

SSB 6259 - H COMM AMD

By Committee on Health Care & Wellness

ADOPTED 03/05/2020

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

3 **"PART I**

4 **Sec. 101.** RCW 43.71B.901 and 2019 c 282 s 1 are each amended to
5 read as follows:

6 (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;

22 (b) According to the northwest tribal epidemiology center and the
23 department of health, American Indians and Alaska Natives in the
24 state experience some of the greatest health disparities compared to
25 other groups, including (~~excessively high rates of~~):

26 (i) (~~Premature~~) Disproportionately high rates of premature
27 mortality due to (~~suicide, overdose, unintentional injury, and~~
28 ~~various~~) chronic diseases and unintentional injury; (~~and~~)

29 (ii) (~~Asthma~~) Disproportionately high rates of asthma, coronary
30 heart disease, hypertension, diabetes, prediabetes, obesity, dental

1 caries, poor mental health, youth depressive feelings, cigarette
2 smoking and vaping, and cannabis use;

3 (iii) A drug overdose death rate in 2016 in this state that is
4 three times higher than the national American Indian and Alaska
5 Native rate and has increased thirty-six percent since 2012 and
6 almost three hundred percent since 2000 in contrast to a relatively
7 stable rate for the state overall population. Over seventy-two
8 percent of these overdose deaths involved an opioid;

9 (iv) A suicide mortality rate in this state that is more than one
10 and four-fifths times higher than the rate for non-American Indians
11 and Alaska Natives. Since 2001, the suicide mortality rate for
12 American Indians and Alaska Natives in this state has increased by
13 fifty-eight percent which is more than three times the rate of
14 increase among non-American Indians and Alaska Natives. Nationally,
15 the highest suicide rates among American Indians and Alaska Natives
16 are for adolescents and young adults, while rates among non-Hispanic
17 whites are highest in older age groups, suggesting that different
18 risk factors might contribute to suicide in these groups; and

19 (v) A rate of exposure to significant adverse childhood
20 experiences between 2009 and 2011 that is nearly twice the rate of
21 non-Hispanic whites;

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

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

31 (e) Because the federal requirements to achieve this cost shift
32 and obtain the new federal funds place significant administrative
33 burdens on Indian health service and tribal health facilities, the
34 state has no way to shift these costs of care to the federal
35 government unless the state provides incentives for tribes to take on
36 these administrative burdens; and

37 (f) The federal government's intent for this update in payment
38 policy is to help states, the Indian health service, and tribes to
39 improve delivery systems for American Indians and Alaska Natives by

1 increasing access to care, strengthening continuity of care, and
2 improving population health.

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

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

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

11 (ii) Implement the national policies of Indian self-determination
12 with the goal of reducing health inequities for American Indians and
13 Alaska Natives;

14 (b) Establish the governor's Indian health advisory council to:

15 (i) Adopt a biennial Indian health improvement advisory plan,
16 developed by the reinvestment committee;

17 (ii) Address issues with tribal implications that are not able to
18 be resolved at the agency level; (~~and~~)

19 (iii) Provide oversight of the Indian health improvement
20 reinvestment account; and

21 (iv) Draft recommended legislation to address Indian health
22 improvement needs including, but not limited to, crisis coordination
23 between Indian health care providers and the state's behavioral
24 health system;

25 (c) Establish the Indian health improvement reinvestment account
26 in order to provide incentives for tribes to assume the
27 administrative burdens created by the federal requirements for the
28 state to shift health care costs to the federal government;

29 (d) Appropriate and deposit into the reinvestment account all of
30 the new state savings, subject to federal appropriations and less
31 agreed upon administrative costs to maintain fiscal neutrality to the
32 state general fund; (~~and~~)

33 (e) Require the funds in the reinvestment account to be spent
34 only on costs for projects, programs, or activities identified in the
35 advisory plan;

36 (f) Address the ongoing suicide and addiction crisis among
37 American Indians and Alaska Natives by:

38 (i) Including Indian health care providers among entities
39 eligible to receive available resources as defined in RCW 71.24.025

1 for the delivery of behavioral health services to American Indians
2 and Alaska Natives;

3 (ii) Strengthening the state's behavioral health system crisis
4 coordination with tribes and Indian health care providers by removing
5 barriers to the federal trust responsibility to provide for American
6 Indians and Alaska Natives; and

7 (g) Recognize the sovereign authority of tribal governments to
8 act as public health authorities in providing for the health and
9 safety of their community members including those individuals who may
10 be experiencing a behavioral health crisis.

11 **Sec. 102.** RCW 43.71B.010 and 2019 c 282 s 2 are each amended to
12 read as follows:

13 The definitions in this section apply throughout this chapter
14 unless the context clearly requires otherwise.

15 (1) "Advisory council" means the governor's Indian health
16 advisory council established in RCW 43.71B.020.

17 (2) "Advisory plan" means the plan described in RCW 43.71B.030.

18 (3) "American Indian" or "Alaska Native" means any individual who
19 is: (a) A member of a federally recognized tribe; or (b) eligible for
20 the Indian health service.

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

22 (5) "Board" means the northwest Portland area Indian health
23 board, an Oregon nonprofit corporation wholly controlled by the
24 tribes in the states of Idaho, Oregon, and Washington.

25 (6) "Commission" means the American Indian health commission for
26 Washington state, a Washington nonprofit corporation wholly
27 controlled by the tribes and urban Indian organizations in the state.

28 (7) "Community health aide" means a tribal community health
29 provider certified by a community health aide program of the Indian
30 health service or one or more tribes or tribal organizations
31 consistent with the provisions of 25 U.S.C. Sec. 16161, who can
32 perform a wide range of duties within the provider's scope of
33 certified practice in health programs of a tribe, tribal
34 organization, Indian health service facility, or urban Indian
35 organization to improve access to culturally appropriate, quality
36 care for American Indians and Alaska Natives and their families and
37 communities, including but not limited to community health aides,
38 community health practitioners, behavioral health aides, behavioral

1 health practitioners, dental health aides, and dental health aide
2 therapists.

3 (8) "Community health aide program" means a community health aide
4 certification board for the state consistent with 25 U.S.C. Sec.
5 16161 and the training programs and certification requirements
6 established thereunder.

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

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

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

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

26 (13) "Reinvestment account" means the Indian health improvement
27 reinvestment account created in RCW 43.71B.040.

28 (14) "Reinvestment committee" means the Indian health improvement
29 reinvestment committee established in RCW 43.71B.020(4).

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

32 (16) "Tribally operated facility" means a health care facility
33 operated by one or more tribes or tribal organizations to provide
34 specialty services, including but not limited to evaluation and
35 treatment services, secure detox services, inpatient psychiatric
36 services, nursing home services, and residential substance use
37 disorder services.

38 (17) "Tribe" means any Indian tribe, band, nation, or other
39 organized group or community, including any Alaska Native village or
40 group or regional or village corporation as defined in or established

1 pursuant to the Alaska Native claims settlement act (43 U.S.C. Sec.
2 1601 et seq.) which is recognized as eligible for the special
3 programs and services provided by the United States to Indians
4 because of their status as Indians.

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

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

17 (20) "Historical trauma" means situations where a community
18 experienced traumatic events, the events generated high levels of
19 collective distress, and the events were perpetuated by outsiders
20 with a destructive or genocidal intent.

21 PART II

22 **Sec. 201.** RCW 71.24.025 and 2019 c 325 s 1004 and 2019 c 324 s 2
23 are each reenacted and amended to read as follows:

24 Unless the context clearly requires otherwise, the definitions in
25 this section apply throughout this chapter.

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

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

30 (b) Being gravely disabled as defined in RCW 71.05.020 or, in the
31 case of a child, a gravely disabled minor as defined in RCW
32 71.34.020; or

33 (c) Presenting a likelihood of serious harm as defined in RCW
34 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

35 (2) "Alcoholism" means a disease, characterized by a dependency
36 on alcoholic beverages, loss of control over the amount and
37 circumstances of use, symptoms of tolerance, physiological or
38 psychological withdrawal, or both, if use is reduced or discontinued,

1 and impairment of health or disruption of social or economic
2 functioning.

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

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

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

17 (6) "Behavioral health administrative services organization"
18 means an entity contracted with the authority to administer
19 behavioral health services and programs under RCW 71.24.381,
20 including crisis services and administration of chapter 71.05 RCW,
21 the involuntary treatment act, for all individuals in a defined
22 regional service area.

23 (7) "Behavioral health provider" means a person licensed under
24 chapter 18.57, 18.57A, 18.71, 18.71A, 18.83, 18.205, 18.225, or 18.79
25 RCW, as it applies to registered nurses and advanced registered nurse
26 practitioners.

27 (8) "Behavioral health services" means mental health services as
28 described in this chapter and chapter 71.36 RCW and substance use
29 disorder treatment services as described in this chapter that,
30 depending on the type of service, are provided by licensed or
31 certified behavioral health agencies, behavioral health providers, or
32 integrated into other health care providers.

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

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

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

1 (b) Has experienced a continuous psychiatric hospitalization or
2 residential treatment exceeding six months' duration within the
3 preceding year; or

4 (c) Has been unable to engage in any substantial gainful activity
5 by reason of any mental disorder which has lasted for a continuous
6 period of not less than twelve months. "Substantial gainful activity"
7 shall be defined by the authority by rule consistent with Public Law
8 92-603, as amended.

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

12 (12) "Community behavioral health program" means all
13 expenditures, services, activities, or programs, including reasonable
14 administration and overhead, designed and conducted to prevent or
15 treat substance use disorder, mental illness, or both in the
16 community behavioral health system.

17 (13) "Community behavioral health service delivery system" means
18 public, private, or tribal agencies that provide services
19 specifically to persons with mental disorders, substance use
20 disorders, or both, as defined under RCW 71.05.020 and receive
21 funding from public sources.

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

39 (15) "Consensus-based" means a program or practice that has
40 general support among treatment providers and experts, based on

1 experience or professional literature, and may have anecdotal or case
2 study support, or that is agreed but not possible to perform studies
3 with random assignment and controlled groups.

4 (16) "County authority" means the board of county commissioners,
5 county council, or county executive having authority to establish a
6 behavioral health administrative services organization, or two or
7 more of the county authorities specified in this subsection which
8 have entered into an agreement to establish a behavioral health
9 administrative services organization.

10 (17) "Department" means the department of health.

11 (18) "Designated crisis responder" has the same meaning as in RCW
12 71.05.020.

13 (19) "Director" means the director of the authority.

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

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

24 (22) "Emerging best practice" or "promising practice" means a
25 program or practice that, based on statistical analyses or a well
26 established theory of change, shows potential for meeting the
27 evidence-based or research-based criteria, which may include the use
28 of a program that is evidence-based for outcomes other than those
29 listed in subsection (23) of this section.

30 (23) "Evidence-based" means a program or practice that has been
31 tested in heterogeneous or intended populations with multiple
32 randomized, or statistically controlled evaluations, or both; or one
33 large multiple site randomized, or statistically controlled
34 evaluation, or both, where the weight of the evidence from a systemic
35 review demonstrates sustained improvements in at least one outcome.
36 "Evidence-based" also means a program or practice that can be
37 implemented with a set of procedures to allow successful replication
38 in Washington and, when possible, is determined to be cost-
39 beneficial.

1 (24) "Indian health care provider" means a health care program
2 operated by the Indian health service or by a tribe, tribal
3 organization, or urban Indian organization as those terms are defined
4 in the Indian health care improvement act (25 U.S.C. Sec. 1603).

