

2SHB 1394 - S COMM AMD

By Subcommittee on Behavioral Health

OUT OF ORDER 04/17/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that there is a
4 need for additional bed capacity and services for individuals with
5 behavioral health needs. The legislature further finds that for many
6 individuals, it is best for them to receive treatment in their
7 communities and in smaller facilities that help them stay closer to
8 home. The legislature further finds that the state hospitals are
9 struggling to keep up with rising demand; there are challenges to
10 finding appropriate placements for patients ready to discharge, and
11 there are a shortage of appropriate facilities for individuals with
12 complex behavioral health needs.

13 Therefore, the legislature intends to provide more options in the
14 continuum of care for behavioral health clients by creating new
15 facility types and by expanding the capacity of current provider
16 types in the community.

17 **Sec. 2.** RCW 71.24.025 and 2018 c 201 s 4002 are each amended to
18 read as follows:

19 Unless the context clearly requires otherwise, the definitions in
20 this section apply throughout this chapter.

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

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

25 (b) Being gravely disabled as defined in RCW 71.05.020 or, in the
26 case of a child, a gravely disabled minor as defined in RCW
27 71.34.020; or

28 (c) Presenting a likelihood of serious harm as defined in RCW
29 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

30 (2) "Alcoholism" means a disease, characterized by a dependency
31 on alcoholic beverages, loss of control over the amount and

1 circumstances of use, symptoms of tolerance, physiological or
2 psychological withdrawal, or both, if use is reduced or discontinued,
3 and impairment of health or disruption of social or economic
4 functioning.

5 (3) "Approved substance use disorder treatment program" means a
6 program for persons with a substance use disorder provided by a
7 treatment program licensed or certified by the department as meeting
8 standards adopted under this chapter.

9 (4) "Authority" means the Washington state health care authority.

10 (5) "Available resources" means funds appropriated for the
11 purpose of providing community mental health programs, federal funds,
12 except those provided according to Title XIX of the Social Security
13 Act, and state funds appropriated under this chapter or chapter 71.05
14 RCW by the legislature during any biennium for the purpose of
15 providing residential services, resource management services,
16 community support services, and other mental health services. This
17 does not include funds appropriated for the purpose of operating and
18 administering the state psychiatric hospitals.

19 (6) "Behavioral health organization" means any county authority
20 or group of county authorities or other entity recognized by the
21 director in contract in a defined region.

22 (7) "Behavioral health program" means all expenditures, services,
23 activities, or programs, including reasonable administration and
24 overhead, designed and conducted to prevent or treat chemical
25 dependency and mental illness.

26 (8) "Behavioral health services" means mental health services as
27 described in this chapter and chapter 71.36 RCW and substance use
28 disorder treatment services as described in this chapter.

29 (9) "Child" means a person under the age of eighteen years.

30 (10) "Chronically mentally ill adult" or "adult who is
31 chronically mentally ill" means an adult who has a mental disorder
32 and meets at least one of the following criteria:

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

35 (b) Has experienced a continuous psychiatric hospitalization or
36 residential treatment exceeding six months' duration within the
37 preceding year; or

38 (c) Has been unable to engage in any substantial gainful activity
39 by reason of any mental disorder which has lasted for a continuous
40 period of not less than twelve months. "Substantial gainful activity"

1 shall be defined by the authority by rule consistent with Public Law
2 92-603, as amended.

3 (11) "Clubhouse" means a community-based program that provides
4 rehabilitation services and is licensed or certified by the
5 department.

6 (12) "Community mental health service delivery system" means
7 public, private, or tribal agencies that provide services
8 specifically to persons with mental disorders as defined under RCW
9 71.05.020 and receive funding from public sources.

10 (13) "Community support services" means services authorized,
11 planned, and coordinated through resource management services
12 including, at a minimum, assessment, diagnosis, emergency crisis
13 intervention available twenty-four hours, seven days a week,
14 prescreening determinations for persons who are mentally ill being
15 considered for placement in nursing homes as required by federal law,
16 screening for patients being considered for admission to residential
17 services, diagnosis and treatment for children who are acutely
18 mentally ill or severely emotionally disturbed discovered under
19 screening through the federal Title XIX early and periodic screening,
20 diagnosis, and treatment program, investigation, legal, and other
21 nonresidential services under chapter 71.05 RCW, case management
22 services, psychiatric treatment including medication supervision,
23 counseling, psychotherapy, assuring transfer of relevant patient
24 information between service providers, recovery services, and other
25 services determined by behavioral health organizations.

26 (14) "Consensus-based" means a program or practice that has
27 general support among treatment providers and experts, based on
28 experience or professional literature, and may have anecdotal or case
29 study support, or that is agreed but not possible to perform studies
30 with random assignment and controlled groups.

31 (15) "County authority" means the board of county commissioners,
32 county council, or county executive having authority to establish a
33 community mental health program, or two or more of the county
34 authorities specified in this subsection which have entered into an
35 agreement to provide a community mental health program.

36 (16) "Department" means the department of health.

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

40 (18) "Director" means the director of the authority.

1 (19) "Drug addiction" means a disease characterized by a
2 dependency on psychoactive chemicals, loss of control over the amount
3 and circumstances of use, symptoms of tolerance, physiological or
4 psychological withdrawal, or both, if use is reduced or discontinued,
5 and impairment of health or disruption of social or economic
6 functioning.

