



Louisiana Legal Status and Representation

Office of Aging and Adult Services (OAAS)

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OAAS-TNG-15-024

Louisiana Legal Status and Representation

- ▶ Legal Statuses recognized in Louisiana include:
 - Competent Major,
 - Interdiction:
 - ◆ Full Interdiction, and
 - ◆ Limited Interdiction.
 - Tutorship.
- ▶ Individuals may be authorized by a participant to assist with making decisions through the declaration of:
 - Representation and Mandate, and
 - OAAS Responsible Representative Designation.

Competent Major

- ▶ The legal term “competency” refers to the ability of an individual to manage his/her own affairs.
- ▶ Louisiana law provides that individuals eighteen years of age or older are competent and capable of governing themselves.
- ▶ This is true for individuals whether or not they have an intellectual disability, mental illness, or any other type of disability.
 - This is equally true for an elderly person who becomes incapacitated by illness and can no longer adequately care for himself, or his property.

Competent Major (Cont.'d)

- ▶ Unless the legal status of the individual with a disability is altered by the court, only the individual has the right to manage his/her own affairs, consent to medical treatment, and make decisions regarding any facet of his/her everyday life.
- ▶ Family and friends have no legal authority to act on behalf of the elderly or disabled individual unless they have been granted that authority by a court (through Interdiction), by the elderly individual (through Representation & Mandate), by the Social Security Administration (through Representative Payment), or by state law.

Process to Alter Legal Status

- ▶ In order to alter the legal status of another person, one may request that the court transfer decision-making authority by granting an interdiction, limited interdiction or continuing tutorship.
- ▶ The petition to alter legal status is filed in the civil district court in the parish the individual resides.
- ▶ The petitioner is responsible for court costs and attorney fees incurred.
- ▶ Ultimately, the court will rule on whether the request to alter legal status will be granted.
- ▶ The court will also appoint someone to be legal guardian to the individual.

Interdiction: Full and Limited

- ▶ To fully interdict an individual, the individual must demonstrate an inability to make decisions regarding his/her person and property.
- ▶ To obtain a limited interdiction, the individual must demonstrate he/she is unable to make decisions regarding their person or property, or any aspect of either.
- ▶ The difficulty in decision making must be due to “an infirmity”.
 - Infirmity is a condition of mental illness, developmental disability or other incapacity, chronic substance abuse for example.
 - Advanced aged alone does not qualify as an infirmity.

Interdiction: Who is the Legal Guardian?

- ▶ When an interdiction is granted, the court will appoint both a curator and undercurator:
 - Curator- The primary legal guardian appointed by the court to make decisions on behalf of the interdicted individual. This court appointed guardian will care for the “person” and the “property” of the incompetent person or minor. A female curator is referred to as a curatrix.
 - Undercurator- A court appointed guardian whose major role is to watch over the curator and ensure the curator is fully and responsibly carrying out the duties required to care for the interdicted individual.

Full Interdiction: Rights Taken

- ▶ The following are rights taken when a full interdiction is granted:
 - Right to Contract- The individual cannot enter any contract of any kind. For example, buying, selling, or mortgaging real estate or opening a bank account.
 - Right to Marry- The individual cannot enter into marriage, as marriage is considered a civil contract under Louisiana law.
 - Right to Vote- The individual cannot vote or register to vote. If registered before, the individual is notified by the registrar of voters that he/she cannot vote as long as the judgment remains in effect.
 - Right to Accept or Renounce Successions- The individual cannot accept or renounce an inheritance. The actions must be taken by the curator.

Full Interdiction: Rights Taken

► Rights taken, continued:

- Right to Sue or be Sued- The individual cannot initiate a lawsuit and cannot be named as a defendant in a lawsuit.
 - ◆ Exceptions include tort and family lawsuits, and
 - ◆ The individual has the right to sue in his/her own name to revoke the interdiction.
- Other Rights- The individual loses the right to drive, consent to his/her own medical treatments, leave the state without permission, and engage in most decision-making about his/her own life.

