# WEST VIRGINIA CODE: §44A-5-2

**§44A-5-2. Definitions.**

(a) “Attending physician” means the physician who has primary responsibility for the treatment and care of a qualified parent.

(b) “Designation” means a writing that is: (i) Voluntarily executed in conformance with the requirements of section five of this article, signed by a parent; and (ii) names a person to act as standby guardian.

(c) “Determination of debilitation” means a written determination made by an attending physician that a qualified parent is chronically and substantially unable to care for a minor child as a result of a debilitating illness, disease or injury. Such a determination shall include the physician's medical opinion to a reasonable degree of medical certainty regarding the nature, cause, extent and probable duration of the parent's debilitating condition.

(d) “Determination of incompetence” means a written determination made by the attending physician that to a reasonable degree of medical certainty a qualified parent is chronically and substantially unable to understand the nature and consequences of decisions concerning the care of a minor child as a result of a mental or organic impairment and consequently is unable to care for the child. Such a determination shall include the physician's medical opinion, to a reasonable degree of medical certainty, regarding the nature, cause, extent and probable duration of the parent's incompetence.

(e) “Functional parent” means a person other than a biological or adoptive parent, who is performing daily caretaking functions for the child.

(f) “Parent” means a biological or adoptive parent and includes a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

(g) “Petition” means a writing that is voluntarily executed and filed in the circuit court of the county in which the child resides in conformance with the requirements of section three of this article.

(h) “Qualified parent” means a parent who has been diagnosed, as evidenced in writing, by a licensed physician to be afflicted with a progressive or chronic condition caused by injury, disease or illness from which, to a reasonable degree of medical probability, the patient cannot recover and that is likely to lead to debilitation or incompetence.

(i) “Standby guardian” means a person who, in accordance with this article, is designated in writing or approved by the circuit court to temporarily assume the duties of guardian of the person or property, or both, of a minor child, on behalf of or in conjunction with a qualified

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parent, upon the occurrence of a triggering event. A standby guardianship shall be so construed as to enable the parent to plan for the future of a child, without terminating parental or legal rights by creating coguardianship rights between a parent and a standby guardian who has the authority to act in a manner consistent with the known wishes of a qualified parent regarding the care, custody and support of the minor child.

(j) “Triggering event” means the event upon the occurrence of which the standby guardian may be authorized to act. The triggering event shall be specified in a court order or written designation and shall be the earlier of a determination of incompetence or the death of a qualified parent. In the case of a standby guardian judicially approved pursuant to section three of this article, the triggering event may also be specified as the qualified parent's written consent to the commencement of the standby guardian's authority. In the case of a standby guardian designated pursuant to section five of this article, the triggering event may also be specified as: (i) A determination of debilitation of the qualified parent; and (ii) that parent's written consent to the commencement of the designated standby guardian's authority.

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