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**SENATE BILL 5045**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators O'Ban and Wagoner

AN ACT Relating to integrating risk for long-term civil involuntary treatment into managed care; amending RCW 71.05.320 and 71.05.320; reenacting and amending RCW 71.24.045; adding a new section to chapter 71.24 RCW; adding a new section to chapter 74.09 RCW; adding a new section to chapter 71.05 RCW; providing an effective date; and providing an expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 71.24 RCW to read as follows:

(1) To promote the development of effective community-based resources for treatment and prevention and align the system's financial structure with the goal of reducing inpatient utilization concurrent with the integration of physical and behavioral health care, the authority shall fully integrate risk for long-term involuntary civil treatment provided by state hospitals into managed care contracts by July 1, 2023.

(2) To further this end, the department and authority must collaborate with appropriate stakeholders and consultants to develop and implement a detailed transition plan taking into account recommendations from both the office of financial management's "Washington Mental Health System Assessment: Final Alternative Options and Recommendations Report" submitted in November 2016, and the office of financial management's "Inpatient Psychiatric Care Risk Model Report" submitted in December 2017. This work shall include, but not be limited by, consideration of the following issues reflected in the report recommendations:

(a) A methodology for determining the appropriate division of inpatient state hospital beds currently being utilized for adult inpatient civil populations, including geropsychiatric patients and patients with intellectual or developmental disabilities, between each of the behavioral health organizations and equivalent entities in full integration regions, considering two options: (i) A method which allocates the resources supporting state hospital bed utilization solely among behavioral health organizations and equivalent entities in full integration regions; and (ii) a method which allocates a portion of the resources supporting state hospital bed utilization among behavioral health organizations and equivalent entities in full integration regions, and the remainder to the state long-term care and developmental disabilities systems. The portion allocated to the state long-term care and developmental disability systems must correspond to state hospital bed utilization by patients whose primary community care needs after discharge will be funded by the state long-term care or developmental disability system, based on client history or a functional needs assessment, and include payment responsibility for the state hospital utilization by these patients;

(b) Development of payment rates for state hospital utilization that reflect financing, safety, and accreditation needs under the new system and ensure that appropriate and necessary access to state hospital beds is maintained for behavioral health organizations and equivalent entities in full integration regions;

(c) Development of acuity-based payment rates that accurately reflect case complexity;

(d) Maximizing federal participation for treatment and preserving access to funds through the disproportionate share hospital program under either methodology described in (a) of this subsection;

(e) Billing and reimbursement mechanisms;

(f) Discharge planning procedures adapted to account for functional needs assessments upon admission;

(g) Identification of regional differences and challenges for implementation in different regional service areas;

(h) A means of tracking expenditures related to successful reductions of state hospital utilization by regional service areas and a means to assure that the funds necessary to safely maintain gains in utilization reduction are protected;

(i) Recommendations for the timing of implementation, including exploration of options for transition to full implementation through the use of smaller-scale pilots allowing for the creation of alternative placements outside the state hospitals such as step-down or transitional placements;

(j) The potential for adverse impacts on safety and a description of available methods to mitigate any risks for patients, behavioral health organizations, equivalent entities in full integration regions, and the community;

(k) An explanation of the benefits and disadvantages associated with the alternative methodologies described in (a) of this subsection;

(l) Updated requirements related to civil commitments that retain the integrity of the process and designated mental health professional independence while enabling behavioral health organizations and equivalent entities in full integration regions to inform the process with firsthand information about the patient and thoughtful recommendations regarding care approaches;

(m) Recommendations for contractual performance measures and withholds for behavioral health organizations and equivalent entities in full integration regions;

(n) Recommendations for ensuring that, upon admission, the entity responsible for the cost of care, including a managed care organization or administrative services organization if applicable, and the patient's outpatient community mental health provider are involved in and consulted on all treatment and discharge planning for individuals who have received services through the community mental health system and who become patients at a state psychiatric hospital;

(o) Development of a process for the entity responsible for the cost of care, including a managed care organization or administrative services organization if applicable, and the patient's outpatient community mental health provider to challenge a determination for discharge or continued inpatient care by the medical director of a state psychiatric hospital for individuals who have received services through the community mental health system and who become patients at a state psychiatric hospital;

(p) A means of tracking regional bed capacity for long-term inpatient psychiatric care in state hospital and community settings; and

(q) Development of payment rates for community hospitals, evaluation and treatment facilities, and equivalent community entities that appropriately reflect patient acuity and accurately reflect case complexity for providing ninety-day and one hundred eighty-day civil commitment services.

