

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

BHS 42-2023

CHAPTER 309
OREGON HEALTH AUTHORITY
HEALTH SYSTEMS DIVISION: BEHAVIORAL HEALTH SERVICES

FILED

12/14/2023 7:34 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Civil commitment initiation processes from tribal courts and for tribal members

EFFECTIVE DATE: 12/15/2023 THROUGH 06/11/2024

AGENCY APPROVED DATE: 12/14/2023

CONTACT: Zachary Thornhill
503-559-4123
zachary.l.thornhill@oha.oregon.gov

500 Summer st. NE
Salem, OR 97301

Filed By:
JUAN RIVERA
Rules Coordinator

NEED FOR THE RULE(S):

The community mental health system in Oregon is divided by counties, which can be challenging to identify within an Indian reservation. For that reason, hospitals, community mental health programs (CMHP), the courts, and tribes may be unsure where a Notice of Mental Illness (NMI) should be filed and, ultimately, what entity is responsible for the civil commitment. These rule changes provide guidance for all parties involved to know when a NMI initiated either by a tribal court or for a tribal member is to be filed in the county of residence or the county in which the hospital is located/person is located.

JUSTIFICATION OF TEMPORARY FILING:

(1) Describe the specific consequences that result from the failure to immediately adopt, amend or suspend the rule(s).

Currently when someone living on the Warm Springs Indian Reservation is placed on an involuntary hold, hospitals and CMHPs can become uncertain where to file the NMI or they may believe that it is not their responsibility one way or the other. Unfortunately, this can lead to holds not being placed when there is a clear risk of dangerousness, civil commitment cases being dismissed, and ultimately individuals back in the community, not accessing appropriate care or treatment for mental illness, and a potential danger to self or risk of danger to the public. This could result in individuals otherwise appropriate for an involuntary hold being discharged and then harm themselves or others. Additionally, without these fixes to the rule, American Indians in this state will have inequitable access to the state's safety net mental health system.

(2) Who would suffer these consequences.

Individuals who are under the jurisdiction of a tribal court of a federally recognized tribe in the state, individuals living on an Indian reservation in the state, American Indians in the state, the broader public writ large.

(3) Why or how failure to immediately take rulemaking action would cause these consequences:

OHA was made aware that approximately one involuntary hold is placed each week on a member from one of the federally recognized tribes and that hold is outside of the Indian Reservation. That is roughly 24 individuals who could

have an unreliable investigation or no investigation at all when they are potentially dangerous to self or others. Without this amendment to the rule, tribes, CMHPs, hospitals, and the courts will continue to be unsure of how to manage these cases. Since civil commitment is on a tight timeline, wavering for a day or two can make or break the case going to hearing.

(4) How the temporary action will avoid or mitigate those consequences.

This temporary rule will mitigate any confusion around where a NMI is filed, which means the investigator will be notified of the need for investigation sooner, and the issue of being released due to procedural issues is avoided. An immediate action with this temporary rule change process ensures that the one person per week from Warm Springs who ends up in the Best Care service area is held in the appropriate treatment setting and with the correct CMHP's service area. rights will not be violated.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None

AMEND: 309-033-0240

RULE TITLE: Initiation of the Civil Commitment Process

RULE SUMMARY: Guidance on how and where to file Notices of Mental Illness, and who can file them; outlines relevant procedures.

RULE TEXT:

(1) Initiation. The civil commitment process is initiated when a notice of mental illness (NMI) is filed with the circuit court. The NMI shall be filed with the court as directed below:

(a) Public petition. When an NMI is given to the director of the county where the person alleged to have a mental illness resides pursuant to ORS 426.070, the director shall immediately file the NMI with the court in the county where the alleged person with mental illness resides. The following persons may give an NMI to the director:

(A) Any two persons;

(B) A county health officer; or

(C) Any magistrate.

