Rulemaking Action: Amend
Brief Summary of rule changes: Updating definitions
Rule number: 309-033-0210
Rule title: Definitions
Full rule text in tracked changes:

309-033-0210
Definitions

(1) "Administrator" means the director or chief executive over behavioral health services in a community hospital or the person in charge of treatment and rehabilitation programs at nonhospital facilities. Whenever "administrator" appears it means the administrator or designee.

(2) "Assignment" means "placement" as defined in OAR 309-033-0210.

(3) "Authority" or "OHA" means the Oregon Health Authority.

(4) "Caregiver" means the person who is appointed by the court under ORS 426.125 to be allowed to care for a person who has a mental illness on conditional release.

(5) "Certificate" means the document or documents issued by the Division, which identifies and declares certification of a provider pursuant to OAR 309-008-0100 to 309-008-1600. A letter accompanying issuance of the certificate will detail the scope and approved service delivery locations of the certificate.

(6) "Clinical record" means the record required by OAR 309-014-0035 documenting the mental health services delivered to clients by a CMHP or subcontractor.

(7) "Community-based civil commitment" means civil commitment that is implemented outside the inpatient hospital or regional acute care psychiatric facility settings for either the complete duration or partial duration of civil commitment. Community-based civil commitment programs with oversight from the Authority include conditional release under ORS 426, outpatient commitment, and trial visit.

(8~~7~~) "Community Mental Health Program (CMHP)" means the entity responsible for organization of various services for persons with a mental health diagnosis or addictive disorders, operated by, or contractually affiliated with, a local mental health authority and operated in a specific geographic area of the state under an agreement with the Division pursuant to OAR 309-014-0000.

(9~~8~~) "Community hospital" means any hospital that is not Oregon State Hospital.

(10) "Conditions of placement" means the set of expectations and guidelines that shall be adhered to, as described in OAR 309-033-0280 and 309-033-0282, in order for a person placed under civil commitment to remain on a community-based civil commitment and avoid revocation.

(11~~9~~) "Council" means a regional acute care psychiatric facility organization with a mission statement and bylaws, comprised of facility representatives, consumers, and family members. The council is advisory to the facility.

(12~~0~~) "County governing body" means the county court or the board of county commissioners of one or more counties who operate a CMHP, or in the case of a Native American Reservation, the Tribal Council, or if the county declines to operate or contract for all or part of a CMHP, the board of directors of a public or private corporation selected by the county.

(13~~1~~) "County of commitment" means the county in which the person was initially placed under civil commitment, or the county to which the county of commitment was transferred as appropriate.

(14) "County of custody" means the county in which the person was initially detained by either a peace officer pursuant to ORS 426.228 or a CMHP director pursuant to ORS 426.233.

(152) "County of placement" means the county in which the person under civil commitment is residing for the purpose of treatment, care, and custody.

(163) "County of residence" means the county where the person currently maintains a mailing address or, if the person has no current mailing address within the state, the county where the person was taken into custody or the county in which a person under civil commitment has been conditionally released as defined by ORS 426.241 to 426.255.

(174) "Court" means the circuit court acting pursuant to ORS Chapter 426.

(185) "Custody" means the prehearing physical ~~retaining~~ detention of a person pursuant to ORS 426.070, 426.072, 426.228, 426.231, 426.233. ~~taken into custody by:~~

~~(a) A peace officer pursuant to ORS 426.070, 426.228, 426.233;~~

~~(b) A peace officer at the direction of the director pursuant to ORS 426.233;~~

~~(c) A health care facility licensed under ORS Chapter 441, and approved by the Division, pursuant to ORS 426.231;~~

~~(d) A state hospital pursuant to ORS 426.232;~~

~~(e) A community hospital pursuant to ORS 426.070 or 426.232;~~

~~(f) A nonhospital facility pursuant to ORS 426.070 or 426.233; or~~

~~(g) A regional acute care psychiatric facility or nonhospital facility pursuant to ORS 426.072 or 426.233.~~

(19) "Declaration for Mental Health Treatment" or "DMHT" means the legal document as described in ORS 127.700 through 127.737 that describes a person's preferences regarding mental health treatment and provides instructions to any provider to meet the person's care needs.

(2016) "Director" means the director of the community mental health program and includes the director's designee, who must be a QMHP, or peace officer authorized by the director to act on their behalf for purposes of this rule.

(2117) "Director of the county of commitment" means the CMHP director for the county where the person is under civil commitment.

(~~18~~22) "Director of the county of placement" means the CMHP director for the county where the person under civil commitment is to be placed.

(~~19~~23) "Director of the county of residence" means the CMHP director for the county of residence.

(240) "Diversion" means the certified 14-day period of intensive treatment extending the prehearing period of detention pursuant to the provision of ORS 426.237(1)(b).

(251) "Division" means the Health Systems Division of the Oregon Health Authority.

(262) "Emergency" means, in the opinion of the treating licensed independent practitioner, immediate action is required to preserve the life or physical health of a person, or because the behaviors of that person creates a substantial likelihood of immediate physical harm to self, or to others in the facility. The fact that a person is in custody under the provisions or ORS 426.072, 426.232 or 426.233 must not be the sole justification that an emergency exists.

(273) "Fresh air" means the inflow of air from outside the facility where the person under civil commitment is receiving services. "Fresh air" may be accessed through an open window or similar method as well as through access to the outdoors.

(284) "Healthcare supervisor" means the appointed licensed independent practitioner, master's level registered nurse or registered nurse certified by the American Nursing Association who reviews and approves policies and procedures related to reporting medical concerns to a LIP and staff training on the administrative rules in OAR Chapter 33, Division 207.

(2925) "Hospital" or "facility" means the community hospital, regional acute care psychiatric facility, or nonhospital facility eligible for, or presently certified for, the use of seclusion or restraints to committed persons and persons in custody or on diversion.

(3026) "Hospital hold" means the notice of mental illness submitted to the court by one licensed independent practitioner at a hospital licensed by the Authority under ORS Chapter 441, ~~taking of a person into custody by order of a licensed independent practitioner~~ pursuant to ORS 426.232.

(31) "Inability to care for basic needs" or "inability to provide for basic needs" means inability to adequately mitigate risk for injury, illness, death, or other major loss solely due to mental health symptoms.

(x) "Judicial day" means

(3227) "Legally incapacitated person" means a person who has been found by the court to be unable to give informed consent to medical treatment and the court has appointed a guardian to make such decisions on the person's behalf pursuant to ORS 126.127.

(3328) "Licensed Independent Practitioner (LIP)" means a physician, nurse practitioner, or naturopathic physician as defined in ORS 426.005.

(3429) "Material risk" means the risk may have a substantial adverse effect on the patient's psychological and/or physical health.

(350) "Mechanical restraint" means any device or equipment used to restrict a person's freedom of movement.

(36) "Monitor" means the individual who is certified at minimum as a Qualified Mental Health Associate, as described in OAR OAR 309-019-0125 and who is designated in the conditions of placement who provides oversight to an individual's placement on outpatient commitment or trial visit. The monitor assists in coordinating care and services to support an individual in fulfilling the conditions of placement and avoiding revocation, and does not provide clinical treatment services. A monitor serves as the liaison between the person under civil commitment, the CMHP, the treatment team, and the court, and may be a designee of the director who provides notice to the court requesting a revocation hearing when appropriate. Common monitors include intensive care coordinators (ICCs), exceptional needs care coordinators (ENCCs) associated with the Choice program and Coordinated Care Organizations, case managers, or certified mental health investigators unassociated with the investigation of the civil commitment case to be monitored.

(381) "Notice of Mental Illness (NMI)" is the notification required, pursuant to ORS 426.070, to be submitted to the director by any two persons, a county health officer, or a magistrate, and thereafter submitted by the director to the court or, pursuant to ORS 426.234, to be submitted by the LIP or the director to the court. Pursuant to ORS 426.070 and 426.234, the court commences proceedings pursuant to ORS 426.070 to 426.130 upon receipt of the NMI.

(392) "Nonhospital facility" means any facility, other than a hospital, that is certified by the Authority to provide adequate security, psychiatric, nursing, and other services to persons under ORS 426.232 or 426.233.

(4033) "Nonhospital hold" means the taking of a person into custody by order of a director pursuant to the provisions of ORS 426.233. A director's hold and a trial visit hold are variations of a nonhospital hold.

(341) "Nurse" means a registered nurse, or a psychiatric nurse practitioner licensed by the Oregon Board of Nursing, but does not include a licensed practical nurse or a certified nurse assistant.

(4235) "Outdoors" means an area with fresh air that is not completely enclosed overhead. "Outdoors" may include a courtyard or similar area.

(4336) "Pro re nata" (P.R.N) means that a medication or medical treatment has been ordered to be given as needed.

(4437) "Patient Day" means the day of admission plus each additional day of stay, but not the day of discharge, unless it is also the day of admission.

(4538) "Peace officer" means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police or investigator of the Criminal Justice Division of the Department of Justice and such other persons as may be designated by law.

(3946) "Person with mental illness" means a person who has been found to have a mental disorder and, due to this mental disorder, is a danger to self or others; unable to provide for basic personal needs that are necessary to avoid serious physical harm in the near future, and is not receiving such care as is necessary to avoid such harm; or is a person who otherwise meets criteria pursuant to ORS 426.005.

(4047) "Physician" means a person who holds a degree of Doctor of Medicine, Doctor of Osteopathy, or Doctor of Podiatric Medicine, if the context in which the term "physician" is used does not authorize or require the person to practice outside the scope of a license issued under ORS 677.805 ("Ankle" defined for ORS 677.805 to 677.840) through 677.840 (Fees).

(4148) "Physician Assistant" means a person who is licensed as such in accordance with ORS 677.265 (Powers of board generally), 677.495 (Definitions for ORS 677.495 to 677.535), 677.505 (Application of provisions governing physician assistants to other health professions), 677.510 (Board approval of using services of physician assistant), 677.515 (Medical services provided by physician assistant), 677.520 (Performance of medical services by unlicensed physician assistant prohibited), and 677.525 (Fees).

(4942) "Placement" or "to place" means the assignment of persons with mental illness to a facility, program, or provider, or the facility, program, or provider the person under civil commitment is sent to receive care, custody and treatment, including the transfer of a person under civil commitment from one location where the person was in care, custody, and treatment to another location for the same purpose.

(50) "Post-Acute Intermediate Treatment Services" or "PAITS" means a level of care that is a mix of rehabilitation services designed for adults who have received acute psychiatric care services in a local hospital, who may or may not have been approved for Long Term Psychiatric Care, whose symptoms have improved, sufficiently, such that they no longer require hospital level of care, yet, still require intensive treatment services to continue psychiatric stabilization, prior to placement, in another community setting.

(51) "Prehearing period of detention" means the timeframe beginning when a person is taken into custody by a peace officer or director per ORS Chapter 426, or detained by a LIP at a hospital or nonhospital facility certified by the Authority who has held a person for up to 12 hours or who has filed a NMI with the court. The five judicial day period of time a person may be detained as referenced in ORS 426.095(2), 426.210, 426.232, 426.237(4)(a), and 426.275(2) encompasses the prehearing period of detention.

(5243) "Psychiatrist" means a physician licensed as provided pursuant to ORS 677.010 to 677.450 by the Board of Medical Examiners for the State of Oregon and who has completed an approved residency training program in psychiatry.

(5344) "Psychologist" means a clinical psychologist licensed by the Oregon Board of Psychologist Examiners.

(54x) "Qualified Mental Health Associate (QMHA)" means a qualified mental health associate as defined in OAR 309-019-0125.

(455) "Qualified Mental Health Professional (QMHP)" means a qualified mental health professional as defined in OAR 309-019-0125.

(4656) "Recertification" means the certification of continued civil commitment provided for under ORS 426.301 resulting in a recommitment.

(547) "Regional Acute Care Psychiatric Facility" means a facility certified by the Division to provide services for adults as described in OAR 309-033-0850 through 309-033-0890 and is operated in cooperation with a regional or local council. A regional acute care psychiatric facility must include 24 hour per day psychiatric, multi-disciplinary, inpatient or residential stabilization, care and treatment, for adults aged 18 or older with severe psychiatric disabilities in a designated region of the state. For the purpose of these rules, a state hospital is not a regional acute care psychiatric service. The goal of a regional acute care psychiatric service is the stabilization, control management, and/or amelioration of acute behavioral and psychiatric dysfunctional symptoms or behaviors that result in the earliest possible return of the person to a lessthe least restrictive environment.

(548) "Restraint" means any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient person to move his or her arms, legs, body, or head freely. Restraint may be used only for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the person, patients, a staff member, or others.

(549) "Seclusion" is the involuntary confinement of a patient person alone in a room or area, from which the person is physically prevented from leaving. Seclusion may be used only for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the person, patients, a staff member, or others.

(650) "Secure Transportation" of minors has the meaning given that term in OAR 419-400-0005(57).

(651) "Secure Transportation Services" for minors has the meaning given that term in OAR 419-400-0005(60).

(652) "Secure transport provider" means a secure transport provider approved according to OAR 309-033-0432.

(653) "Significant procedure" means a diagnostic or treatment modality which poses a material risk of substantial pain or harm to the patient or resident such as, but not limited to, electro-convulsive therapy.

(654) "State hospital" means any campus of the Oregon State Hospital system.

(655) "Superintendent" means the chief executive officer of the Oregon State Hospital or their designee.

(66) "Warrant of detention" means a court-issued directive from a judge or magistrate ordering that a person be held in custody pending court proceedings at an identified location until a certain date and time.

Statutory/Other Authority: ORS 413.042, 426.005, 426.060, 426.110(2), 426.232 & 426.236
Statutes/Other Implemented: ORS 426.005 - 426.395

Rulemaking Action: Amend
Brief Summary of rule changes: Expands agency values to include integrated placements, inclusive cultural norms, and evidence-based practices and policies.
Rule number: 309-033-0220
Rule title: General Standards
Full rule text in tracked changes:

(1) Goals. The goals of the Division in implementing these civil commitment standards are:

(a) To promote the well-being of persons alleged to have a mental illness and those who are a person with mental illness during involuntary care, custody and treatment of mental illness pursuant to ORS Chapter 426;

(b) To promote the protection of the civil rights of each person who is a person alleged to have a mental illness and who is a person with mental illness;

(c) To encourage consistent application of ORS Chapter 426 as it specifically pertains to each of the following groups:

(A) Persons alleged to have a mental illness; and

(B) Persons with ~~a~~ mental illness.