Limited Interdiction: Rights Taken

- ▶ The intent of a limited interdiction is to assist the individual with decision-making in areas needed, but to preserve the individual's independence in areas that are considered sound.
- ▶ Rights altered or taken will be transferred to the curator, but the individual retains all rights not specifically transferred.
- ▶ In cases that limited interdiction is granted, the court issued interdiction documents will need to be reviewed to determine the specific rights held by the curator and by the individual.

Points to Remember for Interdiction

- ▶ When completing assessments, phone calls, quarterly and annual meetings, ensure that you, as direct service providers (DSPs), support coordinators (SCs) and assessors, know the type of interdiction appointed, i.e., full or limited.
- ▶ Make sure that you know who the curator and the undercurator is.
 - ▶ The curator will be the primary contact and informant for all assessments, phone calls, etc.
- ▶ Direct service providers and those reviewing home binder documents, will need to ensure that the curator is signing timesheets and weekly service logs.

Tutorship and Continuing Tutorship

- ▶ Tutorship is a process that provides a court appointed legal guardian to a minor.
- ▶ Tutorship normally ends when a child turns 18 years old, however, with a continuing tutorship, the tutorship remains in effect past the age of 18 and until it is formally revoked by the court.

Continuing Tutorship

- ▶ Similar to interdiction, continuing tutorship results in certain rights and decision-making authority over an individual being transferred to a legal guardian.
- ▶ A continuing tutorship can be granted for those 15 years old and older.
- ▶ Continuing tutorship is intended to be used for individuals with a developmental disability with an IQ score less than 67.
- ▶ Severe physical disability or mental illness is not sufficient grounds to implement a continuing tutorship.

Continuing Tutorship: Who is the Legal Guardian?

- ▶ Similar to interdiction, a tutor and undertutor will be appointed to act as legal guardian to the individual.
- ▶ The role of the tutor is to maintain custody and manage the decisions for the individual.
- ▶ The role of the undertutor is watch over the tutor to ensure the individual is appropriately cared for.
- ▶ Often, the tutor and undertutor are the parents of the individual.
 - If one or both parents are absent for any reason, the court can appoint other relatives or interested persons as the tutor or undertutor.

Continuing Tutorship: Rights Affected

- ▶ The following rights are affected when a continuing tutorship is granted:
 - Right to Contract- The individual cannot enter a contract for any amount that exceeds his/her annual income. The tutor's permission is required in order for an individual to buy real estate, sell, or mortgage any property he/she may own.
 - Right to marry- The individual is able to marry, but must obtain the permission of the tutor beforehand.
 - Right to vote- The law is silent regarding this right at this time. To date, there is no indication an individual has lost the right to vote.

Continuing Tutorship: Rights Affected (Cont.'d)

► Rights affected, continued:

- Right to sue to be sued- The individual cannot appear in court on his/her own and must rely on the tutor to represent his/her interest in all legal actions.
- Right to consent- The tutor is specifically granted to ability to consent to medical treatment and educational plans. The individual cannot provide such consent on his/her own.
 - ◆ The tutor also has the right to obtain any medical, educational, or any other records which affects the individuals right to confidentiality.

Points to Remember

- ▶ When completing assessments, phone calls, quarterly and annual meetings, ensure that you, as DSPs, SCs and assessors, know which rights the participant still has and which rights the tutor is responsible for.
- ▶ Make sure that you know who is the tutor and the undertutor.
 - ▶ The tutor will be the primary contact and informant for all assessments, phone calls, etc.
- ▶ Direct service providers and those reviewing home binder documents, will need to ensure that the tutor is signing timesheets and weekly service logs.

Representation and Mandate

- ▶ Representation and Mandate is the process traditionally known as “Power of Attorney”.
- ▶ Representation and Mandate is when a person voluntarily gives someone the authority to perform certain activities or make certain decisions on their behalf.
 - The Principal is the person who grants someone the authority to act or make decisions on behalf of himself/herself.
 - The Representative is the person who performs activities or makes decisions on behalf of the principal.

Types of Representation

► Procuration:

- A unilateral act where the Principal voluntarily gives another person the authority to represent him/her, and to act on his/her behalf.
- It is important to understand that when someone grants a Procuration, the representative is NOT legally required to accept this authority, and may choose not to act as representative.

