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**HOUSE BILL 1365**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Representatives Tharinger, Harris, Chapman, Appleton, Dolan, Fitzgibbon, Jinkins, Riccelli, Stanford, Robinson, Kloba, Doglio, Pollet, Leavitt, Santos, Ormsby, and Ortiz-Self

Read first time 01/21/19. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to creating a forum and a funding mechanism to  
2 improve the health of American Indians and Alaska Natives in the  
3 state; reenacting and amending RCW 43.79A.040; and adding a new  
4 chapter to Title 43 RCW.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

7 (a) As set forth in 25 U.S.C. Sec. 1602, it is the policy of the  
8 nation, in fulfillment of its special trust responsibilities and  
9 legal obligations to American Indians and Alaska Natives, to:

10 (i) Ensure the highest possible health status for American  
11 Indians and Alaska Natives and to provide all resources necessary to  
12 effect that policy;

13 (ii) Raise the health status of American Indians and Alaska  
14 Natives to at least the levels set forth in the goals contained  
15 within the healthy people 2020 initiative or successor objectives;  
16 and

17 (iii) Ensure tribal self-determination and maximum participation  
18 by American Indians and Alaska Natives in the direction of health  
19 care services so as to render the persons administering such services  
20 and the services themselves more responsive to the needs and desires  
21 of tribes and American Indian and Alaska Native communities;

1 (b) According to the northwest tribal epidemiology center and the  
2 department of health, American Indians and Alaska Natives in the  
3 state experience some of the greatest health disparities compared to  
4 other groups, including excessively high rates of:

5 (i) Premature mortality due to suicide, overdose, unintentional  
6 injury, and various chronic diseases; and

7 (ii) Asthma, coronary heart disease, hypertension, diabetes,  
8 prediabetes, obesity, dental caries, poor mental health, youth  
9 depressive feelings, cigarette smoking and vaping, and cannabis use;

10 (c) These health disparities are a direct result of both  
11 historical trauma, leading to adverse childhood experiences across  
12 multiple generations, and inadequate levels of federal funding to the  
13 Indian health service;

14 (d) Under a 2016 update in payment policy from the centers for  
15 medicare and medicaid services, the state has the opportunity to  
16 shift more of the cost of care for American Indian and Alaska Native  
17 medicaid enrollees from the state general fund to the federal  
18 government if all of the federal requirements are met;

19 (e) Because the federal requirements to achieve this cost shift  
20 and obtain the new federal funds place significant administrative  
21 burdens on Indian health service and tribal health facilities, the  
22 state has no way to shift these costs of care to the federal  
23 government unless the state provides incentives for tribes to take on  
24 these administrative burdens; and

25 (f) The federal government's intent for this update in payment  
26 policy is to help states, the Indian health service, and tribes to  
27 improve delivery systems for American Indians and Alaska Natives by  
28 increasing access to care, strengthening continuity of care, and  
29 improving population health.

30 (2) The legislature, therefore, intends to:

31 (a) Establish that it is the policy of this state and the intent  
32 of this chapter, in fulfillment of the state's unique relationships  
33 and shared respect between sovereign governments, to:

34 (i) Recognize the United States' special trust responsibility to  
35 provide quality health care and allied health services to American  
36 Indians and Alaska Natives, including those individuals who are  
37 residents of this state; and

38 (ii) Implement the national policies of Indian self-determination  
39 and achieving the highest possible health status for American Indians  
40 and Alaska Natives in the state;

- 1 (b) Establish the governor's Indian health advisory council to:
- 2 (i) Adopt a biennial Indian health improvement advisory plan,
- 3 developed by the reinvestment committee;
- 4 (ii) Address issues with tribal implications that are not able to
- 5 be resolved at the agency level; and
- 6 (iii) Provide oversight of the Indian health improvement
- 7 reinvestment account;
- 8 (c) Establish the Indian health improvement reinvestment account
- 9 in order to provide incentives for tribes to assume the
- 10 administrative burdens created by the federal requirements for the
- 11 state to shift health care costs to the federal government;
- 12 (d) Appropriate and deposit into the reinvestment account all of
- 13 the new state savings, subject to federal appropriations and less
- 14 agreed upon administrative costs to maintain fiscal neutrality to the
- 15 state general fund; and
- 16 (e) Require the funds in the reinvestment account to be spent
- 17 only on costs for projects, programs, or activities identified in the
- 18 advisory plan.

19 NEW SECTION. **Sec. 2.** The definitions in this section apply

20 throughout this chapter unless the context clearly requires

21 otherwise.

