

## SUBCHAPTER IV. STANDBY GUARDIANS.

### Article 21.

#### Standby Guardianship.

#### § 35A-1370. Definitions.

For purposes of this Article:

- (1) "Alternate standby guardian" means a person identified in either a petition or designation to become the guardian of the person or, when appropriate, the general guardian of a minor child or incompetent adult, pursuant to G.S. 35A-1373 or to G.S. 35A-1374, when the person identified as the standby guardian and the designator or petitioner has identified an alternate standby guardian.
- (2) "Attending physician" means the physician who has primary responsibility for the treatment and care of the parent or legal guardian. When more than one physician shares this responsibility, or when a physician is acting on the primary physician's behalf, any such physician may act as the attending physician pursuant to this section. When no physician has this responsibility, a physician who is familiar with the petitioner's medical condition may act as the attending physician pursuant to this Article.
- (3) "Debilitation" means a chronic and substantial inability, as a result of a physically debilitating illness, disease, or injury, to care for one's minor child or to satisfy his or her duties as guardian of the person or as general guardian of an incompetent adult.
- (4) "Designation" means a written document voluntarily executed by the designator pursuant to this Article.
- (5) "Designator" means a person who suffers from a progressive chronic illness or an irreversible fatal illness and who is (i) the biological or adoptive parent, the guardian of the person, or the general guardian of a minor child or (ii) the guardian of the person or the general guardian of an incompetent adult. A designation under this Article may be made on behalf of a designator by the guardian of the person or the general guardian of the designator.
- (6) "Determination of debilitation" means a written determination made by the attending physician which contains the physician's opinion to a reasonable degree of medical certainty regarding the nature, cause, extent, and probable duration of the debilitation of the petitioner or designator.
- (7) "Determination of incapacity" means a written determination made by the attending physician which contains the physician's opinion to a reasonable degree of medical certainty regarding the nature, cause, extent, and probable duration of the incapacity of the petitioner or designator.
- (8) "Incapacity" means a chronic and substantial inability, as a result of mental or organic impairment, to understand the nature and consequences of decisions concerning the care of one's minor child or of an incompetent adult, and a consequent inability to make these decisions.
- (8a) "Incompetent adult" means an adult or emancipated minor who is subject to a guardianship of the person or a general guardianship.
- (9) "Minor child" means an unemancipated child or children under the age of 18 years.
- (10) "Petitioner" means a person who suffers from a progressive chronic illness or an irreversible fatal illness and who is (i) the biological parent, the

adoptive parent, the guardian of the person, or the general guardian of a minor child or (ii) the guardian of the person or the general guardian of an incompetent adult. A proceeding under this Article may be initiated and pursued on behalf of a petitioner by the guardian of the person, the general guardian of the petitioner, or by a person appointed by the clerk of superior court pursuant to Rule 17 of the Rules of Civil Procedure as guardian ad litem for the purpose of initiating and pursuing a proceeding under this Article on behalf of a petitioner.

- (11) "Standby guardian" means a person appointed pursuant to G.S. 35A-1373 or designated pursuant to G.S. 35A-1374 to become the guardian of the person or, when appropriate, the general guardian of a minor child or incompetent adult upon the death of a petitioner or designator, upon a determination of debilitation or incapacity of a petitioner or designator, or with the consent of a petitioner or designator.
- (12) "Triggering event" means an event stated in the designation executed or order entered under this Article which empowers the standby guardian, or the alternate standby guardian, if one is identified and the standby guardian is unwilling or unable to serve, to assume the duties of the office, which event may be the death of a petitioner or designator, incapacity of a petitioner or designator, debilitation of a petitioner or designator with the petitioner's or designator's consent, or the consent of the petitioner or designator, whichever occurs first. (1995, c. 313, s. 1; 2015-205, s. 1.)