► Mandate:

- A legal contract between the principal and the intended representative, who accepts the legal authority and responsibilities granted by the principal.
- Once a mandate has been established, the representative has the legal responsibility, and authority, to act on behalf of the principal.

Granting a Mandate

- ▶ A mandate may be granted in a notarized statement (signed in front of two witnesses and a notary public); by any other form of writing (including a letter); or by oral agreement.
 - An oral mandate is not recommended since it may be difficult to prove that it was given and exactly what power was granted to the mandatary.
- ▶ The mandatary can show the written mandate to appropriate persons in order to carry out his/her duties.
- ▶ The mandate may be made a matter of public record by having it recorded in civil district court.

Types of Mandate

► General Mandate:

- Provides the mandatory authority over all person and financial matters.
- Certain items *must be specifically* included in the mandate to be given legal effect, to make health care decisions, for example.

► Special Mandate:

- Specific and/or limited powers are granted.
- The mandate may be time limited, for example, when a principal may be incapacitated due to a specific health issue requires representation only during that particular time period.
- A mandate may be specified by the type of power conferred, for example, when a principal wishes only to have representation to handle their financial affairs or only their medical/health care decisions.

Mandates and Health-Care Planning

- ▶ The principal can choose the person(s) he/she wishes to assist in health care decision-making and can also determine how much authority will be shared and for how long.
- ▶ The principal can also choose to make the authority effective immediately, or to become effective in the event that he or she can no longer act for himself.
- ▶ The principal can revoke the instrument at any time.
- ▶ A “living will” may be included in the mandate, stating the principal's wishes for life-sustaining procedures if the principal becomes terminally ill.

Mandates and Maintaining Independence

- ▶ Having Representation and Mandate in place does not mean that the participant can no longer make decisions.
 - It is important to allow the participant to continue to maintain as much independence as possible.
 - Representation and Mandate is not meant to take away independence, but merely to assist in areas where more assistance is needed or wanted.
 - A person choosing Representation and Mandate does not lose or give up ultimate authority to make decisions; rather, the authority and responsibility shared by another person.
- ▶ DSPs, SCs and assessors need to ensure the participant is the primary contact, communicating with the mandate when requested by the participant or when a participant is unable to make sound decisions.

Points to Remember for Representation and Mandate

- ▶ Review the Mandate documents to determine the type of power conferred, for example, medical decisions, financial, real estate planning, etc.
 - When medical/health care decisions are conferred, it is vital to keep this in mind when:
 - ◆ Becoming aware of hospitalizations, ER visits, etc.,
 - ◆ Reporting CIRs, and
 - ◆ Entering CIRs in W-OTIS.
- ▶ Also be aware of special mandates that are time limited, or mandates that become effective only when the principal can no longer make decisions.

State of Louisiana

Department of Health and Hospitals
Office of Aging and Adult Services

DESIGNATION OF RESPONSIBLE REPRESENTATIVE

Requestor/Applicant/Participant Name:	DOB:
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I understand that the role(s) of the responsible representative(s) are to accompany, assist, and represent me in the Home and Community Based Services assessment, care planning, and service delivery processes. The responsible representative should assist in gathering all necessary information for these processes. I understand that I do not have to name anyone as a responsible representative. If I do name someone, I understand that I still have the right and the responsibility to actively take part in my assessment, care plan, and service delivery.

I understand this may require the Department of Health and Hospitals (DHH) to give information to the representative(s) named below that may otherwise be personal and confidential. I hereby waive my rights to prevent sharing of information by DHH with the responsible representative(s) named below. I hereby allow DHH to share with my responsible representative(s) only the information necessary for him/her to perform the functions described above.

I understand that I am naming only the individual(s) named below, and that they remain my representative until DHH or its contractors receive a written statement or form from me saying that this person is no longer my representative. I understand that the person(s) I name as my responsible representative(s) may not be my paid direct service worker(s). I understand that the person(s) I name as my responsible representative(s) may not serve as the responsible representative(s) for more than two individuals receiving Medicaid Home and Community-Based Services operated by the Office of Aging and Adult Services.

I understand that while some of the information gathered may have no impact on assessment, care plan and service provision processes, it may affect my liability to a third party should this information be disclosed to the third party by my responsible representative(s). I hereby hold harmless and agree to indemnify DHH from any claim resulting from disclosure of information to a third party by my responsible representative(s).

