

Commitment to Change Workgroup

August 11, 2023



Agenda

- Welcome
 - Media & Public
- Public record reminder
- Workgroup member introductions
- Recap highest hopes & worst fears
- CTC Website

- Recertification, dismissal, and discharge of civil commitment



Workgroup Membership

Oregon Tribes – Angie Butler

Mothers of the Mentally Ill – Jerri Clark

Oregon Health Authority – Zachary Thornhill

Oregon State Hospital – **Dr. Maya Lopez** for Dr. Katherine Tacker

Oregon Department of Human Services – Chelas Kronenberg

Disability Rights Oregon – Dave Boyer

Mental Health and Addiction Association of Oregon – Janie Gullickson

NAMI Oregon – Chris Bouneff

Oregon House – Andy Smith for Rep. Jason Kropf (D); Rep. Christine Goodwin (R)

Oregon Senate – Sen. Floyd Prozanski (D); Sen. Kim Thatcher (R)

Workgroup Membership (cont.)

Coordinated Care Organizations – Melissa Thompson

Oregon Criminal Defense Lawyers Association – Allison Knight

Oregon District Attorneys Association – Channa Newell

Association of Oregon Community Mental Health Providers – **Ann-Marie Bandfield** for Cherryl Ramirez

Association of Oregon Counties – Marcus Vejar

League of Oregon Cities – Dakotah Thompson

Oregon State Sheriffs' Association – Sheriff Matt Phillips

Oregon Association Chiefs of Police – Jim Ferraris

Oregon Association of Hospitals and Health Systems – Meghan Slotemaker

Oregon Judicial Department – Hon. Nan Waller; Hon. Matt Donohue

OCTOBER RECAP

Highest Hopes

“Correct the disconnection of justice including criminal justice populations”

“Meet need of those with BH [behavioral health] issues in the community, more doors”



Worst Fears

“Increase in civil demand for OSH without expected decline in A&A demand”

“More requirements without appropriate resources”



Topic 1: Recertification of civil commitment

Be thinking about:

- Statutory requirements
- What happens in practice



Recertification Criteria : Statute

ORS 426.301(1) requires OHA to release any person whose status has not been changed to voluntary at the end of 180-day period of commitment, unless:

OHA/CMHP certifies to the court in the county of placement that the individual still:

- Is a “person with mental illness” *and*
- Needs further treatment

Discussion Section: Recertification Criteria

Under ORS 426.130(1), “the court shall determine whether the person has a mental illness and is in need of treatment.” Under ORS 426.301(1), OHA/CMHP must certify to the court that “the person is still a person with mental illness and is in need of further treatment.”

How, if at all, should the factors considered for the initial civil commitment and the recertification of civil commitment differ?

Notification of Recertification: Statute

ORS 426.301(1) requires the director of the placement facility to immediately issue a copy of the certification to the following people:

- Person under civil commitment *and*
- The CMHP director of the county of residence

Notification of Recertification: Statute (cont.)

ORS 426.301(2) assigns the **director/designee** of the treating facility where the person is confined to **serve the certification** to the person under civil commitment.

After service, the **director** of the facility informs the court in writing:

- Service has been made *and*
- Date of service

Notification of Recertification: Statute (cont.)

OAR 309-033-0310(1)-(2) designates the following people to issue the recertification for commitment:

- If placed in a state hospital: **superintendent**
- If placed in a community hospital or non-hospital facility: **CMHP director of treatment facility**

The **designated individual** must issue the recertification to:

- The **person under civil commitment** *and*
- The **CMHP director** of the county of residence

Notification of Recertification: Statute (cont.)

OAR 309-033-0310(1)-(2) requires the designated person to notify the court of the following:

- The date recertification was issued to the person *and*
- Whether the person, within 14 days of the issuance of recertification, protests continued civil commitment.

Discussion Section: Notification of recertification

What barriers might the director of the treating facility face when communicating with the following actors:

- Person under **civil commitment in state hospital,**
- Person under **civil commitment in a community hospital** or non-hospital facility,
- **CMHP** in county of residence,
- The **last committing court, and**
- The **court of residence**

Orders for continuing commitment: Statute

ORS 426.301(3) requires the certification to advise the person under civil commitment of the following:

- (a) That the **authority or facility** has requested that **commitment be continued** for an additional period of time.
- (b) That the **person may consult with legal counsel** and that **legal counsel will be provided** for the person without cost if the person is unable to afford legal counsel.

Orders for continuing commitment: Statute (cont.)

ORS 426.301(3) requires the certification to advise the person under civil commitment of the following:

(c) That the **person may protest** this further period of commitment **within 14 days**, and if the person does not **protest the further commitment**, commitment will be continued for an **indefinite period of time up to 180 days**.

