



Department of Mental Health

Orders of Non-Hospitalization Procedure and Guidelines

2015

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1. STATEMENT OF PURPOSE

Orders of Non-Hospitalization (ONH) are court orders that contain conditions that a person named in the order must abide by or face the possibility of hospitalization or re-hospitalization. An ONH places a person in the Custody of the Commissioner of the Department of Mental Health, and can be issued in Family or Criminal Court by stipulation or after an evidentiary hearing. Initial ONHs are issued for a 90-day period and can be renewed for up to 12 months. An ONH can be issued upon a person's discharge from a psychiatric hospital, or an ONH can direct a person who is not in a hospital to enter or to remain in a community-based treatment in the custody of the Commissioner of the Department of Mental Health. ONHs generally have a Designated Agency (DA) or Specialized Service Agency (SSA) named as the supervising agency. An ONH is not enforceable outside the state of Vermont. An ONH can be revoked for non-compliance through a court process.

The purpose of this document is to explain what Orders of Non-Hospitalization are, what steps must be followed, and to define expectations, work processes, and roles in the management of ONHs. This manual defines a process that delineates the collaboration between the Department of Mental Health (DMH) and the Designated/Specialized Service Agencies. The goal of an ONH is to help a person live safely and successfully in the community.

An individual is on an Order of Non-Hospitalization (ONH) when the court places him or her in the care and custody of the Commissioner of the Vermont Department of Mental Health. The Commissioner of Mental Health delegates the DAs to act for the Commissioner, and to provide the necessary supports and treatment to these individuals in order to monitor adherence to the conditions of the ONH.

It is also recognized that while the statute calls for predictions of future behavior, these are notoriously hard to predict. Complicated decisions weighing in past behavior, community concerns, and current clinical status need to be factored into the decision-making process. In that spirit not every failure to meet conditions will result in a formal revocation; however, given the shared responsibility, it is also recognized that at both the DA and DMH there needs to be consultation and consideration when there is a failure to adhere to conditions.

2. AUTHORITY/STATUTE

From 18 V.S.A. § 7101. Definitions

As used in this part of this title, the following words, unless the context otherwise requires, shall have the following meanings:

... (2) "Commissioner" means the commissioner of mental health.

(3) "Custody" means safe-keeping, protection, charge, or care.

(8) "Individual" means a resident of or a person in Vermont.

(14) "Mental illness" means a substantial disorder of thought, mood, perception, orientation, or memory, any of which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life, but shall not include mental retardation.

(15) "Individual" means a resident of or person in Vermont qualified under this title for hospitalization or treatment as a mentally ill or mentally retarded individual.

(16) "A individual in need of further treatment" means:

(A) A person in need of treatment; or

(B) A individual who is receiving adequate treatment, and who, if such treatment is discontinued, presents a substantial probability that in the near future his or her condition will deteriorate and he or she will become a person in need of treatment.

(17) "A person in need of treatment" means a person who is suffering from mental illness and, as a result of that mental illness, his or her capacity to exercise self-control, judgment, or discretion in the conduct of his or her affairs and social relations is so lessened that he or she poses a danger of harm to himself, to herself, or to others:

(A) A danger of harm to others may be shown by establishing that:

(i) he or she has inflicted or attempted to inflict bodily harm on another; or

(ii) by his or her threats or actions he or she has placed others in reasonable fear of physical harm to themselves; or

(iii) by his or her actions or inactions he or she has presented a danger to persons in his or her care.

(B) A danger of harm to himself or herself may be shown by establishing that:

(i) he or she has threatened or attempted suicide or serious bodily harm; or

(ii) he or she has behaved in such a manner as to indicate that he or she is unable, without supervision and the assistance of others, to satisfy his or her need for nourishment, personal or medical care, shelter, or self-protection and safety, so that

it is probable that death, substantial physical bodily injury, serious mental deterioration, or serious physical debilitation or disease will ensue unless adequate treatment is afforded.

(23) "Vermont" means the state of Vermont.

(24) "Voluntary individual" means an individual admitted to a hospital voluntarily or an individual whose status has been changed from involuntary to voluntary.

(25) "Children and adolescents with a severe emotional disturbance" means those persons defined as such under 33 V.S.A. § 4301(3).