7 (20) "Early adopter" means a regional service area for which all
8 of the county authorities have requested that the authority purchase
9 medical and behavioral health services through a managed care health
10 system as defined under RCW 71.24.380(6).

11 (21) "Emerging best practice" or "promising practice" means a
12 program or practice that, based on statistical analyses or a well
13 established theory of change, shows potential for meeting the
14 evidence-based or research-based criteria, which may include the use
15 of a program that is evidence-based for outcomes other than those
16 listed in subsection (22) of this section.

17 (22) "Evidence-based" means a program or practice that has been
18 tested in heterogeneous or intended populations with multiple
19 randomized, or statistically controlled evaluations, or both; or one
20 large multiple site randomized, or statistically controlled
21 evaluation, or both, where the weight of the evidence from a systemic
22 review demonstrates sustained improvements in at least one outcome.
23 "Evidence-based" also means a program or practice that can be
24 implemented with a set of procedures to allow successful replication
25 in Washington and, when possible, is determined to be cost-
26 beneficial.

27 (23) "Licensed physician" means a person licensed to practice
28 medicine or osteopathic medicine and surgery in the state of
29 Washington.

30 (24) "Licensed or certified service provider" means an entity
31 licensed or certified according to this chapter or chapter 71.05 RCW
32 or an entity deemed to meet state minimum standards as a result of
33 accreditation by a recognized behavioral health accrediting body
34 recognized and having a current agreement with the department, or
35 tribal attestation that meets state minimum standards, or persons
36 licensed under chapter 18.57, 18.57A, 18.71, 18.71A, 18.83, or 18.79
37 RCW, as it applies to registered nurses and advanced registered nurse
38 practitioners.

39 (25) "Long-term inpatient care" means inpatient services for
40 persons committed for, or voluntarily receiving intensive treatment

1 for, periods of ninety days or greater under chapter 71.05 RCW.
2 "Long-term inpatient care" as used in this chapter does not include:
3 (a) Services for individuals committed under chapter 71.05 RCW who
4 are receiving services pursuant to a conditional release or a court-
5 ordered less restrictive alternative to detention; or (b) services
6 for individuals voluntarily receiving less restrictive alternative
7 treatment on the grounds of the state hospital.

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

11 (27) Mental health "treatment records" include registration and
12 all other records concerning persons who are receiving or who at any
13 time have received services for mental illness, which are maintained
14 by the department of social and health services or the authority, by
15 behavioral health organizations and their staffs, or by treatment
16 facilities. "Treatment records" do not include notes or records
17 maintained for personal use by a person providing treatment services
18 for the department of social and health services, behavioral health
19 organizations, or a treatment facility if the notes or records are
20 not available to others.

21 (28) "Mentally ill persons," "persons who are mentally ill," and
22 "the mentally ill" mean persons and conditions defined in subsections
23 (1), (10), (36), and (37) of this section.

24 (29) "Recovery" means the process in which people are able to
25 live, work, learn, and participate fully in their communities.

26 (30) "Registration records" include all the records of the
27 department of social and health services, the authority, behavioral
28 health organizations, treatment facilities, and other persons
29 providing services for the department of social and health services,
30 the authority, county departments, or facilities which identify
31 persons who are receiving or who at any time have received services
32 for mental illness.

33 (31) "Research-based" means a program or practice that has been
34 tested with a single randomized, or statistically controlled
35 evaluation, or both, demonstrating sustained desirable outcomes; or
36 where the weight of the evidence from a systemic review supports
37 sustained outcomes as described in subsection (22) of this section
38 but does not meet the full criteria for evidence-based.

39 (32) "Residential services" means a complete range of residences
40 and supports authorized by resource management services and which may

1 involve a facility, a distinct part thereof, or services which
2 support community living, for persons who are acutely mentally ill,
3 adults who are chronically mentally ill, children who are severely
4 emotionally disturbed, or adults who are seriously disturbed and
5 determined by the behavioral health organization to be at risk of
6 becoming acutely or chronically mentally ill. The services shall
7 include at least evaluation and treatment services as defined in
8 chapter 71.05 RCW, acute crisis respite care, long-term adaptive and
9 rehabilitative care, and supervised and supported living services,
10 and shall also include any residential services developed to service
11 persons who are mentally ill in nursing homes, residential treatment
12 facilities, assisted living facilities, and adult family homes, and
13 may include outpatient services provided as an element in a package
14 of services in a supported housing model. Residential services for
15 children in out-of-home placements related to their mental disorder
16 shall not include the costs of food and shelter, except for
17 children's long-term residential facilities existing prior to January
18 1, 1991.

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

22 (34) "Resource management services" mean the planning,
23 coordination, and authorization of residential services and community
24 support services administered pursuant to an individual service plan
25 for: (a) Adults and children who are acutely mentally ill; (b) adults
26 who are chronically mentally ill; (c) children who are severely
27 emotionally disturbed; or (d) adults who are seriously disturbed and
28 determined solely by a behavioral health organization to be at risk
29 of becoming acutely or chronically mentally ill. Such planning,
30 coordination, and authorization shall include mental health screening
31 for children eligible under the federal Title XIX early and periodic
32 screening, diagnosis, and treatment program. Resource management
33 services include seven day a week, twenty-four hour a day
34 availability of information regarding enrollment of adults and
35 children who are mentally ill in services and their individual
36 service plan to designated crisis responders, evaluation and
37 treatment facilities, and others as determined by the behavioral
38 health organization.

