
SENATE BILL 6573

State of Washington

65th Legislature

2018 Regular Session

By Senator O'Ban

1 AN ACT Relating to establishing the capacity to purchase
2 community long-term involuntary psychiatric treatment services
3 through managed care; amending RCW 71.24.045, 71.24.310, and
4 71.05.320; reenacting and amending RCW 71.24.025 and 71.05.320;
5 adding new sections to chapter 71.24 RCW; adding a new section to
6 chapter 74.09 RCW; adding a new section to chapter 71.05 RCW;
7 creating a new section; providing an effective date; and providing an
8 expiration date.

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

10 **Part I**

11 **Integrating Risk for Long-Term Civil Involuntary Treatment into**
12 **Managed Care**

13 NEW SECTION. **Sec. 101.** A new section is added to chapter 71.24
14 RCW to read as follows:

15 (1) To promote the development of effective community-based
16 resources for treatment and prevention and align the system financial
17 structure with the goal of reducing inpatient utilization concurrent
18 with the integration of physical and behavioral health care, the
19 authority shall integrate risk for long-term involuntary civil

1 treatment provided by state hospitals into managed care contracts by
2 January 1, 2020.

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

12 (a) A methodology for division of the current state hospital beds
13 between each of the behavioral health organizations and full
14 integration regions, considering two options: (i) A method which
15 allocates the resources supporting state hospital bed utilization
16 solely among behavioral health organizations and full integration
17 regions; and (ii) a method which allocates a portion of the resources
18 supporting state hospital bed utilization among behavioral health
19 organizations and full integration regions, and the remainder to the
20 state long-term care and developmental disabilities systems. The
21 portion allocated to the state long-term care and developmental
22 disability systems must correspond to state hospital bed utilization
23 by patients whose primary community care needs after discharge will
24 be funded by the state long-term care or developmental disability
25 system, based on client history or a functional needs assessment, and
26 include payment responsibility for the state hospital utilization by
27 these patients;

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

33 (c) Development of acuity-based payment rates for western and
34 eastern state hospitals that accurately reflect case complexity;

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

38 (e) Billing and reimbursement mechanisms;

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

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

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

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

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

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

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

24 (m) Recommendations for contractual performance measures and
25 withholds for behavioral health organizations and equivalent entities
26 in full integration regions.

27 (3) A preliminary draft of the transition plan must be submitted,
28 in compliance with RCW 43.01.036, to the relevant committees of the
29 legislature by November 15, 2018, for review by the select committee
30 on quality improvement in state hospitals. The department must
31 consider the input of the committee and external stakeholders before
32 submitting a final transition plan by December 30, 2018.

33 NEW SECTION. **Sec. 102.** A new section is added to chapter 74.09
34 RCW to read as follows:

35 (1) By January 1, 2020, the authority must develop a psychiatric
36 managed care capitation risk model that integrates long-term
37 inpatient care as defined in RCW 71.24.025. This risk model must:

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

4 (b) Apply only to new long-term inpatient care, excluding
5 individuals currently committed to long-term inpatient care;

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

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

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

13 (f) Recognize that the community capacity building for long-term
14 civil commitment is going to be driven by establishing higher per
15 diem rates, expanding certification and direct capital investment in
16 facility building by the state;

17 (g) Include all services currently offered to civil inpatient
18 commitments in the state hospitals;

19 (h) Explore an institution for mental diseases disproportionate
20 share hospital waiver to reduce the reliance on the institution for
21 mental diseases disproportionate share hospital program at the state
22 hospitals;

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

25 (j) Account for the revised institution for mental diseases
26 disproportionate share hospital claim, the reduced institution for
27 mental diseases disproportionate share hospital limit, and the
28 expected diversion of civil patients away from state hospitals.

29 (2) A final draft of the risk model must be submitted, in
30 compliance with RCW 43.01.036, to the relevant committees of the
31 legislature by November 15, 2019.

32 (3) The authority shall consider, develop, and request
33 legislation extending institution for mental diseases
34 disproportionate share hospital payments to nonstate hospitals as an
35 option to maximize any reductions brought on by changes in the
36 forensic to civil patient ratio for the state hospital population.