(d) That if the **person does protest** a further period of commitment, the **person is entitled to a hearing** before the court on whether commitment should be continued.

Orders for continuing commitment: Statute (cont.)

ORS 426.301(3) requires the certification to advise the person under civil commitment of the following:

(e) That the person may protest either orally or in writing by signing the form accompanying the certification.

(f) That the person is entitled to have a physician or other qualified professional as recommended by the authority, other than a member of the staff at the facility where the person is confined, examine the person and report to the court the results of the examination.

Orders for continuing commitment: Statute (cont.)

ORS 426.301(3) requires the certification to advise the person under civil commitment of the following:

(g) That the **person may subpoena witnesses and offer evidence** on behalf of the person at the hearing.

(h) That **if the person is without funds** to retain legal counsel or an examining physician or qualified professional as recommended by the authority, **the court will appoint legal counsel, a physician or other qualified professional.**

Discussion Section: Orders for continuing commitment

What else, if anything, should the notification of recertification include?

Service of the recertification: Statute

ORS 426.301(5) requires that the authority does the following when serving the certification upon the person:

- Delivers the certification,
- Reads the certification, *and*
- Asks whether person protests further commitment

Discussion Section: Service of the recertification

What accommodations or scaffolding might a person need to understand and respond to the notice of recertification?

Discussion Section: Party interests and support

How can the interests of the following actors be balanced during the recertification process:

- Person under civil commitment,
- Family of the person under civil commitment,
- Legal actors,
- Treating facility, *and*
- CMHP

Protest of continuing commitment: Statute

ORS 426.301(5) states that the person may **protest commitment orally** or by **signing the protest form** that accompanies the certification.

If the person does not protest recertification **within 14 days** of service of the certification:

- OHA or treatment **facility must notify the court.**
- The **court** will then **order the commitment** of the person for an additional indefinite period **up to 180 days.**

Protest of continuing commitment: Statute (cont.)

When the person does protest recertification within 14 days of service of the certification, OHA or the treatment facility must “immediately notify” the court.

The court will have the person brought before it to advise them that:

- OHA/facility has requested that commitment be continued for an additional period,
- If the person does not protest this commitment, it will be continued for an indefinite period up to 180 days, and
- The person’s rights under ORS 426.301

Discussion Section: Protest of recertification

Under ORS 426.301(3)(b), the certification must advise the person under civil commitment that “the person may consult with legal counsel and that legal counsel will be provided for the person without cost if the person is unable to afford legal counsel.”

- 1) What is the process for requesting legal counsel during recertification and how does this differ across jurisdictions?
- 2) What role, if any, could another party play in advocating for the individual during the recertification process? (e.g., mediator, legal advocate, peer support, etc.)

Recertification Hearing: Statute

ORS 426.307 states that the following provisions apply when a person requests a recertification hearing:

(1) The hearing shall be conducted as promptly as possible and at a time and place as the court may direct.

(2) If the person requests a continuance in order to prepare for the hearing or to obtain legal counsel to represent the person, the court may grant postponement and detention during postponement as provided under ORS 426.095.

(3) The person has the right to representation by or appointment of counsel as provided under ORS 426.100 subject to ORS 135.055, 151.216 and 151.219.

Recertification Hearing: Statute (cont.)

ORS 426.307:

(4) If the person requests an examination by a physician or other qualified professional as recommended by the Oregon Health Authority and is without funds to retain a physician or other qualified professional for purposes of the examination, the court shall appoint a physician or other qualified professional, other than a member of the staff from the facility where the person is confined, to examine the person at no expense to the person and to report to the court the results of the examination.

Recertification Hearing: Statute (cont.)

ORS 426.307:

(5) The provisions of ORS 40.230, 40.235, 40.240 and 40.250 do not apply to the use of medical records from the current period of commitment or to testimony related to such records or period of commitment in connection with hearings under this section. The court may consider as evidence such reports and testimony.

Recertification Hearing: Statute (cont.)

ORS 426.307:

(6) The court shall then conduct a hearing and **after hearing the evidence** and reviewing the recommendations **of the treating and examining physicians** or other qualified professionals, the **court shall determine whether the person is still a person with mental illness and is in need of further treatment.**

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Recertification Hearing: Statute (cont.)

ORS 426.307:

(6 – cont.) If in the opinion of the court the individual is still a person with mental illness by clear and convincing evidence and is in need of further treatment, the court may order commitment to the authority for an additional indefinite period of time up to 180 days.

Recertification Hearing: Statute (cont.)