5 (25) "Intensive behavioral health treatment facility" means a
6 community-based specialized residential treatment facility for
7 individuals with behavioral health conditions, including individuals
8 discharging from or being diverted from state and local hospitals,
9 whose impairment or behaviors do not meet, or no longer meet,
10 criteria for involuntary inpatient commitment under chapter 71.05
11 RCW, but whose care needs cannot be met in other community-based
12 placement settings.

13 (26) "Licensed or certified behavioral health agency" means:

14 (a) An entity licensed or certified according to this chapter or
15 chapter 71.05 RCW;

16 (b) An entity deemed to meet state minimum standards as a result
17 of accreditation by a recognized behavioral health accrediting body
18 recognized and having a current agreement with the department; or

19 (c) An entity with a tribal attestation that it meets state
20 minimum standards for a licensed or certified behavioral health
21 agency.

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

25 (28) "Long-term inpatient care" means inpatient services for
26 persons committed for, or voluntarily receiving intensive treatment
27 for, periods of ninety days or greater under chapter 71.05 RCW.

28 "Long-term inpatient care" as used in this chapter does not include:

29 (a) Services for individuals committed under chapter 71.05 RCW who
30 are receiving services pursuant to a conditional release or a court-
31 ordered less restrictive alternative to detention; or (b) services
32 for individuals voluntarily receiving less restrictive alternative
33 treatment on the grounds of the state hospital.

34 (29) "Managed care organization" means an organization, having a
35 certificate of authority or certificate of registration from the
36 office of the insurance commissioner, that contracts with the
37 authority under a comprehensive risk contract to provide prepaid
38 health care services to enrollees under the authority's managed care
39 programs under chapter 74.09 RCW.

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

4 (31) Mental health "treatment records" include registration and
5 all other records concerning persons who are receiving or who at any
6 time have received services for mental illness, which are maintained
7 by the department of social and health services or the authority, by
8 behavioral health administrative services organizations and their
9 staffs, by managed care organizations and their staffs, or by
10 treatment facilities. "Treatment records" do not include notes or
11 records maintained for personal use by a person providing treatment
12 services for the entities listed in this subsection, or a treatment
13 facility if the notes or records are not available to others.

14 (32) "Mentally ill persons," "persons who are mentally ill," and
15 "the mentally ill" mean persons and conditions defined in subsections
16 (1), (10), (39), and (40) of this section.

17 (33) "Recovery" means a process of change through which
18 individuals improve their health and wellness, live a self-directed
19 life, and strive to reach their full potential.

20 (34) "Research-based" means a program or practice that has been
21 tested with a single randomized, or statistically controlled
22 evaluation, or both, demonstrating sustained desirable outcomes; or
23 where the weight of the evidence from a systemic review supports
24 sustained outcomes as described in subsection (23) of this section
25 but does not meet the full criteria for evidence-based.

26 (35) "Residential services" means a complete range of residences
27 and supports authorized by resource management services and which may
28 involve a facility, a distinct part thereof, or services which
29 support community living, for persons who are acutely mentally ill,
30 adults who are chronically mentally ill, children who are severely
31 emotionally disturbed, or adults who are seriously disturbed and
32 determined by the behavioral health administrative services
33 organization or managed care organization to be at risk of becoming
34 acutely or chronically mentally ill. The services shall include at
35 least evaluation and treatment services as defined in chapter 71.05
36 RCW, acute crisis respite care, long-term adaptive and rehabilitative
37 care, and supervised and supported living services, and shall also
38 include any residential services developed to service persons who are
39 mentally ill in nursing homes, residential treatment facilities,
40 assisted living facilities, and adult family homes, and may include

1 outpatient services provided as an element in a package of services
2 in a supported housing model. Residential services for children in
3 out-of-home placements related to their mental disorder shall not
4 include the costs of food and shelter, except for children's long-
5 term residential facilities existing prior to January 1, 1991.

6 (36) "Resilience" means the personal and community qualities that
7 enable individuals to rebound from adversity, trauma, tragedy,
8 threats, or other stresses, and to live productive lives.

9 (37) "Resource management services" mean the planning,
10 coordination, and authorization of residential services and community
11 support services administered pursuant to an individual service plan
12 for: (a) Adults and children who are acutely mentally ill; (b) adults
13 who are chronically mentally ill; (c) children who are severely
14 emotionally disturbed; or (d) adults who are seriously disturbed and
15 determined by a behavioral health administrative services
16 organization or managed care organization to be at risk of becoming
17 acutely or chronically mentally ill. Such planning, coordination, and
18 authorization shall include mental health screening for children
19 eligible under the federal Title XIX early and periodic screening,
20 diagnosis, and treatment program. Resource management services
21 include seven day a week, twenty-four hour a day availability of
22 information regarding enrollment of adults and children who are
23 mentally ill in services and their individual service plan to
24 designated crisis responders, evaluation and treatment facilities,
25 and others as determined by the behavioral health administrative
26 services organization or managed care organization, as applicable.

27 (38) "Secretary" means the secretary of the department of health.

28 (39) "Seriously disturbed person" means a person who:

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

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

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

38 (d) Exhibits suicidal preoccupation or attempts; or

39 (e) Is a child diagnosed by a mental health professional, as
40 defined in chapter 71.34 RCW, as experiencing a mental disorder which

1 is clearly interfering with the child's functioning in family or
2 school or with peers or is clearly interfering with the child's
3 personality development and learning.

4 (40) "Severely emotionally disturbed child" or "child who is
5 severely emotionally disturbed" means a child who has been determined
6 by the behavioral health administrative services organization or
7 managed care organization, if applicable, to be experiencing a mental
8 disorder as defined in chapter 71.34 RCW, including those mental
9 disorders that result in a behavioral or conduct disorder, that is
10 clearly interfering with the child's functioning in family or school
11 or with peers and who meets at least one of the following criteria:

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

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

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

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

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

22 (ii) Changes in custodial adult;

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

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

28 (v) Drug or alcohol abuse; or

29 (vi) Homelessness.

30 (41) "State minimum standards" means minimum requirements
31 established by rules adopted and necessary to implement this chapter
32 by:

33 (a) The authority for:

34 (i) Delivery of mental health and substance use disorder
35 services; and

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

37 (b) The department of health for:

38 (i) Licensed or certified behavioral health agencies for the
39 purpose of providing mental health or substance use disorder programs
40 and services, or both;

1 (ii) Licensed behavioral health providers for the provision of
2 mental health or substance use disorder services, or both; and
3 (iii) Residential services.

4 (42) "Substance use disorder" means a cluster of cognitive,
5 behavioral, and physiological symptoms indicating that an individual
6 continues using the substance despite significant substance-related
7 problems. The diagnosis of a substance use disorder is based on a
8 pathological pattern of behaviors related to the use of the
9 substances.

10 (43) "Tribe," for the purposes of this section, means a federally
11 recognized Indian tribe.

12 (44) "Behavioral health aide" means a counselor, health educator,
13 and advocate who helps address individual and community-based
14 behavioral health needs, including those related to alcohol, drug,
15 and tobacco abuse as well as mental health problems such as grief,
16 depression, suicide, and related issues and is certified by a
17 community health aide program of the Indian health service or one or
18 more tribes or tribal organizations consistent with the provisions of
19 25 U.S.C. Sec. 16161 and RCW 43.71B.010 (7) and (8).

20 **Sec. 202.** RCW 71.24.035 and 2019 c 325 s 1006 are each amended
21 to read as follows:

22 (1) The authority is designated as the state behavioral health
23 authority which includes recognition as the single state authority
24 for substance use disorders and state mental health authority.

25 (2) The director shall provide for public, client, tribal, and
26 licensed or certified behavioral health agency participation in
27 developing the state behavioral health program, developing related
28 contracts, and any waiver request to the federal government under
29 medicaid.

30 (3) The director shall provide for participation in developing
31 the state behavioral health program for children and other
32 underserved populations, by including representatives on any
33 committee established to provide oversight to the state behavioral
34 health program.

35 (4) The authority shall be designated as the behavioral health
36 administrative services organization for a regional service area if a
37 behavioral health administrative services organization fails to meet
38 the authority's contracting requirements or refuses to exercise the
39 responsibilities under its contract or state law, until such time as

1 a new behavioral health administrative services organization is
2 designated.

3 (5) The director shall:

4 (a) Assure that any behavioral health administrative services
5 organization, managed care organization, or community behavioral
6 health program provides medically necessary services to medicaid
7 recipients consistent with the state's medicaid state plan or federal
8 waiver authorities, and nonmedicaid services consistent with
9 priorities established by the authority;

10 (b) Develop contracts in a manner to ensure an adequate network
11 of inpatient services, evaluation and treatment services, and
12 facilities under chapter 71.05 RCW to ensure access to treatment,
13 resource management services, and community support services;

14 (c) Make contracts necessary or incidental to the performance of
15 its duties and the execution of its powers, including managed care
16 contracts for behavioral health services, contracts entered into
17 under RCW 74.09.522, and contracts with public and private agencies,
18 organizations, and individuals to pay them for behavioral health
19 services;

20 (d) Define administrative costs and ensure that the behavioral
21 health administrative services organization does not exceed an
22 administrative cost of ten percent of available funds;

23 (e) Establish, to the extent possible, a standardized auditing
24 procedure which is designed to assure compliance with contractual
25 agreements authorized by this chapter and minimizes paperwork
26 requirements. The audit procedure shall focus on the outcomes of
27 service as provided in RCW 71.24.435, 70.320.020, and 71.36.025;

28 (f) Develop and maintain an information system to be used by the
29 state and behavioral health administrative services organizations and
30 managed care organizations that includes a tracking method which
31 allows the authority to identify behavioral health clients'
32 participation in any behavioral health service or public program on
33 an immediate basis. The information system shall not include
34 individual patient's case history files. Confidentiality of client
35 information and records shall be maintained as provided in this
36 chapter and chapter 70.02 RCW;

37 (g) Monitor and audit behavioral health administrative services
38 organizations as needed to assure compliance with contractual
39 agreements authorized by this chapter;

1 (h) Monitor and audit access to behavioral health services for
2 individuals eligible for medicaid who are not enrolled in a managed
3 care organization;

4 (i) Adopt such rules as are necessary to implement the
5 authority's responsibilities under this chapter;

6 (j) Administer or supervise the administration of the provisions
7 relating to persons with substance use disorders and intoxicated
8 persons of any state plan submitted for federal funding pursuant to
9 federal health, welfare, or treatment legislation;

10 (k) Require the behavioral health administrative services
11 organizations and the managed care organizations to develop
12 agreements with tribal, city, and county jails and the department of
13 corrections to accept referrals for enrollment on behalf of a
14 confined person, prior to the person's release; ~~((and))~~

15 (l) Require behavioral health administrative services
16 organizations and managed care organizations, as applicable, to
17 provide services as identified in RCW 71.05.585 to individuals
18 committed for involuntary commitment under less restrictive
19 alternative court orders when:

20 (i) The individual is enrolled in the medicaid program; or

21 (ii) The individual is not enrolled in medicaid, does not have
22 other insurance which can pay for the services, and the behavioral
23 health administrative services organization has adequate available
24 resources to provide the services; and

25 (m) Coordinate with the centers for medicare and medicaid
26 services to provide that behavioral health aide services are eligible
27 for federal funding of up to one hundred percent.