37 **Sec. 103.** RCW 71.24.045 and 2016 sp.s. c 29 s 421 are each
38 amended to read as follows:

39 The behavioral health organization shall:

1 (1) Contract as needed with licensed service providers. The
2 behavioral health organization may, in the absence of a licensed
3 service provider entity, become a licensed service provider entity
4 pursuant to minimum standards required for licensing by the
5 department for the purpose of providing services not available from
6 licensed service providers;

7 (2) Operate as a licensed service provider if it deems that doing
8 so is more efficient and cost effective than contracting for
9 services. When doing so, the behavioral health organization shall
10 comply with rules promulgated by the secretary that shall provide
11 measurements to determine when a behavioral health organization
12 provided service is more efficient and cost effective;

13 (3) Monitor and perform biennial fiscal audits of licensed
14 service providers who have contracted with the behavioral health
15 organization to provide services required by this chapter. The
16 monitoring and audits shall be performed by means of a formal process
17 which insures that the licensed service providers and professionals
18 designated in this subsection meet the terms of their contracts;

19 (4) Establish reasonable limitations on administrative costs for
20 agencies that contract with the behavioral health organization;

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

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

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

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

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

35 (10) Have representation on the hospital clinical discharge
36 planning team to ensure coordinated services occur for individuals
37 who have received services through the community mental health system
38 and who become patients at a state psychiatric hospital, and to
39 ensure they are transitioned into the community in accordance with
40 mutually agreed upon discharge plans and upon determination by the

1 medical director of the state psychiatric hospital that they no
2 longer need intensive inpatient care.

3 **Sec. 104.** RCW 71.24.025 and 2016 sp.s. c 29 s 502 are each
4 reenacted and amended to read as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

7 (1) "Acutely mentally ill" means a condition which is limited to
8 a short-term severe crisis episode of:

9 (a) A mental disorder as defined in RCW 71.05.020 or, in the case
10 of a child, as defined in RCW 71.34.020;

11 (b) Being gravely disabled as defined in RCW 71.05.020 or, in the
12 case of a child, a gravely disabled minor as defined in RCW
13 71.34.020; or

14 (c) Presenting a likelihood of serious harm as defined in RCW
15 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

16 (2) "Alcoholism" means a disease, characterized by a dependency
17 on alcoholic beverages, loss of control over the amount and
18 circumstances of use, symptoms of tolerance, physiological or
19 psychological withdrawal, or both, if use is reduced or discontinued,
20 and impairment of health or disruption of social or economic
21 functioning.

22 (3) "Approved substance use disorder treatment program" means a
23 program for persons with a substance use disorder provided by a
24 treatment program certified by the department of social and health
25 services as meeting standards adopted under this chapter.

26 (4) "Available resources" means funds appropriated for the
27 purpose of providing community mental health programs, federal funds,
28 except those provided according to Title XIX of the Social Security
29 Act, and state funds appropriated under this chapter or chapter 71.05
30 RCW by the legislature during any biennium for the purpose of
31 providing residential services, resource management services,
32 community support services, and other mental health services. This
33 does not include funds appropriated for the purpose of operating and
34 administering the state psychiatric hospitals.

35 (5) "Behavioral health organization" means any county authority
36 or group of county authorities or other entity recognized by the
37 secretary in contract in a defined region.

38 (6) "Behavioral health program" means all expenditures, services,
39 activities, or programs, including reasonable administration and

1 overhead, designed and conducted to prevent or treat chemical
2 dependency and mental illness.

3 (7) "Behavioral health services" means mental health services as
4 described in this chapter and chapter 71.36 RCW and substance use
5 disorder treatment services as described in this chapter.

6 (8) "Child" means a person under the age of eighteen years.