(3) Participating stakeholders under subsection (2) of this section must include, but not be limited to, interested members of the legislature, the Washington state hospital association, the association of Washington healthcare plans, each of the five contracted apple health managed care organizations or administrative services organizations if applicable, the Washington council for behavioral health, and the Washington state association of counties.

(4) A preliminary draft of the transition plan must be submitted, in compliance with RCW 43.01.036, to the relevant committees of the legislature by January 1, 2021. The department and authority must consider the input of the relevant committees of the legislature and external stakeholders before submitting a final transition plan by December 1, 2021.

NEW SECTION. **Sec.**  A new section is added to chapter 74.09 RCW to read as follows:

(1) By July 1, 2023, the authority must develop and implement a psychiatric managed care capitation risk model that integrates long-term inpatient care as defined in RCW 71.24.025. This risk model must:

(a) Include adult inpatient civil populations, including geropsychiatric patients and patients with intellectual or developmental disabilities;

(b) Apply to all new and current individuals committed to long-term inpatient care;

(c) Exclude individuals committed under RCW 71.05.280(3) with an affirmative special finding under RCW 71.05.280(3)(b);

(d) Include all facilities licensed or otherwise authorized to provide ninety-day and one hundred eighty-day civil commitment services;

(e) Require behavioral health organizations and equivalent entities in full integration regions to compensate at a minimum based on the fee-for-service per diem rates to community hospital providers;

(f) Consider whether a higher, acuity-based payment rate should be recommended and required for provider reimbursement;

(g) Recognize that building community capacity for long-term civil commitment will be driven by establishing higher per diem rates, expanding certification, and direct capital investment in facility building by the state;

(h) Include all services currently offered to adult inpatient civil populations, including geropsychiatric patients and patients with intellectual or developmental disabilities in the state hospitals;

(i) Capitate the medicaid portion of funds but not capitate the nonmedicaid portion; and

(j) Account for the impact of the expected diversion of civil patients away from state hospitals.

(2) A preliminary draft of the risk model must be submitted, in compliance with RCW 43.01.036, to the relevant committees of the legislature by January 1, 2021. A final draft of the risk model must be submitted, in compliance with RCW 43.01.036, to the relevant committees of the legislature by December 1, 2021.

(3) The authority and department shall consider, develop, and request legislation to maximize any reductions brought on by changes in the forensic to civil patient ratio for the state hospital population, as appropriate.

**Sec.**  RCW 71.24.045 and 2018 c 201 s 4006 and 2018 c 175 s 7 are each reenacted and amended to read as follows:

The behavioral health organization or equivalent entity in a full integration region shall:

(1) Contract as needed with licensed or certified service providers. The behavioral health organization or equivalent entity in a full integration region may, in the absence of a licensed or certified service provider entity, become a licensed or certified service provider entity pursuant to minimum standards required for licensing or certification by the department for the purpose of providing services not available from licensed or certified service providers;

(2) Operate as a licensed or certified service provider if it deems that doing so is more efficient and cost-effective than contracting for services. When doing so, the behavioral health organization or equivalent entity in a full integration region shall comply with rules adopted by the director that shall provide measurements to determine when a service provided by a behavioral health organization ((~~provided service~~)) or equivalent entity in a full integration region is more efficient and cost-effective;

(3) Monitor and perform biennial fiscal audits of licensed or certified service providers who have contracted with the behavioral health organization or equivalent entity in a full integration region to provide services required by this chapter. The monitoring and audits shall be performed by means of a formal process which insures that the licensed or certified service providers and professionals designated in this subsection meet the terms of their contracts;

(4) Establish reasonable limitations on administrative costs for agencies that contract with the behavioral health organization or equivalent entity in a full integration region;

(5) Assure that the special needs of minorities, older adults, individuals with disabilities, children, and low-income persons are met within the priorities established in this chapter;

(6) Maintain patient tracking information in a central location as required for resource management services and the authority's information system;

(7) Collaborate to ensure that policies do not result in an adverse shift of persons with mental illness into state and local correctional facilities;

(8) Work with the authority to expedite the enrollment or reenrollment of eligible persons leaving state or local correctional facilities and institutions for mental diseases;

(9) Work closely with the designated crisis responder to maximize appropriate placement of persons into community services;

(10) Have representation, including involvement by community mental health providers, on the hospital clinical discharge planning team to: (a) Ensure coordinated services occur for individuals who have received services through the community mental health system and who become patients at a state psychiatric hospital ((~~to~~)); and (b) ensure they are transitioned into the community in accordance with mutually agreed upon discharge plans and upon determination by the medical director of the state psychiatric hospital that they no longer need intensive inpatient care; and

(11) Allow reimbursement for time spent supervising persons working toward satisfying supervision requirements established for the relevant practice areas pursuant to RCW 18.225.090.