ORS 426.307:

(7) At the end of the 180-day period, the person shall be released unless the authority or facility again certifies to the committing court that the person is still a person with mental illness and is in need of further treatment, in which event the procedures set forth in ORS 426.301 to 426.307 shall be followed.

Discussion Section: Recertification of hearing

- 1) What are the barriers to the recertification of hearing process and how do these compare to the initial hearing?
- 2) How can the recertification hearing use trauma-informed processes to promote treatment outcomes?

Topic 2: Dismissal and discharge of civil commitment

Be thinking about:

- What systems need to be in place to support people during discharge and dismissal



End of Jurisdiction: Statute

ORS 426.292 Release prior to expiration of term of commitment

Nothing in this chapter and ORS 430.397 to 430.401 prohibits the Oregon Health Authority from releasing a person from a hospital or other facility in which the person is being treated prior to the expiration of the period of commitment under ORS 426.130 when, in the opinion of the director of the facility or the licensed independent practitioner who is treating the person, the person is no longer a person with mental illness.

End of Jurisdiction: Statute (cont.)

ORS 426.300 Discharge of committed persons

(1) The Oregon Health Authority shall, by filing a written certificate with the last committing court and the court of residence, discharge an individual from court commitment, except one held upon an order of a court or judge having criminal jurisdiction in an action or proceeding arising out of criminal offense, **if the authority finds that the individual is no longer a person with mental illness or that the transfer of the individual to a voluntary status is in the individual's best interest.**

Discharge Criteria : Rule

OAR 309-033-0330 Discharge of Civil Commitment for Persons under Civil Commitment and Placed in the Community

(1) Only the director of county of placement may discharge. Only the director of the county of placement may change the civil commitment status of a person under civil commitment who is placed in a community hospital or other community facility:

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Discharge Criteria : Rule (cont.)

OAR 309-033-0330

- (1)(a) The **director shall discharge** a person from civil commitment **when:**
- (A) Release from treating facility. The **director believes** the person under civil commitment is **no longer a person with mental illness** as defined in ORS 426.005, **and the person is to be released** from the treating facility.
 - (B) Transfer to voluntary status. The **director believes** it is in the **best interest** of the person **to transfer to voluntary status**, but the person is to **remain at the treating facility**.

Discharge Criteria : Rule (cont.)

OAR 309-033-0330

(1)(b) The **director shall** discharge a person from civil commitment by **notifying the last committing court and the court of residence,** pursuant to the provisions of ORS 426.300.

Public Assistance Upon Discharge: Statute

ORS 426.300(2) permits OHA to sign applications for the following:

- Public assistance,
- Medical assistance, *or*
- Any other state or federal benefits on behalf of those individuals who may be eligible.

Discussion Section: Discharge criteria

- 1) Considering the discharge criteria, what transition services should be provided to individuals released from civil commitment?
- 2) How, if at all, can available community-based behavioral health services be utilized to promote transitions of care during discharge?

Notification of Discharge: Rule

OAR 309-033-0330(2) states the following persons shall notify the director of the county of commitment **48 hours before discharging** a person from a hospital, nonhospital or residential facility, or outpatient treatment:

- (a) If the person under civil commitment is **in a state hospital**, the **superintendent or designee shall notify the director**;
- (b) If the person under civil commitment is **in a hospital serving as a regional acute care hospital or a private hospital**, the treating **Licensed Independent Practitioner shall notify the director**;

Notification of Discharge: Rule (cont.)

OAR 309-033-0330(2) requires the following people are notified of discharge:

(c) If the person under civil commitment is placed in a nonhospital or residential facility, the administrator of the facility shall notify the director;

(d) If the person is placed with an outpatient treatment provider or program, the administrator of the program where the person is receiving outpatient treatment shall notify the director.

Procedures for discharge: Rule

OAR 309-033-0330(3) Procedures for discharge. The director shall give written notice to the person under civil commitment within thirty days after the civil commitment was discharged. The notice shall state the date the civil commitment expired or was discharged. A copy of the notice shall be kept in the person's clinical record.

Discussion Section: Transition services

How, if at all, can available community-based behavioral health services be utilized to promote transitions of care during discharge?

Homework



- All workgroup members to distribute July survey to their CTC Workgroup constituent email distribution list
- Read ALL materials provided in advance of the next meeting



Staff contacts

- Facilitator: Chris Thomas
cthomas@gobhi.org
- Workgroup Analyst: Christopher Hamilton
christopher.j.hamilton@ojd.state.or.us
- Workgroup Analyst: Candace Joyner
candace.n.joyner@ojd.state.or.us
- Senior Assistant General Counsel:
Debra Maryanov
debra.c.maryanov@ojd.state.or.us
- Administrative Support: Bri Navarro
brianna.m.navarro@ojd.state.or.us

