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**SUBSTITUTE SENATE BILL 6573**

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**State of Washington**                    **65th Legislature**                    **2018 Regular Session**

**By Senate Ways & Means** (originally sponsored by Senator O'Ban)

READ FIRST TIME 02/06/18.

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

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

**Part I**

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

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

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

1 treatment provided by state hospitals into managed care contracts by  
2 July 1, 2021.

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

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

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

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

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

38 (e) Billing and reimbursement mechanisms;

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

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

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

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

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

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

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

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

27 (n) A means of tracking regional bed capacity for long-term  
28 inpatient psychiatric care in state hospital and community settings  
29 in order to determine readiness for the targeted start date in  
30 subsection (1) of this section; and

31 (o) Development of payment rates for community hospitals and  
32 evaluation and treatment facilities which appropriately reflect  
33 patient acuity and accurately reflect case complexity for providing  
34 ninety and one hundred eighty-day civil commitment services.

35 (3) Participating stakeholders under subsection (2) of this  
36 section must include, but not be limited to, interested members of  
37 the legislature, the Washington state hospital association, the  
38 association of Washington healthcare plans, each of the five  
39 contracted apple health managed care organizations, the Washington

1 council for behavioral health, and the Washington state association  
2 of counties.

3 (4) A preliminary draft of the transition plan must be submitted,  
4 in compliance with RCW 43.01.036, to the relevant committees of the  
5 legislature by November 15, 2019, for review by the select committee  
6 on quality improvement in state hospitals. The department must  
7 consider the input of the committee and external stakeholders before  
8 submitting a final transition plan by December 30, 2019.

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

11 (1) By July 1, 2021, the authority must develop a psychiatric  
12 managed care capitation risk model that integrates long-term  
13 inpatient care as defined in RCW 71.24.025. This risk model must:

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

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

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

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

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

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

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

32 (h) Include all services currently offered to civil inpatient  
33 commitments in the state hospitals;

34 (i) Explore an institution for mental diseases disproportionate  
35 share hospital waiver to reduce the reliance on the institution for  
36 mental diseases disproportionate share hospital program at the state  
37 hospitals;

38 (j) Capitate the medicaid portion of funds but not capitate the  
39 nonmedicaid portion; and

1 (k) Account for the revised institution for mental diseases  
2 disproportionate share hospital claim, the reduced institution for  
3 mental diseases disproportionate share hospital limit, and the  
4 expected diversion of civil patients away from state hospitals.

5 (2) A final draft of the risk model must be submitted, in  
6 compliance with RCW 43.01.036, to the relevant committees of the  
7 legislature by May 15, 2021.

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

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

15 The behavioral health organization shall:

16 (1) Contract as needed with licensed service providers. The  
17 behavioral health organization may, in the absence of a licensed  
18 service provider entity, become a licensed service provider entity  
19 pursuant to minimum standards required for licensing by the  
20 department for the purpose of providing services not available from  
21 licensed service providers;

22 (2) Operate as a licensed service provider if it deems that doing  
23 so is more efficient and cost effective than contracting for  
24 services. When doing so, the behavioral health organization shall  
25 comply with rules promulgated by the secretary that shall provide  
26 measurements to determine when a behavioral health organization  
27 provided service is more efficient and cost effective;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (6) "Behavioral health program" means all expenditures, services,  
18 activities, or programs, including reasonable administration and  
19 overhead, designed and conducted to prevent or treat chemical  
20 dependency and mental illness.

21 (7) "Behavioral health services" means mental health services as  
22 described in this chapter and chapter 71.36 RCW and substance use  
23 disorder treatment services as described in this chapter.

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

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

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

30 (b) Has experienced a continuous psychiatric hospitalization or  
31 residential treatment exceeding six months' duration within the  
32 preceding year; or

33 (c) Has been unable to engage in any substantial gainful activity  
34 by reason of any mental disorder which has lasted for a continuous  
35 period of not less than twelve months. "Substantial gainful activity"  
36 shall be defined by the department by rule consistent with Public Law  
37 92-603, as amended.

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

1 (11) "Community mental health service delivery system" means  
2 public, private, or tribal agencies that provide services  
3 specifically to persons with mental disorders as defined under RCW  
4 71.05.020 and receive funding from public sources.

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

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

26 (14) "County authority" means the board of county commissioners,  
27 county council, or county executive having authority to establish a  
28 community mental health program, or two or more of the county  
29 authorities specified in this subsection which have entered into an  
30 agreement to provide a community mental health program.

31 (15) "Department" means the department of social and health  
32 services.