NEW SECTION. **Sec.**  A new section is added to chapter 71.05 RCW to read as follows:

Treatment under RCW 71.05.320 may be provided at a state hospital or any willing and able facility certified to provide ninety-day or one hundred eighty-day care. The order for such treatment must remand the person to the custody of the department or designee. A prepaid inpatient health plan, managed care organization, or the department, when responsible for the cost of care, may designate where treatment is to be provided, at a willing and able facility certified to provide ninety-day or one hundred eighty-day care or a state hospital, after consultation with the facility currently providing treatment. The prepaid inpatient health plan, managed care organization, or the department, when responsible for the cost of care, may not require prior authorization for treatment under RCW 71.05.320. The designation of a treatment facility must not result in a delay of the transfer of the person to a state hospital or facility certified to provide ninety-day or one hundred eighty-day care if there is an open bed available at either the state hospital or a certified facility.

**Sec.**  RCW 71.05.320 and 2018 c 201 s 3012 are each amended to read as follows:

(1)(a) Subject to (b) of this subsection, if the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her ((~~to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department~~)) for a further period of intensive treatment not to exceed ninety days from the date of judgment.

(b) If the order for inpatient treatment is based on a substance use disorder, treatment must take place at an approved substance use disorder treatment program. The court may only enter an order for commitment based on a substance use disorder if there is an available approved substance use disorder treatment program with adequate space for the person.

(c) If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment to the custody of the department of social and health services or to a facility certified for one hundred eighty day treatment by the department.

(2) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court ((~~shall remand him or her to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department~~)) must commit him or her for a period of treatment of up to ninety days or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment. If the order for less restrictive treatment is based on a substance use disorder, treatment must be provided by an approved substance use disorder treatment program. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment. If the court or jury finds that the grounds set forth in RCW 71.05.280(5) have been proven, and provide the only basis for commitment, the court must enter an order for less restrictive alternative treatment for up to ninety days from the date of judgment and may not order inpatient treatment.

(3) An order for less restrictive alternative treatment entered under subsection (2) of this section must name the mental health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the mental health service provider.

(4) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) or (2) of this section unless the superintendent or professional person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the designated crisis responder, files a new petition for involuntary treatment on the grounds that the committed person:

(a) During the current period of court ordered treatment: (i) Has threatened, attempted, or inflicted physical harm upon the person of another, or substantial damage upon the property of another, and (ii) as a result of a mental disorder, substance use disorder, or developmental disability presents a likelihood of serious harm; or

(b) Was taken into custody as a result of conduct in which he or she attempted or inflicted serious physical harm upon the person of another, and continues to present, as a result of mental disorder, substance use disorder, or developmental disability a likelihood of serious harm; or

(c)(i) Is in custody pursuant to RCW 71.05.280(3) and as a result of mental disorder or developmental disability continues to present a substantial likelihood of repeating acts similar to the charged criminal behavior, when considering the person's life history, progress in treatment, and the public safety.

(ii) In cases under this subsection where the court has made an affirmative special finding under RCW 71.05.280(3)(b), the commitment shall continue for up to an additional one hundred eighty day period whenever the petition presents prima facie evidence that the person continues to suffer from a mental disorder or developmental disability that results in a substantial likelihood of committing acts similar to the charged criminal behavior, unless the person presents proof through an admissible expert opinion that the person's condition has so changed such that the mental disorder or developmental disability no longer presents a substantial likelihood of the person committing acts similar to the charged criminal behavior. The initial or additional commitment period may include transfer to a specialized program of intensive support and treatment, which may be initiated prior to or after discharge ((~~from the state hospital~~)); or

(d) Continues to be gravely disabled; or

(e) Is in need of assisted outpatient ((~~mental~~)) behavioral health treatment.

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to prove such conduct again.

If less restrictive alternative treatment is sought, the petition shall set forth any recommendations for less restrictive alternative treatment services.

(5) A new petition for involuntary treatment filed under subsection (4) of this section shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

(6)(a) The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this section are present, subject to subsection (1)(b) of this section, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment, except as provided in subsection (7) of this section. If the court's order is based solely on the grounds identified in subsection (4)(e) of this section, the court may enter an order for less restrictive alternative treatment not to exceed one hundred eighty days from the date of judgment, and may not enter an order for inpatient treatment. An order for less restrictive alternative treatment must name the mental health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the mental health service provider.