~~(d) To encourage the provision of care, custody and treatment of persons in the least restrictive environment that currently is available within existing resources;~~

(e) To encourage voluntary enrollment of persons in available mental health services in lieu of pursuing involuntary treatment through civil commitment, whenever possible;

(f) To encourage the provision of care, custody, and treatment of persons in the least restrictive environment that currently is available within existing resources. A director or designee responsible for investigations of persons alleged to have a mental illness and for placement of persons with mental illness shall be expected to:

(A) Encourage diversions whenever possible and feasible;

(B) At the time of hearing, consider placement on outpatient commitment before placement in inpatient hospital settings;

(C) When considering facility-based civil commitment placement, consider Adult Foster Homes and Class 3 facilities before locked facilities, and consider placement in a Post-Acute Intermediate Treatment Services (PAITS) program before placement at Oregon State Hospital.

(g~~f~~) To encourage that the director monitors the commitment process in their county, is knowledgeable of the statutes and administrative rules pertaining to civil commitment, provides leadership so that persons being held are afforded their civil rights and are treated with dignity in the implementation of ORS Chapter 426;

(h~~g~~) To provide for the safety of the community when threatened by a person who is dangerous to others as a result of mental illness.

(i) Support the de-stigmatization of mental illness and people living with mental illness(es) through the provision of civil commitment diversion, community-based civil commitment services, and treatment in deinstitutionalized settings.

(2) State's interest. The state's interest is to establish sufficient facts for the court to make a decision that is consistent with the intent of ORS Chapter 426.

(3) Declaration for mental health treatment (DMHT). The director shall establish procedure and written policy which assures that every person who may become incapacitated by mental illness and unable to consent to treatment is educated about the Declaration for Mental Health Treatment at the time of admission or at the time of discharge from a

hospital. and be offered the opportunity to complete one. The director shall make available to the Authority upon request a copy of the written policy and associated procedures.

(4) Data. The Authority aims to maintain consistent and reliable data collection methods from which the results can be utilized to monitor outcomes, inform program evaluation, guide program development, and promote program efficacy. The director shall ensure that all reporting requirements related to civil commitment proceedings as described in OAR Chapter 309 Division 33 and in statute in ORS Chapter 426 are met according to contract or agreement.

Statutory/Other Authority: ORS 413.042 & 426.060
Statutes/Other Implemented: ORS 426.005 - 426.395

Rulemaking Action: Amend
Brief Summary of rule changes: Clarifies LIP options following transport custody
Rule number: 309-033-0230
Rule title: Custody
Full rule text in tracked changes:

(1) Custody by a Licensed Independent Practitioner (LIP) pursuant to ORS 426.231. A LIP taking a person into custody pursuant to ORS 426.231 at a hospital approved under OAR 309-033-0550 shall detain the person for no more than 12 hours. ~~and d~~

(a) During ~~that time shall either:~~the initial 12 hours, the LIP shall do one of the following:

(A~~a~~) Authorize the person for transportation to an approved hospital or nonhospital facility and provide transportation according to the agreement required under OAR 309-033-0550; ~~or~~

(B~~b~~) Release the person if the LIP no longer believes that the person is dangerous to self or others; or~~.~~

(c) If there is not an identified hospital or nonhospital facility in accordance with OAR 309-033-0230(1)(a)(A) within the initial 12 hours, and the LIP believes the person is a danger to self or others and is in need of treatment, the LIP may proceed with a hospital hold pursuant to ORS 426.232.

(2) Custody by a peace officer or secure transport provider. A peace officer taking a person into custody shall remove the person to an approved hospital as directed by the director in the county where the person was taken into custody. The peace officer or approved secure transport provider shall only take a person into custody under the provisions of one of the following:

(a) Custody on peace officer's own initiative. A peace officer may take a person into custody pursuant to the provisions of ORS 426.228 when the peace officer has probable cause to believe that the person is dangerous to self or others, and is in need of immediate care, custody or treatment for a mental illness;

(b) Custody on the director's authority. The director may direct, pursuant to the provisions of ORS 426.233, a peace officer or an approved secure transport provider to take into custody a person who is dangerous to self or others and in need of immediate care, custody or treatment for mental illness;

(c) Custody of a person under civil commitment on the director's authority. The director may direct a peace officer or an approved secure transport provider to take into custody, pursuant to the provisions of ORS 426.233, a person under civil commitment who is on trial visit, outpatient commitment or conditional release in the community, who is dangerous to self or others or who is unable to provide for basic personal needs, who is not receiving the care that is necessary for health and safety, and who is in need of immediate care, custody or treatment for mental illness;

(d) A peace officer may transfer a person in custody under this section to the custody of an approved secure transport provider. The peace officer may meet the approved secure transport provider at any location that is in accordance with ORS 426.140 to effect the transfer. When transferring a person in custody to an authorized person, the peace officer shall deliver the report required under subsection (3) of this section to the authorized person.

(3) Peace officer's written report. When taking a person into custody pursuant to ORS Chapter 426.228 by a peace officer's own initiative, a peace officer shall prepare a written report which states:

(a) The reason for custody;

(b) The date, time, and place the person was taken into custody; and

(c) The name of the director in the county where the person is taken into custody and a telephone number where the director may be reached at all times.

(4) Director's written report. When a peace officer or approved secure transport provider takes a person into custody pursuant to ORS Chapter 426.228 at the direction of the director, a director shall prepare a written report which states:

(a) The reason for custody;

(b) The date, time, and place the person was taken into custody; and

(c) The name of the director in the county where the person is taken into custody and a telephone number where the director may be reached at all times.

(5) Transportation to a hospital or nonhospital facility more than one hour away. If the peace officer determines that more than one hour is required to transport the person to a hospital or nonhospital facility approved by the Division, the peace officer or approved secure transport provider shall obtain a certificate, if possible, from a LIP prior to transporting the person. A LIP authorizing transport shall sign a certificate, on a form approved by the Division, only if the person's condition, in the opinion of the LIP, meets all of the following requirements:

(a) The travel will not be detrimental to the person's physical health;

(b) The person is dangerous to self or others; and

(c) The person is in need of immediate care or treatment for mental illness.

(6) The director directs peace officers or approved secure transport providers to appropriate facility. The director shall adopt written procedures for directing peace officers or approved secure transport providers to transport persons taken into custody, pursuant to ORS 426.228, to an approved hospital or nonhospital facility:

(a) The written procedures shall include one of the following, whichever, in the opinion of the director, serves the best interests of persons with mental illness and the community:

(A) A list of approved hospitals or nonhospital facilities where peace officers or approved secure transport providers are to transport persons;

(B) A procedure for contacting the director 24 hours-a-day, seven days-a-week.

(b) The director shall distribute copies of the written procedures to the sheriff and the chief of police of each municipality in the county and approved secure transport providers. The procedures shall be distributed as often as the procedure is amended;

(c) The director may develop a written agreement with the law enforcement agencies in the county which designates a site or sites where the director can safely evaluate the person and determine which facility, in the director's opinion, can best serve the person's needs within the resources available. If such an agreement exists in a county, the director may direct a peace officer to transport a person in custody under ORS 426.228 to a site designated in the agreement. Once the director makes a determination, the peace officer shall transport and deliver the person to a hospital or nonhospital facility as directed by the director. The agreement shall:

(A) Designate the site or sites where the director can safely evaluate the person's needs for treatment;

(B) Define the minimum response time for the director meeting the peace officer at the site; and

(C) Be signed by all parties to the agreement.

Statutory/Other Authority: ORS 413.042, 426.228, 426.231 & 426.236
Statutes/Other Implemented: ORS 426.005 - 426.395

Rulemaking Action: Amend
Brief Summary of rule changes: Clarification of the initiation of the Civil Commitment Process, adding guidance around working initiation from tribal court jurisdiction and with American Indians
Rule number: 309-033-0240
Rule title: Initiation of the Civil Commitment Process
Full rule text in tracked changes:

(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. If the person has no residence, then the NMI shall be given to the director in the county where the person is currently 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. 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. When a Licensed Independent Practitioner (LIP) admits or retains a person in a hospital pursuant to ORS 426.232, the LIP shall:

(A) Immediately notify the director in the county in which the hospital is located unless the person resides in a county other than the county where the hospital is located, in which case the LIP shall immediately notify the director in the person's county of residence and offer that director the first right of refusal; and

(B) File the NMI with the appropriate circuit court as follows:

(i) If the director of the person's county of residence requests it, the LIP shall file the NMI with the circuit court in the person's county of residence; or

(ii) If the director of the person's county of residence does not request it, or the person does not maintain a residence in Oregon, the LIP shall file the NMI with:

(1) If the person did not arrive at the hospital under custody pursuant to ORS 426.228 or ORS 426.233, the circuit court in the county in which the hospital is located; or

(2~~1~~) If the person arrived at the hospital under custody pursuant to ORS 426.228 or ORS 426.233, and if the county in which the hospital is located does not request that the NMI be filed in its circuit court, the circuit court in the county of custody.~~; or~~

~~(2) If the person did not arrive at the hospital under custody pursuant to ORS 426.228 or ORS 426.233, the circuit court in the county in which the hospital is located.~~

(c) Nonhospital hold. When a director admits or retains a person in a nonhospital facility pursuant to ORS 426.233, the director shall file the NMI as follows:

(A) If the director of the person's county of residence requests it, the NMI shall be filed with the circuit court in the county of residence; or

(B) If the director of the person's county of residence does not request it, the NMI shall be filed with the circuit court in the county of custody.

(d) 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:

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

(2) 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.

(ii) 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:

(1) 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;

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

(3~~iii~~) 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.

(iii~~v~~) 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~~ believes 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:

(1) 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; and

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

(3) ~~The LIP shall i~~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~~ LIP shall ~~be provided to~~notify the CMHP director in the county ~~where the person is located~~of hospitalization.

(ii4) When a~~the~~ CMHP director receives ~~the~~ a 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.~~;~~

(iii5) 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~~

(iv6) 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.

(vii) If the LIP ~~finds~~ believes 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.

~~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~~of 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.

Statutory/Other Authority: ORS 413.042, 426.228, 426.231, 426.234 & 426.236
Statutes/Other Implemented: ORS 426.005 - 426.395

Rulemaking Action: Amend
Brief Summary of rule changes: Provides guidance to peace officers and CMHP directors in fulfilling warrants of detention
Rule number: 309-033-0250
Rule title: Standards for Custody, Hospital and Nonhospital Holds, Emergency Commitment and Emergency Hospitalization of Persons Under Warrant of Detention
Full rule text in tracked changes:

(1) Criteria for placement into custody.
(a) ~~Only p~~Persons who are a danger to self or others, whether prior to being placed under civil commitment or during a civil commitment, and who are in need of mental health treatment ~~for mental illness~~ shall be placed in custody at a facility approved by the Division.

(b) A person who has been placed on conditional release, outpatient commitment, or trial visit, in addition to the criteria in Section 1(a) of this rule number, may also be taken into custody if the person is unable to provide for basic personal needs that are necessary to avoid serious physical harm in the near future and is not receiving such care as is necessary to avoid such harm.

~~(2) Warrant of detention.~~

~~(a) Upon the receipt of a warrant of detention issued by the court pursuant to ORS 426.070, the director or the sheriff of the county shall take the person into custody and remove the person to a community hospital or nonhospital facility that is licensed under ORS Chapter 441, other than an institution listed in ORS 426.010. Whoever takes the person into custody shall inform the person of their rights with regard to representation by or appointment of counsel as described in ORS 426.100 and be given the warning described under ORS 426.123 and OAR 309-033-0540. The director of the community hospital or nonhospital facility may refuse to detain the individual if a Licensed Independent Practitioner (LIP), after reviewing the documents accompanying the individual, is not satisfied that an emergency exists or that the individual is dangerous to self or others and in need of immediate care, custody or treatment for mental illness.~~

(a) If the court issues a warrant of detention to the Director for the prehearing detention of a person alleged to have a mental illness, the Director shall make arrangements to take the person into custody and arrange to transport the person to an OHA-approved community hospital or nonhospital facility that is licensed under ORS Chapter 441, other than an institution listed in ORS 426.010.

(A) The Director is required to inform the person of their rights with regard to representation by or appointment of counsel as described in ORS 426.100 and be given the warning described under in ORS 426.070(5)(b)(B) and OAR 309-033-0540.

(B) The Director shall make arrangements as applicable to transport the person to the civil commitment hearing, as directed in the warrant of detention or a subsequent court order.

(C) Unless otherwise directed by a court order or as provided for in these rules, the Director shall place the person in an OHA-approved community hospital or nonhospital facility until the date indicated in the warrant of detention or any subsequent court order. The Director shall seek to place the person in the least restrictive placement possible that will meet the person's health and safety needs.

(i) If the person represents an immediate and serious danger to the staff or physical facilities of an OHA-approved community hospital or nonhospital facility, the Director, with the written approval of OHA and the proposed alternative placement, the Director may confine the person in a non-OHA approved correctional setting that can meet the health and safety needs of the person pursuant to ORS 426.140(1). The person may be placed in this alternative placement until the date indicated in the warrant of detention or subsequent court order, or until the person is transferred to an OHA-approved community hospital or non-hospital facility.

(ii) If no OHA-approved community hospital or nonhospital facility will admit the person, the Director, with the written approval of OHA , may place the person in a non-OHA approved setting that can meet the health and safety needs of the person pursuant to ORS 426.140(2). If the person is not placed in a community hospital, the Director shall ensure that

there is a 24-hour care attendant in direct charge of the person while they are onsite at the alternative placement, and that the Authority has approved of the placement as suitable for the comfortable, safe, and humane confinement of the person. The person may be placed in this alternative placement until the date indicated in the warrant of detention or a subsequent court order, or until the person is transferred to an OHA-approved community hospital or non-hospital facility.

(b) If the court has issued the warrant of detention to the sheriff of the county to provide for the custody and transportation of the person alleged to have a mental illness, the Director is not responsible for taking the person into custody, providing transportation to the treatment facility, or transportation to the civil commitment hearing. The director shall coordinate with the sheriff on the person's placement and the ongoing civil commitment process.

(c) If the court has issued the warrant of detention to a hospital or nonhospital facility to provide for the custody of the person alleged to have a mental illness, the Director is not responsible for taking the person into custody.