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

36 (17) "Drug addiction" means a disease characterized by a  
37 dependency on psychoactive chemicals, loss of control over the amount  
38 and circumstances of use, symptoms of tolerance, physiological or  
39 psychological withdrawal, or both, if use is reduced or discontinued,



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

3 (18) "Early adopter" means a regional service area for which all  
4 of the county authorities have requested that the department and the  
5 health care authority jointly purchase medical and behavioral health  
6 services through a managed care health system as defined under RCW  
7 71.24.380(6).

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

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

24 (21) "Licensed physician" means a person licensed to practice  
25 medicine or osteopathic medicine and surgery in the state of  
26 Washington.

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

35 (23) "Long-term inpatient care" means inpatient services for  
36 persons committed for, or voluntarily receiving intensive treatment  
37 for, periods of ninety days or greater under chapter 71.05 RCW.  
38 "Long-term inpatient care" as used in this chapter does not include:  
39 (a) Services for individuals committed under chapter 71.05 RCW who  
40 are receiving services pursuant to a conditional release or a court-

1 ordered less restrictive alternative to detention; or (b) services  
2 for individuals voluntarily receiving less restrictive alternative  
3 treatment on the grounds of the state hospital.

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

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

16 (26) "Mentally ill persons," "persons who are mentally ill," and  
17 "the mentally ill" mean persons and conditions defined in subsections  
18 (1), (9), (34), and (35) of this section.

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

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

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

32 (30) "Residential services" means a complete range of residences  
33 and supports authorized by resource management services and which may  
34 involve a facility, a distinct part thereof, or services which  
35 support community living, for persons who are acutely mentally ill,  
36 adults who are chronically mentally ill, children who are severely  
37 emotionally disturbed, or adults who are seriously disturbed and  
38 determined by the behavioral health organization to be at risk of  
39 becoming acutely or chronically mentally ill. The services shall  
40 include at least evaluation and treatment services as defined in

1 chapter 71.05 RCW, acute crisis respite care, long-term adaptive and  
2 rehabilitative care, and supervised and supported living services,  
3 and shall also include any residential services developed to service  
4 persons who are mentally ill in nursing homes, assisted living  
5 facilities, and adult family homes, and may include outpatient  
6 services provided as an element in a package of services in a  
7 supported housing model. Residential services for children in out-of-  
8 home placements related to their mental disorder shall not include  
9 the costs of food and shelter, except for children's long-term  
10 residential facilities existing prior to January 1, 1991.

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

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

31 (33) "Secretary" means the secretary of social and health  
32 services.

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

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

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

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

3 (d) Exhibits suicidal preoccupation or attempts; or

4 (e) Is a child diagnosed by a mental health professional, as  
5 defined in chapter 71.34 RCW, as experiencing a mental disorder which  
6 is clearly interfering with the child's functioning in family or  
7 school or with peers or is clearly interfering with the child's  
8 personality development and learning.

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

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

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

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

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

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

26 (ii) Changes in custodial adult;

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

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

32 (v) Drug or alcohol abuse; or

33 (vi) Homelessness.

34 (36) "State minimum standards" means minimum requirements  
35 established by rules adopted by the secretary and necessary to  
36 implement this chapter for: (a) Delivery of mental health services;  
37 (b) licensed service providers for the provision of mental health  
38 services; (c) residential services; and (d) community support  
39 services and resource management services.

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

7 (38) "Tribal authority," for the purposes of this section and RCW  
8 71.24.300 only, means: The federally recognized Indian tribes and the  
9 major Indian organizations recognized by the secretary insofar as  
10 these organizations do not have a financial relationship with any  
11 behavioral health organization that would present a conflict of  
12 interest.

13 (39) "Authority" means the Washington state health care  
14 authority.

## 15 Part II

### 16 Development of Community Long-Term Involuntary Treatment Capacity

17 NEW SECTION. Sec. 201. A new section is added to chapter 71.24  
18 RCW to read as follows:

19 (1) The state intends to develop new capacity for delivery of  
20 long-term treatment in the community in diverse regions of the state  
21 prior to the effective date of the integration of risk for long-term  
22 involuntary treatment into managed care, and to study the cost and  
23 outcomes associated with treatment in community facilities. In  
24 furtherance of this goal, the department shall purchase a portion of  
25 the state's long-term treatment capacity allocated to behavioral  
26 health organizations under RCW 71.24.310 in willing community  
27 facilities capable of providing alternatives to treatment in a state  
28 hospital. The state shall increase its purchasing of long-term  
29 involuntary treatment capacity in the community over time.

30 (2) The department shall:

31 (a) Work with willing community hospitals licensed under chapters  
32 70.41 and 71.12 RCW and evaluation and treatment facilities certified  
33 under chapter 71.05 RCW to assess their capacity to become certified  
34 to provide long-term mental health placements and to meet the  
35 requirements of this chapter; and

36 (b) Enter into contracts and payment arrangements with such  
37 hospitals and evaluation and treatment facilities choosing to provide  
38 long-term mental health placements, to the extent that willing

1 certified facilities are available. Nothing in this chapter requires  
2 any community hospital or evaluation and treatment facility to be  
3 certified to provide long-term mental health placements.