(26) "No refusal system" means a system of hospitals and intensive residential recovery facilities under contract with the department of mental health that provides high intensity services, in which the facilities shall admit any individual for care if the individual meets the eligibility criteria established by the Commissioner in contract.

(27) "Participating hospital" means a hospital under contract with the Department of Mental Health to participate in the no refusal system.

(28) "Successor in interest" means the mental health hospital owned and operated by the State that provides acute inpatient care and replaces the Vermont State Hospital.

(29) "Peer" means an individual who has a personal experience of living with a mental health condition or psychiatric disability.

(30) "Peer services" means support services provided by trained peers or peer-managed organizations focused on helping individuals with mental health and other co-occurring conditions to support recovery.

18 V.S.A. § 7618 ORDER; NONHOSPITALIZATION

(a) If the court finds that a treatment program other than hospitalization is adequate to meet the person's treatment needs, the court shall order the person to receive whatever treatment other than hospitalization is appropriate for a period of 90 days.

(b) If at any time during the specified period it comes to the attention of the court, either that the individual is not complying with the order, or that the alternative treatment has not been adequate to meet the individual's treatment needs, the court may, after proper hearing:

(1) Consider other alternatives, modify its original order, and direct the individual to undergo another program of alternative treatment for the remainder of the 90-day period; or

(2) Enter a new order directing that the individual be hospitalized for the remainder of the 90-DA/SSA period.

§ 7620. APPLICATION FOR CONTINUED TREATMENT (ACT)

(a) If, prior to the expiration of any order issued in accordance with section 7623 of this title, the commissioner believes that the condition of the individual is such that the individual continues to require

treatment, the commissioner shall apply to the court for a determination that the individual is a individual in need of further treatment and for an order of continued treatment.

(b) An application for an order authorizing continuing treatment shall contain a statement setting forth the reasons for the commissioner's determination that the individual is a individual in need of further treatment, a statement describing the treatment program provided to the individual, and the results of that course of treatment.

(c) Any order of treatment issued in accordance with section 7623 of this title shall remain in force pending the court's decision on the application.

(d) If the commissioner seeks to have the individual receive the further treatment in a secure residential recovery facility, the application for an order authorizing continuing treatment shall expressly state that such treatment is being sought. The application shall contain, in addition to the statements required by subsection (b) of this section, a statement setting forth the reasons for the commissioner's determination that clinically appropriate treatment for the individual's condition can be provided safely only in a secure residential recovery facility.

§ 7621. Hearing on application for continued treatment; orders

(a) The hearing on the application for continued treatment shall be held in accordance with the procedures set forth in sections 7613, 7614, 7615, and 7616 of this title.

(b) If the court finds that the individual is a individual in need of further treatment and requires hospitalization it shall order hospitalization for up to one year.

(c) If the court finds that the individual is a individual in need of further treatment but does not require hospitalization, it shall order non-hospitalization for up to one year. If the treatment plan proposed by the commissioner for a individual in need of further treatment includes admission to a secure residential recovery facility, the court may at any time, on its own motion or on motion of an interested party, review the need for treatment at the secure residential recovery facility.

(d) If at any time during the period of non-hospitalization ordered under subsection (c) of this section, it comes to the attention of the court, that the person is not complying with the order, or that the alternative treatment has not been adequate to meet the individual's treatment needs, the court may, after proper hearing:

(1) Consider other treatments not involving hospitalization, modify its original order, and direct the individual to undergo another program of alternative treatment for an indeterminate period, up to the expiration date of the original order; or

(2) Order that the individual be hospitalized, up to the expiration date of the original order.

(e) If the court finds that the individual is not a individual in need of further treatment, it shall order the individual discharged.

(f) This section shall not be construed to prohibit the court from issuing subsequent orders after a new application is filed pursuant to section 7620 of this title

3. CHARACTERISTICS OF ORDERS OF NON-HOSPITALIZATION

An ONH is a court order requiring an individual to undergo a program of outpatient treatment. An ONH includes specific terms and conditions set by the court.

Individuals who are eligible for an ONH are individuals who have been diagnosed with mental illness, are likely to deteriorate in their condition in the near future without adequate treatment, and would eventually pose a danger to themselves or others as a result of that deterioration.