39 (35) "Secretary" means the secretary of the department of health.

40 (36) "Seriously disturbed person" means a person who:

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

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

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

10 (d) Exhibits suicidal preoccupation or attempts; or

11 (e) Is a child diagnosed by a mental health professional, as
12 defined in chapter 71.34 RCW, as experiencing a mental disorder which
13 is clearly interfering with the child's functioning in family or
14 school or with peers or is clearly interfering with the child's
15 personality development and learning.

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

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

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

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

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

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

33 (ii) Changes in custodial adult;

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

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

39 (v) Drug or alcohol abuse; or

40 (vi) Homelessness.

1 (38) "State minimum standards" means minimum requirements
2 established by rules adopted and necessary to implement this chapter
3 by:

4 (a) The authority for:

5 (i) Delivery of mental health and substance use disorder
6 services; and

7 (ii) Community support services and resource management services;

8 (b) The department of health for:

9 (i) Licensed or certified service providers for the provision of
10 mental health and substance use disorder services; and

11 (ii) Residential services.

12 (39) "Substance use disorder" means a cluster of cognitive,
13 behavioral, and physiological symptoms indicating that an individual
14 continues using the substance despite significant substance-related
15 problems. The diagnosis of a substance use disorder is based on a
16 pathological pattern of behaviors related to the use of the
17 substances.

18 (40) "Tribal authority," for the purposes of this section and RCW
19 71.24.300 only, means: The federally recognized Indian tribes and the
20 major Indian organizations recognized by the director insofar as
21 these organizations do not have a financial relationship with any
22 behavioral health organization that would present a conflict of
23 interest.

24 (41) "Intensive behavioral health treatment facility" means a
25 community-based specialized residential treatment facility for
26 individuals with behavioral health conditions, including individuals
27 discharging from or being diverted from state and local hospitals,
28 whose impairment or behaviors do not meet, or no longer meet,
29 criteria for involuntary inpatient commitment under chapter 71.05
30 RCW, but whose care needs cannot be met in other community-based
31 placement settings.

32 (42) "Mental health peer respite center" means a peer-run program
33 to serve individuals in need of voluntary, short-term, noncrisis
34 services that focus on recovery and wellness.

35 NEW SECTION. Sec. 3. A new section is added to chapter 71.24
36 RCW to read as follows:

37 The secretary shall license or certify intensive behavioral
38 health treatment facilities that meet state minimum standards. The
39 secretary must establish rules working with the authority and the

1 department of social and health services to create standards for
2 licensure or certification of intensive behavioral health treatment
3 facilities. The rules, at a minimum, must:

4 (1) Clearly define clinical eligibility criteria in alignment
5 with how "intensive behavioral health treatment facility" is defined
6 in RCW 71.24.025;

7 (2) Require twenty-four hour supervision of residents;

8 (3) Establish staffing requirements that provide an appropriate
9 response to the acuity of the residents, including a clinical team
10 and a high staff to patient ratio;

11 (4) Require access to regular psychosocial rehabilitation
12 services including, but not limited to, skills training in daily
13 living activities, social interaction, behavior management, impulse
14 control, and self-management of medications;

15 (5) Establish requirements for the ability to use limited egress;

16 (6) Limit services to persons at least eighteen years of age; and

17 (7) Establish resident rights that are substantially similar to
18 the rights of residents in long-term care facilities.

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

21 By December 1, 2019, the secretary of health, in consultation
22 with the department of social and health services, the department of
23 commerce, the long-term care ombuds, and relevant stakeholders must
24 provide recommendations to the governor and the appropriate
25 committees of the legislature on providing resident rights and access
26 to ombuds services to the residents of the intensive behavioral
27 health treatment facilities.

28 NEW SECTION. **Sec. 5.** A new section is added to chapter 71.24
29 RCW to read as follows:

30 The secretary shall license or certify mental health peer respite
31 centers that meet state minimum standards. In consultation with the
32 authority and the department of social and health services, the
33 secretary must:

34 (1) Establish requirements for licensed and certified agencies
35 providing mental health peer respite center services and establish
36 physical plant and service requirements to provide voluntary, short-
37 term, noncrisis services that focus on recovery and wellness;

1 (2) Require licensed and certified agencies to partner with the
2 local crisis system including, but not limited to, evaluation and
3 treatment facilities and designated crisis responders;

4 (3) Establish staffing requirements, including rules to ensure
5 that facilities are peer-run;

6 (4) Limit services to a maximum of seven days in a month;

7 (5) Limit services to individuals who are experiencing
8 psychiatric distress, but do not meet legal criteria for involuntary
9 hospitalization under chapter 71.05 RCW; and

10 (6) Limit services to persons at least eighteen years of age.