(A) The Director shall coordinate with the hospital or nonhospital facility the transportation of the person to the indicated treatment setting, unless otherwise authorized under ORS 426.150(2), including notifying a peace officer or another authorized individual, pursuant to ORS 426.233(1)(b), to take custody of and transport the person to the hospital or nonhospital facility.

(b) In cases where the state hospital initiated the civil commitment proceeding and the ~~patient~~ person is already at the state hospital, the ~~patient~~ person shall remain at the state hospital upon the receipt of the warrant of detention, unless otherwise indicated by the presiding judge.

(3) Hospital hold. Only a LIP with admitting privileges or on staff at a hospital approved by the ~~Division~~ Authority and who has completed a face-to-face examination of the person may retain the person in custody in the hospital as provided by ORS 426.232. When implementing a hospital hold, the LIP shall document the following information on the Notice of Mental Illness (NMI), retaining a copy of the NMI in the clinical record:

(a) Examples of indicators that support the LIP's belief that the person is a danger to self or others due to symptoms and behaviors of a mental disorder and is thus a person with mental illness as defined in ORS 426.005;

(b) Examples of thoughts, plans, means, actions, history of dangerousness, access, and ~~or~~ other indicators that support the LIP's belief that the person is imminently dangerous.

(4) Peace officer custody requested by director. A director may direct a peace officer ~~This section establishes standards and procedures for a director to direct a peace officer~~ to take into custody a person who the director has probable cause to believe is dangerous to self or any other person and who the director has probable cause to believe is in need of immediate care, custody or treatment for mental illness:

(a) A county governing body may authorize the director, or a person named and recommended by the director, to direct a peace officer or approved secure transport provider to take ~~alleged~~ persons alleged to have a~~with~~ mental illness into custody. Such an authorization shall be made formally and in writing by the county governing body of the director. The director shall keep a copy of each authorization in each person's personnel file;

(b) Prior to directing a peace officer or approved secure transport provider to take a person into custody, a director shall have face-to-face contact with the person and document on forms approved by the Division, the evidence for probable cause to believe that the person is:

(A) Dangerous to self or others; and

(B) In need of immediate care, custody or treatment for a mental illness.

(5) When a person in custody can be released. A person who is detained, in custody, or on a hold shall be released as described:

(a) LIP's release of a person on peace officer custody. When a person is brought to a hospital by a peace officer or approved secure transport provider pursuant to ORS 426.228 the treating LIP shall release the person if, upon initial

examination prior to admission, the LIP makes the determination that the person is not dangerous to self or others. It is not necessary to notify the court of the release;

(b) LIP's release of a person on transport custody. At any time during the 12-hour detention period, the treating LIP shall release a person detained pursuant to ORS 426.231 if the LIP makes the determination that the person is not dangerous to self or others. In no case shall a LIP involuntarily detain a person at a hospital approved solely for Transport Custody under OAR 309-033-0550 longer than 12 hours. It is not necessary to notify the court of the release;

(c) LIP's release of a person on a hospital hold. The treating LIP shall release a person retained or admitted to a hospital pursuant to ORS 426.232 whenever the LIP makes the determination that the person is not dangerous to self or others. The treating LIP shall immediately notify the director and the circuit court where the NMI was filed. See OAR 309-033-0240; or

(d) Director's release of a person on a nonhospital hold. The director shall release a person detained in a nonhospital facility, approved under OAR 309-033-0530, pursuant to ORS 426.233, whenever the director, in consultation with a LIP, makes the determination that the person is not dangerous to self or others. The director shall immediately notify the circuit court.

(6) When a person in custody cannot be released. ~~Once the person is admitted to a hospital or nonhospital facility,~~ If a person is taken into custody pursuant to ORS 426.070 and subsequently admitted to a hospital or nonhospital facility, the person~~,~~ may only be released by the court. However, a person may be discharged from a hospital or nonhospital facility when the person is transferred to another approved facility.

(7) Commencement of the prehearing period of detention. No person who is detained, in custody, or on a hold pursuant to ORS 426.228, ORS 426.231, ORS 426.232, or ORS 426.233 shall be involuntary held for more than five judicial days without a hearing before a judge unless otherwise determined pursuant to ORS 426.237 or ORS 426.307.

(a) The first day of the prehearing period of detention is determined to be the judicial day immediately following the day:

(A) The person was initially held on a 12-hour transport custody pursuant to ORS 426.231, if the person was detained in a facility certified by the Authority; or

(B) The person was placed in custody by the director or a peace officer pursuant to ORS 426.228 or ORS 426.233, if the person was initially placed in custody under ORS 426 without a detention pursuant to ORS 426.231; or

(C) A Notice of Mental Illness (NMI) was completed and filed with a court pursuant to ORS 426.232, if the person was not detained or placed in custody prior to the NMI.

(b) The time limit is counted by the 24-hour day, regardless of the precise time a custody or NMI is signed or filed. It is not counted by hour, minute, or second. For example, if the NMI, hold, or custody were placed at 1:15 AM or at 3:00 PM on a Monday, Monday is considered day zero. The fifth judicial day would be the immediate Monday following, presuming only judicial days and a standard two-day weekend followed. The hospital or nonhospital facility treating that person may discharge that person, should all other discharge and release criteria be met, at any time during the fifth judicial day and it does not have to be before or precisely at the time it was written or filed.

Statutory/Other Authority: ORS 413.042, 426.070, 426.231, 426.232, 426.233 & 426.234
Statutes/Other Implemented: ORS 426.005 - 426.395

Rulemaking Action: Amend
Brief Summary of rule changes: Clarifies the need for sworn statement to certify the diversion and includes language as such
Rule number: 309-033-0260
Rule title: Diversion from Commitment Hearing
Full rule text in tracked changes:

(1) Notice to court by director. The director and a Licensed Independent Practitioner (LIP) may certify a person for diversion at any time up to three judicial days after the person has been taken into custody.

(i) A certificate shall be filed with the court as notification of the diversion, and a certificate may be filed with the court with agreement between, per ORS 426.237(1)(b):

(A) The CMHP director in the county responsible for investigation;

(B) The CMHP director in the person's county of residence, if different than the county responsible for investigation; and

(C) The current treating LIP.

(ii) The certificate shall include an attestation signed by the director and the LIP, and it is not required to be notarized.

(A) An attestation may be: "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury."

(2) Treatment plan. The director and the treating LIP shall prepare a treatment plan that describes, in general terms, the types of treatment and medication to be provided during the diversion. The general treatment plan shall be descriptive of the range of services and medications to be provided, and shall include a description of:

(a) Any of the following classes of medication, if medication is to be administered:

(A) Antipsychotics;

(B) Antidepressants;

(C) Mood stabilizers;

(D) Anti-anxiety medications; or

(E) Anti-side effect medications.

(b) Mental health interventions, therapies or diagnostic procedures to be employed;

(c) The person's preferences about medications and therapies and any limitations on the specific use of medications or therapies to which the director and the treating LIP have agreed;

(d) Location where treatment is to be initiated and the type of hospital or nonhospital facilities where the person may be transferred during the diversion; or

(e) Other conditions or limitations agreed to by the person and the director concerning the care or treatment that is to be provided.

(f) Under no circumstance, pursuant to ORS 426.237(3)(h), shall a person be detained for the purpose of the diversion for more than 14 days after the person has accepted the treatment plan.

(3) Notice to person. At the initiation of the diversion period, the director and the LIP shall inform the person verbally, and in writing, of the usual and typical restraints or seclusion which may be employed in an emergency to assure health or safety.

(4) LIP to provide information. The LIP shall provide the information described in OAR 309-033-0620 when administering a specific medication.

(5) Consent for non-psychiatric care. A treating LIP shall obtain the person's consent for non-psychiatric medical care and treatments which may be prescribed during the diversion. The general treatment plan for psychiatric intervention shall not include plans for non-psychiatric medical care or treatment.

(6) ~~Refusal of~~Nonadherence to treatment plan and ~~/~~demand for discharge. The person on diversion may ~~refuse~~ decline the psychiatric treatment described in the general treatment plan or demand discharge at any time during the diversion by signing the form described in this paragraph or, if the person ~~refuses to~~does not sign the form, by verbally making his or her refusal of treatment or demand for discharge known to two staff of the facility. In accepting the person's ~~refusal of~~disengagement with treatment or demand for discharge, the staff of the facility shall:

(a) Provide the person a warning, both verbally and in writing, at the person's first indication that they wish to decline treatment or demand discharge, which states:

"If you decline psychiatric treatment described in the general treatment plan or demand to be discharged you may be required to appear at an involuntary civil commitment hearing. It is your right to request an involuntary civil commitment hearing at this time. If a judge finds you to be a person with mental illness you may be civilly committed for up to 180 days. However, if a judge finds you not to be a person with mental illness you may be released. The treatment in which you were to participate as a condition of avoiding a commitment hearing is described in your general treatment plan. You were given a copy of your general treatment plan when you agreed to diversion. You may see the copy of your general treatment plan on file with this facility at any time. You may talk with your attorney before you decline this treatment, demand discharge, or request a hearing."

(b) If the person declines treatment, demands discharge, or requests a hearing, offer the person the following form to sign:

"Warning

If you decline psychiatric treatment described in your general treatment plan or demand discharge you may be required to appear at an involuntary civil commitment hearing. You have a right to request an involuntary civil commitment hearing at this time. If a judge finds you to be a person with mental illness you may be civilly committed for up to 180 days. The psychiatric treatment in which you were to participate as a condition of avoiding a civil commitment hearing is described in your general treatment plan. You were given a copy of your general treatment plan when you agreed to diversion. You may see the copy of your general treatment plan on file with this facility at any time. You may talk with your attorney before you decline this treatment, demand discharge, or request a hearing.

I decline the treatment described in my general treatment plan.

I request a hearing before the circuit court.

_____

Signature of Certified Person Alleged to Have a Mental Illness."

(c) If the person declines to sign the form described in this section and verbally or nonverbally declines treatment, the staff of the facility shall document, ~~the person's declination~~ on the form and in the person's clinical record, that the person did not sign the form;

(d) Immediately upon the person declining treatment, demand for discharge, or request for a hearing, the treating LIP shall treat the person as a person in custody, as provided under ORS 426.072, and shall immediately notify the director. The director shall immediately request a hearing.

(7) Director of the county of residence approval of payment for diversion. A person shall be on diversion only if payment for the care, custody and treatment is approved verbally by the director of the county of residence as provided under ORS 426.237. The director of the county of residence's approval shall be documented by a written statement, signed by the director, and distributed by the end of the diversion period as follows:

(a) The original shall be filed in the clinical record at the Community Mental Health Program; and

(b) A copy shall be ~~delivered~~ provided to each facility serving the person during the diversion.

Statutory/Other Authority: ORS 413.042, 426.236 & 426.237
Statutes/Other Implemented: ORS 426.005 - 426.395

Rulemaking Action: Add
Brief Summary of rule changes: No changes to rule text; relocated for functionality
Rule number: 309-033-0265
Rule title: The Authority's Denial of Payment for Services to Persons in Custody or on Diversion
Full rule text in tracked changes:

(1) The Authority denial. The Authority shall deny part or all payment for services for a person in custody or on a diversion only when the Authority determines that there is insufficient evidence to reasonably support the belief that the person in custody demonstrated:

(a) Living with a mental disorder; and

(b) Dangerousness to self or others as evidenced by thoughts, plans, means, actions, history of dangerousness or other indicators of imminent dangerousness which Division believes are within accepted community standards of professional knowledge.

(2) The Authority consultation with Licensed Independent Practitioner (LIP). When making a determination under this rule which is primarily based on accepted community standards of professional knowledge, the Authority shall consult with a LIP.

(3) Information payer must submit. When making a request for denial of payment, the payer responsible for the services provided to the person in custody or on diversion under ORS 426.241 shall submit the following to the Authority:

(a) A statement requesting the Authority review the appropriateness of the hold or diversion for the purpose of approving denial of part or all payment for services rendered;

(b) An explanation of why the payer believes the services provided to the person in custody or on diversion do not meet criteria described in ORS 426.232, 426.233 or 426.237;

(c) Any documentation which supports the payer's belief that the services provided to the person in custody or on diversion were inappropriate.

(4) Clinical records to be submitted. At the request of the Authority, as provided by ORS 426.241(5)(b), the following shall submit clinical records and other documents requested relating to the services in question to the Division:

(a) A hospital or a nonhospital facility approved under OAR 309-033-0530;

(b) A LIP or person providing services to the person in custody or on diversion.

Statutory/Other Authority: ORS 413.042, 426.005, 426.060, 426.110(2), 426.232 & 426.236
Statutes/Other Implemented: ORS 426.241

Rulemaking Action: Amend
Brief Summary of rule changes: Clarifies types of programs and settings permitted in civil commitments; aligns initiation of outpatient commitment with statute
Rule number: 309-033-0270
Rule title: Provision of Care, Custody and Treatment of Persons under Civil Commitment
Full rule text in tracked changes:

(1) Persons under civil commitment have the rights provided under ORS 426.385, ORS 430.205 through 430.210, and this rule, including:

(a) A person under civil commitment's right to fresh air.

(b) If a person under civil commitment requests access to fresh air and the outdoors or the person under civil commitment's treating health care provider determines that fresh air or the outdoors would be beneficial to the person under civil commitment, the facility in which the person under civil commitment is receiving services shall provide daily access to fresh air and the outdoors unless this access would create a significant risk of harm to the person under civil commitment or others;

(c) The determination whether a significant risk of harm to the person under civil commitment or others exists shall be made by the person under civil commitment's treating health care provider. The treating health care provider may find that a significant risk of harm to the person under civil commitment or others exists if:

(A) The person under civil commitment's circumstances and condition indicate an unreasonable risk of harm to the person under civil commitment or others which cannot be reasonably accommodated within existing programming should the person under civil commitment be allowed access to fresh air and the outdoors; or

(B) The facility's existing physical plant or existing staffing prevent the provision of access to fresh air and the outdoors in a manner than maintains the safety of the person under civil commitment or others.

(d) If a facility determines that its existing physical plant prevents the provision of access to fresh air and the outdoors in a safe manner, the facility shall make a good faith effort at the time of any significant renovation to the physical plant that involves renovation of the unit or relocation of where persons under civil commitment are treated to include changes to the physical plan or location that allow access to fresh air and the outdoors, so long as such changes do not add an unreasonable amount to the cost of the renovation.