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

6 (4) Contracts developed by the department to implement this  
7 section must be constructed to allow the department to obtain  
8 complete identification information and admission and discharge dates  
9 for patients served under this authority. Prior to requesting  
10 identification information and admission and discharge dates or  
11 reports from certified facilities, the department must determine that  
12 this information cannot be identified or obtained from existing data  
13 sources available to state agencies. In addition, until January 1,  
14 2023, facilities certified by the department to provide community  
15 long-term involuntary treatment to adults shall report to the  
16 department:

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

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

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

27 The legislature finds that administration of chapter 71.05 RCW  
28 and this chapter can be most efficiently and effectively implemented  
29 as part of the behavioral health organization defined in RCW  
30 71.24.025. For this reason, the legislature intends that the  
31 department and the behavioral health organizations shall work  
32 together to implement chapter 71.05 RCW as follows:

33 (1) By June 1, 2006, behavioral health organizations shall  
34 recommend to the department the number of state hospital beds that  
35 should be allocated for use by each behavioral health organization.  
36 The statewide total allocation shall not exceed the number of state  
37 hospital beds offering long-term inpatient care, as defined in this  
38 chapter, for which funding is provided in the biennial appropriations  
39 act.

1 (2) If there is consensus among the behavioral health  
2 organizations regarding the number of state hospital beds that should  
3 be allocated for use by each behavioral health organization, the  
4 department shall contract with each behavioral health organization  
5 accordingly.

6 (3) If there is not consensus among the behavioral health  
7 organizations regarding the number of beds that should be allocated  
8 for use by each behavioral health organization, the department shall  
9 establish by emergency rule the number of state hospital beds that  
10 are available for use by each behavioral health organization. The  
11 emergency rule shall be effective September 1, 2006. The primary  
12 factor used in the allocation shall be the estimated number of adults  
13 with acute and chronic mental illness in each behavioral health  
14 organization area, based upon population-adjusted incidence and  
15 utilization.

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

25 (5)(a) The department ((is encouraged to enter)) shall enter into  
26 performance-based contracts with ((behavioral health organizations))  
27 facilities certified by the department to provide treatment to adults  
28 on a ninety or one hundred eighty-day inpatient involuntary  
29 commitment order to provide some or all of the behavioral health  
30 organization's allocated long-term inpatient treatment capacity in  
31 the community, rather than in the state hospital, to the extent that  
32 willing certified facilities and funding are available. The  
33 performance contracts shall specify the number of patient days of  
34 care available for use by the behavioral health organization in the  
35 state hospital and the number of patient days of care available for  
36 use by the behavioral health organization in a facility certified by  
37 the department to provide treatment to adults on a ninety or one  
38 hundred eighty-day inpatient involuntary commitment order, including  
39 hospitals licensed under chapters 70.41 and 71.12 RCW and evaluation  
40 and treatment facilities certified under chapter 71.05 RCW.

1        (b) A hospital licensed under chapter 70.41 or 71.12 RCW is not  
2 required to undergo certification to treat patients on ninety or one  
3 hundred eighty-day involuntary commitment orders in order to treat  
4 adults who are waiting for placement at either the state hospital or  
5 in certified facilities that voluntarily contract to provide  
6 treatment to patients on ninety or one hundred eighty-day involuntary  
7 commitment orders.

8        (6) If a behavioral health organization uses more state hospital  
9 patient days of care than it has been allocated under subsection (3)  
10 or (4) of this section, or than it has contracted to use under  
11 subsection (5) of this section, whichever is less, it shall reimburse  
12 the department for that care. Reimbursements must be calculated using  
13 quarterly average census data to determine an average number of days  
14 used in excess of the bed allocation for the quarter. The  
15 reimbursement rate per day shall be the hospital's total annual  
16 budget for long-term inpatient care, divided by the total patient  
17 days of care assumed in development of that budget.

18        (7) One-half of any reimbursements received pursuant to  
19 subsection (6) of this section shall be used to support the cost of  
20 operating the state hospital and, during the 2007-2009 fiscal  
21 biennium, implementing new services that will enable a behavioral  
22 health organization to reduce its utilization of the state hospital.  
23 The department shall distribute the remaining half of such  
24 reimbursements among behavioral health organizations that have used  
25 less than their allocated or contracted patient days of care at that  
26 hospital, proportional to the number of patient days of care not  
27 used.