There are three common situations where individuals are placed in outpatient treatment on an ONH:

- The individual is emerging from involuntary hospitalization and is to be discharged under an ONH to care from a DA; the ONH can be entered by stipulation or by a court following litigation;
- The individual is charged with a crime and has been found to be incompetent to stand trial and/or in need of hospitalization. (See section “Persons Not Known To a Designated Agency before Placement On an ONH”);
- The individual is under an ONH in the community, and a new ONH is entered to extend the period of court-ordered outpatient treatment, either by stipulation or judicial decision (See section “concerning the continuation of an ONH”).

Terms and conditions of ONHs vary depending on the individual’s treatment needs and the danger the individual might pose to self or others.

- ONH terms and conditions typically require individuals to follow treatment plans developed by a DA, along with more specific requirements to take medications, make all scheduled appointments with DA staff, and to reside as directed by the DA.
- ONHs may include conditions requiring treatment and residence at a community residence, such as a community care home, assisted living residence, therapeutic community residence, or intensive recovery residential facilities.
- ONHs may include negotiated conditions allowing a more expedited return to hospitalization than ordinarily available from typical Application for Emergency Exam or Warrant for Immediate Examination Procedures. These orders are reserved for individuals who might provide a risk of extreme danger when they fail to follow treatment.

4. RESPONSIBILITIES

A Designated Agency/Specialized Service Agency (DA/SSA) serves all people on ONHs. Those who are not enrolled in services with a DA are required to undergo an intake process at the DA/SSA in their county of residence. Key contact people shall be assigned at the Designated Agencies and at DMH to monitor all people on ONHs.

a. Department of Mental Health

The Director of Care Management is the person responsible for overseeing all individuals on an Order of Non-Hospitalization. Responsibilities include:

- Maintaining an up-to-date list of all people on ONHs.
- Obtaining a copy of the ONH issued by the court from the DMH Legal Unit.
- Creating and maintaining a database shall contain patient information including address, designated agency (or specialized services agency) serving the person, the Family Court involved, CRT/Outpatient individual treatment enrollment, dates of initiation and expected terminations of the ONHs, among other information.

DMH shall have a Care Manager exclusively focused on individuals on ONHs who reports to the DMH Director of Care Management Services. The DMH ONH Care Manager will notify the DA/SSA when a person is on an ONH which requires a court hearing prior to that person being released from the order.

b. Designated Agency/Specialized Service Agency

The Department of Mental Health designates the Designated Agencies and Specialized Services Agencies to supervise individuals on ONHs. In that regard, each DA/SSA shall assign a person responsible at the level of a Clinical Director or equivalent for all individuals on an ONH, and shall develop procedures to ensure that there is current and easily accessible information that includes:

- the list of people who are currently on an ONH, who is on the treatment team and supervisors, the date the ONH started, the date it is due to expire, the conditions of the ONH, and a current place of residence.
- Each DA/SSA will assign a staff member the task of maintaining this database, updating on a monthly basis, and to inform DMH the name of the assigned person. This person can be an administrative person or a clinician; but if it is an administrative person, there must be a clinician tasked with supervising this role.
- The DA/SSA list shall be maintained in a secure digital file, enabling access to any clinician or supervisor involved with person on an ONH has access to the file.

- The DA/SSA shall ensure that there is adequate clinical documentation, that all clinicians working with the individual are aware of the ONH, and have discussed this with the client. This clinical documentation shall include the person's adherence to the conditions of the ONH.

If an individual on an ONH resides in a residential care facility outside the area of the DA/SSA named in the ONH:

- The residential facility and the DA/SSA will both be named in the ONH as treatment providers.
- The residential facility and DA/SSA will work collaboratively with the person to provide treatment and support adherence to the ONH.
- In the event of renewal/modification/revocation/termination of an ONH, the residential facility and DA/SSA will work collaboratively throughout the process.
- Staff (including psychiatrists) involved in the care of the individual on an ONH may be asked to testify regarding a person's treatment adherence and psychiatric well-being if necessary.

c. Hospital Responsibilities

If the individual is being discharged from the hospital and there is an ONH being considered, the hospital's treatment team (attending physician and/or social worker) shall contact the DA/SSA that is expected to treat the individual in the community, as well as the DMH Legal Unit, to discuss why an ONH is being requested, and what conditions are being requested by the court before final discharge plans are made.