28 (6) The director shall use available resources only for
29 behavioral health administrative services organizations and managed
30 care organizations, except:

31 (a) To the extent authorized, and in accordance with any
32 priorities or conditions specified, in the biennial appropriations
33 act; or

34 (b) To incentivize improved performance with respect to the
35 client outcomes established in RCW 71.24.435, 70.320.020, and
36 71.36.025, integration of behavioral health and medical services at
37 the clinical level, and improved care coordination for individuals
38 with complex care needs.

39 (7) Each behavioral health administrative services organization,
40 managed care organization, and licensed or certified behavioral

1 health agency shall file with the secretary of the department of
2 health or the director, on request, such data, statistics, schedules,
3 and information as the secretary of the department of health or the
4 director reasonably requires. A behavioral health administrative
5 services organization, managed care organization, or licensed or
6 certified behavioral health agency which, without good cause, fails
7 to furnish any data, statistics, schedules, or information as
8 requested, or files fraudulent reports thereof, may be subject to the
9 contractual remedies in RCW 74.09.871 or may have its service
10 provider certification or license revoked or suspended.

11 (8) The superior court may restrain any behavioral health
12 administrative services organization, managed care organization, or
13 service provider from operating without a contract, certification, or
14 a license or any other violation of this section. The court may also
15 review, pursuant to procedures contained in chapter 34.05 RCW, any
16 denial, suspension, limitation, restriction, or revocation of
17 certification or license, and grant other relief required to enforce
18 the provisions of this chapter.

19 (9) Upon petition by the secretary of the department of health or
20 the director, and after hearing held upon reasonable notice to the
21 facility, the superior court may issue a warrant to an officer or
22 employee of the secretary of the department of health or the director
23 authorizing him or her to enter at reasonable times, and examine the
24 records, books, and accounts of any behavioral health administrative
25 services organization, managed care organization, or service provider
26 refusing to consent to inspection or examination by the authority.

27 (10) Notwithstanding the existence or pursuit of any other
28 remedy, the secretary of the department of health or the director may
29 file an action for an injunction or other process against any person
30 or governmental unit to restrain or prevent the establishment,
31 conduct, or operation of a behavioral health administrative services
32 organization, managed care organization, or service provider without
33 a contract, certification, or a license under this chapter.

34 (11) The authority shall distribute appropriated state and
35 federal funds in accordance with any priorities, terms, or conditions
36 specified in the appropriations act.

37 (12) The authority, in cooperation with the state congressional
38 delegation, shall actively seek waivers of federal requirements and
39 such modifications of federal regulations as are necessary to allow
40 federal medicaid reimbursement for services provided by freestanding

1 evaluation and treatment facilities licensed under chapter 71.12 RCW
2 or certified under chapter 71.05 RCW. The authority shall
3 periodically share the results of its efforts with the appropriate
4 committees of the senate and the house of representatives.

5 (13) The authority may:

6 (a) Plan, establish, and maintain substance use disorder
7 prevention and substance use disorder treatment programs as necessary
8 or desirable;

9 (b) Coordinate its activities and cooperate with behavioral
10 programs in this and other states, and make contracts and other joint
11 or cooperative arrangements with state, tribal, local, or private
12 agencies in this and other states for behavioral health services and
13 for the common advancement of substance use disorder programs;

14 (c) Solicit and accept for use any gift of money or property made
15 by will or otherwise, and any grant of money, services, or property
16 from the federal government, the state, or any political subdivision
17 thereof or any private source, and do all things necessary to
18 cooperate with the federal government or any of its agencies in
19 making an application for any grant;

20 (d) Keep records and engage in research and the gathering of
21 relevant statistics; and

22 (e) Acquire, hold, or dispose of real property or any interest
23 therein, and construct, lease, or otherwise provide substance use
24 disorder treatment programs.

25 **Sec. 203.** RCW 71.24.155 and 2019 c 325 s 1011 are each amended
26 to read as follows:

27 Grants shall be made by the authority to behavioral health
28 administrative services organizations ~~((and))~~, managed care
29 organizations for community behavioral health programs, and Indian
30 health care providers who have community behavioral health programs
31 totaling not less than ninety-five percent of available resources.
32 The authority may use up to forty percent of the remaining five
33 percent to provide community demonstration projects, including early
34 intervention or primary prevention programs for children, and the
35 remainder shall be for emergency needs and technical assistance under
36 this chapter.

37 **PART III**

1 **Sec. 301.** RCW 71.05.020 and 2019 c 446 s 2, 2019 c 444 s 16, and
2 2019 c 325 s 3001 are each reenacted and amended to read as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

5 (1) "Admission" or "admit" means a decision by a physician,
6 physician assistant, or psychiatric advanced registered nurse
7 practitioner that a person should be examined or treated as a patient
8 in a hospital;

9 (2) "Alcoholism" means a disease, characterized by a dependency
10 on alcoholic beverages, loss of control over the amount and
11 circumstances of use, symptoms of tolerance, physiological or
12 psychological withdrawal, or both, if use is reduced or discontinued,
13 and impairment of health or disruption of social or economic
14 functioning;

15 (3) "Antipsychotic medications" means that class of drugs
16 primarily used to treat serious manifestations of mental illness
17 associated with thought disorders, which includes, but is not limited
18 to atypical antipsychotic medications;

19 (4) "Approved substance use disorder treatment program" means a
20 program for persons with a substance use disorder provided by a
21 treatment program certified by the department as meeting standards
22 adopted under chapter 71.24 RCW;

23 (5) "Attending staff" means any person on the staff of a public
24 or private agency having responsibility for the care and treatment of
25 a patient;

26 (6) "Authority" means the Washington state health care authority;

27 (7) "Co-occurring disorder specialist" means an individual
28 possessing an enhancement granted by the department of health under
29 chapter 18.205 RCW that certifies the individual to provide substance
30 use disorder counseling subject to the practice limitations under RCW
31 18.205.105;

32 (8) "Commitment" means the determination by a court that a person
33 should be detained for a period of either evaluation or treatment, or
34 both, in an inpatient or a less restrictive setting;

35 (9) "Conditional release" means a revocable modification of a
36 commitment, which may be revoked upon violation of any of its terms;

37 (10) "Crisis stabilization unit" means a short-term facility or a
38 portion of a facility licensed or certified by the department, such
39 as an evaluation and treatment facility or a hospital, which has been

1 designed to assess, diagnose, and treat individuals experiencing an
2 acute crisis without the use of long-term hospitalization;

3 (11) "Custody" means involuntary detention under the provisions
4 of this chapter or chapter 10.77 RCW, uninterrupted by any period of
5 unconditional release from commitment from a facility providing
6 involuntary care and treatment;

7 (12) "Department" means the department of health;

8 (13) "Designated crisis responder" means a mental health
9 professional appointed by the county (~~(or)~~), by an entity appointed
10 by the county, or by the authority in consultation with a federally
11 recognized Indian tribe or after meeting and conferring with an
12 Indian health care provider, to perform the duties specified in this
13 chapter;

14 (14) "Detention" or "detain" means the lawful confinement of a
15 person, under the provisions of this chapter;

16 (15) "Developmental disabilities professional" means a person who
17 has specialized training and three years of experience in directly
18 treating or working with persons with developmental disabilities and
19 is a psychiatrist, physician assistant working with a supervising
20 psychiatrist, psychologist, psychiatric advanced registered nurse
21 practitioner, or social worker, and such other developmental
22 disabilities professionals as may be defined by rules adopted by the
23 secretary of the department of social and health services;

24 (16) "Developmental disability" means that condition defined in
25 RCW 71A.10.020(5);

26 (17) "Director" means the director of the authority;

27 (18) "Discharge" means the termination of hospital medical
28 authority. The commitment may remain in place, be terminated, or be
29 amended by court order;

30 (19) "Drug addiction" means a disease, characterized by a
31 dependency on psychoactive chemicals, loss of control over the amount
32 and circumstances of use, symptoms of tolerance, physiological or
33 psychological withdrawal, or both, if use is reduced or discontinued,
34 and impairment of health or disruption of social or economic
35 functioning;

36 (20) "Evaluation and treatment facility" means any facility which
37 can provide directly, or by direct arrangement with other public or
38 private agencies, emergency evaluation and treatment, outpatient
39 care, and timely and appropriate inpatient care to persons suffering
40 from a mental disorder, and which is licensed or certified as such by

1 the department. The authority may certify single beds as temporary
2 evaluation and treatment beds under RCW 71.05.745. A physically
3 separate and separately operated portion of a state hospital may be
4 designated as an evaluation and treatment facility. A facility which
5 is part of, or operated by, the department of social and health
6 services or any federal agency will not require certification. No
7 correctional institution or facility, or jail, shall be an evaluation
8 and treatment facility within the meaning of this chapter;

9 (21) "Gravely disabled" means a condition in which a person, as a
10 result of a mental disorder, or as a result of the use of alcohol or
11 other psychoactive chemicals: (a) Is in danger of serious physical
12 harm resulting from a failure to provide for his or her essential
13 human needs of health or safety; or (b) manifests severe
14 deterioration in routine functioning evidenced by repeated and
15 escalating loss of cognitive or volitional control over his or her
16 actions and is not receiving such care as is essential for his or her
17 health or safety;

18 (22) "Habilitative services" means those services provided by
19 program personnel to assist persons in acquiring and maintaining life
20 skills and in raising their levels of physical, mental, social, and
21 vocational functioning. Habilitative services include education,
22 training for employment, and therapy. The habilitative process shall
23 be undertaken with recognition of the risk to the public safety
24 presented by the person being assisted as manifested by prior charged
25 criminal conduct;

26 (23) "Hearing" means any proceeding conducted in open court. For
27 purposes of this chapter, at any hearing the petitioner, the
28 respondent, the witnesses, and the presiding judicial officer may be
29 present and participate either in person or by video, as determined
30 by the court. The term "video" as used herein shall include any
31 functional equivalent. At any hearing conducted by video, the
32 technology used must permit the judicial officer, counsel, all
33 parties, and the witnesses to be able to see, hear, and speak, when
34 authorized, during the hearing; to allow attorneys to use exhibits or
35 other materials during the hearing; and to allow respondent's counsel
36 to be in the same location as the respondent unless otherwise
37 requested by the respondent or the respondent's counsel. Witnesses in
38 a proceeding may also appear in court through other means, including
39 telephonically, pursuant to the requirements of superior court civil
40 rule 43. Notwithstanding the foregoing, the court, upon its own

1 motion or upon a motion for good cause by any party, may require all
2 parties and witnesses to participate in the hearing in person rather
3 than by video. In ruling on any such motion, the court may allow in-
4 person or video testimony; and the court may consider, among other
5 things, whether the respondent's alleged mental illness affects the
6 respondent's ability to perceive or participate in the proceeding by
7 video;

8 (24) "History of one or more violent acts" refers to the period
9 of time ten years prior to the filing of a petition under this
10 chapter, excluding any time spent, but not any violent acts
11 committed, in a mental health facility, a long-term alcoholism or
12 drug treatment facility, or in confinement as a result of a criminal
13 conviction;

14 (25) "Imminent" means the state or condition of being likely to
15 occur at any moment or near at hand, rather than distant or remote;

16 (26) "In need of assisted outpatient behavioral health treatment"
17 means that a person, as a result of a mental disorder or substance
18 use disorder: (a) Has been committed by a court to detention for
19 involuntary behavioral health treatment during the preceding thirty-
20 six months; (b) is unlikely to voluntarily participate in outpatient
21 treatment without an order for less restrictive alternative
22 treatment, based on a history of nonadherence with treatment or in
23 view of the person's current behavior; (c) is likely to benefit from
24 less restrictive alternative treatment; and (d) requires less
25 restrictive alternative treatment to prevent a relapse,
26 decompensation, or deterioration that is likely to result in the
27 person presenting a likelihood of serious harm or the person becoming
28 gravely disabled within a reasonably short period of time;