7 (9) "Chronically mentally ill adult" or "adult who is chronically
8 mentally ill" means an adult who has a mental disorder and meets at
9 least one of the following criteria:

10 (a) Has undergone two or more episodes of hospital care for a
11 mental disorder within the preceding two years; or

12 (b) Has experienced a continuous psychiatric hospitalization or
13 residential treatment exceeding six months' duration within the
14 preceding year; or

15 (c) Has been unable to engage in any substantial gainful activity
16 by reason of any mental disorder which has lasted for a continuous
17 period of not less than twelve months. "Substantial gainful activity"
18 shall be defined by the department by rule consistent with Public Law
19 92-603, as amended.

20 (10) "Clubhouse" means a community-based program that provides
21 rehabilitation services and is certified by the department of social
22 and health services.

23 (11) "Community mental health service delivery system" means
24 public, private, or tribal agencies that provide services
25 specifically to persons with mental disorders as defined under RCW
26 71.05.020 and receive funding from public sources.

27 (12) "Community support services" means services authorized,
28 planned, and coordinated through resource management services
29 including, at a minimum, assessment, diagnosis, emergency crisis
30 intervention available twenty-four hours, seven days a week,
31 prescreening determinations for persons who are mentally ill being
32 considered for placement in nursing homes as required by federal law,
33 screening for patients being considered for admission to residential
34 services, diagnosis and treatment for children who are acutely
35 mentally ill or severely emotionally disturbed discovered under
36 screening through the federal Title XIX early and periodic screening,
37 diagnosis, and treatment program, investigation, legal, and other
38 nonresidential services under chapter 71.05 RCW, case management
39 services, psychiatric treatment including medication supervision,
40 counseling, psychotherapy, assuring transfer of relevant patient

1 information between service providers, recovery services, and other
2 services determined by behavioral health organizations.

3 (13) "Consensus-based" means a program or practice that has
4 general support among treatment providers and experts, based on
5 experience or professional literature, and may have anecdotal or case
6 study support, or that is agreed but not possible to perform studies
7 with random assignment and controlled groups.

8 (14) "County authority" means the board of county commissioners,
9 county council, or county executive having authority to establish a
10 community mental health program, or two or more of the county
11 authorities specified in this subsection which have entered into an
12 agreement to provide a community mental health program.

13 (15) "Department" means the department of social and health
14 services.

15 (16) "Designated crisis responder" means a mental health
16 professional designated by the county or other authority authorized
17 in rule to perform the duties specified in this chapter.

18 (17) "Drug addiction" means a disease characterized by a
19 dependency on psychoactive chemicals, loss of control over the amount
20 and circumstances of use, symptoms of tolerance, physiological or
21 psychological withdrawal, or both, if use is reduced or discontinued,
22 and impairment of health or disruption of social or economic
23 functioning.

24 (18) "Early adopter" means a regional service area for which all
25 of the county authorities have requested that the department and the
26 health care authority jointly purchase medical and behavioral health
27 services through a managed care health system as defined under RCW
28 71.24.380(6).

29 (19) "Emerging best practice" or "promising practice" means a
30 program or practice that, based on statistical analyses or a well
31 established theory of change, shows potential for meeting the
32 evidence-based or research-based criteria, which may include the use
33 of a program that is evidence-based for outcomes other than those
34 listed in subsection (20) of this section.

35 (20) "Evidence-based" means a program or practice that has been
36 tested in heterogeneous or intended populations with multiple
37 randomized, or statistically controlled evaluations, or both; or one
38 large multiple site randomized, or statistically controlled
39 evaluation, or both, where the weight of the evidence from a systemic
40 review demonstrates sustained improvements in at least one outcome.

1 "Evidence-based" also means a program or practice that can be
2 implemented with a set of procedures to allow successful replication
3 in Washington and, when possible, is determined to be cost-
4 beneficial.

5 (21) "Licensed physician" means a person licensed to practice
6 medicine or osteopathic medicine and surgery in the state of
7 Washington.

8 (22) "Licensed service provider" means an entity licensed
9 according to this chapter or chapter 71.05 RCW or an entity deemed to
10 meet state minimum standards as a result of accreditation by a
11 recognized behavioral health accrediting body recognized and having a
12 current agreement with the department, or tribal attestation that
13 meets state minimum standards, or persons licensed under chapter
14 18.57, 18.57A, 18.71, 18.71A, 18.83, or 18.79 RCW, as it applies to
15 registered nurses and advanced registered nurse practitioners.