11 NEW SECTION. **Sec. 6.** A new section is added to chapter 71.24
12 RCW to read as follows:

13 (1) The authority and the entities identified in RCW 71.24.310
14 and 71.24.380 shall: (a) Work with willing community hospitals
15 licensed under chapters 70.41 and 71.12 RCW and evaluation and
16 treatment facilities licensed or certified under chapter 71.05 RCW to
17 assess their capacity to become licensed or certified to provide
18 long-term inpatient care and to meet the requirements of this
19 chapter; and (b) enter into contracts and payment arrangements with
20 such hospitals and evaluation and treatment facilities choosing to
21 provide long-term mental health placements, to the extent that
22 willing licensed or certified facilities are available.

23 (2) Nothing in this section requires any community hospital or
24 evaluation and treatment facility to be licensed or certified to
25 provide long-term mental health placements.

26 NEW SECTION. **Sec. 7.** By November 15, 2019, the health care
27 authority shall confer with the department of health, hospitals
28 licensed under chapters 70.41 and 71.12 RCW, and evaluation and
29 treatment facilities licensed or certified under chapter 71.05 RCW to
30 review laws and regulations and identify changes that may be
31 necessary to address care delivery and cost-effective treatment for
32 adults on ninety-day or one hundred eighty-day commitment orders. The
33 health care authority must report its findings to the governor's
34 office and the appropriate committees of the legislature by December
35 15, 2019.

36 **Sec. 8.** RCW 70.38.111 and 2017 c 199 s 1 are each amended to
37 read as follows:

1 (1) The department shall not require a certificate of need for
2 the offering of an inpatient tertiary health service by:

3 (a) A health maintenance organization or a combination of health
4 maintenance organizations if (i) the organization or combination of
5 organizations has, in the service area of the organization or the
6 service areas of the organizations in the combination, an enrollment
7 of at least fifty thousand individuals, (ii) the facility in which
8 the service will be provided is or will be geographically located so
9 that the service will be reasonably accessible to such enrolled
10 individuals, and (iii) at least seventy-five percent of the patients
11 who can reasonably be expected to receive the tertiary health service
12 will be individuals enrolled with such organization or organizations
13 in the combination;

14 (b) A health care facility if (i) the facility primarily provides
15 or will provide inpatient health services, (ii) the facility is or
16 will be controlled, directly or indirectly, by a health maintenance
17 organization or a combination of health maintenance organizations
18 which has, in the service area of the organization or service areas
19 of the organizations in the combination, an enrollment of at least
20 fifty thousand individuals, (iii) the facility is or will be
21 geographically located so that the service will be reasonably
22 accessible to such enrolled individuals, and (iv) at least seventy-
23 five percent of the patients who can reasonably be expected to
24 receive the tertiary health service will be individuals enrolled with
25 such organization or organizations in the combination; or

26 (c) A health care facility (or portion thereof) if (i) the
27 facility is or will be leased by a health maintenance organization or
28 combination of health maintenance organizations which has, in the
29 service area of the organization or the service areas of the
30 organizations in the combination, an enrollment of at least fifty
31 thousand individuals and, on the date the application is submitted
32 under subsection (2) of this section, at least fifteen years remain
33 in the term of the lease, (ii) the facility is or will be
34 geographically located so that the service will be reasonably
35 accessible to such enrolled individuals, and (iii) at least seventy-
36 five percent of the patients who can reasonably be expected to
37 receive the tertiary health service will be individuals enrolled with
38 such organization;

39 if, with respect to such offering or obligation by a nursing home,
40 the department has, upon application under subsection (2) of this

1 section, granted an exemption from such requirement to the
2 organization, combination of organizations, or facility.

3 (2) A health maintenance organization, combination of health
4 maintenance organizations, or health care facility shall not be
5 exempt under subsection (1) of this section from obtaining a
6 certificate of need before offering a tertiary health service unless:

7 (a) It has submitted at least thirty days prior to the offering
8 of services reviewable under RCW 70.38.105(4)(d) an application for
9 such exemption; and

10 (b) The application contains such information respecting the
11 organization, combination, or facility and the proposed offering or
12 obligation by a nursing home as the department may require to
13 determine if the organization or combination meets the requirements
14 of subsection (1) of this section or the facility meets or will meet
15 such requirements; and

16 (c) The department approves such application. The department
17 shall approve or disapprove an application for exemption within
18 thirty days of receipt of a completed application. In the case of a
19 proposed health care facility (or portion thereof) which has not
20 begun to provide tertiary health services on the date an application
21 is submitted under this subsection with respect to such facility (or
22 portion), the facility (or portion) shall meet the applicable
23 requirements of subsection (1) of this section when the facility
24 first provides such services. The department shall approve an
25 application submitted under this subsection if it determines that the
26 applicable requirements of subsection (1) of this section are met.

27 (3) A health care facility (or any part thereof) with respect to
28 which an exemption was granted under subsection (1) of this section
29 may not be sold or leased and a controlling interest in such facility
30 or in a lease of such facility may not be acquired and a health care
31 facility described in (1)(c) which was granted an exemption under
32 subsection (1) of this section may not be used by any person other
33 than the lessee described in (1)(c) unless:

34 (a) The department issues a certificate of need approving the
35 sale, lease, acquisition, or use; or

36 (b) The department determines, upon application, that (i) the
37 entity to which the facility is proposed to be sold or leased, which
38 intends to acquire the controlling interest, or which intends to use
39 the facility is a health maintenance organization or a combination of
40 health maintenance organizations which meets the requirements of

1 (1)(a)(i), and (ii) with respect to such facility, meets the
2 requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i)
3 and (ii).