29 (27) "Individualized service plan" means a plan prepared by a
30 developmental disabilities professional with other professionals as a
31 team, for a person with developmental disabilities, which shall
32 state:

33 (a) The nature of the person's specific problems, prior charged
34 criminal behavior, and habilitation needs;

35 (b) The conditions and strategies necessary to achieve the
36 purposes of habilitation;

37 (c) The intermediate and long-range goals of the habilitation
38 program, with a projected timetable for the attainment;

39 (d) The rationale for using this plan of habilitation to achieve
40 those intermediate and long-range goals;

1 (e) The staff responsible for carrying out the plan;

2 (f) Where relevant in light of past criminal behavior and due
3 consideration for public safety, the criteria for proposed movement
4 to less-restrictive settings, criteria for proposed eventual
5 discharge or release, and a projected possible date for discharge or
6 release; and

7 (g) The type of residence immediately anticipated for the person
8 and possible future types of residences;

9 (28) "Information related to mental health services" means all
10 information and records compiled, obtained, or maintained in the
11 course of providing services to either voluntary or involuntary
12 recipients of services by a mental health service provider. This may
13 include documents of legal proceedings under this chapter or chapter
14 71.34 or 10.77 RCW, or somatic health care information;

15 (29) "Intoxicated person" means a person whose mental or physical
16 functioning is substantially impaired as a result of the use of
17 alcohol or other psychoactive chemicals;

18 (30) "Judicial commitment" means a commitment by a court pursuant
19 to the provisions of this chapter;

20 (31) "Legal counsel" means attorneys and staff employed by county
21 prosecutor offices or the state attorney general acting in their
22 capacity as legal representatives of public mental health and
23 substance use disorder service providers under RCW 71.05.130;

24 (32) "Less restrictive alternative treatment" means a program of
25 individualized treatment in a less restrictive setting than inpatient
26 treatment that includes the services described in RCW 71.05.585;

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

30 (34) "Likelihood of serious harm" means:

31 (a) A substantial risk that: (i) Physical harm will be inflicted
32 by a person upon his or her own person, as evidenced by threats or
33 attempts to commit suicide or inflict physical harm on oneself; (ii)
34 physical harm will be inflicted by a person upon another, as
35 evidenced by behavior which has caused such harm or which places
36 another person or persons in reasonable fear of sustaining such harm;
37 or (iii) physical harm will be inflicted by a person upon the
38 property of others, as evidenced by behavior which has caused
39 substantial loss or damage to the property of others; or

1 (b) The person has threatened the physical safety of another and
2 has a history of one or more violent acts;

3 (35) "Medical clearance" means a physician or other health care
4 provider has determined that a person is medically stable and ready
5 for referral to the designated crisis responder;

6 (36) "Mental disorder" means any organic, mental, or emotional
7 impairment which has substantial adverse effects on a person's
8 cognitive or volitional functions;

9 (37) "Mental health professional" means a psychiatrist,
10 psychologist, physician assistant working with a supervising
11 psychiatrist, psychiatric advanced registered nurse practitioner,
12 psychiatric nurse, or social worker, and such other mental health
13 professionals as may be defined by rules adopted by the secretary
14 pursuant to the provisions of this chapter;

15 (38) "Mental health service provider" means a public or private
16 agency that provides mental health services to persons with mental
17 disorders or substance use disorders as defined under this section
18 and receives funding from public sources. This includes, but is not
19 limited to, hospitals licensed under chapter 70.41 RCW, evaluation
20 and treatment facilities as defined in this section, community mental
21 health service delivery systems or community behavioral health
22 programs as defined in RCW 71.24.025, facilities conducting
23 competency evaluations and restoration under chapter 10.77 RCW,
24 approved substance use disorder treatment programs as defined in this
25 section, secure withdrawal management and stabilization facilities as
26 defined in this section, and correctional facilities operated by
27 state and local governments;

28 (39) "Peace officer" means a law enforcement official of a public
29 agency or governmental unit, and includes persons specifically given
30 peace officer powers by any state law, local ordinance, or judicial
31 order of appointment;

32 (40) "Physician assistant" means a person licensed as a physician
33 assistant under chapter 18.57A or 18.71A RCW;

34 (41) "Private agency" means any person, partnership, corporation,
35 or association that is not a public agency, whether or not financed
36 in whole or in part by public funds, which constitutes an evaluation
37 and treatment facility or private institution, or hospital, or
38 approved substance use disorder treatment program, which is conducted
39 for, or includes a department or ward conducted for, the care and

1 treatment of persons with mental illness, substance use disorders, or
2 both mental illness and substance use disorders;

3 (42) "Professional person" means a mental health professional,
4 substance use disorder professional, or designated crisis responder
5 and shall also mean a physician, physician assistant, psychiatric
6 advanced registered nurse practitioner, registered nurse, and such
7 others as may be defined by rules adopted by the secretary pursuant
8 to the provisions of this chapter;

9 (43) "Psychiatric advanced registered nurse practitioner" means a
10 person who is licensed as an advanced registered nurse practitioner
11 pursuant to chapter 18.79 RCW; and who is board certified in advanced
12 practice psychiatric and mental health nursing;

13 (44) "Psychiatrist" means a person having a license as a
14 physician and surgeon in this state who has in addition completed
15 three years of graduate training in psychiatry in a program approved
16 by the American medical association or the American osteopathic
17 association and is certified or eligible to be certified by the
18 American board of psychiatry and neurology;

19 (45) "Psychologist" means a person who has been licensed as a
20 psychologist pursuant to chapter 18.83 RCW;

21 (46) "Public agency" means any evaluation and treatment facility
22 or institution, secure withdrawal management and stabilization
23 facility, approved substance use disorder treatment program, or
24 hospital which is conducted for, or includes a department or ward
25 conducted for, the care and treatment of persons with mental illness,
26 substance use disorders, or both mental illness and substance use
27 disorders, if the agency is operated directly by federal, state,
28 county, or municipal government, or a combination of such
29 governments;

30 (47) "Release" means legal termination of the commitment under
31 the provisions of this chapter;

32 (48) "Resource management services" has the meaning given in
33 chapter 71.24 RCW;

34 (49) "Secretary" means the secretary of the department of health,
35 or his or her designee;

36 (50) "Secure withdrawal management and stabilization facility"
37 means a facility operated by either a public or private agency or by
38 the program of an agency which provides care to voluntary individuals
39 and individuals involuntarily detained and committed under this
40 chapter for whom there is a likelihood of serious harm or who are

1 gravely disabled due to the presence of a substance use disorder.

2 Secure withdrawal management and stabilization facilities must:

3 (a) Provide the following services:

4 (i) Assessment and treatment, provided by certified substance use
5 disorder professionals or co-occurring disorder specialists;

6 (ii) Clinical stabilization services;

7 (iii) Acute or subacute detoxification services for intoxicated
8 individuals; and

9 (iv) Discharge assistance provided by certified substance use
10 disorder professionals or co-occurring disorder specialists, including
11 facilitating transitions to appropriate voluntary or involuntary
12 inpatient services or to less restrictive alternatives as appropriate
13 for the individual;

14 (b) Include security measures sufficient to protect the patients,
15 staff, and community; and

16 (c) Be licensed or certified as such by the department of health;

17 (51) "Serious violent offense" has the same meaning as provided
18 in RCW 9.94A.030;

19 (52) "Social worker" means a person with a master's or further
20 advanced degree from a social work educational program accredited and
21 approved as provided in RCW 18.320.010;

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

28 (54) "Substance use disorder professional" means a person
29 certified as a substance use disorder professional by the department
30 of health under chapter 18.205 RCW;

31 (55) "Therapeutic court personnel" means the staff of a mental
32 health court or other therapeutic court which has jurisdiction over
33 defendants who are dually diagnosed with mental disorders, including
34 court personnel, probation officers, a court monitor, prosecuting
35 attorney, or defense counsel acting within the scope of therapeutic
36 court duties;

37 (56) "Treatment records" include registration and all other
38 records concerning persons who are receiving or who at any time have
39 received services for mental illness, which are maintained by the
40 department of social and health services, the department, the

1 authority, behavioral health administrative services organizations
2 and their staffs, managed care organizations and their staffs, and by
3 treatment facilities. Treatment records include mental health
4 information contained in a medical bill including but not limited to
5 mental health drugs, a mental health diagnosis, provider name, and
6 dates of service stemming from a medical service. Treatment records
7 do not include notes or records maintained for personal use by a
8 person providing treatment services for the department of social and
9 health services, the department, the authority, behavioral health
10 administrative services organizations, managed care organizations, or
11 a treatment facility if the notes or records are not available to
12 others;

13 (57) "Triage facility" means a short-term facility or a portion
14 of a facility licensed or certified by the department, which is
15 designed as a facility to assess and stabilize an individual or
16 determine the need for involuntary commitment of an individual, and
17 must meet department residential treatment facility standards. A
18 triage facility may be structured as a voluntary or involuntary
19 placement facility;

20 (58) "Violent act" means behavior that resulted in homicide,
21 attempted suicide, nonfatal injuries, or substantial damage to
22 property.

23 **Sec. 302.** RCW 71.05.150 and 2019 c 446 s 4 are each amended to
24 read as follows:

25 (1) When a designated crisis responder receives information
26 alleging that a person, as a result of a mental disorder, substance
27 use disorder, or both presents a likelihood of serious harm or is
28 gravely disabled, or that a person is in need of assisted outpatient
29 behavioral health treatment; the designated crisis responder may,
30 after investigation and evaluation of the specific facts alleged and
31 of the reliability and credibility of any person providing
32 information to initiate detention or involuntary outpatient
33 treatment, if satisfied that the allegations are true and that the
34 person will not voluntarily seek appropriate treatment, file a
35 petition for initial detention under this section or a petition for
36 involuntary outpatient behavioral health treatment under RCW
37 71.05.148. Before filing the petition, the designated crisis
38 responder must personally interview the person, unless the person
39 refuses an interview, and determine whether the person will

1 voluntarily receive appropriate evaluation and treatment at an
2 evaluation and treatment facility, crisis stabilization unit, triage
3 facility, or approved substance use disorder treatment program.

4 (2) (a) An order to detain a person with a mental disorder to a
5 designated evaluation and treatment facility, or to detain a person
6 with a substance use disorder to a secure withdrawal management and
7 stabilization facility or approved substance use disorder treatment
8 program, for not more than a seventy-two-hour evaluation and
9 treatment period may be issued by a judge of the superior court upon
10 request of a designated crisis responder, subject to (d) of this
11 subsection, whenever it appears to the satisfaction of a judge of the
12 superior court:

13 (i) That there is probable cause to support the petition; and

14 (ii) That the person has refused or failed to accept appropriate
15 evaluation and treatment voluntarily.

16 (b) The petition for initial detention, signed under penalty of
17 perjury, or sworn telephonic testimony may be considered by the court
18 in determining whether there are sufficient grounds for issuing the
19 order.

20 (c) The order shall designate retained counsel or, if counsel is
21 appointed from a list provided by the court, the name, business
22 address, and telephone number of the attorney appointed to represent
23 the person.

24 (d) A court may not issue an order to detain a person to a secure
25 withdrawal management and stabilization facility or approved
26 substance use disorder treatment program unless there is an available
27 secure withdrawal management and stabilization facility or approved
28 substance use disorder treatment program that has adequate space for
29 the person.