16 (23) "Long-term inpatient care" means inpatient services for
17 persons committed for, or voluntarily receiving intensive treatment
18 for, periods of ninety days or greater under chapter 71.05 RCW.
19 "Long-term inpatient care" as used in this chapter does not include:
20 (a) Services for individuals committed under chapter 71.05 RCW who
21 are receiving services pursuant to a conditional release or a court-
22 ordered less restrictive alternative to detention; or (b) services
23 for individuals voluntarily receiving less restrictive alternative
24 treatment on the grounds of the state hospital.

25 (24) "Mental health services" means all services provided by
26 behavioral health organizations and other services provided by the
27 state for persons who are mentally ill.

28 (25) Mental health "treatment records" include registration and
29 all other records concerning persons who are receiving or who at any
30 time have received services for mental illness, which are maintained
31 by the department, by behavioral health organizations and their
32 staffs, and by treatment facilities. Treatment records do not include
33 notes or records maintained for personal use by a person providing
34 treatment services for the department, behavioral health
35 organizations, or a treatment facility if the notes or records are
36 not available to others.

37 (26) "Mentally ill persons," "persons who are mentally ill," and
38 "the mentally ill" mean persons and conditions defined in subsections
39 (1), (9), (34), and (35) of this section.

1 (27) "Recovery" means the process in which people are able to
2 live, work, learn, and participate fully in their communities.

3 (28) "Registration records" include all the records of the
4 department, behavioral health organizations, treatment facilities,
5 and other persons providing services to the department, county
6 departments, or facilities which identify persons who are receiving
7 or who at any time have received services for mental illness.

8 (29) "Research-based" means a program or practice that has been
9 tested with a single randomized, or statistically controlled
10 evaluation, or both, demonstrating sustained desirable outcomes; or
11 where the weight of the evidence from a systemic review supports
12 sustained outcomes as described in subsection (20) of this section
13 but does not meet the full criteria for evidence-based.

14 (30) "Residential services" means a complete range of residences
15 and supports authorized by resource management services and which may
16 involve a facility, a distinct part thereof, or services which
17 support community living, for persons who are acutely mentally ill,
18 adults who are chronically mentally ill, children who are severely
19 emotionally disturbed, or adults who are seriously disturbed and
20 determined by the behavioral health organization to be at risk of
21 becoming acutely or chronically mentally ill. The services shall
22 include at least evaluation and treatment services as defined in
23 chapter 71.05 RCW, acute crisis respite care, long-term adaptive and
24 rehabilitative care, and supervised and supported living services,
25 and shall also include any residential services developed to service
26 persons who are mentally ill in nursing homes, assisted living
27 facilities, and adult family homes, and may include outpatient
28 services provided as an element in a package of services in a
29 supported housing model. Residential services for children in out-of-
30 home placements related to their mental disorder shall not include
31 the costs of food and shelter, except for children's long-term
32 residential facilities existing prior to January 1, 1991.

33 (31) "Resilience" means the personal and community qualities that
34 enable individuals to rebound from adversity, trauma, tragedy,
35 threats, or other stresses, and to live productive lives.

36 (32) "Resource management services" mean the planning,
37 coordination, and authorization of residential services and community
38 support services administered pursuant to an individual service plan
39 for: (a) Adults and children who are acutely mentally ill; (b) adults
40 who are chronically mentally ill; (c) children who are severely

1 emotionally disturbed; or (d) adults who are seriously disturbed and
2 determined solely by a behavioral health organization to be at risk
3 of becoming acutely or chronically mentally ill. Such planning,
4 coordination, and authorization shall include mental health screening
5 for children eligible under the federal Title XIX early and periodic
6 screening, diagnosis, and treatment program. Resource management
7 services include seven day a week, twenty-four hour a day
8 availability of information regarding enrollment of adults and
9 children who are mentally ill in services and their individual
10 service plan to designated crisis responders, evaluation and
11 treatment facilities, and others as determined by the behavioral
12 health organization.