(2) Provision of care at a state hospital. The superintendent of the state hospital shall be responsible for all admissions to the state hospital pursuant to OAR 309-091-0015. The superintendent shall implement policies and procedures which afford a person under civil commitment placed in a state hospital the rights provided by ORS 426.385, 430.205 through 430.210 and this rule.

(3) Provision of care at a community hospital. The director shall place a person under civil commitment only at a community hospital approved under OAR 309-033-0530:

(a) The Licensed Independent Practitioner (LIP), in consultation with the director, shall determine whether the best interests of a person under civil commitment are served by an admission to a community hospital;

(b) The administrator shall implement policies and procedures which afford a person under civil commitment placed in a community hospital the rights provided by ORS 426.385, 430.205 through 430.210 and this rule.

(4) Provision of care at a nonhospital facility or an outpatient program. The director shall only place a person under civil commitment in a nonhospital facility that is licensed or certified by the Division:

(a) The administrator, in consultation with the director, shall determine whether the best interests of a person under civil commitment are served by an admission to a nonhospital facility or an outpatient program;

(b) The administrator shall implement policies and procedures which afford a person under civil commitment placed in a nonhospital facility or an outpatient program the rights provided by ORS 426.385, 430.205 through 430.210 and this rule;

(c) The director shall place the person under civil commitment on a trial visit when the person is discharged from a level one facility to a lower level of care in accordance with OAR 309-033-0290 and 309-033-0300. A lower level of care may include treatment in another facility, outpatient care, or case management services~~;~~

(d) The director shall place a person under civil commitment on outpatient commitment~~,~~ who, ~~the court has ordered on outpatient commitment~~ at the time of the civil commitment hearing and immediately following it, ~~on outpatient commitment when the director places the person~~ is not initially placed in a ~~facility other than a~~ level one facility. This may include treatment or services whereby the person resides in a residential behavioral health facility, their private residence or home, camps or other nontraditional settings, or self-describes as currently experiencing houselessness.

(5) Provision of medical services for a person under civil commitment. The superintendent of the~~a~~ state hospital, the treating LIP at a community hospital, or the director may transfer a person under civil commitment to a ~~general~~ community hospital, or transfer a person under civil commitment from a psychiatry unit~~ic ward~~ to a medical ~~ward~~ unit for medical care:

(a) The treating LIP shall only provide medical care with the consent of the person under civil commitment in accordance with OAR 309-033-0600 through 309-033-0650;

(b) The superintendent or treating LIP shall transfer a person under civil commitment to a community~~general~~ hospital for medical services on a pass or discharge the person from the state hospital when it is determined that the person will not return to the state hospital within a reasonable length of time, or that discharge is clinically appropriate and is required for the person to have access to third-party insurance benefits;

(c) The treating LIP shall immediately notify the director that a person was transferred to another hospital for medical care under this subsection.

Statutory/Other Authority: ORS 413.042, 426.060, 426.385 & 430.205 - 430.210
Statutes/Other Implemented: ORS 426.005 - 426.395
History:
BHS 9-2023, amend filed 04/04/2023, effective 04/07/2023
BHS 17-2022, temporary amend filed 10/14/2022, effective 10/14/2022 through 04/11/2023
MHS 5-2009, f. & cert. ef. 12-17-09
MHD 6-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 309-200-0080

Rulemaking Action: Amend
Brief Summary of rule changes: Clarification of processes and procedures for outpatient commitment and trial visits
Rule number: 309-033-0280
Rule title: Procedures for Persons under Civil Commitment and on Outpatient Commitment or Trial Visit
Full rule text in tracked changes:

(1) Outpatient commitment. At the time of the civil commitment hearing the director may place a person under civil commitment on an outpatient commitment if adequate treatment services are available ~~in the county~~.

(a) A director may place a person on outpatient commitment who meets criteria for civil commitment and who also has professional or natural supports in the community that are willing and available to assist the person in adhering to the conditions of placement.

(b) The director of the county of commitment shall establish the initial conditions of placement for a person on outpatient commitment in accordance with OAR 309-033-0282, including enrolling the person in services. Thereafter, the director of the county of placement may modify the conditions without a hearing in accordance with OAR 309-033-0280(4)(a).

(c) The director of the county of commitment shall be responsible for monitoring the provision of care for a person on outpatient commitment, including documenting in the person's clinical record the person's progress toward discharge of the outpatient commitment.

(2) Trial visit. A director may, upon approval of the director of the county of placement, grant a trial visit to any person under civil commitment during a period of community inpatient treatment. While it may be clinically advisable, the director is not required to obtain the consent or signature of the committed person.

(a) A trial visit shall not exceed the time remaining in the period of civil commitment, unless otherwise recommitted in accordance with ORS 426.307;

(b) The director of the county of placement, unless otherwise determined in accordance with ORS 426.278, shall be responsible for monitoring the provision of care for persons on trial visit, including documenting in the person's clinical record progress toward successful discharge of the civil commitment.

(3) Nonadherence to conditions of placement. The director shall evaluate any complaints or concerns received from any person regarding the behavior or treatment of a person on a community-based civil commitment. A director may petition the court for a revocation hearing if the person who is placed on outpatient commitment or trial visit is unable to meet the conditions as set.

(4) Modifications to the conditions of placement. In accordance with ORS 426.127 and 426.273, the director of the county of placement shall be responsible for documenting in the person's clinical record any modifications to the conditions, and reasons for such changes, and the distribution of revised conditions of placement as described in ORS 426.278.

(a) Modifications to the conditions of placement that are more restrictive require a revocation hearing before a judge before being adopted. The court maintaining jurisdiction shall be notified of the request for revocation hearing by:

(A) For outpatient commitments, the director of the county of residence shall provide notification.

(B) For trial visits, the director of the county of placement shall provide notification.

(b) The notice shall have

(5) Distribution of the conditions of placement. When a person under civil commitment is placed on outpatient commitment or trial visit, the following persons shall receive a copy of any initial conditions of placement and any subsequent modified conditions of placement:

(a) The person under civil commitment;

(b) The director of the county of placement where the person is to receive nonhospital or outpatient care;

(c) The director of any facility, program, service, or other provider who is designated to provide treatment;

(d) The court in the county of commitment; and

(e) The court in the county of placement, if different than the county of commitment.

(6) Transfer of trial visit or outpatient commitment to another county. The director may transfer a person on trial visit or outpatient commitment to another county only if the director for the county where the person will reside agrees to accept and provide for monitoring of the trial visit or outpatient commitment:

(A) The director of the county where the person currently resides shall provide the director of the county where the person will reside a copy of the current conditions of placement for the person on trial visit or outpatient commitment;

(B) The director of the transferring county of placement shall make every reasonable effort to enroll the person in available services prior to the transfer. The director of the transferring county of placement shall modify the conditions of placement to accommodate any necessary changes except those that are more restrictive requiring a hearing and distribute the modified conditions as required in Section 5 of this rule.

(C) Immediately upon accepting the trial visit or outpatient commitment and should the person require it, the director of the county where the person will reside shall enroll the person in available treatment services and shall make any modifications to the conditions of placement as necessary except those that are more restrictive requiring a hearing and distribute the modified conditions of placement as required under Section 5 of this rule.

~~The director shall be responsible for:~~

~~(a) Enrolling the person under civil commitment in treatment services and assuring that the person has an opportunity to participate in the development of the treatment plan;~~

~~(b) Distributing the conditions of placement as pursuant to ORS 426.278 and OAR 309-033-0280 below;~~

~~(c) Monitoring and documenting the provision and consumption of services which fulfill the conditions set for the outpatient commitment;~~

~~(d) Petitioning the court for a revocation hearing if the best interests of the person under civil commitment require a modification in the conditions of placement for a treatment option which is more restrictive;~~

~~(e) With the participation of the person under civil commitment, changing the conditions to less restrictive conditions, if appropriate; and~~

~~(f) Documenting in the clinical record any conditions of placement requiring modification by means of a report which:~~

~~(A) Documents the need for a change in the conditions of outpatient commitment;~~

~~(B) Sets new conditions of civil commitment;~~

~~(C) Describes the reasons for the new conditions;~~

(D) Is signed by the person under civil commitment and the mental health professional assigned to the case. If the person under civil commitment will not sign or is otherwise unable to sign the new conditions of placement, such fact shall be documented in the report; and

(E) Documents that a copy of the changes with the reasons for the changes was distributed to appropriate persons described in ORS 426.278 and OAR 309-033-0280.

(2) Trial visit. A director may, upon approval of the director of the county of placement, grant a trial visit to any person under civil commitment during a period of community inpatient treatment. While it may be clinically advisable, the director is not required to obtain the consent or signature of the committed person.:

(a) Trial visit of a person under civil commitment shall not exceed the time remaining in the period of civil commitment;

(b) Conditions for trial visit shall include designation of a facility, hospital, program, service, or other provider to provide care or treatment;

(c) The director shall place the person on trial visit in accordance with OAR 309-033-0290;

(d) The director shall evaluate any complaints received from any person concerning the behavior or treatment of a person on trial visit. The director shall document the results of the evaluation in the clinical record;

(e) Modification of the conditions of trial visit. The director may modify the conditions of placement for trial visit:

(A) Any modification shall not include a treatment option which is more restrictive than the current conditions of placement;

(B) The director shall petition the court for a revocation hearing if the best interests of the person under civil commitment require a modification in the conditions of placement for a treatment option which is more restrictive;

(C) The director shall document in the clinical record any conditions of placement requiring modification by means of a report which:

(i) Documents the need for a change in the conditions of the trial visit;

(ii) Sets new conditions of the trial visit;

(iii) Describes the reasons for the new conditions;

(iv) Is signed by the person under civil commitment and the mental health professional assigned to the case, or, if the person under civil commitment will not sign the new conditions of placement or is otherwise unable to sign, such fact shall be documented in the clinical record; and

(v) Documents that a copy of the changes and the reasons for the changes was distributed to appropriate persons provided under ORS 426.278 and OAR 309-033-0280.

(f) Transfer of trial visit to another county. The director may transfer a person on trial visit to another county only if the director for the county where the person will reside agrees to accept the trial visit:

(A) The director of the county where the person currently resides shall provide the director of the county where the person will reside a copy of the current treatment plan for the person on trial visit;

(B) Immediately upon accepting the trial visit the director of the county where the person will reside shall enroll the person on trial visit in treatment services and shall make any modifications to the trial visit conditions as necessary and distribute the modified conditions of placement as required under OAR 309-033-0280.

~~(3) Distribution of the conditions of placement. When a person under civil commitment is placed on conditional release, outpatient commitment, or trial visit, or when the conditions of placement are modified in any manner, the current conditions of placement shall be distributed by the director to the following persons, pursuant to ORS 426.278:~~

~~(a) The person under civil commitment;~~

~~(b) The director of the county in which the person under civil commitment is to receive hospital, nonhospital, or outpatient treatment;~~

~~(c) The administrator of any facility, hospital, program, service, or other provider designated to provide care or treatment;~~

~~(d) The current court of commitment; and~~

~~(e) The appropriate court of the county in which the person under civil commitment lives during the civil commitment period if the person is living in a different county than the county of the court that made the current civil commitment.~~

Statutory/Other Authority: ORS 413.042, 426.127, 426.273 & 426.278
Statutes/Other Implemented: ORS 426.005 - 426.395

Rulemaking Action: Add
Brief Summary of rule changes: Establishes standards for conditions of placement and monitoring role
Rule number: 309-033-0282
Rule title: Establishing and Monitoring Conditions of Placement
Full rule text in tracked changes:

Establishing and Monitoring Conditions of Placement

(1) The conditions of placement serve as the objective and legal civil commitment service goals, and not clinical treatment goals. For all community-based civil commitments, the conditions of placement shall be established prior to the person's release from the more restrictive setting.

(a) The initial conditions of placement shall be established by the director of the county of commitment. Any subsequent changes to the conditions of placement shall be managed by the director of the county of placement.

(b) The conditions of placement shall include at minimum:

(A) Where the person is to physically reside, and the person's agreement to cooperate with parameters of the living arrangement as applicable. Houselessness may be sufficient for residence;

(B) The identified monitor's name, credential(s), and contact information, including email address and phone number.

(C) For outpatient commitment, the designation of a facility, program, or service where the person is to receive care, including contact information. Facilities, programs, and services providing mental health treatment shall be designated in accordance with OAR 309-033-0270(4). At least one of the following professional supports shall be identified in the conditions of placement:

(i) The identified and assigned counselor, therapist, or psychiatrist the person is to see for treatment including the time, date, and location, if different than in section 1(b)(A)(iii) of this rule number; or

(ii) The identified and assigned care coordinator, case manager, or outreach worker who maintains a therapeutic or supportive relationship with the person and assists the person with the following tasks, but not exclusively the following tasks: benefits coordination, ensuring housing needs are met, securing support in meeting instrumental activities of daily living (I/ADLs), money management, and meeting other identified needs.

(D) For trial visit, pursuant to ORS 426.273(2), outpatient care is not required to be a condition of placement. Should outpatient care be a condition of placement, Section C of this rule shall apply to the trial visit conditions of placement.

(E) A list of activities, behaviors, and tasks that the person on community-based placement shall be expected to adhere to, which may include but are not limited to:

(i) Mental health treatment and counseling services;

(ii) Co-occurring disorder or substance use disorder treatment services or supports;

(iii) Residential treatment services;

(iv) Medication management;

(v) Case management and care coordination; and

(vi) Skills training.

(c) The director establishing the conditions of placement shall make reasonable efforts to obtain a release of information signed by the person under civil commitment that authorizes the sharing and exchange of the person's protected health

information (PHI), including mental health and substance use authorizations, between all parties associated with the conditions of placement. Any sharing or exchange of the person's PHI shall be for care coordination purposes.

(d) Conditions of placement shall be distributed in accordance with ORS 426.278.

(2) Monitors shall be employed by a Community Mental Health Program (CMHP), either directly or by contract, and shall only monitor community-based civil commitments that the employing CMHP is responsible for notifying the court of nonadherence and submitting requests for revocation hearing.

(a) Qualifications. A monitor shall be certified by the Authority at minimum as a Qualified Mental Health Associate (QMHA), unless otherwise provided for by OAR 309-033-0225, or be actively working toward the QMHA credential as verified by the CMHP director.