30 (3) The designated crisis responder shall then serve or cause to
31 be served on such person, his or her guardian, and conservator, if
32 any, a copy of the order together with a notice of rights, and a
33 petition for initial detention. After service on such person the
34 designated crisis responder shall file the return of service in court
35 and provide copies of all papers in the court file to the evaluation
36 and treatment facility, secure withdrawal management and
37 stabilization facility, or approved substance use disorder treatment
38 program, and the designated attorney. The designated crisis responder
39 shall notify the court and the prosecuting attorney that a probable
40 cause hearing will be held within seventy-two hours of the date and

1 time of outpatient evaluation or admission to the evaluation and
2 treatment facility, secure withdrawal management and stabilization
3 facility, or approved substance use disorder treatment program. The
4 person shall be permitted to be accompanied by one or more of his or
5 her relatives, friends, an attorney, a personal physician, or other
6 professional or religious advisor to the place of evaluation. An
7 attorney accompanying the person to the place of evaluation shall be
8 permitted to be present during the admission evaluation. Any other
9 individual accompanying the person may be present during the
10 admission evaluation. The facility may exclude the individual if his
11 or her presence would present a safety risk, delay the proceedings,
12 or otherwise interfere with the evaluation.

13 (4) The designated crisis responder may notify a peace officer to
14 take such person or cause such person to be taken into custody and
15 placed in an evaluation and treatment facility, secure withdrawal
16 management and stabilization facility, or approved substance use
17 disorder treatment program. At the time such person is taken into
18 custody there shall commence to be served on such person, his or her
19 guardian, and conservator, if any, a copy of the original order
20 together with a notice of rights and a petition for initial
21 detention.

22 (5) An Indian tribe shall have jurisdiction exclusive to the
23 state as to any involuntary commitment of an American Indian or
24 Alaska Native to an evaluation and treatment facility located within
25 the boundaries of that tribe, unless the tribe has consented to the
26 state's concurrent jurisdiction, or the tribe has expressly declined
27 to exercise its exclusive jurisdiction.

28 (6) Tribal court orders for involuntary commitment shall be
29 recognized and enforced in accordance with superior court civil rule
30 82.5.

31 (7) In any investigation and evaluation of an individual under
32 RCW 71.05.150 or 71.05.153 in which the designated crisis responder
33 knows, or has reason to know, that the individual is an American
34 Indian or Alaska Native who receives medical or behavioral health
35 services from a tribe within this state, the designated crisis
36 responder shall notify the tribe or Indian health care provider
37 regarding whether or not a petition for initial detention or
38 involuntary outpatient treatment will be filed. Notification shall be
39 made in person or by telephonic or electronic communication to the
40 tribal contact listed in the authority's tribal crisis coordination

1 plan as soon as possible but no later than three hours subject to the
2 requirements in RCW 70.02.230 (2)(dd) and (3). A designated crisis
3 responder may restrict the release of information as necessary to
4 comply with 42 C.F.R. Part 2.

5 **Sec. 303.** RCW 71.05.150 and 2019 c 446 s 5 are each amended to
6 read as follows:

7 (1) When a designated crisis responder receives information
8 alleging that a person, as a result of a mental disorder, substance
9 use disorder, or both presents a likelihood of serious harm or is
10 gravely disabled, or that a person is in need of assisted outpatient
11 behavioral health treatment; the designated crisis responder may,
12 after investigation and evaluation of the specific facts alleged and
13 of the reliability and credibility of any person providing
14 information to initiate detention or involuntary outpatient
15 treatment, if satisfied that the allegations are true and that the
16 person will not voluntarily seek appropriate treatment, file a
17 petition for initial detention under this section or a petition for
18 involuntary outpatient behavioral health treatment under RCW
19 71.05.148. Before filing the petition, the designated crisis
20 responder must personally interview the person, unless the person
21 refuses an interview, and determine whether the person will
22 voluntarily receive appropriate evaluation and treatment at an
23 evaluation and treatment facility, crisis stabilization unit, triage
24 facility, or approved substance use disorder treatment program.

25 (2)(a) An order to detain a person with a mental disorder to a
26 designated evaluation and treatment facility, or to detain a person
27 with a substance use disorder to a secure withdrawal management and
28 stabilization facility or approved substance use disorder treatment
29 program, for not more than a seventy-two-hour evaluation and
30 treatment period may be issued by a judge of the superior court upon
31 request of a designated crisis responder whenever it appears to the
32 satisfaction of a judge of the superior court:

33 (i) That there is probable cause to support the petition; and

34 (ii) That the person has refused or failed to accept appropriate
35 evaluation and treatment voluntarily.

36 (b) The petition for initial detention, signed under penalty of
37 perjury, or sworn telephonic testimony may be considered by the court
38 in determining whether there are sufficient grounds for issuing the
39 order.

1 (c) The order shall designate retained counsel or, if counsel is
2 appointed from a list provided by the court, the name, business
3 address, and telephone number of the attorney appointed to represent
4 the person.

5 (3) The designated crisis responder shall then serve or cause to
6 be served on such person, his or her guardian, and conservator, if
7 any, a copy of the order together with a notice of rights, and a
8 petition for initial detention. After service on such person the
9 designated crisis responder shall file the return of service in court
10 and provide copies of all papers in the court file to the evaluation
11 and treatment facility, secure withdrawal management and
12 stabilization facility, or approved substance use disorder treatment
13 program, and the designated attorney. The designated crisis responder
14 shall notify the court and the prosecuting attorney that a probable
15 cause hearing will be held within seventy-two hours of the date and
16 time of outpatient evaluation or admission to the evaluation and
17 treatment facility, secure withdrawal management and stabilization
18 facility, or approved substance use disorder treatment program. The
19 person shall be permitted to be accompanied by one or more of his or
20 her relatives, friends, an attorney, a personal physician, or other
21 professional or religious advisor to the place of evaluation. An
22 attorney accompanying the person to the place of evaluation shall be
23 permitted to be present during the admission evaluation. Any other
24 individual accompanying the person may be present during the
25 admission evaluation. The facility may exclude the individual if his
26 or her presence would present a safety risk, delay the proceedings,
27 or otherwise interfere with the evaluation.

28 (4) The designated crisis responder may notify a peace officer to
29 take such person or cause such person to be taken into custody and
30 placed in an evaluation and treatment facility, secure withdrawal
31 management and stabilization facility, or approved substance use
32 disorder treatment program. At the time such person is taken into
33 custody there shall commence to be served on such person, his or her
34 guardian, and conservator, if any, a copy of the original order
35 together with a notice of rights and a petition for initial
36 detention.

37 (5) An Indian tribe shall have jurisdiction exclusive to the
38 state as to any involuntary commitment of an American Indian or
39 Alaska Native to an evaluation and treatment facility located within
40 the boundaries of that tribe, unless the tribe has consented to the

1 state's concurrent jurisdiction, or the tribe has expressly declined
2 to exercise its exclusive jurisdiction.

3 (6) Tribal court orders for involuntary commitment shall be
4 recognized and enforced in accordance with superior court civil rule
5 82.5.

6 (7) In any investigation and evaluation of an individual under
7 RCW 71.05.150 or 71.05.153 in which the designated crisis responder
8 knows, or has reason to know, that the individual is an American
9 Indian or Alaska Native who receives medical or behavioral health
10 services from a tribe within this state, the designated crisis
11 responder shall notify the tribe or Indian health care provider
12 regarding whether or not a petition for initial detention or
13 involuntary outpatient treatment will be filed. Notification shall be
14 made in person or by telephonic or electronic communication to the
15 tribal contact listed in the authority's tribal crisis coordination
16 plan as soon as possible but no later than three hours subject to the
17 requirements in RCW 70.02.230 (2)(dd) and (3). A designated crisis
18 responder may restrict the release of information as necessary to
19 comply with 42 C.F.R. Part 2.

20 **Sec. 304.** RCW 71.05.201 and 2018 c 291 s 11 are each amended to
21 read as follows:

22 (1) If a designated crisis responder decides not to detain a
23 person for evaluation and treatment under RCW 71.05.150 or 71.05.153
24 or forty-eight hours have elapsed since a designated crisis responder
25 received a request for investigation and the designated crisis
26 responder has not taken action to have the person detained, an
27 immediate family member or guardian or conservator of the person, or
28 a federally recognized Indian tribe if the person is a member of such
29 tribe, may petition the superior court for the person's initial
30 detention.

31 (2) A petition under this section must be filed within ten
32 calendar days following the designated crisis responder investigation
33 or the request for a designated crisis responder investigation. If
34 more than ten days have elapsed, the immediate family member,
35 guardian, or conservator may request a new designated crisis
36 responder investigation.

37 (3)(a) The petition must be filed in the county in which the
38 designated crisis responder investigation occurred or was requested
39 to occur and must be submitted on forms developed by the

1 administrative office of the courts for this purpose. The petition
2 must be accompanied by a sworn declaration from the petitioner, and
3 other witnesses if desired, describing why the person should be
4 detained for evaluation and treatment. The description of why the
5 person should be detained may contain, but is not limited to, the
6 information identified in RCW 71.05.212.

7 (b) The petition must contain:

8 (i) A description of the relationship between the petitioner and
9 the person; and

10 (ii) The date on which an investigation was requested from the
11 designated crisis responder.

12 (4) The court shall, within one judicial day, review the petition
13 to determine whether the petition raises sufficient evidence to
14 support the allegation. If the court so finds, it shall provide a
15 copy of the petition to the designated crisis responder agency with
16 an order for the agency to provide the court, within one judicial
17 day, with a written sworn statement describing the basis for the
18 decision not to seek initial detention and a copy of all information
19 material to the designated crisis responder's current decision.

20 (5) Following the filing of the petition and before the court
21 reaches a decision, any person, including a mental health
22 professional, may submit a sworn declaration to the court in support
23 of or in opposition to initial detention.

24 (6) The court shall dismiss the petition at any time if it finds
25 that a designated crisis responder has filed a petition for the
26 person's initial detention under RCW 71.05.150 or 71.05.153 or that
27 the person has voluntarily accepted appropriate treatment.

28 (7) The court must issue a final ruling on the petition within
29 five judicial days after it is filed. After reviewing all of the
30 information provided to the court, the court may enter an order for
31 initial detention or an order instructing the designated crisis
32 responder to file a petition for assisted outpatient behavioral
33 health treatment if the court finds that: (a) There is probable cause
34 to support a petition for detention or assisted outpatient behavioral
35 health treatment; and (b) the person has refused or failed to accept
36 appropriate evaluation and treatment voluntarily. The court shall
37 transmit its final decision to the petitioner.

38 (8) If the court enters an order for initial detention, it shall
39 provide the order to the designated crisis responder agency and issue
40 a written order for apprehension of the person by a peace officer for

1 delivery of the person to a facility or emergency room determined by
2 the designated crisis responder. The designated crisis responder
3 agency serving the jurisdiction of the court must collaborate and
4 coordinate with law enforcement regarding apprehensions and
5 detentions under this subsection, including sharing of information
6 relating to risk and which would assist in locating the person. A
7 person may not be detained to jail pursuant to a written order issued
8 under this subsection. An order for detention under this section
9 should contain the advisement of rights which the person would
10 receive if the person were detained by a designated crisis responder.
11 An order for initial detention under this section expires one hundred
12 eighty days from issuance.