13 (33) "Secretary" means the secretary of social and health
14 services.

15 (34) "Seriously disturbed person" means a person who:

16 (a) Is gravely disabled or presents a likelihood of serious harm
17 to himself or herself or others, or to the property of others, as a
18 result of a mental disorder as defined in chapter 71.05 RCW;

19 (b) Has been on conditional release status, or under a less
20 restrictive alternative order, at some time during the preceding two
21 years from an evaluation and treatment facility or a state mental
22 health hospital;

23 (c) Has a mental disorder which causes major impairment in
24 several areas of daily living;

25 (d) Exhibits suicidal preoccupation or attempts; or

26 (e) Is a child diagnosed by a mental health professional, as
27 defined in chapter 71.34 RCW, as experiencing a mental disorder which
28 is clearly interfering with the child's functioning in family or
29 school or with peers or is clearly interfering with the child's
30 personality development and learning.

31 (35) "Severely emotionally disturbed child" or "child who is
32 severely emotionally disturbed" means a child who has been determined
33 by the behavioral health organization to be experiencing a mental
34 disorder as defined in chapter 71.34 RCW, including those mental
35 disorders that result in a behavioral or conduct disorder, that is
36 clearly interfering with the child's functioning in family or school
37 or with peers and who meets at least one of the following criteria:

38 (a) Has undergone inpatient treatment or placement outside of the
39 home related to a mental disorder within the last two years;

1 (b) Has undergone involuntary treatment under chapter 71.34 RCW
2 within the last two years;

3 (c) Is currently served by at least one of the following child-
4 serving systems: Juvenile justice, child-protection/welfare, special
5 education, or developmental disabilities;

6 (d) Is at risk of escalating maladjustment due to:

7 (i) Chronic family dysfunction involving a caretaker who is
8 mentally ill or inadequate;

9 (ii) Changes in custodial adult;

10 (iii) Going to, residing in, or returning from any placement
11 outside of the home, for example, psychiatric hospital, short-term
12 inpatient, residential treatment, group or foster home, or a
13 correctional facility;

14 (iv) Subject to repeated physical abuse or neglect;

15 (v) Drug or alcohol abuse; or

16 (vi) Homelessness.

17 (36) "State minimum standards" means minimum requirements
18 established by rules adopted by the secretary and necessary to
19 implement this chapter for: (a) Delivery of mental health services;
20 (b) licensed service providers for the provision of mental health
21 services; (c) residential services; and (d) community support
22 services and resource management services.

23 (37) "Substance use disorder" means a cluster of cognitive,
24 behavioral, and physiological symptoms indicating that an individual
25 continues using the substance despite significant substance-related
26 problems. The diagnosis of a substance use disorder is based on a
27 pathological pattern of behaviors related to the use of the
28 substances.

29 (38) "Tribal authority," for the purposes of this section and RCW
30 71.24.300 only, means: The federally recognized Indian tribes and the
31 major Indian organizations recognized by the secretary insofar as
32 these organizations do not have a financial relationship with any
33 behavioral health organization that would present a conflict of
34 interest.

35 (39) "Authority" means the Washington state health care
36 authority.

1 **Part II**

2 **Development of Community Long-Term Involuntary Treatment Capacity**

3 NEW SECTION. **Sec. 201.** A new section is added to chapter 71.24
4 RCW to read as follows:

5 (1) The state intends to develop new capacity for delivery of
6 long-term treatment in the community in diverse regions of the state
7 prior to the effective date of the integration of risk for long-term
8 involuntary treatment into managed care, and to study the cost and
9 outcomes associated with treatment in community facilities. In
10 furtherance of this goal, the department shall purchase a portion of
11 the state's long-term treatment capacity allocated to behavioral
12 health organizations under RCW 71.24.310 in willing community
13 facilities capable of providing alternatives to treatment in a state
14 hospital. The state shall increase its purchasing of long-term
15 involuntary treatment capacity in the community over time.

