

Health care proxies for adult children

A critical tool for those with kids of legal age.

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Key takeaways

- ✓ A health care proxy and durable power of attorney are important legal documents that everyone age 18 and over should consider having.
- ✓ Parents of adult children should discuss drawing up these documents with their child, to ensure they are able to be involved in decision-making should their child become incapacitated.
- ✓ Without the appropriate documentation and designations, decisions about care and treatment may be left up to the health care provider.

Bailey Grogan wanted to be a neurosurgeon. A rising sophomore in the pre-med program at the University of Miami, she'd worked hard to set herself up for success in the hopes of following in the footsteps of her mother, Shawnee, a neonatal ICU nurse. "Bailey was a caring soul, and highly motivated to do good in the world," says her stepfather Scott Baker, head of the Fidelity Personal Trust Company. "She had a great balance between drive and compassion, and that's what led her down the path of medicine. Following her freshman year, Bailey had 3 summer jobs and also took 8 credits' worth of physics classes so she would be well prepared for the coming school year. She worked very hard and was very, very bright." Bailey was excited for the upcoming school year, and spent the week before classes with her mother, shopping for school supplies and decorating her dorm room.

But just 2 days after Shawnee had returned to their home in New Hampshire, she and Scott received an urgent call from a hospital in Florida. "They told us that Bailey had been struck by a car while crossing the street near her school, and that we should come down right away." The hospital wouldn't provide details, other than to suggest that it was "urgent." Scott and Shawnee frantically made their way to Florida, not knowing the extent of her injuries, and found that she had been critically injured and was in a coma. Like any parents would, they sought out Bailey's doctors to begin making plans for her treatment. But they soon discovered that they wouldn't be able to play a role in Bailey's care.

Because Bailey was 19 years old and a legal adult, Bailey's doctors were legally forbidden from sharing information about her condition with anyone—even her parents. And because she hadn't formally designated anyone to make decisions on her behalf, what type of treatment she would receive—and whether she would be treated at all—was up to the hospital. "Because we didn't have a power of attorney or health care proxy for her," says Baker, "we did not have any legal rights in determining what takes place with regard to her care."



Photo courtesy of Scott and Shawnee Baker

The need for a plan

Scott and Shawnee had powers of attorney and health care proxies in place for themselves, but they hadn't imagined they would need to do so for their children. "We did so because we're older and well, stuff happens to older folks. But we'd never really considered that our college-age daughter should have these documents as well. It's just not a conversation one typically has with their child. You're more focused on their future, and what that holds for them."

Jeff Wyble, a vice president on Fidelity's Advanced Planning team, makes a point to discuss this topic with all his clients who have children who are over the age of 18 that do not have a spouse or partner who they can plan with. "At the very minimum," says Wyble, "I suggest that the children should have a financial durable power of attorney and a living will with a health care proxy that gives the parents or any trusted individual decision-making authority."

It's an important step to consider, especially as more and more people delay marriage until later in life. In 2021, the estimated median age at which men and women got married for the first time was 30.4 years and 28.6 years, respectively—this means that many individuals could be without a partner with whom they are comfortable designating as their representative for more than a decade.¹ During this time, the parents may be the most logical choice to take responsibility for the individual's financial and health care needs in the event they are incapacitated.

"But it doesn't necessarily have to be the parents," says Baker. "It could be a close friend or a roommate; anyone you trust to speak on your behalf and who you feel has your interests at heart."

Without a health care proxy in place, important decisions about your adult child's care could be made by a hospital ethics committee. While these committees strive to determine the best course of action for an incapacitated patient, there's no guarantee that what they conclude will align with the personal preferences and beliefs of you or your child.

Preparing for the unexpected

Having the right documents in place not only gives parents the authority to act on their child's behalf, it also allows the child to articulate their preferences and desires for care in the event they are unable to do so in a crisis. This can be a significant help for parents faced with a difficult choice regarding their child's care.

"A living will explains exactly what the individual's wishes are in the event they are unable to communicate them," says Wyble. "It can include specifics regarding whether or not to continue life support in particular circumstances, whether they wish to become an organ donor, and other important health-related matters. A health care proxy is the person appointed to carry out the wishes in the living will."

Generally, a financial durable power of attorney can give the designee, known as the "attorney in fact" or "agent," the ability to access bank accounts and make financial decisions on the adult child's behalf, to ensure that bills are paid and day-to-day expenses are taken care of. If the document is explicitly drafted to state that it is "durable," it will generally be in effect until the individual's death, unless it is formally revoked. Exactly how much power is granted is up to the individual and should be specified in the document when it is drafted. Wyble notes that many financial institutions, including Fidelity, allow you to execute a durable power of attorney specific to the accounts held there. Additionally, the Fidelity Estate Planner's "Find an Attorney" service can connect you to professional legal resources, including LegalZoom®, that can aid you in drafting these documents.

"The biggest risk of not having these documents in place is that it can delay important decisions," says Wyble. "In the event that you didn't agree with a decision made by the hospital's ethics committee, or simply wanted to have more say in how treatment is administered, you would need to find an attorney and go to court to explain the situation. It's a slow, expensive process and maybe you don't have that kind of time, or maybe you'd rather be using that time differently."

A must-have conversation

After 42 days in a coma, and with a multitude of tests showing little hope, the hospital's ethics committee chose to suspend care, and Bailey passed quietly. For Scott and Shawnee, the emotional devastation they felt was compounded by the mental anguish of not having been able to play a more active role in the decision-making for her care during that time.

"As you can imagine, it's an unenviable position to be in as parents," says Baker. "You don't know if your daughter is going to live, or be in a coma for the rest of her life, and the medical staff basically says to you, 'Sorry, we legally can't share that information with you.' They said that to us so many times, literally, 'I know she's your daughter, but we can't share that with you.' Also, trust me, you don't want to sit across from an 11-member hospital ethics committee, where they tell you what their plans are for your child's life."

While it may be difficult to address issues like mortality with your children, Wyble finds that in most cases, his clients' children are comfortable having the discussion and willing to grant responsibility to their parents when they realize what's at stake. "What I normally tell clients is that if you're establishing or revising your own estate plan, you should talk to your attorney and add these documents for your adult children," says Wyble. "That's your entry point. Maybe you've named your adult child as a successor proxy in the event your spouse cannot serve on your behalf. That opens the door to the discussion, where you can explain what it means for them to be your proxy. From there, you can ask them: What would you want if something like this happened to you?"

"It's so easy to do," says Baker, "and in hindsight, completely obvious. It's an important, proactive step that all parents should take."

Next steps to consider



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1. "Census Bureau Releases New Estimates on America's Families and Living Arrangements," Census.gov, November 29, 2021

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