22 (1) "Advisory council" means the governor's Indian health

23 advisory council established in section 3 of this act.

24 (2) "Advisory plan" means the plan described in section 4 of this

25 act.

26 (3) "American Indian" or "Alaska Native" means any individual who

27 is: (a) A member of a federally recognized tribe; or (b) eligible for

28 the Indian health service.

29 (4) "Authority" means the health care authority.

30 (5) "Board" means the northwest Portland area Indian health

31 board, an Oregon nonprofit corporation wholly controlled by the

32 tribes in the states of Idaho, Oregon, and Washington.

33 (6) "Commission" means the American Indian health commission for

34 Washington state, a Washington nonprofit corporation wholly

35 controlled by the tribes and urban Indian organizations in the state.

36 (7) "Community health aide" means a tribal community health

37 provider certified by a community health aide program of the Indian

38 health service or one or more tribes or tribal organizations

39 consistent with the provisions of 25 U.S.C. Sec. 16161, who can

1 perform a wide range of duties within the provider's scope of  
2 certified practice in health programs of a tribe, tribal  
3 organization, Indian health service facility, or urban Indian  
4 organization to improve access to culturally appropriate, quality  
5 care for American Indians and Alaska Natives and their families and  
6 communities, including but not limited to community health aides,  
7 community health practitioners, behavioral health aides, behavioral  
8 health practitioners, dental health aides, and dental health aide  
9 therapists.

10 (8) "Community health aide program" means a community health aide  
11 certification board for the state consistent with 25 U.S.C. Sec.  
12 16161 and the training programs and certification requirements  
13 established thereunder.

14 (9) "Fee-for-service" means the state's medicaid program for  
15 which payments are made under the state plan, without a managed care  
16 entity, in accordance with the fee-for-service payment methodology.

17 (10) "Indian health care provider" means a health care program  
18 operated by the Indian health service or by a tribe, tribal  
19 organization, or urban Indian organization as those terms are defined  
20 in 25 U.S.C. Sec. 1603.

21 (11) "Indian health service" means the federal agency within the  
22 United States department of health and human services.

23 (12) "New state savings" means the savings to the state general  
24 fund that are achieved as a result of the centers for medicare and  
25 medicaid services state health official letter 16-002 and related  
26 guidance, calculated as the difference between (a) medicaid payments  
27 received from the centers for medicare and medicaid services based on  
28 the one hundred percent federal medical assistance percentage; and  
29 (b) medicaid payments received from the centers for medicare and  
30 medicaid services based on the federal medical assistance percentage  
31 that would apply in the absence of state health official letter  
32 16-002 and related guidance.

33 (13) "Reinvestment account" means the Indian health improvement  
34 reinvestment account created in section 5 of this act.

35 (14) "Reinvestment committee" means the Indian health improvement  
36 reinvestment committee established in section 3(4) of this act.

37 (15) "Tribal organization" has the meaning set forth in 25 U.S.C.  
38 Sec. 5304.

39 (16) "Tribally operated facility" means a health care facility  
40 operated by one or more tribes or tribal organizations to provide

1 specialty services, including but not limited to evaluation and  
2 treatment services, secure detox services, inpatient psychiatric  
3 services, nursing home services, and residential substance use  
4 disorder services.

5 (17) "Tribe" means any Indian tribe, band, nation, or other  
6 organized group or community, including any Alaska Native village or  
7 group or regional or village corporation as defined in or established  
8 pursuant to the Alaska Native claims settlement act (43 U.S.C. Sec.  
9 1601 et seq.) which is recognized as eligible for the special  
10 programs and services provided by the United States to Indians  
11 because of their status as Indians.

12 (18) "Urban Indian" means any individual who resides in an urban  
13 center and is: (a) A member of a tribe terminated since 1940 and  
14 those tribes recognized now or in the future by the state in which  
15 they reside, or who is a descendant, in the first or second degree,  
16 of any such member; (b) an Eskimo or Aleut or other Alaska Native;  
17 (c) considered by the secretary of the interior to be an Indian for  
18 any purpose; or (d) considered by the United States secretary of  
19 health and human services to be an Indian for purposes of eligibility  
20 for Indian health services, including as a California Indian, Eskimo,  
21 Aleut, or other Alaska Native.

22 (19) "Urban Indian organization" means an urban Indian  
23 organization, as defined by 25 U.S.C. Sec. 1603.