16 (2) The department shall:

17 (a) Work with willing community hospitals licensed under chapters
18 70.41 and 71.12 RCW and evaluation and treatment facilities certified
19 under chapter 71.05 RCW to assess their capacity to become certified
20 to provide long-term mental health placements and to meet the
21 requirements of this chapter; and

22 (b) Enter into contracts and payment arrangements with such
23 hospitals and evaluation and treatment facilities choosing to provide
24 long-term mental health placements, to the extent that willing
25 certified facilities are available. Nothing in this chapter requires
26 any community hospital or evaluation and treatment facility to be
27 certified to provide long-term mental health placements.

28 (3) The department must establish rules for the certification of
29 facilities interested in providing care under this section.

30 (4) Contracts developed by the department to implement this
31 section must be constructed to allow the department to obtain
32 complete identification information and admission and discharge dates
33 for patients served under this authority. Prior to requesting
34 identification information and admission and discharge dates or
35 reports from certified facilities, the department must determine that
36 this information cannot be identified or obtained from existing data
37 sources available to state agencies. In addition, until January 1,
38 2023, facilities certified by the department to provide community

1 long-term involuntary treatment to adults shall report to the
2 department:

3 (a) All instances where a patient on a ninety or one hundred
4 eighty-day involuntary commitment order experiences an adverse event
5 required to be reported to the department of health pursuant to
6 chapter 70.56 RCW; and

7 (b) All hospital-based inpatient psychiatric service core
8 measures reported to the joint commission or other accrediting body
9 occurring from psychiatric departments, in the format in which the
10 report was made to the joint commission.

11 **Sec. 202.** RCW 71.24.310 and 2017 c 222 s 1 are each amended to
12 read as follows:

13 The legislature finds that administration of chapter 71.05 RCW
14 and this chapter can be most efficiently and effectively implemented
15 as part of the behavioral health organization defined in RCW
16 71.24.025. For this reason, the legislature intends that the
17 department and the behavioral health organizations shall work
18 together to implement chapter 71.05 RCW as follows:

19 (1) By June 1, 2006, behavioral health organizations shall
20 recommend to the department the number of state hospital beds that
21 should be allocated for use by each behavioral health organization.
22 The statewide total allocation shall not exceed the number of state
23 hospital beds offering long-term inpatient care, as defined in this
24 chapter, for which funding is provided in the biennial appropriations
25 act.

26 (2) If there is consensus among the behavioral health
27 organizations regarding the number of state hospital beds that should
28 be allocated for use by each behavioral health organization, the
29 department shall contract with each behavioral health organization
30 accordingly.

31 (3) If there is not consensus among the behavioral health
32 organizations regarding the number of beds that should be allocated
33 for use by each behavioral health organization, the department shall
34 establish by emergency rule the number of state hospital beds that
35 are available for use by each behavioral health organization. The
36 emergency rule shall be effective September 1, 2006. The primary
37 factor used in the allocation shall be the estimated number of adults
38 with acute and chronic mental illness in each behavioral health

1 organization area, based upon population-adjusted incidence and
2 utilization.

3 (4) The allocation formula shall be updated at least every three
4 years to reflect demographic changes, and new evidence regarding the
5 incidence of acute and chronic mental illness and the need for long-
6 term inpatient care. In the updates, the statewide total allocation
7 shall include (a) all state hospital beds offering long-term
8 inpatient care for which funding is provided in the biennial
9 appropriations act; plus (b) the estimated equivalent number of beds
10 or comparable diversion services contracted in accordance with
11 subsection (5) of this section.

12 (5)(a) The department ((is encouraged to enter)) shall enter into
13 performance-based contracts with ((behavioral health organizations))
14 facilities certified by the department to provide treatment to adults
15 on a ninety or one hundred eighty-day inpatient involuntary
16 commitment order to provide some or all of the behavioral health
17 organization's allocated long-term inpatient treatment capacity in
18 the community, rather than in the state hospital, to the extent that
19 willing certified facilities and funding are available. The
20 performance contracts shall specify the number of patient days of
21 care available for use by the behavioral health organization in the
22 state hospital and the number of patient days of care available for
23 use by the behavioral health organization in a facility certified by
24 the department to provide treatment to adults on a ninety or one
25 hundred eighty-day inpatient involuntary commitment order, including
26 hospitals licensed under chapters 70.41 and 71.12 RCW and evaluation
27 and treatment facilities certified under chapter 71.05 RCW.