13 (9) Except as otherwise expressly stated in this chapter, all
14 procedures must be followed as if the order had been entered under
15 RCW 71.05.150. RCW 71.05.160 does not apply if detention was
16 initiated under the process set forth in this section.

17 (10) For purposes of this section, "immediate family member"
18 means a spouse, domestic partner, child, stepchild, parent,
19 stepparent, grandparent, or sibling.

20 **Sec. 305.** RCW 71.05.212 and 2018 c 291 s 13 are each amended to
21 read as follows:

22 (1) Whenever a designated crisis responder or professional person
23 is conducting an evaluation under this chapter, consideration shall
24 include all reasonably available information from credible witnesses
25 and records regarding:

26 (a) Prior recommendations for evaluation of the need for civil
27 commitments when the recommendation is made pursuant to an evaluation
28 conducted under chapter 10.77 RCW;

29 (b) Historical behavior, including history of one or more violent
30 acts;

31 (c) Prior determinations of incompetency or insanity under
32 chapter 10.77 RCW; and

33 (d) Prior commitments under this chapter.

34 (2) Credible witnesses may include family members, landlords,
35 neighbors, or others with significant contact and history of
36 involvement with the person. If the designated crisis responder
37 relies upon information from a credible witness in reaching his or
38 her decision to detain the individual, then he or she must provide
39 contact information for any such witness to the prosecutor. The

1 designated crisis responder or prosecutor shall provide notice of the
2 date, time, and location of the probable cause hearing to such a
3 witness.

4 (3) Symptoms and behavior of the respondent which standing alone
5 would not justify civil commitment may support a finding of grave
6 disability or likelihood of serious harm, or a finding that the
7 person is in need of assisted outpatient behavioral health treatment,
8 when:

9 (a) Such symptoms or behavior are closely associated with
10 symptoms or behavior which preceded and led to a past incident of
11 involuntary hospitalization, severe deterioration, or one or more
12 violent acts;

13 (b) These symptoms or behavior represent a marked and concerning
14 change in the baseline behavior of the respondent; and

15 (c) Without treatment, the continued deterioration of the
16 respondent is probable.

17 (4) When conducting an evaluation for offenders identified under
18 RCW 72.09.370, the designated crisis responder or professional person
19 shall consider an offender's history of judicially required or
20 administratively ordered antipsychotic medication while in
21 confinement.

22 (5) The authority, in consultation with tribes and coordination
23 with Indian health care providers and the American Indian health
24 commission for Washington state, shall establish written guidelines
25 by June 30, 2021, for conducting culturally appropriate evaluations
26 of American Indians or Alaska Natives.

27 **Sec. 306.** RCW 71.05.435 and 2019 c 446 s 26 are each amended to
28 read as follows:

29 (1) Whenever a person who is the subject of an involuntary
30 commitment order under this chapter is discharged from an evaluation
31 and treatment facility, state hospital, secure withdrawal management
32 and stabilization facility, or approved substance use disorder
33 treatment program providing involuntary treatment services, the
34 entity discharging the person shall provide notice of the person's
35 discharge to the designated crisis responder office responsible for
36 the initial commitment, which may be a federally recognized Indian
37 tribe or other Indian health care provider if the designated crisis
38 responder is appointed by the authority, and the designated crisis
39 responder office that serves the county in which the person is

1 expected to reside. The entity discharging the person must also
2 provide these offices with a copy of any less restrictive order or
3 conditional release order entered in conjunction with the discharge
4 of the person, unless the entity discharging the person has entered
5 into a memorandum of understanding obligating another entity to
6 provide these documents.

7 (2) The notice and documents referred to in subsection (1) of
8 this section shall be provided as soon as possible and no later than
9 one business day following the discharge of the person. Notice is not
10 required under this section if the discharge is for the purpose of
11 transferring the person for continued detention and treatment under
12 this chapter at another treatment facility.

13 (3) The authority shall maintain and make available an updated
14 list of contact information for designated crisis responder offices
15 around the state.

16 NEW SECTION. **Sec. 307.** A new section is added to chapter 71.24
17 RCW to read as follows:

18 (1) The authority shall provide an annual report on psychiatric
19 treatment and evaluation and bed utilization for American Indians and
20 Alaska Natives starting on October 1, 2020. The report shall be
21 available for review by the tribes, urban Indian health programs, and
22 the American Indian health commission for Washington state.

23 (2) Indian health care providers shall be included in any bed
24 tracking system created by the authority.

25 **PART IV**

26 **Sec. 401.** RCW 70.02.010 and 2019 c 325 s 5019 are each amended
27 to read as follows:

28 The definitions in this section apply throughout this chapter
29 unless the context clearly requires otherwise.

30 (1) "Admission" has the same meaning as in RCW 71.05.020.

31 (2) "Audit" means an assessment, evaluation, determination, or
32 investigation of a health care provider by a person not employed by
33 or affiliated with the provider to determine compliance with:

34 (a) Statutory, regulatory, fiscal, medical, or scientific
35 standards;

36 (b) A private or public program of payments to a health care
37 provider; or

- 1 (c) Requirements for licensing, accreditation, or certification.
- 2 (3) "Authority" means the Washington state health care authority.
- 3 (4) "Commitment" has the same meaning as in RCW 71.05.020.
- 4 (5) "Custody" has the same meaning as in RCW 71.05.020.
- 5 (6) "Deidentified" means health information that does not
6 identify an individual and with respect to which there is no
7 reasonable basis to believe that the information can be used to
8 identify an individual.
- 9 (7) "Department" means the department of social and health
10 services.
- 11 (8) "Designated crisis responder" has the same meaning as in RCW
12 71.05.020 or 71.34.020, as applicable.
- 13 (9) "Detention" or "detain" has the same meaning as in RCW
14 71.05.020.
- 15 (10) "Directory information" means information disclosing the
16 presence, and for the purpose of identification, the name, location
17 within a health care facility, and the general health condition of a
18 particular patient who is a patient in a health care facility or who
19 is currently receiving emergency health care in a health care
20 facility.
- 21 (11) "Discharge" has the same meaning as in RCW 71.05.020.
- 22 (12) "Evaluation and treatment facility" has the same meaning as
23 in RCW 71.05.020 or 71.34.020, as applicable.
- 24 (13) "Federal, state, or local law enforcement authorities" means
25 an officer of any agency or authority in the United States, a state,
26 a tribe, a territory, or a political subdivision of a state, a tribe,
27 or a territory who is empowered by law to: (a) Investigate or conduct
28 an official inquiry into a potential criminal violation of law; or
29 (b) prosecute or otherwise conduct a criminal proceeding arising from
30 an alleged violation of law.
- 31 (14) "General health condition" means the patient's health status
32 described in terms of "critical," "poor," "fair," "good,"
33 "excellent," or terms denoting similar conditions.
- 34 (15) "Health care" means any care, service, or procedure provided
35 by a health care provider:
- 36 (a) To diagnose, treat, or maintain a patient's physical or
37 mental condition; or
- 38 (b) That affects the structure or any function of the human body.

1 (16) "Health care facility" means a hospital, clinic, nursing
2 home, laboratory, office, or similar place where a health care
3 provider provides health care to patients.

4 (17) "Health care information" means any information, whether
5 oral or recorded in any form or medium, that identifies or can
6 readily be associated with the identity of a patient and directly
7 relates to the patient's health care, including a patient's
8 deoxyribonucleic acid and identified sequence of chemical base pairs.
9 The term includes any required accounting of disclosures of health
10 care information.

11 (18) "Health care operations" means any of the following
12 activities of a health care provider, health care facility, or third-
13 party payor to the extent that the activities are related to
14 functions that make an entity a health care provider, a health care
15 facility, or a third-party payor:

16 (a) Conducting: Quality assessment and improvement activities,
17 including outcomes evaluation and development of clinical guidelines,
18 if the obtaining of generalizable knowledge is not the primary
19 purpose of any studies resulting from such activities; population-
20 based activities relating to improving health or reducing health care
21 costs, protocol development, case management and care coordination,
22 contacting of health care providers and patients with information
23 about treatment alternatives; and related functions that do not
24 include treatment;

25 (b) Reviewing the competence or qualifications of health care
26 professionals, evaluating practitioner and provider performance and
27 third-party payor performance, conducting training programs in which
28 students, trainees, or practitioners in areas of health care learn
29 under supervision to practice or improve their skills as health care
30 providers, training of nonhealth care professionals, accreditation,
31 certification, licensing, or credentialing activities;

32 (c) Underwriting, premium rating, and other activities relating
33 to the creation, renewal, or replacement of a contract of health
34 insurance or health benefits, and ceding, securing, or placing a
35 contract for reinsurance of risk relating to claims for health care,
36 including stop-loss insurance and excess of loss insurance, if any
37 applicable legal requirements are met;

38 (d) Conducting or arranging for medical review, legal services,
39 and auditing functions, including fraud and abuse detection and
40 compliance programs;

1 (e) Business planning and development, such as conducting cost-
2 management and planning-related analyses related to managing and
3 operating the health care facility or third-party payor, including
4 formulary development and administration, development, or improvement
5 of methods of payment or coverage policies; and

6 (f) Business management and general administrative activities of
7 the health care facility, health care provider, or third-party payor
8 including, but not limited to:

9 (i) Management activities relating to implementation of and
10 compliance with the requirements of this chapter;

11 (ii) Customer service, including the provision of data analyses
12 for policy holders, plan sponsors, or other customers, provided that
13 health care information is not disclosed to such policy holder, plan
14 sponsor, or customer;

15 (iii) Resolution of internal grievances;

16 (iv) The sale, transfer, merger, or consolidation of all or part
17 of a health care provider, health care facility, or third-party payor
18 with another health care provider, health care facility, or third-
19 party payor or an entity that following such activity will become a
20 health care provider, health care facility, or third-party payor, and
21 due diligence related to such activity; and

22 (v) Consistent with applicable legal requirements, creating
23 deidentified health care information or a limited dataset for the
24 benefit of the health care provider, health care facility, or third-
25 party payor.

26 (19) "Health care provider" means a person who is licensed,
27 certified, registered, or otherwise authorized by the law of this
28 state to provide health care in the ordinary course of business or
29 practice of a profession.

30 (20) "Human immunodeficiency virus" or "HIV" has the same meaning
31 as in RCW 70.24.017.

32 (21) "Imminent" has the same meaning as in RCW 71.05.020.

33 (22) "Information and records related to mental health services"
34 means a type of health care information that relates to all
35 information and records compiled, obtained, or maintained in the
36 course of providing services by a mental health service agency or
37 mental health professional to persons who are receiving or have
38 received services for mental illness. The term includes mental health
39 information contained in a medical bill, registration records, as
40 defined in RCW 70.97.010, and all other records regarding the person

1 maintained by the department, by the authority, by behavioral health
2 administrative services organizations and their staff, managed care
3 organizations contracted with the authority under chapter 74.09 RCW
4 and their staff, and by treatment facilities. The term further
5 includes documents of legal proceedings under chapter 71.05, 71.34,
6 or 10.77 RCW, or somatic health care information. For health care
7 information maintained by a hospital as defined in RCW 70.41.020 or a
8 health care facility or health care provider that participates with a
9 hospital in an organized health care arrangement defined under
10 federal law, "information and records related to mental health
11 services" is limited to information and records of services provided
12 by a mental health professional or information and records of
13 services created by a hospital-operated community behavioral health
14 program as defined in RCW 71.24.025. The term does not include
15 psychotherapy notes.