4 (4) In the case of a health maintenance organization, an
5 ambulatory care facility, or a health care facility, which ambulatory
6 or health care facility is controlled, directly or indirectly, by a
7 health maintenance organization or a combination of health
8 maintenance organizations, the department may under the program apply
9 its certificate of need requirements to the offering of inpatient
10 tertiary health services to the extent that such offering is not
11 exempt under the provisions of this section or RCW 70.38.105(7).

12 (5)(a) The department shall not require a certificate of need for
13 the construction, development, or other establishment of a nursing
14 home, or the addition of beds to an existing nursing home, that is
15 owned and operated by a continuing care retirement community that:

16 (i) Offers services only to contractual members;

17 (ii) Provides its members a contractually guaranteed range of
18 services from independent living through skilled nursing, including
19 some assistance with daily living activities;

20 (iii) Contractually assumes responsibility for the cost of
21 services exceeding the member's financial responsibility under the
22 contract, so that no third party, with the exception of insurance
23 purchased by the retirement community or its members, but including
24 the medicaid program, is liable for costs of care even if the member
25 depletes his or her personal resources;

26 (iv) Has offered continuing care contracts and operated a nursing
27 home continuously since January 1, 1988, or has obtained a
28 certificate of need to establish a nursing home;

29 (v) Maintains a binding agreement with the state assuring that
30 financial liability for services to members, including nursing home
31 services, will not fall upon the state;

32 (vi) Does not operate, and has not undertaken a project that
33 would result in a number of nursing home beds in excess of one for
34 every four living units operated by the continuing care retirement
35 community, exclusive of nursing home beds; and

36 (vii) Has obtained a professional review of pricing and long-term
37 solvency within the prior five years which was fully disclosed to
38 members.

39 (b) A continuing care retirement community shall not be exempt
40 under this subsection from obtaining a certificate of need unless:

1 (i) It has submitted an application for exemption at least thirty
2 days prior to commencing construction of, is submitting an
3 application for the licensure of, or is commencing operation of a
4 nursing home, whichever comes first; and

5 (ii) The application documents to the department that the
6 continuing care retirement community qualifies for exemption.

7 (c) The sale, lease, acquisition, or use of part or all of a
8 continuing care retirement community nursing home that qualifies for
9 exemption under this subsection shall require prior certificate of
10 need approval to qualify for licensure as a nursing home unless the
11 department determines such sale, lease, acquisition, or use is by a
12 continuing care retirement community that meets the conditions of (a)
13 of this subsection.

14 (6) A rural hospital, as defined by the department, reducing the
15 number of licensed beds to become a rural primary care hospital under
16 the provisions of Part A Title XVIII of the Social Security Act
17 Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the
18 reduction of beds licensed under chapter 70.41 RCW, increase the
19 number of licensed beds to no more than the previously licensed
20 number without being subject to the provisions of this chapter.

21 (7) A rural health care facility licensed under RCW 70.175.100
22 formerly licensed as a hospital under chapter 70.41 RCW may, within
23 three years of the effective date of the rural health care facility
24 license, apply to the department for a hospital license and not be
25 subject to the requirements of RCW 70.38.105(4)(a) as the
26 construction, development, or other establishment of a new hospital,
27 provided there is no increase in the number of beds previously
28 licensed under chapter 70.41 RCW and there is no redistribution in
29 the number of beds used for acute care or long-term care, the rural
30 health care facility has been in continuous operation, and the rural
31 health care facility has not been purchased or leased.

32 (8) A rural hospital determined to no longer meet critical access
33 hospital status for state law purposes as a result of participation
34 in the Washington rural health access preservation pilot identified
35 by the state office of rural health and formerly licensed as a
36 hospital under chapter 70.41 RCW may apply to the department to renew
37 its hospital license and not be subject to the requirements of RCW
38 70.38.105(4)(a) as the construction, development, or other
39 establishment of a new hospital, provided there is no increase in the
40 number of beds previously licensed under chapter 70.41 RCW. If all or

1 part of a formerly licensed rural hospital is sold, purchased, or
2 leased during the period the rural hospital does not meet critical
3 access hospital status as a result of participation in the Washington
4 rural health access preservation pilot and the new owner or lessor
5 applies to renew the rural hospital's license, then the sale,
6 purchase, or lease of part or all of the rural hospital is subject to
7 the provisions of this chapter.

8 (9) (a) A nursing home that voluntarily reduces the number of its
9 licensed beds to provide assisted living, licensed assisted living
10 facility care, adult day care, adult day health, respite care,
11 hospice, outpatient therapy services, congregate meals, home health,
12 or senior wellness clinic, or to reduce to one or two the number of
13 beds per room or to otherwise enhance the quality of life for
14 residents in the nursing home, may convert the original facility or
15 portion of the facility back, and thereby increase the number of
16 nursing home beds to no more than the previously licensed number of
17 nursing home beds without obtaining a certificate of need under this
18 chapter, provided the facility has been in continuous operation and
19 has not been purchased or leased. Any conversion to the original
20 licensed bed capacity, or to any portion thereof, shall comply with
21 the same life and safety code requirements as existed at the time the
22 nursing home voluntarily reduced its licensed beds; unless waivers
23 from such requirements were issued, in which case the converted beds
24 shall reflect the conditions or standards that then existed pursuant
25 to the approved waivers.