28 (b) A hospital licensed under chapter 70.41 or 71.12 RCW is not
29 required to undergo certification to treat patients on ninety or one
30 hundred eighty-day involuntary commitment orders in order to treat
31 adults who are waiting for placement at either the state hospital or
32 in certified facilities that voluntarily contract to provide
33 treatment to patients on ninety or one hundred eighty-day involuntary
34 commitment orders.

35 (6) If a behavioral health organization uses more state hospital
36 patient days of care than it has been allocated under subsection (3)
37 or (4) of this section, or than it has contracted to use under
38 subsection (5) of this section, whichever is less, it shall reimburse
39 the department for that care. Reimbursements must be calculated using
40 quarterly average census data to determine an average number of days

1 used in excess of the bed allocation for the quarter. The
2 reimbursement rate per day shall be the hospital's total annual
3 budget for long-term inpatient care, divided by the total patient
4 days of care assumed in development of that budget.

5 (7) One-half of any reimbursements received pursuant to
6 subsection (6) of this section shall be used to support the cost of
7 operating the state hospital and, during the 2007-2009 fiscal
8 biennium, implementing new services that will enable a behavioral
9 health organization to reduce its utilization of the state hospital.
10 The department shall distribute the remaining half of such
11 reimbursements among behavioral health organizations that have used
12 less than their allocated or contracted patient days of care at that
13 hospital, proportional to the number of patient days of care not
14 used.

15 NEW SECTION. **Sec. 203.** A new section is added to chapter 71.05
16 RCW to read as follows:

17 Treatment under RCW 71.05.320 may be provided at a state hospital
18 or any willing and able facility certified to provide ninety-day or
19 one hundred eighty-day care. The order for such treatment must remand
20 the person to the custody of the department or designee. A prepaid
21 inpatient health plan, managed care organization, or the department,
22 when responsible for the cost of care, may designate where treatment
23 is to be provided, at a willing certified facility or a state
24 hospital, after consultation with the facility currently providing
25 treatment. The prepaid inpatient health plan, managed care
26 organization, or the department, when responsible for the cost of
27 care, may not require prior authorization for treatment under RCW
28 71.05.320. The designation of a treatment facility must not result in
29 a delay of the transfer of the person to a state hospital or
30 certified treatment facility if there is an open bed available at
31 either the state hospital or a certified facility.

32 **Sec. 204.** RCW 71.05.320 and 2016 sp.s. c 29 s 237 and 2016 c 45
33 s 4 are each reenacted and amended to read as follows:

34 (1)(a) Subject to (b) of this subsection, if the court or jury
35 finds that grounds set forth in RCW 71.05.280 have been proven and
36 that the best interests of the person or others will not be served by
37 a less restrictive treatment which is an alternative to detention,
38 the court shall remand him or her to the custody of the department or

1 to a facility certified for ninety day treatment by the department
2 for a further period of intensive treatment not to exceed ninety days
3 from the date of judgment.

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

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

14 (2) If the court or jury finds that grounds set forth in RCW
15 71.05.280 have been proven, but finds that treatment less restrictive
16 than detention will be in the best interest of the person or others,
17 then the court (~~shall remand him or her to the custody of the~~
18 ~~department or to a facility certified for ninety day treatment by the~~
19 ~~department~~) must commit him or her for a period of treatment of up
20 to ninety days or to a less restrictive alternative for a further
21 period of less restrictive treatment not to exceed ninety days from
22 the date of judgment. If the order for less restrictive treatment is
23 based on a substance use disorder, treatment must be provided by an
24 approved substance use disorder treatment program. If the grounds set
25 forth in RCW 71.05.280(3) are the basis of commitment, then the
26 period of treatment may be up to but not exceed one hundred eighty
27 days from the date of judgment. If the court or jury finds that the
28 grounds set forth in RCW 71.05.280(5) have been proven, and provide
29 the only basis for commitment, the court must enter an order for less
30 restrictive alternative treatment for up to ninety days from the date
31 of judgment and may not order inpatient treatment.