(b) Hospital hold with no request from director. When a Licensed Independent Practitioner (LIP) admits or retains a person in a hospital pursuant to ORS 426.232, and the director in the county where the person resides makes no request for the LIP to file the NMI in the county where the person resides, the LIP shall file the NMI with the court in the county where the person is hospitalized;

(c) Hospital hold with request from director. When a LIP admits or retains a person in a hospital pursuant to ORS 426.232, and the director in the county where the person resides requests the LIP to do so, the LIP shall file the NMI with the court in the county where the person resides;

(d) Hospital hold subsequent to peace officer custody with no request from director. When a LIP admits a person to a hospital pursuant to ORS 426.232, subsequent to the person being brought to the hospital by a peace officer or approved secure transport provider, and the director of the county where the hospital is located makes no request, pursuant to ORS 426.234, the LIP shall file the NMI with the court in the county where the person initially was taken into custody by the peace officer;

(e) Hospital hold subsequent to peace officer custody with request from director. When a LIP admits a person to a hospital pursuant to ORS 426.232, subsequent to the person being brought to the hospital by a peace officer or approved secure transport provider, and the director of the county where the hospital is located requests the LIP to do so, the LIP shall file the NMI with the court in the county where the person is hospitalized;

(f) Nonhospital hold with no request from director. When a director in the county where the director admits or retains a

person in a nonhospital facility pursuant to ORS 426.233, and the director in the county where the person resides makes no request for the director to file the NMI be filed in the county where the person resides, the director shall file the NMI with the court in the county where the person initially was taken into custody; and

(g) Nonhospital hold with request from director. When a director admits or retains a person in a nonhospital facility pursuant to ORS 426.233, and the director in the county where the person resides requests the director to do so, the director shall file the NMI with the court in the county where the person resides.

(2) Initiation of commitment proceedings by two persons, a county health officer or magistrate. The NMI shall be given to the director in the county where the person alleged to have a mental illness resides. If the person has no residence, then the NMI shall be given to the director in the county where the person currently is located. The director shall file the original NMI with the court on the day the NMI is received or, if the NMI is received outside the court's routine business hours, the next day the court is open for business. The director shall retain a copy of the NMI in the clinical record as required by OAR 309-033-0930.

(3) Initiation by hospital hold. The LIP who takes a person into custody, pursuant to ORS 426.232, in a hospital approved under OAR 309-033-0530 shall:

(a) File an NMI with the appropriate court as described in OAR 309-033-0240; and

(b) Immediately notify the director in the county in which the person was hospitalized, unless the person resides in a county other than the county where the person is hospitalized in which case the LIP shall immediately notify the director in the county where the person resides.

(4) Initiation by nonhospital hold. The director, after authorizing the taking of a person into custody pursuant to the provisions of ORS 426.233, shall file a NMI with the appropriate court as described in OAR 309-033-0240.

(5) How a director requests where the NMI is filed. A director may request that the LIP, in the case of a hospital hold, or the director of the county where the person was taken into custody, in the case of a nonhospital hold, file the NMI according to the provisions of ORS 426.234 by either:

(a) On a case-by-case basis. Making the request immediately upon receipt of the notice required by ORS 426.234; or

(b) Upon general request. Sending a written general request to a hospital or a director.

(c) Initiation for a Person under the Jurisdiction of a Federally Recognized Tribe in Oregon. The civil commitment process may be initiated for a person under the jurisdiction of a federally recognized tribe located in Oregon by a tribal court pursuant to ORS 426.180, by a tribal court or other statutory grounds pursuant to ORS 426.070, or by a licensed independent practitioner (LIP) pursuant to ORS 426.232.

(A) Initiation by a Tribal Court in Oregon. When a person is received at a hospital or nonhospital facility pursuant to ORS 426.180, the LIP at the hospital or nonhospital facility shall immediately review the accompanying medical records and court documents.