26 (b) To convert beds back to nursing home beds under this
27 subsection, the nursing home must:

28 (i) Give notice of its intent to preserve conversion options to
29 the department of health no later than thirty days after the
30 effective date of the license reduction; and

31 (ii) Give notice to the department of health and to the
32 department of social and health services of the intent to convert
33 beds back. If construction is required for the conversion of beds
34 back, the notice of intent to convert beds back must be given, at a
35 minimum, one year prior to the effective date of license modification
36 reflecting the restored beds; otherwise, the notice must be given a
37 minimum of ninety days prior to the effective date of license
38 modification reflecting the restored beds. Prior to any license
39 modification to convert beds back to nursing home beds under this

1 section, the licensee must demonstrate that the nursing home meets
2 the certificate of need exemption requirements of this section.

3 The term "construction," as used in (b)(ii) of this subsection,
4 is limited to those projects that are expected to equal or exceed the
5 expenditure minimum amount, as determined under this chapter.

6 (c) Conversion of beds back under this subsection must be
7 completed no later than four years after the effective date of the
8 license reduction. However, for good cause shown, the four-year
9 period for conversion may be extended by the department of health for
10 one additional four-year period.

11 (d) Nursing home beds that have been voluntarily reduced under
12 this section shall be counted as available nursing home beds for the
13 purpose of evaluating need under RCW 70.38.115(2) (a) and (k) so long
14 as the facility retains the ability to convert them back to nursing
15 home use under the terms of this section.

16 (e) When a building owner has secured an interest in the nursing
17 home beds, which are intended to be voluntarily reduced by the
18 licensee under (a) of this subsection, the applicant shall provide
19 the department with a written statement indicating the building
20 owner's approval of the bed reduction.

21 (10)(a) The department shall not require a certificate of need
22 for a hospice agency if:

23 (i) The hospice agency is designed to serve the unique religious
24 or cultural needs of a religious group or an ethnic minority and
25 commits to furnishing hospice services in a manner specifically aimed
26 at meeting the unique religious or cultural needs of the religious
27 group or ethnic minority;

28 (ii) The hospice agency is operated by an organization that:

29 (A) Operates a facility, or group of facilities, that offers a
30 comprehensive continuum of long-term care services, including, at a
31 minimum, a licensed, medicare-certified nursing home, assisted
32 living, independent living, day health, and various community-based
33 support services, designed to meet the unique social, cultural, and
34 religious needs of a specific cultural and ethnic minority group;

35 (B) Has operated the facility or group of facilities for at least
36 ten continuous years prior to the establishment of the hospice
37 agency;

38 (iii) The hospice agency commits to coordinating with existing
39 hospice programs in its community when appropriate;

1 (iv) The hospice agency has a census of no more than forty
2 patients;

3 (v) The hospice agency commits to obtaining and maintaining
4 medicare certification;

5 (vi) The hospice agency only serves patients located in the same
6 county as the majority of the long-term care services offered by the
7 organization that operates the agency; and

8 (vii) The hospice agency is not sold or transferred to another
9 agency.

10 (b) The department shall include the patient census for an agency
11 exempted under this subsection (10) in its calculations for future
12 certificate of need applications.

13 (11) To alleviate the need to board psychiatric patients in
14 emergency departments and increase capacity of hospitals to serve
15 individuals on ninety-day or one hundred eighty-day commitment
16 orders, for the period of time from May 5, 2017, through June 30,
17 ((2019)) 2021:

18 (a) The department shall suspend the certificate of need
19 requirement for a hospital licensed under chapter 70.41 RCW that
20 changes the use of licensed beds to increase the number of beds to
21 provide psychiatric services, including involuntary treatment
22 services. A certificate of need exemption under this subsection
23 (11) (a) shall be valid for two years.

24 (b) The department may not require a certificate of need for:

25 (i) The addition of beds as described in RCW 70.38.260 (2) and
26 (3); or

27 (ii) The construction, development, or establishment of a
28 psychiatric hospital licensed as an establishment under chapter 71.12
29 RCW that will have no more than sixteen beds and provide treatment to
30 adults on ninety or one hundred eighty-day involuntary commitment
31 orders, as described in RCW 70.38.260 ((+4)) (5).

32 **Sec. 9.** RCW 70.38.260 and 2017 c 199 s 2 are each amended to
33 read as follows:

34 (1) For a grant awarded during fiscal years ((2016)) 2018 and
35 ((2017)) 2019 by the department of commerce under this section,
36 hospitals licensed under chapter 70.41 RCW and psychiatric hospitals
37 licensed as establishments under chapter 71.12 RCW are not subject to
38 certificate of need requirements for the addition of the number of
39 new psychiatric beds indicated in the grant. The department of

1 commerce may not make a prior approval of a certificate of need
2 application a condition for a grant application under this
3 section. The period during which an approved hospital or psychiatric
4 hospital project qualifies for a certificate of need exemption under
5 this section is two years from the date of the grant award.

6 (2) (a) Until June 30, (~~(2019)~~) 2021, a hospital licensed under
7 chapter 70.41 RCW is exempt from certificate of need requirements for
8 the addition of new psychiatric beds.