(b) At the end of the one hundred eighty day period of commitment, or one-year period of commitment if subsection (7) of this section applies, the committed person shall be released unless a petition for an additional one hundred eighty day period of continued treatment is filed and heard in the same manner as provided in this section. Successive one hundred eighty day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty day commitment.

(7) An order for less restrictive treatment entered under subsection (6) of this section may be for up to one year when the person's previous commitment term was for intensive inpatient treatment in a state hospital.

(8) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length except as provided in subsection (7) of this section.

**Sec.**  RCW 71.05.320 and 2018 c 201 s 3013 are each amended to read as follows:

(1)(a) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her ((~~to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department~~)) for a further period of intensive treatment not to exceed ninety days from the date of judgment.

(b) If the order for inpatient treatment is based on a substance use disorder, treatment must take place at an approved substance use disorder treatment program. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment to the custody of the department of social and health services or to a facility certified for one hundred eighty day treatment by the department.

(2) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court ((~~shall remand him or her to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department~~)) must commit him or her for a period of treatment of up to ninety days or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment. If the order for less restrictive treatment is based on a substance use disorder, treatment must be provided by an approved substance use disorder treatment program. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment. If the court or jury finds that the grounds set forth in RCW 71.05.280(5) have been proven, and provide the only basis for commitment, the court must enter an order for less restrictive alternative treatment for up to ninety days from the date of judgment and may not order inpatient treatment.

(3) An order for less restrictive alternative treatment entered under subsection (2) of this section must name the mental health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the mental health service provider.

(4) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) or (2) of this section unless the superintendent or professional person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the designated crisis responder, files a new petition for involuntary treatment on the grounds that the committed person:

(a) During the current period of court ordered treatment: (i) Has threatened, attempted, or inflicted physical harm upon the person of another, or substantial damage upon the property of another, and (ii) as a result of a mental disorder, substance use disorder, or developmental disability presents a likelihood of serious harm; or

(b) Was taken into custody as a result of conduct in which he or she attempted or inflicted serious physical harm upon the person of another, and continues to present, as a result of mental disorder, substance use disorder, or developmental disability a likelihood of serious harm; or

(c)(i) Is in custody pursuant to RCW 71.05.280(3) and as a result of mental disorder or developmental disability continues to present a substantial likelihood of repeating acts similar to the charged criminal behavior, when considering the person's life history, progress in treatment, and the public safety.

(ii) In cases under this subsection where the court has made an affirmative special finding under RCW 71.05.280(3)(b), the commitment shall continue for up to an additional one hundred eighty day period whenever the petition presents prima facie evidence that the person continues to suffer from a mental disorder or developmental disability that results in a substantial likelihood of committing acts similar to the charged criminal behavior, unless the person presents proof through an admissible expert opinion that the person's condition has so changed such that the mental disorder or developmental disability no longer presents a substantial likelihood of the person committing acts similar to the charged criminal behavior. The initial or additional commitment period may include transfer to a specialized program of intensive support and treatment, which may be initiated prior to or after discharge ((~~from the state hospital~~)); or

(d) Continues to be gravely disabled; or

(e) Is in need of assisted outpatient ((~~mental~~)) behavioral health treatment.

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to prove such conduct again.

If less restrictive alternative treatment is sought, the petition shall set forth any recommendations for less restrictive alternative treatment services.

(5) A new petition for involuntary treatment filed under subsection (4) of this section shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

(6)(a) The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this section are present, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment, except as provided in subsection (7) of this section. If the court's order is based solely on the grounds identified in subsection (4)(e) of this section, the court may enter an order for less restrictive alternative treatment not to exceed one hundred eighty days from the date of judgment, and may not enter an order for inpatient treatment. An order for less restrictive alternative treatment must name the mental health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the mental health service provider.

(b) At the end of the one hundred eighty day period of commitment, or one-year period of commitment if subsection (7) of this section applies, the committed person shall be released unless a petition for an additional one hundred eighty day period of continued treatment is filed and heard in the same manner as provided in this section. Successive one hundred eighty day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty day commitment.

(7) An order for less restrictive treatment entered under subsection (6) of this section may be for up to one year when the person's previous commitment term was for intensive inpatient treatment in a state hospital.

(8) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length except as provided in subsection (7) of this section.

NEW SECTION. **Sec.**  Section 6 of this act takes effect July 1, 2026.

NEW SECTION. **Sec.**  Section 5 of this act expires July 1, 2026.

**--- END ---**