(i) After reviewing the documentation, the receiving LIP may decline to hold the person if the LIP:

(I) Does not believe that an emergency exists; or

(II) Finds that the person is a not a danger to self or others and is not in need of immediate care, custody, and treatment for mental illness.

(III) If the LIP determines that an emergency exists or that the person is a danger to self or others and is in need of emergency care or treatment for mental illness, the LIP shall:

(aa) Admit the person to the hospital or nonhospital facility by detaining the person pursuant to ORS 426.231 or placing an emergency hold pursuant to ORS 426.232;

(bb) Provide the person with the warning in accordance with ORS 426.123;

(cc) Immediately file a NMI with the circuit court in the county in which the hospital is located and immediately notify the CMHP director in that county.

(ii) The director of the hospital or nonhospital facility or LIP shall notify the tribal court that placed the person under civil commitment of any action taken in accordance with ORS 426.180 through ORS 426.210 no later than 24 hours after the action is taken, except for information protected from disclosure by state or federal laws.

(B) Initiation Pursuant to ORS 426.070. If a NMI is filed under ORS 426.070(1) for a person under the jurisdiction of a

federally recognized tribe located in Oregon, the NMI shall be provided to the CMHP director in the county where the person alleged to have a mental illness resides, unless the person is eligible for services provided by a tribal CMHP in which case the NMI shall be provided to the CMHP director in the county where the person is located.

(i) When the CMHP director receives the NMI as described in subsection (1)(d)(B) of this rule, the Director shall immediately notify the judge in the circuit court where the CMHP is located;

(ii) The CMHP shall ask the person if they belong to or are otherwise under the jurisdiction of a tribe located in this State, and request that the person sign a Release of Information authorizing the CMHP to share the person's protected health information with that tribe; and

(iii) If the CMHP obtains a signed Release of Information (ROI) from the person, the CMHP shall inform the tribe of all actions taken pursuant to ORS 426.070 and coordinate appropriate services for the person, consistent with the person's approval under the ROI.

(C) Initiation Pursuant to ORS 426.232. When a person under the jurisdiction of a federally recognized tribe located in Oregon is received at a hospital or nonhospital facility pursuant to ORS 426.232, after evaluating the person, the following shall occur:

(i) If the LIP finds that there is probable cause to believe the person is a danger to self or others and is in need of emergency care or treatment for mental illness, the LIP shall:

(I) Admit the person to a hospital where the LIP has admitting privileges or is on staff; or approve the person for emergency care or treatment at a nonhospital facility approved by the authority;

(II) Inform the person of their right to counsel and provide the warning in accordance with ORS 426.100 and 426.123;

(III) The LIP shall immediately notify the CMHP director in the county where the person alleged to have a mental illness resides, unless the person lives on an Indian reservation located within Oregon in which case the NMI shall be provided to the CMHP director in the county where the person is located.

(IV) When the CMHP director receives the LIP's notification as described in subsection (1)(d)(C)(3) of this rule, the Director shall immediately notify the judge in the circuit court where the CMHP is located;

(V) The hospital or nonhospital facility shall ask the person if they belong to or are otherwise under the jurisdiction of a tribe located in Oregon, and request that the person sign an ROI authorizing the hospital or nonhospital facility to share the person's protected health information with that tribe; and

(VI) If the hospital or nonhospital facility obtains a signed ROI from the person, the hospital or nonhospital facility shall inform the tribe of all actions taken pursuant to ORS 426.232 and coordinate appropriate services for the person, consistent with the person's approval under the ROI.

(ii) If the LIP finds there is no probable cause to believe the person is a danger to self or others and that the person is not in need of emergency care or treatment for mental illness, the LIP shall release the person unless otherwise directed by a state or federal court order or the person agrees to remain in the hospital voluntarily.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 426.070, 426.180, 426.228, 426.231, 426.232 & 426.236

STATUTES/OTHER IMPLEMENTED: ORS 426.005 - 426.395