9 (b) A hospital that adds new psychiatric beds under this
10 subsection (2) must:

11 (i) Notify the department of the addition of new psychiatric
12 beds. The department shall provide the hospital with a notice of
13 exemption within thirty days; and

14 (ii) Commence the project within two years of the date of receipt
15 of the notice of exemption.

16 (c) Beds granted an exemption under RCW 70.38.111(11)(b) must
17 remain psychiatric beds unless a certificate of need is granted to
18 change their use or the hospital voluntarily reduces its licensed
19 capacity.

20 (3) (a) Until June 30, (~~(2019)~~) 2021, a psychiatric hospital
21 licensed as an establishment under chapter 71.12 RCW is exempt from
22 certificate of need requirements for the one-time addition of up to
23 thirty new psychiatric beds, except new psychiatric beds in
24 subsection (4) of this section, if it demonstrates to the
25 satisfaction of the department:

26 (i) That its most recent two years of publicly available fiscal
27 year-end report data as required under RCW 70.170.100 and 43.70.050
28 reported to the department by the psychiatric hospital, show a payer
29 mix of a minimum of fifty percent medicare and medicaid based on a
30 calculation using patient days; and

31 (ii) A commitment to maintaining the payer mix in (a) of this
32 subsection for a period of five consecutive years after the beds are
33 made available for use by patients.

34 (b) A psychiatric hospital that adds new psychiatric beds under
35 this subsection (3) must:

36 (i) Notify the department of the addition of new psychiatric
37 beds. The department shall provide the psychiatric hospital with a
38 notice of exemption within thirty days; and

39 (ii) Commence the project within two years of the date of receipt
40 of the notice of exemption.

1 (c) Beds granted an exemption under RCW 70.38.111(11)(b) must
2 remain psychiatric beds unless a certificate of need is granted to
3 change their use or the psychiatric hospital voluntarily reduces its
4 licensed capacity.

5 (4)(a) Until June 30, 2021, an existing psychiatric hospital
6 licensed under chapter 71.12 RCW, located in King county, serving
7 adults, adolescents, and children, and recipient of capital funding
8 from the behavioral health facilities grant program, is exempt from
9 certificate of need requirements for the one-time addition of up to
10 sixty new psychiatric beds for individuals on ninety-day and one
11 hundred eighty-day civil commitment orders if it demonstrates to the
12 satisfaction of the department:

13 (i) That its most recent two years of publicly available fiscal
14 year-end report data, reported to the department by the psychiatric
15 hospital, show a payer mix of a minimum of fifty percent medicare and
16 medicaid based on a calculation using patient days; and

17 (ii) A commitment to maintaining the payer mix in this subsection
18 (4)(a) for a period of five consecutive years after the beds are made
19 available for use by patients.

20 (b) A psychiatric hospital that adds new psychiatric beds for
21 individuals on ninety-day and one hundred eighty-day civil commitment
22 orders under this subsection (4) must:

23 (i) Notify the department of the addition of new psychiatric
24 beds. The department shall provide the psychiatric hospital with a
25 notice of exemption within thirty days; and

26 (ii) Commence the project within two years of the date of receipt
27 of the notice of exemption.

28 (c) Beds granted an exemption under RCW 70.38.111(11)(b) must
29 remain psychiatric beds unless a certificate of need is granted to
30 change their use or the psychiatric hospital voluntarily reduces its
31 licensed capacity.

32 (5)(a) Until June 30, ((2019)) 2021, an entity seeking to
33 construct, develop, or establish a psychiatric hospital licensed as
34 an establishment under chapter 71.12 RCW is exempt from certificate
35 of need requirements if the proposed psychiatric hospital will have
36 no more than sixteen beds and dedicate a portion of the beds to
37 providing treatment to adults on ninety or one hundred eighty-day
38 involuntary commitment orders. The psychiatric hospital may also
39 provide treatment to adults on a seventy-two hour detention or
40 fourteen-day involuntary commitment order.

1 (b) An entity that seeks to construct, develop, or establish a
2 psychiatric hospital under this subsection (~~((4))~~) (5) must:

3 (i) Notify the department of the addition of construction,
4 development, or establishment. The department shall provide the
5 entity with a notice of exemption within thirty days; and

6 (ii) Commence the project within two years of the date of receipt
7 of the notice of exemption.

8 (c) Entities granted an exemption under RCW 70.38.111(11)(b)(ii)
9 may not exceed sixteen beds unless a certificate of need is granted
10 to increase the psychiatric hospital's capacity.

11 (~~((5))~~) (6) This section expires June 30, (~~((2022))~~) 2025.

12 NEW SECTION. **Sec. 10.** By December 1, 2019, the secretary of
13 health must, in consultation with the department of social and health
14 services, department of children, youth, and families,
15 representatives from providers serving children's inpatient
16 psychiatric needs in each of the three largest cities in Washington,
17 and the health care authority, provide recommendations to the
18 governor's office and the appropriate committees of the legislature
19 on youth short-term residential intensive behavioral health and
20 developmental disabilities services. The recommendations must
21 establish staffing requirements that provide an appropriate level of
22 treatment for residents and include both licensed mental health
23 professionals and developmental disability professionals. The
24 recommendations should also consider developmental disability-related
25 services necessary to support the youth and the youth's family in
26 preparation for and after discharge.