When the individual was admitted on an existing order of non-hospitalization, or after a revocation hearing, the hospital treatment team shall collaborate with the DA/SSA, as well as the DMH Legal Unit, to review whether or not an ONH is needed. If needed, they will review with the DA/SSA whether the conditions are appropriate or if any changes are needed. If the teams agree that an ONH is not needed, then the hospital team shall document the reasons why an ONH is no longer needed.

The hospital team shall notify the DMH Care Management Unit of the discharge plan, including consideration of an ONH, at their regularly scheduled meetings.

d. Disagreement Regarding ONH Initiation/Continuation/Maintenance

If there is disagreement between the parties (Designated Hospital, DA/SSA and/or DMH) the DMH Care Manager shall promptly (within three business days) convene a meeting between the three parties, including any other parties thought to be helpful in this negotiation. If no agreement can be reached, the DMH Commissioner or Designee shall review the case and make the final determination.

5. OBSERVATION OF PERSON ON AN ORDER OF NON-HOSPITALIZATION

DA/SSA's shall use the ONH as a living document and incorporate it into the treatment plan and service provision for all individuals under such orders. Treatment team members shall be familiar with the terms of ONHs, general location of the clients (home address, residential home address, etc.), status of the individual's compliance with the ONH, and current treatment plan.

The DA/SSA shall review with DMH care managers, at least on a quarterly basis via meetings that the care provisioned has been provided for a person on an ONH. Updates shall include such things as, but not be limited to, treatment being provided, notable behaviors in the community, and adherence to the conditions imposed by the court.

If an individual person on an ONH fails to comply with any of the terms of the ONH, the responsible entity at the DA/SSA, or a member of the treatment team, shall notify within three business days, the assigned care manager at DMH, and shall report the steps taken by the agency to encourage/facilitate compliance. Treatment team members, along with the Director of Care Management, together will determine any necessary actions (modification of the ONH, change in placement, revocation of ONH, etc.) with regard to the non-compliance.

The treatment team will discuss the conditions of the ONH as it applies to the treatment plan. The individual on the ONH shall be involved to the greatest extent possible in the discussions regarding the ONH as it pertains to his/her treatment plan. The individual will be given guidance and support on working towards maximizing his/ her chances of not having an ONH in the future.

6. MODIFICATION / REVOCATION OF AN ORDER OF NON-HOSPITALIZATION

When, after following the process described in a response to a person not adhering to the requirements of an ONH, is deemed to be necessary, the DA/SSA Clinical Director or Designee shall inform the DMH paralegals both by phone call, as well as by submitting the appropriate form, along with any pertinent medical records attached. DMH will determine if the legal requirements are met to proceed with a formal request for a modification/revocation.

If a person is not following the conditions of the ONH, the DMH Commissioner (or designee), DMH Care Manager, DMH Legal, DA/SSA Medical staff, DA/SSA Case Manager, or others involved in the oversight of the ONH, will discuss the compliance issues as soon as possible (within three business days) to decide if revocation of the order is necessary.

The Commissioner or Designee shall take into account the DA/SSA treatment teams, DMH Legal and DMH Care Management Unit's recommendations, before making a decision as to whether revocation shall be filed. This decision will be provided to the DA/SSA overseeing the ONH, in writing, within one week of the decision being made. DMH Legal Unit will file a Motion to Revoke the ONH with the court. DA/SSA medical staff and others in the treatment team will be called to testify to provide evidence to the court.

7. CONTINUING / DISCONTINUING ORDERS OF NON-HOSPITALIZATION

Two months before an ONH is due to end, the Clinical Director at the DA/SSA overseeing the list, will notify the treatment team. The DMH Care Manager will keep a similar record. There will be documentation of this process that is accessible to the clinical person assigned to oversee this process.

The DA/SSA Clinical Director will convey the team's recommendation as to whether the ONH appears to confer an advantage in helping the person live safely in the community.¹ The Care Manager can also talk directly to members of the team as needed. It is the responsibility of DMH to determine whether to apply for an Order for Continued Treatment.