24 NEW SECTION. **Sec. 3.** (1) The governor's Indian health advisory  
25 council is established, consisting of:

26 (a) The following voting members:

27 (i) One representative from each tribe, designated by the tribal  
28 council, who is either the tribe's commission delegate or an  
29 individual specifically designated for this role, or his or her  
30 designee;

31 (ii) The chief executive officer of each urban Indian  
32 organization, or the urban Indian organization's commission delegate  
33 if applicable, or his or her designee;

34 (iii) One member from each of the two largest caucuses of the  
35 house of representatives, appointed by the speaker of the house of  
36 representatives;

37 (iv) One member from each of the two largest caucuses of the  
38 senate, appointed by the president of the senate; and

39 (v) One member representing the governor's office; and

1 (b) The following nonvoting members:

2 (i) One member of the executive leadership team from each of the  
3 following state agencies: The authority; the department of children,  
4 youth, and families; the department of commerce; the department of  
5 corrections; the department of health; the department of social and  
6 health services; the office of the insurance commissioner; the office  
7 of the superintendent of public instruction; and the Washington  
8 health benefit exchange;

9 (ii) The chief operating officer of each Indian health service  
10 area office and service unit, or his or her designee;

11 (iii) The executive director of the commission, or his or her  
12 designee; and

13 (iv) The executive director of the board, or his or her designee.

14 (2) The advisory council shall meet at least three times per year  
15 when the legislature is not in session, in a forum that offers both  
16 in-person and remote participation where everyone can hear and be  
17 heard.

18 (3) The advisory council has the responsibility to:

19 (a) Adopt the biennial Indian health improvement advisory plan  
20 prepared and amended by the reinvestment committee as described in  
21 section 4 of this act no later than November 1st of each odd-numbered  
22 year;

23 (b) Address current or proposed policies or actions that have  
24 tribal implications and are not able to be resolved or addressed at  
25 the agency level;

26 (c) Facilitate better understanding among advisory council  
27 members and their support staff of the Indian health system, American  
28 Indian and Alaska Native health disparities and historical trauma,  
29 and tribal sovereignty and self-governance;

30 (d) Provide oversight of contracting and performance of service  
31 coordination organizations or service contracting entities as defined  
32 in RCW 70.320.010 in order to address their impacts on services to  
33 American Indians and Alaska Natives and relationships with Indian  
34 health care providers; and

35 (e) Provide oversight of the Indian health improvement  
36 reinvestment account created in section 5 of this act, ensuring that  
37 amounts expended from the reinvestment account are consistent with  
38 the advisory plan adopted under section 4 of this act.

1 (4) The reinvestment committee of the advisory council is  
2 established, consisting of the following members of the advisory  
3 council:

4 (a) With voting rights on the reinvestment committee, every  
5 advisory council member who represents a tribe or an urban Indian  
6 organization; and

7 (b) With nonvoting rights on the reinvestment committee, every  
8 advisory council member who represents a state agency, the Indian  
9 health service area office or a service unit, the commission, and the  
10 board.

11 (5) The advisory council may appoint technical advisory  
12 committees, which may include members of the advisory council, as  
13 needed to address specific issues and concerns.

14 (6) The authority, in conjunction with the represented state  
15 agencies on the advisory council, shall supply such information and  
16 assistance as are deemed necessary for the advisory council and its  
17 committees to carry out its duties under this section.

18 (7) The authority shall provide (a) administrative and clerical  
19 assistance to the advisory council and its committees and (b)  
20 technical assistance with the assistance of the commission.

21 (8) The advisory council meetings, reports and recommendations,  
22 and other forms of collaboration described in this chapter support  
23 the tribal consultation process but are not a substitute for the  
24 requirements for state agencies to conduct consultation or maintain  
25 government-to-government relationships with tribes under federal and  
26 state law.

27 NEW SECTION. **Sec. 4.** (1) With assistance from the authority,  
28 the commission, and other member entities of the advisory council,  
29 the reinvestment committee of the advisory council shall prepare and  
30 amend from time to time a biennial Indian health improvement advisory  
31 plan to:

32 (a) Raise the health status of American Indians and Alaska  
33 Natives in the state to at least the levels set forth in the goals  
34 contained in the federal healthy people 2020 initiative or successor  
35 objectives; or

36 (b) Help the state, the Indian health service, tribes, and urban  
37 Indian organizations, statewide or in regions, improve delivery  
38 systems for American Indians and Alaska Natives by increasing access

1 to care, strengthening continuity of care, and improving population  
2 health through investments in capacity and infrastructure.