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

38 (4) The person shall be released from involuntary treatment at
39 the expiration of the period of commitment imposed under subsection
40 (1) or (2) of this section unless the superintendent or professional

1 person in charge of the facility in which he or she is confined, or
2 in the event of a less restrictive alternative, the designated crisis
3 responder, files a new petition for involuntary treatment on the
4 grounds that the committed person:

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

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

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

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

35 (d) Continues to be gravely disabled; or

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

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

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

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

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

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

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

38 (8) No person committed as provided in this section may be
39 detained unless a valid order of commitment is in effect. No order of

1 commitment can exceed one hundred eighty days in length except as
2 provided in subsection (7) of this section.

3 **Sec. 205.** RCW 71.05.320 and 2016 sp.s. c 29 s 238 are each
4 amended to read as follows:

5 (1)(a) If the court or jury finds that grounds set forth in RCW
6 71.05.280 have been proven and that the best interests of the person
7 or others will not be served by a less restrictive treatment which is
8 an alternative to detention, the court shall remand him or her to the
9 custody of the department or to a facility certified for ninety day
10 treatment by the department for a further period of intensive
11 treatment not to exceed ninety days from the date of judgment.

12 (b) If the order for inpatient treatment is based on a substance
13 use disorder, treatment must take place at an approved substance use
14 disorder treatment program. If the grounds set forth in RCW
15 71.05.280(3) are the basis of commitment, then the period of
16 treatment may be up to but not exceed one hundred eighty days from
17 the date of judgment in a facility certified for one hundred eighty
18 day treatment by the department.

19 (2) If the court or jury finds that grounds set forth in RCW
20 71.05.280 have been proven, but finds that treatment less restrictive
21 than detention will be in the best interest of the person or others,
22 then the court (~~shall remand him or her to the custody of the~~
23 ~~department or to a facility certified for ninety day treatment by the~~
24 ~~department~~) must commit him or her for a period of treatment of up
25 to ninety days or to a less restrictive alternative for a further
26 period of less restrictive treatment not to exceed ninety days from
27 the date of judgment. If the order for less restrictive treatment is
28 based on a substance use disorder, treatment must be provided by an
29 approved substance use disorder treatment program. If the grounds set
30 forth in RCW 71.05.280(3) are the basis of commitment, then the
31 period of treatment may be up to but not exceed one hundred eighty
32 days from the date of judgment. If the court or jury finds that the
33 grounds set forth in RCW 71.05.280(5) have been proven, and provide
34 the only basis for commitment, the court must enter an order for less
35 restrictive alternative treatment for up to ninety days from the date
36 of judgment and may not order inpatient treatment.

37 (3) An order for less restrictive alternative treatment entered
38 under subsection (2) of this section must name the mental health
39 service provider responsible for identifying the services the person

1 will receive in accordance with RCW 71.05.585, and must include a
2 requirement that the person cooperate with the services planned by
3 the mental health service provider.

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

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

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

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

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

1 (d) Continues to be gravely disabled; or

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

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

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

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

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

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

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

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

9 NEW SECTION. **Sec. 206.** The department of social and health
10 services shall confer with the department of health and hospitals
11 licensed under chapters 70.41 and 71.12 RCW to review laws and
12 regulations and identify changes that may be necessary to address
13 care delivery and cost-effective treatment for adults on ninety or
14 one hundred eighty day commitment orders which may be different than
15 the requirements for short-term psychiatric hospitalization. The
16 department of social and health services shall report its findings to
17 the select committee on quality improvement in state hospitals by
18 November 1, 2018.

19 NEW SECTION. **Sec. 207.** Section 205 of this act takes effect
20 July 1, 2026.

21 NEW SECTION. **Sec. 208.** Section 204 of this act expires July 1,
22 2026.

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