At least 30 days before the expiration of the Order of Non-Hospitalization, the DA/SSA's treatment team shall complete necessary paperwork (using the attached form, along with attached documents, if necessary) to make known their recommendation regarding the renewal of the ONH. This paperwork shall be sent to the DMH Legal Unit, at least 30 days before expiration of the current ONH, to update the Department on current clinical status, treatment plan, treatment participation, and the recommendation from the team on whether or not to file for an Application for Continued Treatment (ACT).

DMH Legal Unit as well as the DMH Commissioner (or Designee) shall review the documentation provided and the recommendation by the DA/SSA. The Commissioner, in collaboration with the DA/SSA, will decide whether or not to file an Application for Continued Treatment, and whether or not to request the same or different conditions from the court.

¹ In determining this question regarding safety, please refer to the comments regarding the "patient in need of further treatment standard" – as this is the minimum legal criteria for a patient's recommitment to an ONH.

8. TESTIMONY

When an ONH is either being revoked for non-compliance with the terms of the ONH, or being renewed via an Application for Continued Treatment (ACT), members of the treatment team from the designated agency will be required to testify. In regard to a revocation, it is essential that the reasons for the revocation are documented, including what conditions were violated, in what way, and when the violations occurred. In addition, any and all efforts to re-engage the individual in treatment must be recorded.

If the revocation request is set for hearing, the members of the treatment team who are asked to testify must review the record and be prepared to testify, from memory, about the reasons the revocation is being sought, the efforts made to reach out to the individual, and other relevant information.

The same is true when an ACT has been filed. The treatment team members must be prepared to testify, and must review and know the relevant portions of the individual's treatment plan and history. The treatment team members must be prepared to describe why the individual is a "person in need of further treatment."

The "patient in need of further treatment" standard, required for recommitment to an ONH, includes the statutory term "person in need of treatment" within it, so it is essential that the witness understands both of these terms thoroughly. As noted in the definition above, a "patient in need of further treatment" is an individual who, without treatment, and to a substantial probability "in the near future," would decompensate and then become a "person in need of treatment." Both the decompensation and subsequent mental state, where the individual poses a danger, must arise "in the near future" to satisfy this standard.

There is no further explanation in the law as to what is meant by the "substantial probability" (i.e. of decompensation and resulting danger) that is required. There is also no definition of "near future" in the law – though DMH's fair estimate is that this time period is "within one year."

The term "person in need of treatment" is a key component within the "patient in need of further treatment" definition set forth above. It is, therefore, essential that treatment team members (especially those who will be testifying) know what the term "person in need of treatment" means in the law.

In the simplest terms, a "person in need of treatment" is an individual who is mentally ill and, as a result, poses a danger to self or others. An individual "poses a danger" due to mental illness when the individual's mental condition, as manifested in the individual's current presentation and psychiatric history (e.g. symptoms, behaviors, life circumstances, other history, etc.), allows an inference that the individual presents a current and active risk of danger due to the individual's mental condition.

It can be helpful to think of this definition as referring primarily to the individual's mental state, such that the individual could be considered "ripe" to engage in dangerous behavior because of it, even though dangerous behavior might not have yet emerged; it is a mental state where dangerous behavior would be anticipated in a very short matter of time, even though it has not yet taken place.

The claim that an individual "poses a danger" due to mental illness is, therefore, less than an assertion that the individual is now behaving dangerously due to mental illness. It is less than a claim amounting to any guaranty or certainty that dangerous behavior will arise in minutes or a few hours. The definition does not require a claim or prediction that specific behavior will occur, nor a claim or prediction expressing certainty about the timing of such specific behavior. What must be considered is whether the likelihood of the person deteriorating, and whether that deterioration will lead to dangerous behavior—and how soon that might occur. Being thoroughly familiar with and able to recount an individual's history both on and off an ONH is the best preparation for testifying at an ACT hearing.

9. ONH FOR INDIVIDUALS NOT ENROLLED WITH THE DESIGNATED AGENCIES

There are circumstances in which the Assistant Attorney General (AAG) for the Department of Mental Health is not part of the court proceedings involving a person who is thought to have a mental illness. When that occurs, it means that there might not be anyone in Court to point out that the individual is not involved with a designated agency/special services agency, or not appropriate for an ONH. As a result, the Court sometimes issues an ONH without input from, or even the knowledge of, DMH or the DA/SSA. When the AAGs are aware and allowed to participate in the case (in court), however, they encourage the parties to determine the clinical needs of the person, and to look for the appropriate means of meeting those needs, prior to writing an ONH specifying the conditions to be set forth in the ONH.

