

# Commitment to Change Workgroup

September 8, 2023



# Agenda

- Welcome
  - Media & Public
- Public record reminder
- Introductions
- Recertification, dismissal, and discharge of civil commitment
- Civil commitment funding
- Civil commitment transportation
- Civil commitment liability



# Workgroup Membership

Oregon Tribes – Angie Butler

Mothers of the Mentally Ill – Jerri Clark

Oregon Health Authority – Zach Thornhill

Oregon State Hospital – Dr. Katherine Tacker

Oregon Department of Human Services – Chelas Kronenberg

Disability Rights Oregon – **Jude Kassar** for 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 –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

**“Break through silo and look at holistically and stop flow to OSH”**

“Improve experience for people who need hospital care and for families and community”



## Worst Fears

“Top down perspectives taking priority”

“I don't want to waste my time here – make these discussions productive”



# Reminder: CTC Workgroup Purpose

The CTC Workgroup's purpose is to provide recommendations to the Chief Justice on civil commitment system reform by the 2025 Legislative Session.

We are not tasked with drafting statutory proposals.

# CTC Workgroup RoadMap

## Past and Present:

- Smallest, and yet most representative group as possible
- Big picture overview of civil commitment and the role of government
- Getting on the same page regarding the current system
  - While starting big picture discussions





# CTC Workgroup Road Map

## Future:

- Further discuss themes pulled out from previous conversations, for example:
- Moving from competency to civil commitment
- Breaking down silos between agencies with complex cases
- Tweak existing system or start anew?



# Topic 1: Recertification of civil commitment

Be thinking about:

- Statutory requirements
- What happens in practice



# 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:

(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....

## Discussion Section: Examination during recertification

How often, if at all, do individuals request a mental health examiner during the recertification process?



## Discussion Section: Recertification Hearing

How do the recertification hearing's statutory requirements differ from what happens in practice?

# 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... 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 ... 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...** **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.

## 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.

# 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: Transition services

What transition services need to be in place for individuals to be supported upon discharge?

## Discussion Section: Notification of discharge

What gaps are there in the statute and rule in who needs be notified?

Do the statute and rule support these notifications? If not, what needs to be changed?

Congrats! We made it through the in-depth statute review.



# Topic 3: Wholistic Civil Commitment Administration

Be thinking about:

- How do elements of civil commitment administration impact multiple steps in the process



# Transportation to Treatment Facility: Statute

**ORS 426.150 (1)** Upon receipt of the order of commitment, the Oregon Health Authority or its designee shall take the person with mental illness into its custody, and ensure the safekeeping and proper care of the person until the person is delivered to an assigned treatment facility or to a representative of the assigned treatment facility...

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# Transportation to Treatment Facility: Statute

**ORS 426.150 (1)** The representative of the assigned treatment facility, accompanied by any assistants the authority or its designee may deem necessary, shall proceed to the place where the person is in custody, and upon demand shall be given custody of the person, together with the certified record required by ORS 426.170.

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# Transportation to Treatment Facility: Statute

**ORS 426.150 (1)** The representative shall issue appropriate receipts and immediately transport the person safely to the assigned **treatment facility** and deliver the person and the record to the director or a designated employee of the facility. **In taking custody of the person**, the authority, its designee or the representative of the facility has all the powers provided by ORS 133.225 and 161.255 and **may require the assistance of any peace officer or other authorized individual.**

# Transportation to Treatment Facility: Statute

**ORS 426.150 (2)** The committing judge, upon approval of the examining physicians or other qualified professionals as recommended by the authority and upon request of a legal guardian, friend or relative of the person with mental illness, **may authorize the legal guardian, friend or relative to transport the person to the assigned facility when** the committing judge determines that means of transportation would not be detrimental to the welfare of the person or to the public.

# Transportation During Commitment: Rules

## OAR 309-033-0430 (1)

(1) ...The director of the county of commitment shall arrange for the transportation of persons under civil commitment to the hospital or nonhospital facility:

(a) Only persons under civil commitment who have received prior approval for admission by the superintendent may be transported to a state hospital;

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# Transportation During Commitment: Rules

## OAR 309-033-0430 (1)

(b) A guardian, friend or relative may transport the person under civil commitment to the designated facility if all of the following are met:

(A) The guardian, friend, or relative requests to transport the person to the designated facility prior to or at the time of the civil commitment hearing;

(B) The committing judge at the civil commitment hearing determines that the means of transportation would not be detrimental to the welfare of the person with mental illness or to the public.

# Client Rights During Secure Transport: Rules

## OAR 309-033-0435

(1) A secure transport provider shall maintain written policies and procedures with regard to client rights. The policies and procedures must assure that a client has the right to be treated with consideration, respect, and full recognition of human dignity and individuality. These rights are in addition to any other rights provided for in law.

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# Client Rights During Secure Transport: Rules

## OAR 309-033-0435

(2) The **client care policies and procedures must include** but are not limited to:

- (a) Considerate and **respectful care**;
- (b) **Reasonable privacy** concerning a client's transportation and care;
- (c) **Confidentiality of all communications** and records relating to client transportation and care except to the extent otherwise required by law;
- (d) An environment in the secure **transport that is free from recognized hazards**.

# Grievance of Transfer: Rules

## OAR 309-033-0430 (5)

The director and the superintendent shall have written procedures for resolving grievances about the transfer of persons under civil commitment from one facility to another. The director or the superintendent shall suspend the transfer of the person until the grievance procedure is completed, unless immediate transfer is necessary for health or safety, upon the written or verbal protest of one of the following persons:

- (a) The person being transferred;
- (b) The legal guardian of the person being transferred.



## Discussion Section: Transportation

How are secure and safe transport services working from a systems and consumer perspective?

## Discussion Section: Transportation

There have been discussions about moving the responsibility of transport from the county-level to a state-wide program.

How might a state-wide transportation program affect the civil commitment system?

# Civil Commitment Liability: Statute

Under **ORS 426.150**, the following individuals cannot be held liable if they act in *good faith and without malice*:

- Individual(s) initiating commitment procedures
- CMHP director/designees conducting investigation
- Individual representing the states interests
- Examiner
- Individuals authorized to transport or take into custody
- Legal guardian, relative, or friend who assumes responsibility under conditional release

## Discussion Section: Liability

Given this statute, what are the concerns about liability from these stakeholders?

# Homework



- September constituent survey
- Read ALL materials provided in advance of the next meeting
- Feedback on “hopes and dreams” and “worst fears”
- Feedback on civil commitment system processes



# Staff contacts

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