(A) While not required to be a certified mental health investigator, a monitor shall complete the mental health investigator training as provided by the Division. The CMHP shall retain the certificate of completion in the monitor's personnel file.

(B) A monitor shall not also be the identified professional support in OAR 309-033-0282(1)(b)(D), the mental health investigator who completed the investigation report entered into evidence to establish this period of civil commitment, or an examiner who completed an examination report provided to the court which ultimately placed this person under civil commitment.

(b) Monitoring tasks. A monitor shall not provide clinical services. The role provides non-clinical support to the person in fulfilling the legal components of the conditions of placement and monitors the provision of outpatient care by:

(A) Maintaining regular, consistent contact with its caseload via direct contacts. A direct contact is considered a phone call or in-person visit with the person under civil commitment. Direct contacts do not include those with legal guardians, authorized representatives, or other surrogate decision makers.

(B) Regular indirect contact to obtain information on the person's progress. An indirect contact is considered any communication with a person other than the person placed under civil commitment and that is related to the person's progress. Indirect contacts may include but not be limited to medical and behavioral health providers, prescribers, counselors, case managers, family members, friends, law enforcement.

(C) The monitor shall observe and document the person's current presentation and, as qualified, mental status at each contact and document visit summary in the CMHP clinical record. Depending on assessment of mental status, the monitor may recommend to the director that a civil commitment be discharged if the monitor believes the person no longer meets criteria for civil commitment and does not need further monitoring and supports in the community, or that a community-based civil commitment be revoked if the monitor determines there has been nonadherence to the conditions of placement.

(1) A monitor shall act within scope of their training and capacity. Should a monitor not meet qualifications as a behavioral health clinician as defined in ORS 414.025 and believe the person's mental status has altered with significance, the monitor shall request that a behavioral health clinician as defined in ORS 414.025 complete a mental status exam and document the visit in the person's clinical record.

Statutes or Other Authority:
Statutes or Other Implemented:

Rulemaking Action: Amend
Brief Summary of rule changes: Clarifies CMHP responsibilities for placement of persons under civil commitment and submitting the placement order
Rule number: 309-033-0290
Rule title: Placement of Persons under Civil Commitment
Full rule text in tracked changes:

(1) Placement authority. The Authority, pursuant to ORS 426.060, delegates the responsibility for the placement of a person under civil commitment to the director of the county of commitment:

(a) The director, in consultation with the appropriate administrator, may place or transfer placement of a person under civil commitment to any facility or program approved by the Authority which, in the opinion of the director, will appropriately meet the mental health needs of the person under civil commitment and is consistent with applicable rules and statutes;

(b) Pursuant to ORS 426.300, the director of the county of placement may discharge a person from civil commitment by notifying, in writing, the court having jurisdiction, when voluntary status is in the best interest of the person, or if the director determines the person is no longer a person with mental illness defined by ORS 426.005;

(c) Placement outside the county of residence. The director of the county of commitment may place the person under civil commitment at a facility in a county other than the county of residence or county of commitment if the director determines that such placement is in the best interest of the person under civil commitment;

(d) Placement at ~~a~~ the state hospital. The director of the county of commitment shall only place a person under civil commitment in ~~a~~the state hospital with the consent of the superintendent.

(A) The director may divert a person from state hospital admission by seeking placement for the person in a residential facility operating a Post-Acute Intermediate Treatment Services (PAITS) program.

(2) Placement procedure. The director of the county of commitment shall make the initial placement in writing immediately upon the civil commitment of a person by the court or at the time the person under civil commitment is transferred to another placement during the civil commitment period. The director shall:

(a) Retain an original placement order, as provided by the Division, on file, in paper or electronic format, in safe keeping for seven years;

(b) Deliver a signed original copy, in paper or electronic format, of the placement order to the person under civil commitment prior to placement;

(c) Enter into the Division's current electronic data systems a copy of the director's written placement order, and information about the person under civil commitment including:

(A) Name and any known aliases;

(B) Date of birth;

(C) ~~Residential address~~The physical location where the person can be found while under civil commitment. The physical location may be an address or description for those without an address; ~~or description of physical location if there is no residential address;~~

(xx) If new placement is at a facility, type of facility transferring from and transferring to.

(D) Address of the facility, hospital, ~~,~~ or program where the person is placed for treatment, if different from ~~residence~~physical location;

(E) Name and telephone number of the administrator of the hospital, facility, or program providing the person's treatment; and

(F) Any other data as requested by the Division.

(d) Should the Division's current electronic data system(s) be unavailable to upload and communicate the written placement order, within three business days the director shall submit a copy of the placement order to the Division by email at civil.commitment@odhsoha.oregon.gov;

(e) Petition for transfer of jurisdiction when placement is outside the county of commitment. Should a person be placed outside the county that ordered the current period of civil commitment, ~~T~~the director of the ~~transferring~~ current county of commitment shall petition its court to transfer jurisdiction to the court in the county where the person is to reside, pursuant to ORS 426.275.

(3) Right to ~~A~~appeal ~~of~~ a placement ~~procedure~~. At any time during the period of civil commitment, a person under civil commitment may appeal to the Authority for a change in placement made by a director. The Division shall, in addition to the person under civil commitment, accept completed and submitted appeals from advocates; a person's legal representation, authorized healthcare representatives; a person's social worker or caseworker; and others who submit the appeal on behalf of the person under civil commitment and with the person's documented consent.

(a) How to make an appeal. The person under civil commitment shall make the appeal in writing and shall include the following information in the appeal:

(A) A statement that the person under civil commitment appeals the current placement;

(B) The reason(s) the person under civil commitment believes the current placement is inappropriate; and

(C) The proposed alternate placement and the reasons the person under civil commitment is requesting the alternate placement.

(b) Appeal of a placement. When an appeal to a placement has been made, the Authority shall determine the placement for the person under civil commitment and notify the person under civil commitment of the placement decision, in writing or verbally, within ~~five~~ ten judicial days of the receipt of the written appeal. The Authority's determination shall be final:

(A) In determining an appealed placement, the Authority:

(i) Shall review the written appeal;

(ii) Shall contact the director making the placement, and consider the director's reason(s) for making the placement;

(iii) Shall consider the opinion of the person's treating licensed independent practitioner (LIP);

(iv) May require the director to submit a written statement which gives the reason(s) for the placement;

(v) May consider the consultation or opinion of any person that the Authority believes has knowledge relevant to the case; and

(vi) Shall consider whether the person has been accepted at the person's preferred placement.

(B) The Authority shall consider the following criteria in making a determination of an appealed placement:

(i) The best interests of the person under civil commitment;

(ii) The safety of the person and the community; and

(iii) The availability of the least restrictive, most integrated setting depending on available resources.

Statutory/Other Authority: ORS 413.042 & 426.060
Statutes/Other Implemented: ORS 426.005 - 426.395

Rulemaking Action: Amend
Brief Summary of rule changes: Clarifies transfers to higher levels of care
Rule number: 309-033-0300
Rule title: Transfers Between Classes of Facilities
Full rule text in tracked changes:

(1) Transfers between classes of facilities. The director may transfer a person under civil commitment from one class of facility to another in the same class or in a less restrictive class as provided by ORS 426.060. However, the director shall transfer a person under civil commitment who has voluntarily agreed to placement at the facility only with the written consent of the person. The director shall transfer persons under civil commitment as provided by OAR 309-033-0400 through 309-033-0440 and OAR 309-033-0290. The director shall modify the conditions of trial visit to reflect the change of placement and shall notify the following persons of the transfer:

(a) The person under civil commitment;

(b) The court in the county where the person was civilly committed;

(c) The court in the county where the person is to be placed;

(d) The director in the county where the person is to reside;

(e) The administrator of the facility designated to provide care or treatment; and

(f) Any other provider designated to provide care or treatment.

(2) Transfers restricted by rule. The director may transfer a person under civil commitment from a facility of one class to another facility of a same class or lower class by:

(a) Placing the person under civil commitment at the new facility; and

(b) Modifying the person's civil commitment status as follows:

(A) Persons transferred to a Class 2 or Class 3 facility. When the director transfers a person under civil commitment to a Class 2 or Class 3 facility, the director shall place the person on trial visit as described in~~(see~~ OAR 309-033-0290~~)~~;

(B) Transfers between Class 1 hospitals or facilities. The director shall transfer a person between Class 1 hospitals or facilities without placing the person on trial visit; or

(C) Transfer to any facility and discharged from civil commitment. When the director determines a person under civil commitment is no longer a person with mental illness as defined by ORS 426.005, or the person agrees to voluntary treatment and does so in good faith, the director of the county of placement shall discharge the person from civil commitment pursuant to OAR 309-033-0330 and enroll the person in services voluntarily at the receiving facility.

(3) Transfers from a facility of one class to a facility of a more restrictive class:

(a) Involuntary transfers of persons under civil commitment. The director shall transfer a person who is on trial visit to a facility of a more restrictive class only:

(A) By revocation as ordered by~~of~~ the court after a hearing, pursuant to ORS 426.275; or

(B) Initiate involuntary procedures as provided in OAR 309-033-0300(3)(c) and as provided by ORS 426.233.

(b) Voluntary transfers of persons on trial visit. The director may transfer a person who is on trial visit to a facility of a more restrictive class with the person's consent. However, if the person revokes his/her consent to the current more restrictive placement and requests to be placed at another facility of a less restrictive class, as soon as reasonably possible the director shall:

(A) Transfer the person to a facility where the person consents to receive services; or

(B) Initiate involuntary procedures as provided in this paragraph and by ORS 426.233.

(c) Emergency transfers of persons on trial visit and outpatient commitment. As provided by ORS 426.233, the director may transfer a person who is on ~~trial visit~~ a community-based civil commitment to a hospital or nonhospital facility approved by the Division when the director has probable cause to believe the person is dangerous to self or others, or is unable to provide for basic personal needs that are necessary to avoid serious physical harm in the near future, and is not receiving ~~the~~ such care ~~that~~as is necessary ~~for health and safety, and is in need of care, custody or treatment for mental illness~~to avoid such harm. Should the monitor recommend revocation, the director shall proceed as described in OAR 309-033-0320(3). ~~Upon the recommendation of the investigator, the director shall request~~

~~the court to revoke the person's trial visit or recertify the person for continued civil commitment at a more restrictive facility as provided by ORS 426.275.~~

(4) Authority to retake persons. A Class 1 or Class 2 facility shall immediately notify a peace officer and the Division of any person who has left the facility without lawful authority and shall immediately request the assistance of a peace officer(s) in retaking and returning the person to a Division-approved hospital or facility. The director shall show the peace officer a copy of the order of civil commitment.

Statutory/Other Authority: ORS 413.042, 426.060, 426.223, 426.233, 426.273, 426.275 & 426.278
Statutes/Other Implemented: ORS 426.005 - 426.395
History:
BHS 9-2023, amend filed 04/04/2023, effective 04/07/2023
MHD 6-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 309-200-0110

Rulemaking Action: Amend
Brief Summary of rule changes: Updates processes and expectations related to revocations
Rule number: 309-033-0320
Rule title: Revocation of Conditional Release, Outpatient Commitment or Trial Visit
Full rule text in tracked changes:

(1) Conditional release. A caregiver appointed by the court to care for a person under civil commitment while on conditional release is responsible for reporting to the court any violation of the conditions of placement. If a person on conditional release, whose conditions of placement include any service agreed to be provided by a Community Mental Health Program (CMHP), violates the conditions of conditional release, the director shall include in the clinical record a revocation report which documents the following:

(a) The person's ~~noncompliance~~ nonadherence to~~with~~ those conditions of placement that include services provided by the CMHP;

(b) Efforts by the CMHP to inform the caregiver of the ~~noncompliance~~ nonadherence and the caregiver's response to these efforts;

(c) Requests by the caregiver for the CMHP to assist in obtaining compliance from the person on conditional release, or in notifying the court of the person's ~~failure to comply~~nonadherence to ~~with~~ the conditions of placement, and the CMHP response to the requests for assistance;

(d) Documentation of the disposition made by the court, if the caregiver submits notification to the court; and

(e) The date the person was transported to a~~n~~ more restrictive~~inpatient~~ facility, and the name of the facility, if appropriate.

(2) Outpatient commitment and trial visit. A monitor may request that a person's community-based civil commitment be revoked due to nonadherence to the conditions of placement. Nonadherence occurs when a person:

(a) does not complete any one or more condition as agreed upon at the onset of the community-based placement;

(b) is not receptive to one or more attempts at improvement plans to remedy missed conditions;

(c) manifests a decompensated mental status and the monitor has good cause to believe the person will quickly become a danger to self or others or be unable to provide for basic needs without more intensive clinical intervention; or

(d) is, in good faith, determined to be better served by a placement that is in a more restrictive setting.

(3) Intent to revoke due to nonadherence. For persons on outpatient commitment or trial visit, ~~I~~the director or designee is responsible for reporting to the court any ~~violation of the~~nonadherence to the conditions of placement. ~~for persons on outpatient commitment or trial visit.~~ For persons on outpatient commitment or trial visit and for whom revocation will be requested, the director or designee shall: ~~include in the clinical record a revocation report which includes the following:~~

(a) Provide notice to the court of intent to revoke by submitting a request for revocation hearing. Upon receipt of the request, the judge may issue a warrant of detention for the person under civil commitment to remain at a designated facility following the LIP evaluation; and

(b) Provide the person with written and verbal notice of intent to revoke in accordance with OAR 309-033-0300. The notice shall include:

(i) A statement of the person's right to legal representation for the revocation hearing;

(ii) The name and email address of the monitor who determined it was in the person's best interest to seek revocation;

(iii) The individual condition(s) of placement to which the person is alleged to have been nonadherent and is serving as the monitor's grounds to seek revocation; and

(iv) A summary of any effort(s) to resolve the concern in the community and the person's response(s) to the intervention(s).

(c) Submit to the court:

(A) A request for revocation hearing; and

(B) A copy of the conditions of placement.

(c) Include in the clinical record a revocation report which includes the following:

(Aa) Documentation of the person's noncompliance with the conditions of placement;

(Bb) Documentation of efforts from all parties attempting to obtain compliance adherence from the person under civil commitment and the response of the person to these efforts;

(Cc) A copy of the notification request for revocation hearing submitted to the court as notification of the person's failure to comply with nonadherence to the conditions of placement;

(Dd) Documentation of the disposition made by the court;

(Ee) Documentation of the distribution of any modified conditions of placement or disposition placing the person in inpatient treatmenta higher level of care to all parties originally receiving copies of the conditions of placement; and

(Ff) Date the person was transported to an inpatient facilitya higher level of care, and the name of the facility, if appropriate.