27 **Sec. 11.** RCW 74.39A.030 and 2018 c 278 s 6 and 2018 c 225 s 2
28 are each reenacted and amended to read as follows:

29 (1) To the extent of available funding, the department shall
30 expand cost-effective options for home and community services for
31 consumers for whom the state participates in the cost of their care.

32 (2) In expanding home and community services, the department
33 shall take full advantage of federal funding available under Title
34 XVIII and Title XIX of the federal social security act, including
35 home health, adult day care, waiver options, and state plan services
36 and expand the availability of in-home services and residential
37 services, including services in adult family homes, assisted living
38 facilities, and enhanced services facilities.

1 (3) (a) The department shall by rule establish payment rates for
2 home and community services that support the provision of cost-
3 effective care. Beginning July 1, 2019, the department shall adopt a
4 data-driven medicaid payment methodology as specified in RCW
5 74.39A.032 for contracted assisted living, adult residential care,
6 and enhanced adult residential care. In the event of any conflict
7 between any such rule and a collective bargaining agreement entered
8 into under RCW 74.39A.270 and 74.39A.300, the collective bargaining
9 agreement prevails.

10 (b) The department may authorize an enhanced adult residential
11 care rate for nursing homes that temporarily or permanently convert
12 their bed use under chapter 70.38 RCW for the purposes of providing
13 assisted living, enhanced adult residential care (~~under chapter~~
14 ~~70.38 RCW~~), or adult residential care, when the department
15 determines that payment of an enhanced rate is cost-effective and
16 necessary to foster expansion of these contracted (~~enhanced adult~~
17 ~~residential care~~) services. As an incentive for nursing homes to
18 permanently convert a portion of (~~its~~) their nursing home bed
19 capacity for the purposes of providing assisted living, enhanced
20 adult residential care, or adult residential care, including but not
21 limited to serving individuals with behavioral health treatment
22 needs, the department may authorize a supplemental add-on to the
23 (~~enhanced adult~~) residential care rate.

24 (~~(c) The department may authorize a supplemental assisted living~~
25 ~~services rate for up to four years for facilities that convert from~~
26 ~~nursing home use and do not retain rights to the converted nursing~~
27 ~~home beds under chapter 70.38 RCW, if the department determines that~~
28 ~~payment of a supplemental rate is cost-effective and necessary to~~
29 ~~foster expansion of contracted assisted living services.))~~

30 NEW SECTION. Sec. 12. (1) The health care authority shall
31 establish a pilot program to provide mental health drop-in center
32 services. The mental health drop-in center services shall provide a
33 peer-focused recovery model during daytime hours through a community-
34 based, therapeutic, less restrictive alternative to hospitalization
35 for acute psychiatric needs. The program shall assist clients in need
36 of voluntary, short-term, noncrisis services that focus on recovery
37 and wellness. Clients may refer themselves, be brought to the center
38 by law enforcement, be brought to the center by family members, or be
39 referred by an emergency department.

1 (2) The pilot program shall be conducted in the largest city in a
2 regional service area that has at least nine counties. Funds to
3 support the pilot program shall be distributed through the behavioral
4 health administrative service organization that serves the pilot
5 program.

6 (3) The pilot program shall begin on January 1, 2020, and
7 conclude July 1, 2022.

8 (4) By December 1, 2020, the health care authority shall submit a
9 preliminary report to the governor and the appropriate committees of
10 the legislature. The preliminary report shall include a survey of
11 peer mental health programs that are operating in the state,
12 including the location, type of services offered, and number of
13 clients served. By December 1, 2021, the health care authority shall
14 report to the governor and the appropriate committees of the
15 legislature on the results of the pilot program. The report shall
16 include information about the number of clients served, the needs of
17 the clients, the method of referral for the clients, and
18 recommendations on how to expand the program statewide, including any
19 recommendations to account for different needs in urban and rural
20 areas."

2SHB 1394 - S COMM AMD

By Subcommittee on Behavioral Health

OUT OF ORDER 04/17/2019

21 On page 1, line 2 of the title, after "patients;" strike the
22 remainder of the title and insert "amending RCW 71.24.025, 70.38.111,
23 and 70.38.260; reenacting and amending RCW 74.39A.030; adding new
24 sections to chapter 71.24 RCW; creating new sections; and providing
25 an expiration date."

EFFECT: (1) Increases licensure/certification requirements for
intensive behavioral health treatment facilities by requiring clearly
defined eligibility criteria, a clinical team, a high staff-to-
patient ratio, and access to psychosocial rehabilitation services
including skills training in daily living activities, social
interaction, behavior management, impulse control, and self-
management of medications.

(2) Requires the Department of Health to create a certification
for mental health peer respite centers which are a peer-run program
limited to seven service days per month which serves clients who do
not meet criteria for involuntary hospitalization.

(3) Expands exemption from certification of need requirements by allowing a 60-bed, instead of 30-bed, expansion of psychiatric beds for an existing hospital in King county meeting certain requirements (Navos) until June 30, 2021, for the purpose of serving individuals on 90-day or 180-day civil commitments, at least half of which must be funded by Medicare or Medicaid.

(4) The Department of Health must consult with Seattle Children's, Mary Bridge in Tacoma, and Sacred Heart in Spokane before developing recommendations on youth short-term residential intensive behavioral health and developmental disabilities services.

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