

5.2 Terminology Used in this Chapter

“General guardian” means “a guardian of both the estate and the person.” N.C. GEN. STAT. § 35A-1202(7) (hereinafter G.S.). A general guardian has authority to make health care decisions, including decisions concerning mental health and substance abuse treatment, unless limited by the order of the clerk of superior court appointing the guardian.

“Guardian,” for the purposes of Chapter 122C of the North Carolina General Statutes, is the “person appointed as a guardian of the person or general guardian by the court under Chapters 7A or 35A or former Chapters 33 or 35 of the General Statutes.” G.S. 122C-3(15). Because a guardian of the estate (see below) cannot make mental health or substance abuse treatment decisions for the ward, that type of guardian is not referenced in Chapter 122C.

“Guardian of the estate” is “a guardian appointed solely for the purpose of managing the property, estate, and business affairs of a ward.” G.S. 35A-1202(9). A guardian of the estate does not have the authority to make health care decisions, which include decisions concerning mental health and substance abuse treatment, for the ward.

“Guardian of the person” is “a guardian appointed solely for the purpose of performing duties relating to the care, custody, and control of a ward.” G.S. 35A-1202(10). A guardian of the person has authority to make health care decisions, including decisions concerning mental health and substance abuse treatment, unless limited by the order of the clerk of superior court appointing the guardian.

“Incompetent adult” as defined in Chapter 35A, “Incompetency and Guardianship,” is “an adult or emancipated minor who lacks sufficient capacity to manage the adult’s own affairs or to make or communicate important decisions concerning the adult’s person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.” G.S. 35A-1101(7). The term “incompetent adult” as used in Chapter 122C means “an adult individual adjudicated incompetent.” G.S. 122C-3(17).

“Incompetent child” is “a minor who is at least 17 1/2 years of age and who, other than by reason of minority, lacks sufficient capacity to make or communicate important decisions concerning the child’s person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, disease, injury, or similar cause or condition.” G.S. 35A-1101(8).

“Incompetent person” is “a person who has been adjudicated to be an ‘incompetent adult’ or ‘incompetent child’ as defined in G.S. 35A-1101(7) or (8).” G.S. 35A-1202(11).

“Interim guardian” is “a guardian, appointed prior to adjudication of incompetence and for a temporary period, for a person who requires immediate intervention to address conditions that constitute imminent or foreseeable risk of harm to the person’s physical

well-being or to the person's estate." G.S. 35A-1101(11). An interim guardian has authority to make decisions regarding mental health or substance abuse treatment only if specifically granted by the order of the clerk of superior court appointing the interim guardian.

"Legally responsible person" is "(i) when applied to an adult, who has been adjudicated incompetent, a guardian." G.S. 122C-3(20). The term is used in the statutes governing voluntary admission of incompetent adults, and therefore is used in this chapter, although a legally responsible person for an incompetent adult is the guardian.

"Limited guardianship" is a guardianship limited to the specific areas of decision-making determined by the clerk of superior court to be beyond the ward's capacity. The ward retains the right to make all decisions in matters not encompassed by the limited guardianship. G.S. 35A-1212(a), 35A-1215(b). For example, a guardianship may be limited to medical decision-making. The ward would retain the right to make all decisions except those related to health care.

"Ward" is "a person who has been adjudicated incompetent or an adult or minor for whom a guardian has been appointed by a court of competent jurisdiction." G.S. 35A-1202(15).