secure inventory of important accounts, insurance policies, legal documents, digital assets, professional contacts, and recurring expenses. The appropriate caregiver or executor should know where this information is stored and how to access it when needed.

DOCUMENTS ARE ONLY USEFUL WHEN PEOPLE CAN FIND THEM

Signing legal documents is not the final step. The people named in them should know they have been selected and understand what the role may involve.

Copies of health care documents should be shared with the health care agent and appropriate medical providers. Financial agents should know where the original power of attorney is kept. Families should also review whether their banks or financial institutions have their own forms or procedures.

Legal requirements vary by state, so documents should be prepared or reviewed by a qualified estate-planning attorney. Plans should also be revisited as health, finances, relationships, and state of residence change.

PLANNING IS AN ACT OF CARE

Legal planning can feel uncomfortable because it requires families to think about illness, incapacity, and death. But the real purpose is not to predict a crisis. It is to make a difficult situation more manageable.

The good news is that a relatively small set of documents can provide meaningful clarity. Aging parents can choose who will help manage their care and finances. Parents of young children can identify who should protect them. Adult unmarried children can make sure someone they trust can step in during an emergency.

Caregiving is already demanding. The right legal documents help ensure that when your family needs you, you have the authority, not just the willingness, to help.