Statutory/Other Authority: ORS 413.042 & 426.275
Statutes/Other Implemented: ORS 426.005 - 426.395
History:
BHS 9-2023, amend filed 04/04/2023, effective 04/07/2023
MHD 6-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 309-200-0130

Rulemaking Action: Amend
Brief Summary of rule changes: Adds data reporting requirements
Rule number: 309-033-0530
Rule title: Approval of Hospitals and Nonhospital Facilitites to Provide Services to Persons under Civil Commitment and to Person in Custody and on Diversion
Full rule text in tracked changes:

This section establishes rules for approval of hospital and nonhospital facilities which provide service to a person under civil commitment or to a person in custody or on diversion.

(1) Approved hospitals and other facilities. Only hospitals and nonhospital facilities, approved by the Division under this rule, shall provide care and treatment services for persons under civil commitment or for persons in custody or on diversion.

(a) Data reporting. Hospital facilities, nonhospital regional acute care psychiatric facilities, and community mental health programs (CMHPs) approved to provide services to individuals placed under civil commitment for care, custody, and treatment shall complete, within 24 hours of hospital admission or discharge, the appropriate reporting requirements related to care for persons under civil commitment as indicated in:

(A) The County Financial Assistance Agreement: and

(B) OAR 309-032-0870.

(2) Application for approval. Approval of hospitals or nonhospital facilities shall be accomplished by submission of a letter of application pursuant to OAR 309-008-0400. If approved, a certificate pursuant to OAR 309-008-0500 will be issued to the hospital or nonhospital facility to provide such services. This approval shall be reviewed on a biennial basis subject to application of the hospital or other facility and/or review by the Division.

(3) Requirements for approval. In undertaking review of the hospital or nonhospital facility for approval, the Division shall be satisfied that the hospital or nonhospital facility meets one of the following requirements:

(a) Approval to provide seclusion and restraint to persons under civil commitment and to persons in custody and on diversion. The Division shall approve, without further requirement, hospitals and nonhospital facilities currently approved under OAR 309-033-0700 through 309-033-0740;

(b) Requirements for facilities not approved to provide seclusion and restraint. The Division shall approve a nonhospital facility to serve persons under civil commitment and persons in custody and on diversion if the nonhospital facility is certified as a secure residential facility under Division rules and the nonhospital facility has the following:

(A) Written policies and procedures in place which assure that:

(i) The facility shall not admit a person who may require seclusion or physical restraint.

(ii) A person who develops the need for seclusion and restraint is immediately removed to a hospital or nonhospital facility approved under OAR 309-033-0700 through 309-033-0740..

(iii) Each person admitted to the facility has a Licensed Independent Practitioner (LIP) who is responsible for treating the person during the person's stay at the facility and who examines the person within 24 hours of the person's admission to the facility.

(iv) A staff person shall provide direct care for consumers only when that staff person is trained in the curriculum approved by the LIP. The staff shall receive the training within the last six months prior to providing direct consumer care.

(v) A staff person shall participate in the training approved by the LIP quarterly.

(B) A LIP, who is employed by the facility or has a contract with the facility, to provide medical oversight of admission policies and procedures, and staff training;

(C) A staff training curriculum which is approved by the LIP and includes:

(i) Criteria for the admission of a person who can safely be served by the nonhospital facility;

(ii) Recognition of indicators of violence or assault and criteria for the transfer of person to a more secure facility;

(iii) Indicators of medical problems, identification of medication side effects, and indicators of medical problems and medical crisis; and

(iv) Management of aggressive behavior and de-escalation techniques.

(D) Two qualified mental health associates who are available on-site 24 hours-a-day, seven days-a-week;

(E) Alarmed doors and windows which have been approved by the Division;

(F) A written agreement with a law enforcement agency to respond to emergencies that provides:

(i) Emergency response time within 15 minutes of the nonhospital facility's request;

(ii) Agreement by the law enforcement agency to retake a person who elopes and to return the person to the nonhospital facility or remove the person to a hospital or nonhospital facility approved under OAR 309-033-0700 through 309-033-0740, as directed by the administrator of the nonhospital facility.

(G) Documentation of fire marshal approval to operate as a secure facility.

Statutory/Other Authority: ORS 413.042, 426.228, 426.232, 426.233 & 426.236
Statutes/Other Implemented: ORS 426.005 - 426.395

Rulemaking Action: Amend
Brief Summary of rule changes: Updates custody and release language for LIP
Rule number: 309-033-0550
Rule title: Standards for the Approval of Hospitals Detaining Persons in Custody Pending Transport to an Approved Holding Hospital or Nonhospital Facility
Full rule text in tracked changes:

(1) Approved hospitals. Only hospitals approved by the Division under this rule may detain a person pending transport pursuant to the provisions of ORS 426.231. A hospital approved under this rule may transport the person only to a hospital or nonhospital facility approved under OAR 309-033-0530. Hospitals approved under OAR 309-033-0530 are also approved under this rule to detain a person pending transport and may transport a person to another hospital or nonhospital facility approved under OAR 309-033-0530.

(2) Application for approval. Approval of hospitals shall be accomplished by submission of a letter of application in accordance with administrative rules on letters of approval. If approved, a certificate of approval will be issued to the hospital to provide such services. This approval shall be renewed on a biennial basis subject to the application of the hospital or review by the Division.

(3) Requirements for approval. The director in the county in which the hospital is located shall submit a letter of recommendation for approval on behalf of the hospital. The letter of recommendation shall clearly state that the director and the hospital have a written agreement which includes the following:

(a) The procedures to be followed when a person is detained or transported to another hospital or nonhospital facility, with the parties responsible for performing the procedures clearly identified. The procedures shall state whether the hospital is required to give notice to the director prior to the release of the person;

(b) The party or parties responsible for transporting the person to another hospital or nonhospital facility and the means through which such transportation is initiated and authorized;

(c) The services to be provided by the hospital when a person is detained and transported to another hospital or nonhospital facility, and the payment the hospital is to receive for these services;

(d) The hospital shall have a room which meets OAR 309-033-0720 or shall provide an attendant to provide continuous face-to-face monitoring of the person.

(4) Responsibilities of the Licensed Independent Practitioner (LIP). The LIP shall complete a face-to-face examination of the person. Once the LIP determines that the person is dangerous to self or any other person and in need of emergency care or treatment for mental illness, the LIP shall:

(a) Assure the detention of the person in safe and humane quarters for no longer than 12 hours;

(b) Assure that the person is monitored face-to-face every 15 minutes;

(c) Consult with a LIP who has admitting privileges at a receiving hospital or nonhospital facility approved by the Division to determine that the receiving LIP:

(A) Agrees that the person appears to be dangerous to self or any other person; and

(B) Consents to receive the person for further evaluation for involuntary emergency care and treatment for mental illness.

(d) If the person is to be sent to the receiving hospital or nonhospital facility, complete a written statement that states:

(A) The LIP has examined the person within the preceding 12 hours;

(B) The reasons the LIP has found the person to be dangerous to self or any other person and is in need of emergency care or treatment for mental illness; and

(C) The name of the admitting LIP at the receiving hospital or nonhospital facility who has agreed to transporting the person for further evaluation and possible admission.

(e) Retain a copy of the written statement in the person's clinical record. The original written statement shall accompany the person to the receiving hospital and shall serve as authorization for transport.

(5) Release ~~when person is no longer dangerous.~~of detained person awaiting transport. If the LIP at the hospital where the person is detained and is awaiting transport believes the person is no longer dangerous to self or any other person, then the LIP shall release the person as soon as possible. If the LIP cannot locate a receiving hospital where a LIP agrees to receive the person for evaluation, then either:

(a) T~~t~~he person shall be released within twelve hours of the time the person was originally detained.~~;~~; or

(b) The LIP may proceed to hold the person pursuant to ORS 426.232 should the LIP have probable cause to believe the person is a danger to self or others.

Statutory/Other Authority: ORS 413.042 & 426.231
Statutes/Other Implemented: ORS 426.005 - 426.395

Rulemaking Action: Amend
Brief Summary of rule changes: Updates language for informed consent for treatment
Rule number: 309-033-0620
Rule title: Obtaining Informed Consent to Treatment from a Person and the Administration of Significant Procedures Without the Informed Consent of a Person under Civil Commitment
Full rule text in tracked changes:

(1) Basic rule for obtaining informed consent to treatment from a person. A person or a guardian, on behalf of a legally incapacitated person, may accept or refuse any treatment or significant procedure and may withdraw at any time consent previously given to any treatment or significant procedure, unless otherwise provided for in a court or administrative order.

(2) Documentation of withdrawal of consent. Any refusal or withdrawal or withholding of consent shall be documented in the person's record.

(3) Exceptions to obtaining informed consent from a person. A director, hospital, or nonhospital facility, or other provider may not be required to obtain informed consent from a person under civil commitment or that person's legal representative.

(a) Personnel of a facility shall not administer a significant procedure to a person under civil commitment unless informed consent is obtained from or on behalf of the person in the manner prescribed in OAR 309-033-0620, except as described in OAR 309-033-0630 and OAR 309-033-0630.

(b) Consent to placement shall not be required for residential treatment admissions. Administrators of inpatient psychiatric programs and of Class 1 and Class 2 facilities are not required to obtain informed consent from a person under civil commitment or that person's legal representative prior to admission to services. Administrators shall accept prospective residents who are placed under civil commitment, and who meet admissions criteria though do not express desire to admit and who would otherwise be accepted if not for the person stating they do not want to go.

(4) Capacity of the person under civil commitment. Unless adjudicated legally incapacitated for all purposes or for the specific purpose of making treatment decisions, a person shall be presumed competent to consent to, or refuse, withhold, or withdraw consent to significant procedures.

(a) A Licensed Independent Practitioner (LIP) shall deem a person unable to consent to or refuse, withhold, or withdraw consent to a significant procedure only if the person currently demonstrates an inability to comprehend and weigh the risks and benefits of the proposed procedure, alternative procedures, or no treatment at all or other information disclosed pursuant to OAR 309-032-0620. Such inability is to be documented in the person's record and supported by documented statement or behavior of the person.

(b) A person under civil commitment and court ordered to the custody of the Division shall not be deemed unable to consent to or refuse, withhold, or withdraw consent to a significant procedure merely by reason of one or more of the following facts:

(A) That the person has been involuntarily placed under civil commitment to the Division;

(B) That the person has been diagnosed with a mental disorder;

(C) That the person has disagreed or now disagrees with the treating LIP's diagnosis; and

(D) That the person has disagreed or now disagrees with the treating LIP's recommendation regarding treatment.

(c) If a court has determined that a person under civil commitment is legally incapacitated with regard to medical treatment decisions, then consent shall be sought from the legal guardian or healthcare representative as defined by ORS 127.505.

(5) Procedures for obtaining informed consent and information to be given.

(a) The person from whom informed consent to a significant procedure is sought, as required by ORS 677.097, shall be given information regarding:

(A) The nature and seriousness of the person under civil commitment's mental illness or condition;

(B) The purpose and method of the significant procedure, its intended outcome and the risks and benefits of the procedure and when neuroleptic medication is prescribed, that tardive dyskinesia is a risk;

(C) Any alternatives that are reasonably available and reasonably comparable in effectiveness; and

(D) Any additional information concerning the proposed significant procedure requested by the person.

(b) The LIP intending to administer a significant procedure shall document in the person's chart that the information required in OAR 309-033-0620 was explained and that the person or guardian of a legally incapacitated person or resident explicitly consented, refused, withheld, or withdrew consent.

(6) Voluntary consent. Consent to a proposed significant procedure must be given voluntarily, free of any duress or coercion. Subject to the provisions of OAR 309-033-0640 and 309-033-0260 the decision to refuse, withhold or withdraw consent previously given shall not result in the denial of any other benefit, privilege, or service solely on the basis of refusing withholding to or withdrawing consent. A voluntary person may be discharged from the facility if offered procedures are refused.

(7) Obtaining consent with respect to legally incapacitated persons. A facility may not administer a significant procedure to a person determined legally incapacitated and who is under civil commitment without the consent of the guardian, except in the case of an emergency.

(8) Reports of progress. The person or the guardian of a person determined legally incapacitated shall, upon request, be informed of the progress of the person during administration of the significant procedure.

(9) Right to appeal. A person has the right to appeal the application of any provision of these rules as provided in the grievance policies and procedures of the facility. If the person under civil commitment is also determined to be legally incapacitated, the guardian has the right to appeal the application of any provision of these rules by using the grievance procedures.

Statutory/Other Authority: ORS 413.042 & 426.385
Statutes/Other Implemented: ORS 426.005 - 426.395

Rulemaking Action: Amend
Brief Summary of rule changes: Specifies psychiatric type of facilities
Rule number: 309-033-0720
Rule title: Application, Training and Minimum Staffing Requirements
Full rule text in tracked changes:

(1) Only the following facilities shall be certified pursuant to this rule and the procedures found OAR 309-008-0100 to 309-008-1600 to use seclusion or restraint:

(a) Community hospitals licensed by the Public Health Division;

(b) Regional acute care psychiatric facilities for adults certified by the Division pursuant to OAR 309-032-0850 through 309-032-0890; and

(c) Nonhospital facilities certified by the Division pursuant to OAR 309-033-0500 through 309-033-0550.

(2) Applications. Certification for the use of seclusion and restraints must be accomplished by submission of an application, and by the application process described in OAR 309-008-0100 to 309-008-1600. Continued certification is subject to hospital or facility reviews at frequencies determined by the Division.

(3) Requirements for Certification. In order to be certified for the use of seclusion and restraint, the Division must be satisfied that the hospital or facility meets the following requirements:

(a) Medical staffing. An adequate number of nurses, direct care staff, Licensed Independent Practitioners (LIP) or physician assistants shall be available at the hospital or facility, to provide emergency medical services which may be required. For hospitals, a letter from the chief of the medical staff or medical director of the hospital or facility, ensuring such availability, shall constitute satisfaction of this requirement. For nonhospital facilities, a written agreement with a local hospital, to provide such medical services may fulfill this requirement. When such an agreement is not possible, a written agreement with a local physician to provide such medical services may fulfill this requirement.