If the AAGs are involved, or if the court contacts DMH Legal Unit after issuing an ONH, the paralegal will transmit the ONH and any other available information to the DA/SSA involved. If DMH was not notified, the DA/SSA may be the first to hear of the person on ONH, either by receipt of the Court's Order, or from the individual or their attorney. The DA/SSA should then inform the DMH paralegal of this, and email a copy of the ONH to DMH. The DA/SSA Clinical Director, or equivalent, may contact the Court to try to obtain information from the court, including the Competency Forensic Evaluation (if possible and/or available). The DA/SSA Clinical Director (or equivalent) then informs the Intake Coordinator (or equivalent) at the DA/SSA to expect a call from the person on the ONH.

If the individual on the ONH calls the DA/SSA to make an appointment, it should be scheduled and an initial evaluation completed. If treatment is recommended, and the DA/SSA can provide it, the DA/SSA admits them to the appropriate program for services, e.g. Community Rehabilitation Services (CRT) or Adult Outpatient Program (AOP). If treatment is not recommended, or the DA/SSA cannot provide it, the recommendations for treatment shall be given to the person. The DMH shall be notified of the disposition plan by the DA/SSA as soon as possible.

If the person does not call, or does not keep appointments, including email follow-up, despite efforts made by the DA/SSA to engage the person in services within 30 days of the receipt of the ONH, the DA/SSA shall contact the DMH Legal Unit to inform them. The DMH Legal Unit may notify the court and the attorneys (State and Defense), and may file for Dismissal of Custody. If the individual person is in treatment with the DA/SSA, the usual process for continuing/modifying/terminating/revoking an ONH would apply.

In some instances, the person on an ONH will be followed by a provider who is not an employee of a DA/SSA. In that case, the DMH Legal Unit and DMH Mental Health Services Director (or designee) will coordinate with the provider and operationalize with them how the ONH procedure will be followed and monitored in the community.

APPENDICES

APPENDIX A

Vermont Department of Mental Health Form for Continuation/Termination of an Order of Non-Hospitalization		
1	Patient's Name	
2	Date of Birth	
3	Designated Agency Working with Patient	
4	Date of ONH Initiation	
5	Date ONH Set to Terminate	
6	Patient's Residence	<input type="checkbox"/> Intensive Recovery Residential <input type="checkbox"/> Group Home <input type="checkbox"/> Supported Housing <input type="checkbox"/> Independent Housing <input type="checkbox"/> Shelter <input type="checkbox"/> Homeless <input type="checkbox"/> Other
7	Patient's course of Treatment	<i>with specific reference to each condition in the ONH and the client's response to each condition over the course of the order, including the history of compliance with each condition and the response to the treatments received, etc.</i>

APPENDIX B

Vermont Department of Mental Health Form for the Revocation/Modification of Order of Non-Hospitalization		
1	Patient's Name	
2	Date of Birth	
3	Designated Agency Working with Patient	
4	Date of ONH Initiation	
5	Date ONH Set to Terminate	
6	Patient's Residence	<input type="checkbox"/> Intensive Recovery Residential
		<input type="checkbox"/> Group Home
		<input type="checkbox"/> Supported Housing
		<input type="checkbox"/> Independent Housing
		<input type="checkbox"/> Shelter
		<input type="checkbox"/> Homeless
		<input type="checkbox"/> Other
7	Patient's Course of Treatment	<i>with specific reference to each condition in the ONH and the client's response to each condition over the course of the order, including the history of compliance with each condition and the response to the treatments received, etc.</i>
8	Reasons for the Request to Revoke or Modify the Order	<i>with specific reference to each condition in the ONH and the client's response to each condition over the course of the order, including the history of compliance with each condition and the response to the treatments received, etc.</i>

APPENDIX C

Vermont Department of Mental Health Form Outcome Notification for Order of Non-Hospitalization When Person was Ordered for an Evaluation Only		
1	Patient's Name	
2	Date of Birth	
3	Designated Agency Working with Patient	
4	Date of ONH Initiation	
5	Date ONH Set to Terminate	
7	Summary of Findings from the Assessment	
8	Treatment Referral (if any) and Disposition	