Responsible Representative Name:		
Relationship to Requestor/Applicant/Participant:		
Address:		
Home Phone #:	Other Phone(s) #:	
2 nd Responsible Representative Name:		
Relationship to Requestor/Applicant/Participant:		
Address:		
Home Phone #:	Other Phone(s) #:	
Applicant/Participant's Signature:		Date:
Witness' Signature:		Date:

- Designation of Responsible Representative
- OAAS-RF-06-003
- Reissued June 23, 2014

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Purpose of Responsible Representative

- ▶ A Responsible Representative (RR) is a person designated by a participant to act on his/her behalf in the process of accessing and/or maintaining OAAS Home and Community Based Services (HCBS).
- ▶ The participant will sign the form indicating the person(s) they wish to assist with the assessment, care planning and service delivery processes.
- ▶ The OAAS Designation of Responsible Representative form is valid within OAAS HCBS only.
- ▶ If RR is initiated by the participant, it is up to the participant to determine RR's level of involvement in the above process.
- ▶ If RR is chosen, participant still has the right and responsibility to participate in their care.

When to Use Responsible Representative?

- ▶ When participant's MDS-HC assessment and Support Coordinator's/Assessor's professional judgment suggest that support is needed to assist, accompany and represent the participant in HCBS assessment, care planning, service delivery processes.
- ▶ The form should only be provided when a participant appears to lack capacity in planning and decision making or when a participant initiates the request.
- ▶ Do not offer if the participant:
 - Has a legal guardian due to interdiction or continuing tutorship,
 - Is represented by the same person through a Representation and Mandate, or
 - Can guide their own plan of care.

Points to Remember for Responsible Representative

- ▶ A Direct Service Worker (DSW) for a participant is prohibited from also acting as the same participant's RR.
- ▶ An individual may not be designated as a RR for more than two individuals receiving Home and Community Based Services operated by OAAS.
- ▶ A designation of RR can be revoked by a participant at any time.
 - The participant would need to provide written documentation indicating the removal of the RR.
 - The written documentation needs to be maintained in the participant's record.

Responsible Representative vs. Representation and Mandate

Responsible Representative	Representation and Mandate
Assists in the MDS-HC assessment process by gathering, sharing, & receiving information.	✓
Assists in the Care Planning process.	✓
Assists in the Service delivery process.	✓
✗	Is able to make medical decisions, legally.
✗	Is able to make financial decisions, legally.
Participant has a right to revoke at any time.	Can be time limited and/or revoked.

Documentation for Legal Status

- ▶ DSPs, SCs and Assessors should identify a participant's legal status:
 - When interdiction or continuing tutorship is identified:
 - ◆ Review the record for documentation.
 - ◆ Verify what legal rights were transferred or altered when limited interdiction is granted.
 - ◆ Ensure you are communicating with the court appointed curator or tutor.
 - ◆ Request copies of the documentation when not found in the participant's record.

Documentation for Representation & Mandate

- ▶ DSPs, SCs and Assessors should identify participant's having representation via Representation and Mandate:
 - Review the record for documentation.
 - Verify the type of Mandate and whether special conditions are noted.
 - Ensure you are communicating with representative noted in the documentation.
 - Request copies of the documentation when not found in the participant's record.

Documentation for Responsible Representative

- ▶ DSPs, SCs and Assessors should identify when a RR is designated:
 - Review the record for documentation.
 - Ensure you are communicating with the RR noted on the form.
- ▶ DSPs, SCs and Assessors should identify when a RR designation is appropriate:
 - Review the record for documentation.
 - Have the participant complete/sign the RR form.
 - Ensure the completed form is placed in participant's record.

References

- ▶ Designation of Responsible Representative, OAAS-RF-06-003, reissued June 23, 2014.
- ▶ *Legal Status in Louisiana, A Guide to : Full Interdiction, Limited Interdiction, Continuing Tutorship, Representation & Mandate (formerly Power of Attorney), Representative Payment. Legal Procedures and Practical Results.* By the Advocacy Center. © 1995, Revised 2011
http://advocacyla.org/tl_files/publications/LegalStatus.pdf