(b) Direct Care Staff Training. A staff person must be trained and able to demonstrate competency in the application of restraints and implementation of seclusion during the following intervals:

(A) A new staff person must be trained within the six months prior to providing direct patient care or as part of orientation; and

(B) Subsequently on a periodic basis consistent with the hospital or facility policy.

(c) Documentation in the staff personnel records must indicate the training and demonstration of competency were successfully completed.

(d) Trainer Qualifications. Individuals providing staff training must be qualified as evidenced by education, training, and experience in techniques used to address a person's behaviors.

(e) Training Curriculum. The training required for direct care staff must include:

(A) Standards for the proper use of seclusion and restraints as described in OAR 309-033-0730;

(B) Identification of medication side effects;

(C) Indicators of medical problems and medical crisis;

(D) Techniques to identify staff and patient behaviors, events, and environmental factors that may trigger circumstances that require the use of a restraint or seclusion;

(E) The use of non-physical intervention skills;

(F) Choosing the least restrictive intervention based on an individualized assessment of the person's medical, or behavioral status or condition;

(G) The safe application and use of all types of restraint or seclusion used in the hospital or facility, including training in how to recognize and respond to sign of physical or psychological distress;

(H) Clinical identification of specific behavioral changes that indicate that restraint or seclusion is no longer necessary;

(I) Monitoring the physical and psychological well-being of the patient who is restrained or secluded, including but not limited to respiratory and circulatory status, skin integrity, vital signs, and any special requirements specified by the hospital or facility policies and procedures; and

(J) The use of first aid techniques and certification in the use of cardio-pulmonary resuscitation, including periodic recertification.

Statutory/Other Authority: ORS 426.005, 426.060, 426.110(2), 426.232 & 426.236
Statutes/Other Implemented: ORS 426.005 - 426.395

Rulemaking Action: Amend
Brief Summary of rule changes: Adds language referring to Restraint/Seclusion Review Committee
Rule number: 309-033-0725
Rule title: Medical Services
Full rule text in tracked changes:

(1) A Licensed Independent Practitioner (LIP) must be available 24 hours per day, seven days per week to provide medical supervision of the services provided.

(a) In accordance with state law, those LIPs authorized to order seclusion or restraint pursuant to the facility policy, must at minimum have a working knowledge of the hospital policy regarding the use of seclusion and restraint;

(b) A LIP must examine a person admitted to the facility within 24 hours of the person's admission.

(2) At least one registered nurse must be on duty at all times.

(3) The facility must maintain a personnel file for each patient care staff which includes a written job description; the minimum level of education or training required for the position; copies of applicable licenses, certifications, or degrees granted; annual performance appraisals; a biennial, individualized staff development plan signed by the staff; documentation of CPR training; documentation of annual training and certification in managing aggressive behavior, including seclusion and restraint; and other staff development and/or skill training received.

(4) Healthcare supervisor. The facility must appoint a ~~H~~healthcare supervisor who shall review and approve policies and procedures relating to:

(a) The reporting of indicators of medical problems to a LIP; ~~and~~

(b) Curriculum for the staff training, as identified in these rules; and

(c) The Restraint/Seclusion Review Committee as described in OAR 309-033-0733, including review of its findings.~~.~~

(A) The healthcare supervisor shall make these reviews available to the Authority upon request.

Statutory/Other Authority: ORS 426.005, 426.060, 426.110(2), 426.232, 426.236 & 430.041
Statutes/Other Implemented: ORS 426.005 - 426.395

Rulemaking Action: Amend
Brief Summary of rule changes: Adds language around documentation of Restraint/Seclusion Review Committee
Rule number: 309-033-0733
Rule title: Documentation
Full rule text in tracked changes:

(1) No later than the end of their work shifts, the persons who obtained authorization and carried out the use of restraint shall document in the person's chart including but not necessarily limited to the following:

(a) The specific behavior(s) which required the intervention of seclusion or restraint;

(b) Less restrictive alternatives used before deciding seclusion or restraint was necessary;

(c) The methods of intervention used and the patient's responses to the interventions; and

(d) Findings and recommendations from the face-to-face evaluation discussed in OAR 309-033-0730(d) through (f) above.

(2) Within 24 hours after the incident resulting in the use of restraint, the treating Licensed Independent Practitioner (LIP) who ordered the intervention must review and sign the order.

(3) Each use of restraint must be reported daily to the health care supervisor.

(4) Any death that occurs while a patient is in seclusion or restraint must be reported to the Division within 24 hours of the death.

(5) Restraint/Seclusion Review Committee. Each facility must have a Restraint/Seclusion Review Committee. The committee may be one formed specifically for the purposes set forth in this rule, or the duties prescribed in this rule may be assigned to an existing committee. The purpose and duty of the Restraint/Seclusion Review Committee is to review and evaluate, at least quarterly, the appropriateness of all such interventions and ~~report~~ provide its findings to the health care supervisor in a written report:.

(A) The committee shall evaluate incidents of seclusion and restraint for alternative approaches and interventions where a resident required seclusion or restraint.

(B) In Class 1 facilities, the committee shall evaluate all incidents wherein a resident requiring restraint or seclusion was transferred to another facility for the administration of seclusion and restraint.

Statutory/Other Authority: ORS 426.005, 426.060, 426.110(2), 426.232, 426.236 & 430.041
Statutes/Other Implemented: ORS 426.005 - 426.395

Rulemaking Action: Amend
Brief Summary of rule changes: Repeal
Rule number: 309-033-0800
Rule title:
Full rule text in tracked changes:

~~(1) Purpose. These rules prescribe standards and procedures for community-based civil commitments.~~

~~(2) Statutory authority. These rules are authorized by ORS 426.241 and 413.042 and carry out the provisions of 426.241.~~

~~Statutory/Other Authority: ORS 426.005 through ORS 426.490~~
~~Statutes/Other Implemented:~~

Rulemaking Action: Amend
Brief Summary of rule changes: Updates Statement of Purpose
Rule number: 309-033-0900
Rule title: Statement of Purpose and Statutory Authority
Full rule text in tracked changes:

(1) Purpose. These rules prescribe standards and procedures relating to the investigation and examination of a person alleged to be a person with mental illness during the involuntary civil commitment process, including training, education, and certification of mental health investigators and examiners.

(2) Statutory authority. These rules are authorized by ORS 426.005–426.395 and carry out the provisions of 426.005–426.395.

Statutory/Other Authority: ORS 413.042 & 426.060 - 426.500
Statutes/Other Implemented: ORS 426.005 - 426.395

Rulemaking Action: Amend
Brief Summary of rule changes: Adds language around self harm and nonphysical violence
Rule number: 309-033-0920
Rule title: Certification of Mental Health Investigators
Full rule text in tracked changes:

(1) Investigation only by a certified investigator. Only a person certified by the Division shall conduct an investigation of a person alleged to be a person with mental illness as required by ORS 426.070(3)(c) and 426.074.

(2) Certification of a mental health investigator. The Division shall certify as a qualified mental health investigator, for three years or until such time as the Division terminates the certificate, any person who meets the following:

(a) Is recommended by a director for certification as a mental health investigator; and

(b) Is a Qualified Mental Health Provider (QMHP), or on January 1, 1988, has been employed by a Community Mental Health Program (CMHP) as an investigator for a minimum of two years; and

(c) Has established individual competence through training provided by the Division and within 6 months of the training has passed an examination conducted by the Division in the following areas:

(A) The role and duties of an investigator and the process of investigation;

(B) Oregon statutes and administrative rules relating to the civil commitment of persons with mental illness;

(C) Establishing probable cause for mental disorder;

(D) The mental status examination; and

(E) The assessment of suicidality, risk of self-harm, risk of harm to others including physical ~~and non-physical~~ violence and ~~assaultiveness,~~ homicidality, and inability to care for basic needs.

(3) Certification of a senior mental health investigator. The Division shall certify as a senior mental health investigator, for five years or until such time as the Division terminates the certificate, a person who meets the following:

(a) Is recommended by a director for certification as a senior mental health investigator;

(b) Is a QMHP;

(c) Has been certified as a mental health investigator for three years; and

(d) Has completed the training required under OAR 309-033-0920 during the six months prior to application for certification.

(4) Certification of a mental health investigator resident. The Division shall certify as a mental health investigator resident for a non-renewable period of six months, or until such time as the Division terminates the certificate, a person who meets the following:

(a) Is recommended by a director for certification as a mental health investigator;

(b) Is a QMHP;

(c) Has passed an examination conducted by the Division regarding Oregon statutes and administrative rules relating to the civil commitment of persons with mental illness; and

(d) Is supervised by a certified senior mental health investigator. The senior mental health investigator shall review each investigation conducted by the mental health investigator resident and co-sign each investigation report as evidence that the senior mental health investigator believes the report meets OAR 309-033-0940, The Investigation Report.

(5) Qualifications for recertification. The Division may recertify a mental health investigator or a senior mental health investigator who is currently employed by a CMHP, is recommended by the director for recertification and who, during the period of certification, has maintained the QMHP certification or other equivalent licensure and completed eight hours of training provided by the Division covering civil commitment statutes, administrative rules, and procedures.

(6) Residents cannot be recertified. The Division shall not recertify a mental health investigator resident.

(7) Termination of certification. The Division may terminate the certification of a mental health investigator, senior mental health investigator, or a mental health investigator resident when, in the opinion of the Authority:

(a) The person no longer can competently perform the duties required by this rule, or

(b) The person has exhibited a behavior or a pattern of behavior which violates the rights, afforded by statute, of persons being investigated.

Statutory/Other Authority: ORS 413.042 & 426.060 - 426.500
Statutes/Other Implemented: ORS 426.005 - 426.395

Rulemaking Action: Amend
Brief Summary of rule changes: Clarifies duty of the investigator
Rule number: 309-033-0930
Rule title: Investigation of Persons Alleged to Have a Mental Illness
Full rule text in tracked changes:

(1) Initiation and timelines for investigation. Upon receipt of a Notice of Mental Illness (NMI) the Community Mental Health Program (CMHP) shall conduct an investigation of the person to determine probable cause for mental disorder. The person conducting the investigation shall not be the same as the person filing the NMI.

(a) Investigation of NMIs by two persons, a county health officer, or a magistrate. At a minimum, if the person can be located, the investigator must contact the person by telephone within three judicial days of the receipt of the NMI by the director:

(A) The investigator shall complete an investigation and submit an investigation report to the circuit court within 15 days of the director's receipt of the NMI;

(B) The investigator may request an extension from the court if a treatment option less -restrictive than involuntary inpatient commitment is actively being pursued or if the person cannot be located.

(b) Investigation of persons in custody. The investigator shall investigate persons in custody in an approved hospital under ORS 426.232 or 426.033 as soon as reasonably possible but no later than one judicial day after the initiation of the detention and 24-hours prior to the hearing. Whenever feasible, the investigator shall:

(A) Make face-to-face contact with the person within 24 hours of admission to a hospital or nonhospital facility, including weekends; and

(B) Meet with the person one additional time prior to making a recommendation for the court to hold a commitment hearing.

(2) Procedures for the investigation. Only certified mental health investigators, senior mental health investigators or mental health investigator residents shall conduct an investigation of a person.

(a) While conducting an investigation, the investigator shall:

(A) Present photo identification, authorized and provided by the county mental health authority, to the person; and

(B) Explain the reason for the investigation orally and, if doing so would not endanger the investigator, in writing.

(b) Information from relatives. The investigator shall solicit information about the person from person's parents and relatives, whenever feasible.

(c) Information from the Nine Federally Recognized Tribes of Oregon. When the person is identified as an enrolled member of a federally recognized tribe in Oregon, the investigator shall solicit information from that tribe, whenever feasible.

(d) Disclosure of names. The investigator shall disclose the names of the persons filing the NMI to the person alleged to have a mental illness except when, in the opinion of the investigator, disclosure will jeopardize the safety of the persons filing the NMI. The investigator may withhold any information that is used in the investigation report, only until the investigation report is delivered to the court and others as required under ORS 426.074. The investigator may withhold any information that is not included in the investigation report if the investigator determines that release of the information would constitute a clear and immediate danger to any person (see ORS 426.370).

(e) Encourage voluntary services. The director shall attempt, as appropriate and pursuant to ORS 426. OAR 309-033-0220, to voluntarily enroll in the least restrictive community mental health services a person for whom an NMI has been filed.

(f) Clinical record required. The director shall maintain a clinical record for every person investigated under this rule. The clinical record shall document to the extent possible the following:

(A) A brief summary of the events leading to the filing of an NMI, the circumstances and events surrounding the interview of the person and the investigator's attempts to engage the person in voluntary mental health services;

(B) Identifying information about the person;

(C) A copy of the NMI;

(D) A copy of the investigation report submitted to the court;

(E) Names, addresses and telephone numbers of family, friends, relatives, or other persons who the investigator interviewed for pertinent information. This list shall include the names of the persons filing the NMI with the director; and

(F) Summary of the disposition of the case.

(g) Coordination of services. In the event the person is released or agrees to voluntary treatment, the investigator shall, in accordance with ORS 441.043 and 441.054, coordinate with ~~the CMHP~~providers for the purpose of referral and offering voluntary treatment services to the person as soon as reasonably possible.

(3) Access to clinical records. The investigator shall have access to clinical records of the person being investigated as follows:

(a) When the person is in custody. The investigator shall have access only to clinical records compiled during the hold period. Without valid consent, the investigator shall not have access to clinical records compiled as part of treatment that is provided to the person at any time outside the hold period except as provided by OAR 309-033-0930(3)(b).

(b) When the person investigated is eligible for civil commitment pursuant to ORS 426.074 or revocation pursuant to ORS 426.275. The investigator shall have access to any clinical record necessary to verify the existence of the criteria which make the person eligible for civil commitment pursuant to ORS 426.074 or revocation pursuant to ORS 426.275.

