

NAMI Draft Legislative Concept on Civil Commitment

Background

NAMI Oregon convened a workgroup composed of individuals and family members with lived experience, providers, judicial and legal officials, elected officials, and others to contemplate modifications to Oregon's civil commitment statutes. The goal was to find modest changes that increase the likelihood that individuals now being committed under "aid and assist" could be served in the civil system instead, thus avoiding entanglements with the criminal justice system.

The group met every three weeks from January through April. In the end, the group agreed that adding definitions to terms such as "danger to self," "danger to others," and "basic personal needs" had a better chance of successfully lowering criteria than other statutory changes.

Current statute uses these exact terms, but the law doesn't define what they mean. That's left the terms open to interpretation by the Oregon Court of Appeals, which hears challenges to commitment orders. Over the years, the court has narrowed the circumstances and acuity necessary to meet criteria for danger to self or danger to others and has a mixed record on "basic personal needs," a term added to statute in 2015.

What the Concept Does

The concept is designed to provide clarity on what key terms mean and guidance to the courts on factors to consider during a commitment hearing. While the specific statute isn't designed to inform clinicians, as a practical matter they do look to the law for guidance to determine who meets criteria for commitment.

Highlights of NAMI Oregon's concept:

- Unlike current law, we separate "danger to self" and "danger to others" into distinct categories.
- For danger to self, we include reasonable clinical judgment as part of the legal standard. To aid the courts, we include the clinician categories that patients in Emergency Departments are likely to see in Oregon.
- We added a specific time frame — 30 days — to guide the courts as to how far into the future it should look. It's an unsatisfying standard, but the group felt it gave a reasonable framework for both the courts and clinicians.
- Rather than define "basic personal needs," we added a definition for "serious physical harm" that borrows from existing statute.
- We add additional information the court may consider.

NAMI Oregon's Workgroup Continues

NAMI Oregon recognizes that a change in the law will create new pressure for services and require a simultaneous investment in facility-based care and other community-based services. A change in the law alone will only contribute to the current logjam that Oregon is experiencing.

NAMI Oregon plans to pull together another workgroup in late spring for three to four meetings to discuss what investments, at minimum, will be necessary to ensure patients under civil commitment receive the services they deserve and require to recuperate.

**NAMI Oregon Working Group on Civil Commitment
Working Draft v3**

Potential Legislative Proposal

Define “danger to others.”

- Statements or attempts to inflict serious physical harm upon another person that would place a reasonable person in fear of imminent physical harm.
- Likely to inflict serious physical harm upon another person within the next 30 days.

Define “danger to self.”

- Create standard for reasonable clinical judgment to be applied in manner similar to “reasonable person” standard in danger to others.
- Example Definition: Statements or attempts to inflict serious physical harm to self, including statements and attempts of suicide, by which a behavioral health clinician would reasonably conclude that the person is at significant risk of self-harm.
- Likely to inflict serious physical harm to self within next 30 days.
- Clinicians to be included as “behavioral health clinician”:
 - Licensed psychiatrist.
 - Licensed psychologist.
 - Licensed nurse practitioner.
 - Licensed clinical social worker.
 - Licensed professional counselor or licensed marriage and family therapist.
 - Licensed physician.
 - Licensed physician assistant.
 - An intern or resident who is working under a board-approved supervisory contract in a clinical mental health field.
 - Any other clinician whose authorized scope of practice includes mental health diagnosis and treatment.

Better define “basic personal needs.”

- Current: “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.”
- Define “serious physical harm” to mean physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ. (*ORS 161.015, Paragraph 8*)

Factors the court may consider, but is not limited to:

- Past behavior that resulted in significant physical harm to self or to another person.
- Past patterns of deterioration that contributed to the person being repeatedly hospitalized in inpatient psychiatric care.
- “At minimum, the court shall consider when assessing the relevance of the person’s past behavior how recently the past behavior occurred and the frequency and severity of the past behavior.”