3 (2) The advisory plan shall include the following:

4 (a) An assessment of Indian health and Indian health care in the  
5 state;

6 (b) Specific recommendations for programs, projects, or  
7 activities, along with recommended reinvestment account expenditure  
8 amounts and priorities for expenditures, for the next two state  
9 fiscal bienniums. The programs, projects, and activities may include  
10 but are not limited to:

11 (i) Tribally operated facilities providing evaluation, treatment,  
12 and recovery services for opioid use disorder, other substance use  
13 disorders, mental illness, or specialty care;

14 (ii) Increased access to quality, culturally appropriate, trauma-  
15 informed specialty services, including adult and pediatric  
16 psychiatric services, medication consultation, and addiction or  
17 geriatric psychiatry;

18 (iii) A third-party administrative entity to provide, arrange,  
19 and make payment for services for American Indians and Alaska  
20 Natives;

21 (iv) Expansion of suicide prevention services, including culture-  
22 based programming, to instill and fortify cultural practices as a  
23 protective factor;

24 (v) Expansion of traditional healing services;

25 (vi) Development of a community health aide program, including a  
26 community health aide certification board for the state consistent  
27 with 25 U.S.C. Sec. 16161, and support for community health aide  
28 services;

29 (vii) Health information technology capability within tribes and  
30 urban Indian organizations to assure the technological capacity to:

31 (A) Produce sound evidence for Indian health care provider best  
32 practices; (B) effectively coordinate care between Indian health care  
33 providers and non-Indian health care providers; (C) provide  
34 interoperability with state claims and reportable data systems, such  
35 as for immunizations and reportable conditions; and (D) support  
36 patient-centered medical home models, including sufficient resources  
37 to purchase and implement certified electronic health record systems,  
38 such as hardware, software, training, and staffing;

39 (viii) Support for care coordination by tribes and other Indian  
40 health care providers to mitigate barriers to access to care for

1 American Indians and Alaska Natives, with duties to include without  
2 limitation: (A) Follow-up of referred appointments; (B) routine  
3 follow-up care for management of chronic disease; (C) transportation;  
4 and (D) increasing patient understanding of provider instructions;

5 (ix) Expanded support for tribal and urban Indian epidemiology  
6 centers to create a system of epidemiological analysis that meets the  
7 needs of the state's American Indian and Alaska Native population;  
8 and

9 (x) Other health care services and public health services that  
10 contribute to reducing health inequities for American Indians and  
11 Alaska Natives in the state and increasing access to quality,  
12 culturally appropriate health care for American Indians and Alaska  
13 Natives in the state; and

14 (c) Review of how programs, projects, or activities that have  
15 received investments from the reinvestment account have or have not  
16 achieved the objectives and why.

17 NEW SECTION. **Sec. 5.** (1) The Indian health improvement  
18 reinvestment account is created in the custody of the state  
19 treasurer. All receipts from new state savings as defined in section  
20 2 of this act and any other moneys appropriated to the account must  
21 be deposited into the account. Expenditures from the account may be  
22 used only for projects, programs, and activities authorized by  
23 section 4 of this act. Only the director of the authority or the  
24 director's designee may authorize expenditures from the account. The  
25 account is subject to allotment procedures under chapter 43.88 RCW,  
26 but an appropriation is not required for expenditures.

27 (2) Beginning July 1, 2019, the new state savings as defined in  
28 section 2 of this act, less the state's administrative costs as  
29 agreed upon by the state and the reinvestment committee, shall be  
30 deposited into the reinvestment account. With advice from the  
31 advisory council, the authority shall develop a report and  
32 methodology to identify and track the new state savings.

33 (3) The authority shall pursue new state savings for medicaid  
34 managed care premiums on an actuarial basis and in consultation with  
35 tribes.

36 NEW SECTION. **Sec. 6.** This chapter may be known and cited as the  
37 "Washington Indian health improvement act."

1       **Sec. 7.** RCW 43.79A.040 and 2018 c 260 s 28, 2018 c 258 s 4, and  
2 2018 c 127 s 6 are each reenacted and amended to read as follows:

3       (1) Money in the treasurer's trust fund may be deposited,  
4 invested, and reinvested by the state treasurer in accordance with  
5 RCW 43.84.080 in the same manner and to the same extent as if the  
6 money were in the state treasury, and may be commingled with moneys  
7 in the state treasury for cash management and cash balance purposes.