16 (23) "Information and records related to sexually transmitted
17 diseases" means a type of health care information that relates to the
18 identity of any person upon whom an HIV antibody test or other
19 sexually transmitted infection test is performed, the results of such
20 tests, and any information relating to diagnosis of or treatment for
21 any confirmed sexually transmitted infections.

22 (24) "Institutional review board" means any board, committee, or
23 other group formally designated by an institution, or authorized
24 under federal or state law, to review, approve the initiation of, or
25 conduct periodic review of research programs to assure the protection
26 of the rights and welfare of human research subjects.

27 (25) "Legal counsel" has the same meaning as in RCW 71.05.020.

28 (26) "Local public health officer" has the same meaning as in RCW
29 70.24.017.

30 (27) "Maintain," as related to health care information, means to
31 hold, possess, preserve, retain, store, or control that information.

32 (28) "Mental health professional" means a psychiatrist,
33 psychologist, psychiatric advanced registered nurse practitioner,
34 psychiatric nurse, or social worker, and such other mental health
35 professionals as may be defined by rules adopted by the secretary of
36 health under chapter 71.05 RCW, whether that person works in a
37 private or public setting.

38 (29) "Mental health service agency" means a public or private
39 agency that provides services to persons with mental disorders as
40 defined under RCW 71.05.020 or 71.34.020 and receives funding from

1 public sources. This includes evaluation and treatment facilities as
2 defined in RCW 71.34.020, community mental health service delivery
3 systems, or community behavioral health programs, as defined in RCW
4 71.24.025, and facilities conducting competency evaluations and
5 restoration under chapter 10.77 RCW.

6 (30) "Minor" has the same meaning as in RCW 71.34.020.

7 (31) "Parent" has the same meaning as in RCW 71.34.020.

8 (32) "Patient" means an individual who receives or has received
9 health care. The term includes a deceased individual who has received
10 health care.

11 (33) "Payment" means:

12 (a) The activities undertaken by:

13 (i) A third-party payor to obtain premiums or to determine or
14 fulfill its responsibility for coverage and provision of benefits by
15 the third-party payor; or

16 (ii) A health care provider, health care facility, or third-party
17 payor, to obtain or provide reimbursement for the provision of health
18 care; and

19 (b) The activities in (a) of this subsection that relate to the
20 patient to whom health care is provided and that include, but are not
21 limited to:

22 (i) Determinations of eligibility or coverage, including
23 coordination of benefits or the determination of cost-sharing
24 amounts, and adjudication or subrogation of health benefit claims;

25 (ii) Risk adjusting amounts due based on enrollee health status
26 and demographic characteristics;

27 (iii) Billing, claims management, collection activities,
28 obtaining payment under a contract for reinsurance, including stop-
29 loss insurance and excess of loss insurance, and related health care
30 data processing;

31 (iv) Review of health care services with respect to medical
32 necessity, coverage under a health plan, appropriateness of care, or
33 justification of charges;

34 (v) Utilization review activities, including precertification and
35 preauthorization of services, and concurrent and retrospective review
36 of services; and

37 (vi) Disclosure to consumer reporting agencies of any of the
38 following health care information relating to collection of premiums
39 or reimbursement:

40 (A) Name and address;

- 1 (B) Date of birth;
2 (C) Social security number;
3 (D) Payment history;
4 (E) Account number; and
5 (F) Name and address of the health care provider, health care
6 facility, and/or third-party payor.
- 7 (34) "Person" means an individual, corporation, business trust,
8 estate, trust, partnership, association, joint venture, government,
9 governmental subdivision or agency, or any other legal or commercial
10 entity.
- 11 (35) "Professional person" has the same meaning as in RCW
12 71.05.020.
- 13 (36) "Psychiatric advanced registered nurse practitioner" has the
14 same meaning as in RCW 71.05.020.
- 15 (37) "Psychotherapy notes" means notes recorded, in any medium,
16 by a mental health professional documenting or analyzing the contents
17 of conversations during a private counseling session or group, joint,
18 or family counseling session, and that are separated from the rest of
19 the individual's medical record. The term excludes mediation
20 prescription and monitoring, counseling session start and stop times,
21 the modalities and frequencies of treatment furnished, results of
22 clinical tests, and any summary of the following items: Diagnosis,
23 functional status, the treatment plan, symptoms, prognosis, and
24 progress to date.
- 25 (38) "Reasonable fee" means the charges for duplicating or
26 searching the record, but shall not exceed sixty-five cents per page
27 for the first thirty pages and fifty cents per page for all other
28 pages. In addition, a clerical fee for searching and handling may be
29 charged not to exceed fifteen dollars. These amounts shall be
30 adjusted biennially in accordance with changes in the consumer price
31 index, all consumers, for Seattle-Tacoma metropolitan statistical
32 area as determined by the secretary of health. However, where editing
33 of records by a health care provider is required by statute and is
34 done by the provider personally, the fee may be the usual and
35 customary charge for a basic office visit.
- 36 (39) "Release" has the same meaning as in RCW 71.05.020.
- 37 (40) "Resource management services" has the same meaning as in
38 RCW 71.05.020.
- 39 (41) "Serious violent offense" has the same meaning as in RCW
40 71.05.020.

1 (42) "Sexually transmitted infection" or "sexually transmitted
2 disease" has the same meaning as "sexually transmitted disease" in
3 RCW 70.24.017.

4 (43) "Test for a sexually transmitted disease" has the same
5 meaning as in RCW 70.24.017.

6 (44) "Third-party payor" means an insurer regulated under Title
7 48 RCW authorized to transact business in this state or other
8 jurisdiction, including a health care service contractor, and health
9 maintenance organization; or an employee welfare benefit plan,
10 excluding fitness or wellness plans; or a state or federal health
11 benefit program.

12 (45) "Treatment" means the provision, coordination, or management
13 of health care and related services by one or more health care
14 providers or health care facilities, including the coordination or
15 management of health care by a health care provider or health care
16 facility with a third party; consultation between health care
17 providers or health care facilities relating to a patient; or the
18 referral of a patient for health care from one health care provider
19 or health care facility to another.

20 (46) "Managed care organization" has the same meaning as provided
21 in RCW 71.24.025.

22 (47) "Indian health care provider" has the same meaning as in RCW
23 43.71B.010(10).

24 **Sec. 402.** RCW 70.02.230 and 2019 c 381 s 19, 2019 c 325 s 5020,
25 and 2019 c 317 s 2 are each reenacted and amended to read as follows:

26 (1) Except as provided in this section, RCW 70.02.050, 71.05.445,
27 74.09.295, 70.02.210, 70.02.240, 70.02.250, 70.02.260, and 70.02.265,
28 or pursuant to a valid authorization under RCW 70.02.030, the fact of
29 admission to a provider for mental health services and all
30 information and records compiled, obtained, or maintained in the
31 course of providing mental health services to either voluntary or
32 involuntary recipients of services at public or private agencies must
33 be confidential.

34 (2) Information and records related to mental health services,
35 other than those obtained through treatment under chapter 71.34 RCW,
36 may be disclosed only:

37 (a) In communications between qualified professional persons to
38 meet the requirements of chapter 71.05 RCW, including Indian health
39 care providers, in the provision of services or appropriate

1 referrals, or in the course of guardianship proceedings if provided
2 to a professional person:

3 (i) Employed by the facility;

4 (ii) Who has medical responsibility for the patient's care;

5 (iii) Who is a designated crisis responder;

6 (iv) Who is providing services under chapter 71.24 RCW;

7 (v) Who is employed by a state or local correctional facility
8 where the person is confined or supervised; or

9 (vi) Who is providing evaluation, treatment, or follow-up
10 services under chapter 10.77 RCW;

11 (b) When the communications regard the special needs of a patient
12 and the necessary circumstances giving rise to such needs and the
13 disclosure is made by a facility providing services to the operator
14 of a facility in which the patient resides or will reside;

15 (c) (i) When the person receiving services, or his or her
16 guardian, designates persons to whom information or records may be
17 released, or if the person is a minor, when his or her parents make
18 such a designation;

19 (ii) A public or private agency shall release to a person's next
20 of kin, attorney, personal representative, guardian, or conservator,
21 if any:

22 (A) The information that the person is presently a patient in the
23 facility or that the person is seriously physically ill;

24 (B) A statement evaluating the mental and physical condition of
25 the patient, and a statement of the probable duration of the
26 patient's confinement, if such information is requested by the next
27 of kin, attorney, personal representative, guardian, or conservator;
28 and

29 (iii) Other information requested by the next of kin or attorney
30 as may be necessary to decide whether or not proceedings should be
31 instituted to appoint a guardian or conservator;

32 (d) (i) To the courts, including tribal courts, as necessary to
33 the administration of chapter 71.05 RCW or to a court ordering an
34 evaluation or treatment under chapter 10.77 RCW solely for the
35 purpose of preventing the entry of any evaluation or treatment order
36 that is inconsistent with any order entered under chapter 71.05 RCW.

37 (ii) To a court or its designee in which a motion under chapter
38 10.77 RCW has been made for involuntary medication of a defendant for
39 the purpose of competency restoration.

1 (iii) Disclosure under this subsection is mandatory for the
2 purpose of the federal health insurance portability and
3 accountability act;

4 (e)(i) When a mental health professional or designated crisis
5 responder is requested by a representative of a law enforcement or
6 corrections agency, including a police officer, sheriff, community
7 corrections officer, a municipal attorney, or prosecuting attorney to
8 undertake an investigation or provide treatment under RCW 71.05.150,
9 10.31.110, or 71.05.153, the mental health professional or designated
10 crisis responder shall, if requested to do so, advise the
11 representative in writing of the results of the investigation
12 including a statement of reasons for the decision to detain or
13 release the person investigated. The written report must be submitted
14 within seventy-two hours of the completion of the investigation or
15 the request from the law enforcement or corrections representative,
16 whichever occurs later.

17 (ii) Disclosure under this subsection is mandatory for the
18 purposes of the federal health insurance portability and
19 accountability act;

20 (f) To the attorney of the detained person;

21 (g) To the prosecuting attorney as necessary to carry out the
22 responsibilities of the office under RCW 71.05.330(2),
23 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided
24 access to records regarding the committed person's treatment and
25 prognosis, medication, behavior problems, and other records relevant
26 to the issue of whether treatment less restrictive than inpatient
27 treatment is in the best interest of the committed person or others.
28 Information must be disclosed only after giving notice to the
29 committed person and the person's counsel;

30 (h)(i) To appropriate law enforcement agencies and to a person,
31 when the identity of the person is known to the public or private
32 agency, whose health and safety has been threatened, or who is known
33 to have been repeatedly harassed, by the patient. The person may
34 designate a representative to receive the disclosure. The disclosure
35 must be made by the professional person in charge of the public or
36 private agency or his or her designee and must include the dates of
37 commitment, admission, discharge, or release, authorized or
38 unauthorized absence from the agency's facility, and only any other
39 information that is pertinent to the threat or harassment. The agency
40 or its employees are not civilly liable for the decision to disclose

1 or not, so long as the decision was reached in good faith and without
2 gross negligence.

3 (ii) Disclosure under this subsection is mandatory for the
4 purposes of the federal health insurance portability and
5 accountability act;

6 (i)(i) To appropriate corrections and law enforcement agencies
7 all necessary and relevant information in the event of a crisis or
8 emergent situation that poses a significant and imminent risk to the
9 public. The mental health service agency or its employees are not
10 civilly liable for the decision to disclose or not so long as the
11 decision was reached in good faith and without gross negligence.

