

Back to School: Health Care Proxies and Health Care Decisions

The unfortunate story of Joe H.S. Grad and his family highlights an important issue: Who has the power to make health care decisions for your “adult” children? Joe H.S. Grad, an 18 year old college student, away from home for the first time, was injured in a car accident. To their dismay, his parents had no legal authority to make health and medical decisions, or to access his confidential medical records, as he was over 18 years of age.

In New York, one is considered an adult at the age of 18 and is presumed capable of making decisions. This is true under the laws in most states. This means that college-age children are considered adults under the law and are able to execute legal documents and determine who will be authorized to make healthcare decisions on their behalf. This is accomplished through the execution of a valid and thorough health care proxy. A health care proxy designates a health care *agent* to make health care and medical decisions. An enhanced health care proxy will also allow the agent to have access to confidential medical records. A New York health care proxy will be honored, if validly executed, in all 50 states. In the absence of valid health care proxy, default laws, which vary from state to state, will determine who or what entity will be authorized to make such decisions.

Since it is back-to-school season for most college students, it is important not to send them away without implementing a health care proxy. They should consider whom to designate to carry out their wishes regarding health and medical treatment in the event of an incapacitating illness or injury. They can select only one agent at a time but the document can specify a successor agent or agents. The agent must be familiar with the individual’s wishes in regard to treatment, including artificial nutrition and hydration. By law, doctors and hospitals must respect the wishes communicated through the appointed agent.

At Berwitz & DiTata LLP we believe that every adult should execute an enhanced health care proxy while they are healthy and before any emergency arises. For college bound students it can be an important document to have in place before they enroll. Important, too, is the peace of mind it provides to their parents.