Statutory/Other Authority: ORS 413.042 & 426.060 ~~–~~ 426.500
Statutes/Other Implemented: ORS 426.005 ~~–~~ 426.395

Rulemaking Action: Amend
Brief Summary of rule changes: Clarifies content of investigator report
Rule number: 309-033-0940
Rule title: The Investigation Report
Full rule text in tracked changes:

(1) Evidence required in report. The investigator shall include in a report to the court, if relevant or available, evidence and the source of that evidence in the following areas:

(a) Evidence which describes the present illness and the course of events which led to the filing of the Notice of Mental Illness (NMI) and which occurred during the investigation of the person;

(b) Evidence to support or contradict the allegation that the person has a mental disorder;

~~(c)~~€ Evidence to support or contradict the allegation that the person is a danger to self or others or is unable to provide for basic personal needs and is not receiving such care as is necessary for health and safety; and

.(d) Evidence to support or contradict that the person has been placed under civil commitment at least twice in the last three years, and that the person is decompensating in a manner similar to that which resulted in the previous civil commitments.

(2) Documentation of manifestation of mental disorder. The evidence which describes the present illness shall include:

(a) The situation in which the person was found and the most recent behaviors displayed by the person which lead to and support the filing of an NMI;

(b) The sequence of events affecting the person during the investigation period including dates of admission, transfer or discharge from a hospital or nonhospital facility;

(c) Any change in the mental status of the person during the course of the investigation; and

(d) Attempts by the investigator to engage the person in voluntary treatment in lieu of civil commitment and their outcome.

(3) Documentation of mental disorder. Evidence to support or contradict the allegation that the person has a mental disorder shall include the results of a mental status examination and a psychosocial history.

(a) Mental status examination. A mental status examination shall review the presence of indicators of mental disorder in the following areas:

(A) Appearance. Features of the person's dress, physical condition which may indicate the presence of a mental disorder.

(B) Behavior. Features of the person's behavior, movement or rate of speech which may indicate the presence of mental disorder.

(C) Thought content. Features of the content of the person's speech such as delusions and hallucinations which may indicate the presence of a mental disorder.

(D) Thought process. Features of the person's expressed thoughts which may indicate that the person is unable to think in a clear logical fashion and which may indicate the presence of a mental disorder.

(E) Insight. Features of the person's understanding and appreciation of his/her current mental state which may indicate the presence of a mental disorder.

(F) Judgment. Features of the person's ability to make objectively safe decisions ~~judgment~~ about social situations and dangerous situations which may indicate the presence of a mental disorder.

(G) Cognitive testing. Features of the person's ability to concentrate, ability to remember recent and historical events, ability to use abstract thinking, and ability to use or remember generally known information which may indicate the presence of a mental disorder.

(H) Emotions. Features of the person's emotions, such as being inappropriate to the situation, which may indicate the presence of a mental disorder.

(b) Psychosocial History. A psychosocial history shall discuss the presence of indicators of mental disorder in the following areas:

(A) Psychiatric history:

(i) History of psychiatric or mental health treatment;

(ii) History of commitments for mental disorder including verification from the Division if available; and

(iii) Current participation in mental health treatment.

(B) Family history:

(i) Members of the person's family who have a history of psychiatric or mental health treatment;

(ii) Members of the person's family who have a history of commitment for mental disorder; or

(iii) Reports of family members who appear to have had an untreated mental disorder.

(C) ~~History of alcohol or drug abuse~~~~substance use~~Substance use history:

(i) History of mis~~ab~~using alcohol or drugs;

(ii) Behaviors which the person may have displayed during the course of the investigation, which are substantially similar to behaviors that indicate the presence of a mental disorder, that may be attributable to the use of alcohol or drugs; or

(iii) If the person appears to have a mental disorder, the effect of the person's current use of alcohol or drugs on behaviors that may indicate the presence of a mental disorder.

(D) History of a loss of function.

(E) Social function.

(F) Personal finances:

(i) Availability of financial resources to provide for basic needs such as food and shelter;

(ii) Use of financial resources to meet needs for food and shelter; or

(iii) Other features of the manner in which the person uses money which would indicate the presence of a mental disorder.

(G) Medical issues:

(i) Medical conditions that may produce behaviors which are substantially similar to behaviors that indicate the presence of a mental disorder; or

(ii) Medical conditions which contribute to the seriousness of a mental disorder which appears to be present.

(4) Documentation of dangerousness and/or inability to provide for basic needs. Evidence to support or contradict the allegation that the person is a danger to self or others, or is unable to provide for basic personal needs and is not receiving such care as is necessary for health and safety shall include the results of an assessment of dangerousness.

(a) An assessment of dangerousness to self shall consider the following areas:

(A) History of and current self-harm behaviors and the potential lethality of such behaviors;

(B~~A~~) History of thoughts, plans or attempts at suicide;

(C~~B~~) Presence of thoughts, plans or attempts at suicide;

(D~~C~~) Means and ability to carry out the plans for suicide;

(E~~D~~) The potential lethality of the plan;

(F~~E~~) The probable imminence of an attempt at suicide; and

(G~~F~~) Available support systems which may prevent the person from acting on the plan.

(b) An assessment of dangerousness to others shall consider the following areas:

(A) History of thoughts, plans, attempts or acts of assaultiveness or violence;

(B) Presence of thoughts, plans, attempts or acts of assaultiveness or violence;

(C) Means and ability to carry out the plans for assaultiveness or violence;

(D) The potential lethality of the plan;

(E) The probable imminence of an attempt at assault or violence; and

(F) Available support systems which may prevent the person from attempting an assault or an act of violence.

(c) An assessment of the person's ability to provide for basic personal needs shall consider the following areas:

(A) History of the person's ability to provide for basic personal needs;

(B) The person's current use of resources to obtain food, shelter, and health care necessary for health and safety;

(C) Behaviors which result in exposure to danger to self or others;

(D) Available support systems which may provide the person care necessary for health and safety; an~~d~~

~~€~~(E) If the person appears to lack capacity to care for self, the availability of a guardian who can assure the provision of such care.

(5) Additional report requirements. The investigation report shall also include the following:

(a) The person's consent or objection to contact with specific third parties; ~~and~~

(b) If appropriate and if available from the Division, verification of the person's eligibility for commitment under ORS 426.005(c); and

~~.~~(c) A recommendation from the investigator, should a hearing be recommended, as to whether inpatient civil commitment or community-based civil commitment is most appropriate with clinical justification.

(6) Report availability. The investigation report shall be made available to:

~~(a€)~~ T~~#~~he facility with custody of the person if the person is under civil commitment; and

(b) The Authority upon request.~~.~~

(7) Investigator's responsibilities to the circuit court. The investigator shall file the investigation report with the circuit court twenty-four hours before the hearing and shall appear at the civil commitment hearing. The investigator may not be responsible for the citation, per ORS 426.070(5)(a).

Statutory/Other Authority: ORS 413.042 ~~&~~ 426.060 - 426.500
Statutes/Other Implemented: OR~~S~~ 426.005 - 426.395

Rulemaking Action: Amend
Brief Summary of rule changes: Clarifies certification requirements for examiners
Rule number: 309-033-0950
Rule title: Certification of Mental Health Examiners
Full rule text in tracked changes:

(1) Psychiatrists exempt from certification. A psychiatrist may serve as an examiner as provided by ORS 426.110. Division certification is not necessary for psychiatrists serving as mental health examiners.

(2) Qualifications for certification of persons other than psychiatrists. The Division shall certify, as a qualified mental health examiner for three years or until such time as the Division terminates the certificate, a Qualified Mental Health Professional who meets all of the following:

(a) Has at least three years clinical experience in the diagnosis and treatment of adults with severe and persistent mental illness who primarily live with a psychotic disorder;

(b) Presents acceptable written references from two persons who have the above qualifications and can demonstrate direct knowledge of the person's qualifi~~cat€~~ions;

(c) Is recommended by a CMHP~~the~~ director to be an examiner ~~in the county~~; and

(d) Has established individual competence through training provided by the Division in the following areas:

(A) The role and duties of an examiner and the process of examination;

(B) Oregon statutes and administrative rules relating to the civil commitment of persons with ment~~al €~~illness;

(C) Establishing clear and convincing evidence for mental disorder;

(D) The mental status ex~~ami€~~nation; and

(E) The assessment of suicidality, risk of self-harm, risk of harm to others including physical violence and ~~assaultiveness,~~ homicidality, and inability to care for basic needs.

(3) Qualifications for recertification. The Division may recertify for three years, or until such time as the Division terminates the certificate of, any mental health examiner who meets the following:

(a) The examiner has been an examiner certified by the Division after July 1, 1988;

(b) The examiner has successfully maintained certification or licensure in accordance with subsections (1) and (2) of this rule, and completed eight hours of training provided by the Divison relating to civil commitment statutes, administrative rules, and procedures. ~~relating to the assessment and diagnosis of mental disorder and, changes in statutes and administrative rules relating to civil commitment; and~~

(c) The director recommends the person to be an examiner in the county.

(4) Examination. The examiner shall conduct an examination in a manner that elicits the data necessary for establishing a diagnosis and a plan for treatment. Only certified examiners shall conduct an examination of an alleged person with a mental illness.

(5) Termination of certification. The Division may terminate the certification of any mental health examiner when, in the opinion of the Division:

(a) The person no longer can competently perform the duties required by this rule; or

(b) The person has exhibited a behavior or a pattern of behavior which violates the rights, afforded by statute, of persons being investigated.

Statutory/Other Authority: ORS 413.042 & 426.060 - 426.500
Statutes/Other Implemented: ORS 426.005 - 426.395

Rulemaking Action: Amend
Brief Summary of rule changes: Clarifies standards for examiner's report to the court
Rule number: 309-033-0960
Rule title: Mental Health Examiner's Report to the Court
Full rule text in tracked changes:

(1) Examiner assessment of evidence. The examiner shall provide in a report to the court the examiner's opinion:

(a) Wwhether the evidence supports or contradicts:

(ia) The allegation that the person has a mental disorder;

(iib) The allegation that the person is a danger to self or others, or is unable to provide for basic personal needs and is not receiving such care as is necessary for health and safety; and

(iiic) That the person would cooperate with and benefit from voluntary treatment.

(b) Whether inpatient civil commitment or community-based civil commitment could serve this person with clinical justification.

(2) Mental status examination and psychosocial history. In addition to considering other evidence presented at the hearing, the examiner shall conduct a mental status examination and a psychosocial history to determine whether the person alleged to have mental illness has a mental disorder:

(a) Mental status examination. A mental status examination shall include review of the presence of indicators of mental disorder in the following areas:

(A) Appearance. Features of the person's dress, physical condition which may indicate the presence of a mental disorder.

(B) Behavior. Features of the person's behavior, movement or rate of speech which may indicate the presence of mental disorder.

(C) Thought content. Features of the content of the person's speech such as delusions and hallucinations which may indicate the presence of a mental disorder.

(D) Thought process. Features of the person's expressed thoughts which may indicate that the person is unable to think in a clear logical fashion and which may indicate the presence of a mental disorder.

(E) Insight. Features of the person's understanding and appreciation of his/her current mental state which may indicate the presence of a mental disorder.

(F) Judgment. Features of the person's ~~judgment~~ capacity to make objectively safe decisions about social situations and dangerous situations which may indicate the presence of a mental disorder.

(G) Cognitive testing. Features of the person's ability to concentrate, ability to remember recent and historical events, ability to use abstract thinking, and ability to use or remember generally known information which may indicate the presence of a mental disorder.

(H) Emotions. Features of the person's emotions, such as being inappropriate to the situation, which may indicate the presence of a mental disorder.

(b) Psychosocial history. A psychosocial history shall consider the presence of indicators of mental disorder in the following areas:

(A) Psychiatric history:

(i) History of psychiatric or mental health treatment;

(ii) History of commitments for mental disorder including verification from the Division if available; and

(iii) Current participation in mental health treatment.

(B) Family history:

(i) Members of the person's family who have a history of psychiatric or mental health treatment;

(ii) Members of the person's family who have a history of commitment for mental disorder; or

(iii) Reports of family members who appear to have had an untreated mental disorder.

(C) ~~History of substancealcohol or drug abuse~~Substance use history:

(i) History of misabusing alcohol or drugs;

(ii) Behaviors the person may have displayed during the course of the investigation which are substantially similar to behaviors that indicate the presence of a mental disorder that may be attributable to the use of alcohol or drugs; or

(iii) If the person appears to have a mental disorder, the effect of the person's current use of alcohol or drugs on behaviors that may indicate the presence of a mental disorder.

(D) History of a loss of function:

(E) Social function.

(F) Personal finances:

(i) Availability of financial resources to provide for basic needs such as food and shelter;

(ii) Use of financial resources to meet needs for food and shelter; and

(iii) Other features of the manner in which the person uses money which would indicate the presence of a mental disorder.

(G) Medical issues:

(i) Medical conditions that may produce behaviors which are substantially similar to behaviors that indicate the presence of a mental disorder; or

(ii) Medical conditions which contribute to the seriousness of a mental disorder which appears to be present.

(3) Assessment of dangerousness and ability to provide basic needs. In addition to considering other evidence presented at the hearing, the examiner shall conduct an assessment of the danger the person represents to self or others and an assessment of the person's ability to provide for basic personal needs:

(a) An assessment of dangerousness to self shall consider the following areas:

(A) History of and current self-harm behaviors and the potential lethality of such behaviors;

(B~~A~~) History of thoughts, plans or attempts at suicide;

(C~~B~~) Presence of thoughts, plans or attempts at suicide;

(~~C~~D) Means and ability to carry out the plans for suicide;

(~~D~~E) The potential lethality of the plan;

(~~E~~F) The probable imminence of an attempt at suicide; and

(~~F~~G) Available support systems which may prevent the person from acting on the plan.

(b) An assessment of dangerousness to others shall consider the following areas:

(A) History of thoughts, plans, attempts or acts of assaultiveness or violence;

(B) Presence of thoughts, plans, attempts or acts of assaultiveness or violence;

(C) Means and ability to carry out the plans for assaultiveness or violence;

(D) The potential lethality of the plan;

(E) The probable imminence of an attempt at assault or violence; and

(F) Available support systems which may prevent the person from attempting an assault or an act of violence.

(c) An assessment of the person's ability to provide for basic personal needs shall consider the following areas:

(A) History of the person's ability to provide for basic personal needs;

(B) The person's current use of resources to obtain food, shelter, and health care necessary for health and safety;

(C) Behaviors which result in exposure to danger to self or other;

(D) Available support systems which may provide the person care necessary for health and safety; and

(E) If the person appears to lack capacity to care for self, the availability of a guardian who can assure the provision of such care.

Statutory/Other Authority: ORS 413.042 & 426.060 - 426.500
Statutes/Other Implemented: ORS 426.005 - 426.395
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