12 (ii) Disclosure under this subsection is mandatory for the
13 purposes of the health insurance portability and accountability act;

14 (j) To the persons designated in RCW 71.05.425 for the purposes
15 described in those sections;

16 (k) Upon the death of a person. The person's next of kin,
17 personal representative, guardian, or conservator, if any, must be
18 notified. Next of kin who are of legal age and competent must be
19 notified under this section in the following order: Spouse, parents,
20 children, brothers and sisters, and other relatives according to the
21 degree of relation. Access to all records and information compiled,
22 obtained, or maintained in the course of providing services to a
23 deceased patient are governed by RCW 70.02.140;

24 (l) To mark headstones or otherwise memorialize patients interred
25 at state hospital cemeteries. The department of social and health
26 services shall make available the name, date of birth, and date of
27 death of patients buried in state hospital cemeteries fifty years
28 after the death of a patient;

29 (m) To law enforcement officers and to prosecuting attorneys as
30 are necessary to enforce RCW 9.41.040(2)(a)(iv). The extent of
31 information that may be released is limited as follows:

32 (i) Only the fact, place, and date of involuntary commitment, an
33 official copy of any order or orders of commitment, and an official
34 copy of any written or oral notice of ineligibility to possess a
35 firearm that was provided to the person pursuant to RCW 9.41.047(1),
36 must be disclosed upon request;

37 (ii) The law enforcement and prosecuting attorneys may only
38 release the information obtained to the person's attorney as required
39 by court rule and to a jury or judge, if a jury is waived, that

1 presides over any trial at which the person is charged with violating
2 RCW 9.41.040(2)(a)(iv);

3 (iii) Disclosure under this subsection is mandatory for the
4 purposes of the federal health insurance portability and
5 accountability act;

6 (n) When a patient would otherwise be subject to the provisions
7 of this section and disclosure is necessary for the protection of the
8 patient or others due to his or her unauthorized disappearance from
9 the facility, and his or her whereabouts is unknown, notice of the
10 disappearance, along with relevant information, may be made to
11 relatives, the department of corrections when the person is under the
12 supervision of the department, and governmental law enforcement
13 agencies designated by the physician or psychiatric advanced
14 registered nurse practitioner in charge of the patient or the
15 professional person in charge of the facility, or his or her
16 professional designee;

17 (o) Pursuant to lawful order of a court, including a tribal
18 court;

19 (p) To qualified staff members of the department, to the
20 authority, to behavioral health administrative services
21 organizations, to managed care organizations, to resource management
22 services responsible for serving a patient, or to service providers
23 designated by resource management services as necessary to determine
24 the progress and adequacy of treatment and to determine whether the
25 person should be transferred to a less restrictive or more
26 appropriate treatment modality or facility;

27 (q) Within the mental health service agency or Indian health care
28 provider facility where the patient is receiving treatment,
29 confidential information may be disclosed to persons employed,
30 serving in bona fide training programs, or participating in
31 supervised volunteer programs, at the facility when it is necessary
32 to perform their duties;

33 (r) Within the department and the authority as necessary to
34 coordinate treatment for mental illness, developmental disabilities,
35 alcoholism, or substance use disorder of persons who are under the
36 supervision of the department;

37 (s) Between the department of social and health services, the
38 department of children, youth, and families, and the health care
39 authority as necessary to coordinate treatment for mental illness,
40 developmental disabilities, alcoholism, or drug abuse of persons who

1 are under the supervision of the department of social and health
2 services or the department of children, youth, and families;

3 (t) To a licensed physician or psychiatric advanced registered
4 nurse practitioner who has determined that the life or health of the
5 person is in danger and that treatment without the information and
6 records related to mental health services could be injurious to the
7 patient's health. Disclosure must be limited to the portions of the
8 records necessary to meet the medical emergency;

9 (u)(i) Consistent with the requirements of the federal health
10 insurance portability and accountability act, to:

11 (A) A health care provider, including an Indian health care
12 provider, who is providing care to a patient, or to whom a patient
13 has been referred for evaluation or treatment; or

14 (B) Any other person who is working in a care coordinator role
15 for a health care facility (~~(or)~~) health care provider, or Indian
16 health care provider, or is under an agreement pursuant to the
17 federal health insurance portability and accountability act with a
18 health care facility or a health care provider and requires the
19 information and records to assure coordinated care and treatment of
20 that patient.

21 (ii) A person authorized to use or disclose information and
22 records related to mental health services under this subsection
23 (2)(u) must take appropriate steps to protect the information and
24 records relating to mental health services.

25 (iii) Psychotherapy notes may not be released without
26 authorization of the patient who is the subject of the request for
27 release of information;

28 (v) To administrative and office support staff designated to
29 obtain medical records for those licensed professionals listed in (u)
30 of this subsection;

31 (w) To a facility that is to receive a person who is
32 involuntarily committed under chapter 71.05 RCW, or upon transfer of
33 the person from one evaluation and treatment facility to another. The
34 release of records under this subsection is limited to the
35 information and records related to mental health services required by
36 law, a record or summary of all somatic treatments, and a discharge
37 summary. The discharge summary may include a statement of the
38 patient's problem, the treatment goals, the type of treatment which
39 has been provided, and recommendation for future treatment, but may
40 not include the patient's complete treatment record;

1 (x) To the person's counsel or guardian ad litem, without
2 modification, at any time in order to prepare for involuntary
3 commitment or recommitment proceedings, reexaminations, appeals, or
4 other actions relating to detention, admission, commitment, or
5 patient's rights under chapter 71.05 RCW;

6 (y) To staff members of the protection and advocacy agency or to
7 staff members of a private, nonprofit corporation for the purpose of
8 protecting and advocating the rights of persons with mental disorders
9 or developmental disabilities. Resource management services may limit
10 the release of information to the name, birthdate, and county of
11 residence of the patient, information regarding whether the patient
12 was voluntarily admitted, or involuntarily committed, the date and
13 place of admission, placement, or commitment, the name and address of
14 a guardian of the patient, and the date and place of the guardian's
15 appointment. Any staff member who wishes to obtain additional
16 information must notify the patient's resource management services in
17 writing of the request and of the resource management services' right
18 to object. The staff member shall send the notice by mail to the
19 guardian's address. If the guardian does not object in writing within
20 fifteen days after the notice is mailed, the staff member may obtain
21 the additional information. If the guardian objects in writing within
22 fifteen days after the notice is mailed, the staff member may not
23 obtain the additional information;

24 (z) To all current treating providers, including Indian health
25 care providers, of the patient with prescriptive authority who have
26 written a prescription for the patient within the last twelve months.
27 For purposes of coordinating health care, the department or the
28 authority may release without written authorization of the patient,
29 information acquired for billing and collection purposes as described
30 in RCW 70.02.050(1)(d). The department, or the authority, if
31 applicable, shall notify the patient that billing and collection
32 information has been released to named providers, and provide the
33 substance of the information released and the dates of such release.
34 Neither the department nor the authority may release counseling,
35 inpatient psychiatric hospitalization, or drug and alcohol treatment
36 information without a signed written release from the client;

37 (aa)(i) To the secretary of social and health services and the
38 director of the health care authority for either program evaluation
39 or research, or both so long as the secretary or director, where
40 applicable, adopts rules for the conduct of the evaluation or

1 research, or both. Such rules must include, but need not be limited
2 to, the requirement that all evaluators and researchers sign an oath
3 of confidentiality substantially as follows:

4 "As a condition of conducting evaluation or research concerning
5 persons who have received services from (fill in the facility,
6 agency, or person) I,, agree not to divulge, publish, or
7 otherwise make known to unauthorized persons or the public any
8 information obtained in the course of such evaluation or research
9 regarding persons who have received services such that the person who
10 received such services is identifiable.

11 I recognize that unauthorized release of confidential information
12 may subject me to civil liability under the provisions of state law.

13 /s/"

14 (ii) Nothing in this chapter may be construed to prohibit the
15 compilation and publication of statistical data for use by government
16 or researchers under standards, including standards to assure
17 maintenance of confidentiality, set forth by the secretary, or
18 director, where applicable;

19 (bb) To any person if the conditions in RCW 70.02.205 are met;

20 (cc) To the secretary of health for the purposes of the maternal
21 mortality review panel established in RCW 70.54.450;

22 (dd) To a tribe or Indian health care provider to carry out the
23 requirements of RCW 71.05.150(7).

24 (3) Whenever federal law or federal regulations restrict the
25 release of information contained in the information and records
26 related to mental health services of any patient who receives
27 treatment for a substance use disorder, the department or the
28 authority may restrict the release of the information as necessary to
29 comply with federal law and regulations.

30 (4) Civil liability and immunity for the release of information
31 about a particular person who is committed to the department of
32 social and health services or the authority under RCW 71.05.280(3)
33 and 71.05.320(4)(c) after dismissal of a sex offense as defined in
34 RCW 9.94A.030, is governed by RCW 4.24.550.

35 (5) The fact of admission to a provider of mental health
36 services, as well as all records, files, evidence, findings, or
37 orders made, prepared, collected, or maintained pursuant to chapter
38 71.05 RCW are not admissible as evidence in any legal proceeding
39 outside that chapter without the written authorization of the person

1 who was the subject of the proceeding except as provided in RCW
2 70.02.260, in a subsequent criminal prosecution of a person committed
3 pursuant to RCW 71.05.280(3) or 71.05.320(4)(c) on charges that were
4 dismissed pursuant to chapter 10.77 RCW due to incompetency to stand
5 trial, in a civil commitment proceeding pursuant to chapter 71.09
6 RCW, or, in the case of a minor, a guardianship or dependency
7 proceeding. The records and files maintained in any court proceeding
8 pursuant to chapter 71.05 RCW must be confidential and available
9 subsequent to such proceedings only to the person who was the subject
10 of the proceeding or his or her attorney. In addition, the court may
11 order the subsequent release or use of such records or files only
12 upon good cause shown if the court finds that appropriate safeguards
13 for strict confidentiality are and will be maintained.

14 (6)(a) Except as provided in RCW 4.24.550, any person may bring
15 an action against an individual who has willfully released
16 confidential information or records concerning him or her in
17 violation of the provisions of this section, for the greater of the
18 following amounts:

19 (i) One thousand dollars; or

20 (ii) Three times the amount of actual damages sustained, if any.

21 (b) It is not a prerequisite to recovery under this subsection
22 that the plaintiff suffered or was threatened with special, as
23 contrasted with general, damages.

24 (c) Any person may bring an action to enjoin the release of
25 confidential information or records concerning him or her or his or
26 her ward, in violation of the provisions of this section, and may in
27 the same action seek damages as provided in this subsection.

28 (d) The court may award to the plaintiff, should he or she
29 prevail in any action authorized by this subsection, reasonable
30 attorney fees in addition to those otherwise provided by law.

31 (e) If an action is brought under this subsection, no action may
32 be brought under RCW 70.02.170.

33 **PART V**

34 NEW SECTION. **Sec. 501.** Section 302 of this act expires July 1,
35 2026.

36 NEW SECTION. **Sec. 502.** Section 303 of this act takes effect
37 July 1, 2026.

1 NEW SECTION. **Sec. 503.** Section 203 of this act takes effect
2 July 1, 2021."

3 Correct the title.

EFFECT: Clarifies the current law that allows designated crisis responders to be appointed by an entity appointed by the county. Clarifies that the requirement that a nontribal designated crisis responder notify the tribe when a person who is American Indian or Alaska Native applies to emergency detentions as well as detentions that result after an investigation.

--- **END** ---