

The following guidance is limited to those individuals currently residing in a nursing facility who have been identified as being able to handle and benefit from community-based treatment.

Power of Attorney (Financial & Medical)

- Mandate (La. C.C. art. 2989) - A mandate is a contract by which a person, the principal, confers authority on another person, the mandatary, to transact one or more affairs for the principal.
 - Principal = Resident
 - Mandatary = family member or other person acting on behalf of the resident.
- Required Documentation – There must be a written document that identifies the principal and mandatary and specifically authorizes the mandatary to make health care decisions, such as surgery, medical expenses, nursing home residency, and medication, and/or make financial decisions, such as to open, close, access, or control accounts and deposits in any type of financial institution.
 - Mandate = document
- Role, Responsibilities, & Authority of Mandatary – in addition to the authority expressly granted in the written document, the mandatary may perform all acts that are incidental to or necessary for the performance of the mandate.
- Capacity to make decisions regarding the care of his person and property - Absent a judgment of full/limited interdiction or continuing/permanent tutorship, a person is assumed to have capacity to make decisions regarding the care of his person and property. As such, if the principal and mandatary

disagree about transitioning out of the nursing facility, then the principal has final decision-making authority.

- Termination - both the mandate and the authority of the mandatary terminate upon the:
 - Death of the principal or of the mandatary.
 - Interdiction of the mandatary.
 - Qualification of the curator after the interdiction of the principal.
 - The principal may terminate the mandate and the authority of the mandatary at any time.
 - The mandatary notifies the principal of his resignation or renunciation of his authority.
 - Neither the mandate nor the authority of the mandatary is terminated by the principal's incapacity, disability, or other condition that makes an express revocation of the mandate impossible or impractical.
- HIPAA – Assuming the mandate includes the express authority for the mandatary to make health care decisions on behalf of the principle, then you may discuss/share the principal’s protected health information with the mandatary. Additionally, the mandatary can execute HIPAA authorizations on behalf of the principal for the disclosure of such information to third parties.

Interdiction (Full & Limited)

Interdict = Resident

Curator = Family member or other person appointed by the court to make decisions on behalf of the resident regarding the care of his person or property, or any aspect of either.

Undercurator = family member or other person appointed by the court to serve as a watchdog of sorts, but has no decision-making authority.

- Types of Interdiction
 - Full Interdiction
 - Limited Interdiction
 - Temporary or preliminary interdiction

- Required Documentation
 - A judgment that identifies the curator and undercurator, unless the appointment of an undercurator is not required by law; and, sets forth the name, domicile, age, and current address of the interdict.
 - A judgment of limited interdiction shall also set forth the powers of the limited curator and shall state that the limited interdict retains the capacity of a natural person except as expressly limited by the judgment.
 - A judgment granting or extending temporary or preliminary interdiction shall also set forth the date of termination.
 - Since the powers of the curator do not commence until he qualifies for office, letters of curatorship are issued by the clerk of court after the appointed curator complies with the procedural steps required to qualify

for office. The letters set forth the date of the qualification of the curator and the date, if any, on which the letters expire.

- Letters of curatorship issued to a limited curator shall also set forth the powers of the limited curator.
- Role, Responsibilities, & Authority of Curator & Undercurator
 - Under a judgment of full interdiction, the curator shall have custody of and shall care for the person of the interdict and shall take possession of, preserve, and administer the interdict's property. Additionally, the curator has authority to give consent for any medical treatment or procedure, to give consent for any educational plan or procedure, and to obtain medical, educational, or other records.
 - Under a judgment of limited interdiction, the limited curator has only those powers and authority set forth in the judgment.
 - Neither a curator nor a court shall admit or commit an interdict to a mental health treatment facility except in accordance with the provisions of R.S. 28:50 through 64.
 - A curator appointed in an order of temporary interdiction has no authority to admit the interdict to a residential or long-term care facility in the absence of good cause shown at a contradictory hearing.
 - The undercurator's main role is to monitor the situation to ensure the curator is performing his duties. As such, the undercurator must have free access to the interdict and to all records relating to the interdict relevant to his office.

- Capacity to make decisions regarding the care of his person and property
 - Under a judgment of full interdiction, the curator has sole authority over decisions regarding the property or personal care of the interdict, including transitioning the interdict from a nursing facility to community-based treatment.
 - Under a judgment of limited interdiction, the limited curator has sole authority over decisions regarding the interdict's property (finances, physical possessions, etc) or personal care (medical treatment, place of dwelling, education, etc), or aspects of either, as explicitly set forth in the judgment of limited interdiction. As such, you must read the judgment of limited interdiction carefully to determine if the limited curator has the power to make decisions regarding the place of dwelling of the interdict or his medical care.
- Termination - Interdiction terminates upon death of the interdict or by judgment of the court.
- HIPAA – Under a judgment of full interdiction or a judgment of limited interdiction that includes the power to make health care decisions, you may discuss/share the interdict's protected health information with the curator and undercurator. Additionally, the curator can execute HIPAA authorizations on behalf of the interdict for the disclosure of such information to third parties.

Tutorship (Continuing or Permanent)

Persons, including certain children, with intellectual disabilities or mental deficiencies may be placed under continuing or permanent tutorship without formal or complete interdiction.

Tutee = Resident

Tutor = Family member or other person appointed by the court to make decisions on behalf of the resident regarding the care of his person or property.

Undertutor - Family member or other person appointed by the court to serve as a watchdog of sorts, but has no decision-making authority.

- Required Documentation
 - A judgment that identifies the tutor and undertutor, unless the appointment of an undertutor is not required by law; and, sets forth the name, domicile, age, and current address of the tutee.
 - After the person appointed as tutor has qualified by furnishing the security required of him by law, and by taking his oath of office, the clerk shall issue to him letters of tutorship. These letters, issued in the name and under the seal of the court, evidence the appointment of the tutor, his qualification, and his compliance with all requirements of law relating thereto.
- Role, Responsibilities, & Authority of Tutor & Undertutor
 - The tutor shall have custody of and shall care for the person of the tutee and shall take possession of, preserve, and administer the tutee's property. Additionally, the tutor has authority to give consent for any medical treatment or procedure, to give consent for any educational plan or procedure, and to obtain medical, educational, or other records.

- The undertutor's main role is to monitor the situation to ensure the tutor is performing his duties. As such, the undertutor must have free access to the tutee and to all records relating to the tutee relevant to his office.
- Capacity to make decisions regarding the care of his person and property
 - The tutor has sole authority over decisions regarding the property or personal care of the tutee, including transitioning the tutee from a nursing facility to community-based treatment.
- Termination – Continuing or permanent tutorship terminates upon death of the tutee or by judgment of the court.
- HIPAA – Under continuing or permanent tutorship, you may discuss/share the tutee's protected health information with the tutor and undertutor. Additionally, the tutee can execute HIPAA authorizations on behalf of the tutee for the disclosure of such information to third parties.