8       (2) All income received from investment of the treasurer's trust  
9 fund must be set aside in an account in the treasury trust fund to be  
10 known as the investment income account.

11       (3) The investment income account may be utilized for the payment  
12 of purchased banking services on behalf of treasurer's trust funds  
13 including, but not limited to, depository, safekeeping, and  
14 disbursement functions for the state treasurer or affected state  
15 agencies. The investment income account is subject in all respects to  
16 chapter 43.88 RCW, but no appropriation is required for payments to  
17 financial institutions. Payments must occur prior to distribution of  
18 earnings set forth in subsection (4) of this section.

19       (4)(a) Monthly, the state treasurer must distribute the earnings  
20 credited to the investment income account to the state general fund  
21 except under (b), (c), and (d) of this subsection.

22       (b) The following accounts and funds must receive their  
23 proportionate share of earnings based upon each account's or fund's  
24 average daily balance for the period: The 24/7 sobriety account, the  
25 Washington promise scholarship account, the Gina Grant Bull memorial  
26 legislative page scholarship account, the Washington advanced college  
27 tuition payment program account, the Washington college savings  
28 program account, the accessible communities account, the Washington  
29 achieving a better life experience program account, the community and  
30 technical college innovation account, the agricultural local fund,  
31 the American Indian scholarship endowment fund, the foster care  
32 scholarship endowment fund, the foster care endowed scholarship trust  
33 fund, the contract harvesting revolving account, the Washington state  
34 combined fund drive account, the commemorative works account, the  
35 county enhanced 911 excise tax account, the toll collection account,  
36 the developmental disabilities endowment trust fund, the energy  
37 account, the fair fund, the family and medical leave insurance  
38 account, the fish and wildlife federal lands revolving account, the  
39 natural resources federal lands revolving account, the food animal  
40 veterinarian conditional scholarship account, the forest health

1 revolving account, the fruit and vegetable inspection account, the  
2 future teachers conditional scholarship account, the game farm  
3 alternative account, the GET ready for math and science scholarship  
4 account, the Washington global health technologies and product  
5 development account, the grain inspection revolving fund, the  
6 Washington history day account, the industrial insurance rainy day  
7 fund, the juvenile accountability incentive account, the law  
8 enforcement officers' and firefighters' plan 2 expense fund, the  
9 local tourism promotion account, the low-income home rehabilitation  
10 revolving loan program account, the multiagency permitting team  
11 account, the northeast Washington wolf-livestock management account,  
12 the pilotage account, the produce railcar pool account, the regional  
13 transportation investment district account, the rural rehabilitation  
14 account, the Washington sexual assault kit account, the stadium and  
15 exhibition center account, the youth athletic facility account, the  
16 self-insurance revolving fund, the children's trust fund, the  
17 Washington horse racing commission Washington bred owners' bonus fund  
18 and breeder awards account, the Washington horse racing commission  
19 class C purse fund account, the individual development account  
20 program account, the Washington horse racing commission operating  
21 account, the life sciences discovery fund, the Washington state  
22 heritage center account, the reduced cigarette ignition propensity  
23 account, the center for childhood deafness and hearing loss account,  
24 the school for the blind account, the Millersylvania park trust fund,  
25 the public employees' and retirees' insurance reserve fund, the  
26 school employees' benefits board insurance reserve fund, (~~(the)~~)  
27 the public employees' and retirees' insurance account, (~~(the)~~) the  
28 school employees' insurance account, (~~and~~) the radiation perpetual  
29 maintenance fund, and the Indian health improvement reinvestment  
30 account.

31 (c) The following accounts and funds must receive eighty percent  
32 of their proportionate share of earnings based upon each account's or  
33 fund's average daily balance for the period: The advanced right-of-  
34 way revolving fund, the advanced environmental mitigation revolving  
35 account, the federal narcotics asset forfeitures account, the high  
36 occupancy vehicle account, the local rail service assistance account,  
37 and the miscellaneous transportation programs account.

38 (d) Any state agency that has independent authority over accounts  
39 or funds not statutorily required to be held in the custody of the  
40 state treasurer that deposits funds into a fund or account in the

1 custody of the state treasurer pursuant to an agreement with the  
2 office of the state treasurer shall receive its proportionate share  
3 of earnings based upon each account's or fund's average daily balance  
4 for the period.

5 (5) In conformance with Article II, section 37 of the state  
6 Constitution, no trust accounts or funds shall be allocated earnings  
7 without the specific affirmative directive of this section.

8 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act  
9 constitute a new chapter in Title 43 RCW.

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