28        NEW SECTION. Sec. 203. A new section is added to chapter 71.05  
29 RCW to read as follows:

30        Treatment under RCW 71.05.320 may be provided at a state hospital  
31 or any willing and able facility certified to provide ninety-day or  
32 one hundred eighty-day care. The order for such treatment must remand  
33 the person to the custody of the department or designee. A prepaid  
34 inpatient health plan, managed care organization, or the department,  
35 when responsible for the cost of care, may designate where treatment  
36 is to be provided, at a willing and able facility certified to  
37 provide ninety-day or one hundred eighty-day care or a state  
38 hospital, after consultation with the facility currently providing  
39 treatment. The prepaid inpatient health plan, managed care



1 organization, or the department, when responsible for the cost of  
2 care, may not require prior authorization for treatment under RCW  
3 71.05.320. The designation of a treatment facility must not result in  
4 a delay of the transfer of the person to a state hospital or facility  
5 certified to provide ninety-day or one hundred eighty-day care if  
6 there is an open bed available at either the state hospital or a  
7 certified facility.

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

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

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

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

28 (2) If the court or jury finds that grounds set forth in RCW  
29 71.05.280 have been proven, but finds that treatment less restrictive  
30 than detention will be in the best interest of the person or others,  
31 then the court (~~shall remand him or her to the custody of the~~  
32 ~~department or to a facility certified for ninety day treatment by the~~  
33 ~~department)) must commit him or her for a period of treatment of up  
34 to ninety days or to a less restrictive alternative for a further  
35 period of less restrictive treatment not to exceed ninety days from  
36 the date of judgment. If the order for less restrictive treatment is  
37 based on a substance use disorder, treatment must be provided by an  
38 approved substance use disorder treatment program. If the grounds set  
39 forth in RCW 71.05.280(3) are the basis of commitment, then the~~

1 period of treatment may be up to but not exceed one hundred eighty  
2 days from the date of judgment. If the court or jury finds that the  
3 grounds set forth in RCW 71.05.280(5) have been proven, and provide  
4 the only basis for commitment, the court must enter an order for less  
5 restrictive alternative treatment for up to ninety days from the date  
6 of judgment and may not order inpatient treatment.

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

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

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

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

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

35 (ii) In cases under this subsection where the court has made an  
36 affirmative special finding under RCW 71.05.280(3)(b), the commitment  
37 shall continue for up to an additional one hundred eighty day period  
38 whenever the petition presents prima facie evidence that the person  
39 continues to suffer from a mental disorder or developmental  
40 disability that results in a substantial likelihood of committing

1 acts similar to the charged criminal behavior, unless the person  
2 presents proof through an admissible expert opinion that the person's  
3 condition has so changed such that the mental disorder or  
4 developmental disability no longer presents a substantial likelihood  
5 of the person committing acts similar to the charged criminal  
6 behavior. The initial or additional commitment period may include  
7 transfer to a specialized program of intensive support and treatment,  
8 which may be initiated prior to or after discharge (~~from the state~~  
9 ~~hospital~~); or

10 (d) Continues to be gravely disabled; or

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

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

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

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

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

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

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

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

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

19 (1)(a) If the court or jury finds that grounds set forth in RCW  
20 71.05.280 have been proven and that the best interests of the person  
21 or others will not be served by a less restrictive treatment which is  
22 an alternative to detention, the court shall remand him or her (~~to~~  
23 ~~the custody of the department or to a facility certified for ninety~~  
24 ~~day treatment by the department)) for a further period of intensive  
25 treatment not to exceed ninety days from the date of judgment.~~

26 (b) If the order for inpatient treatment is based on a substance  
27 use disorder, treatment must take place at an approved substance use  
28 disorder treatment program. If the grounds set forth in RCW  
29 71.05.280(3) are the basis of commitment, then the period of  
30 treatment may be up to but not exceed one hundred eighty days from  
31 the date of judgment in a facility certified for one hundred eighty  
32 day treatment by the department.

33 (2) If the court or jury finds that grounds set forth in RCW  
34 71.05.280 have been proven, but finds that treatment less restrictive  
35 than detention will be in the best interest of the person or others,  
36 then the court (~~shall remand him or her to the custody of the~~  
37 ~~department or to a facility certified for ninety day treatment by the~~  
38 ~~department)) must commit him or her for a period of treatment of up  
39 to ninety days or to a less restrictive alternative for a further~~

1 period of less restrictive treatment not to exceed ninety days from  
2 the date of judgment. If the order for less restrictive treatment is  
3 based on a substance use disorder, treatment must be provided by an  
4 approved substance use disorder treatment program. If the grounds set  
5 forth in RCW 71.05.280(3) are the basis of commitment, then the  
6 period of treatment may be up to but not exceed one hundred eighty  
7 days from the date of judgment. If the court or jury finds that the  
8 grounds set forth in RCW 71.05.280(5) have been proven, and provide  
9 the only basis for commitment, the court must enter an order for less  
10 restrictive alternative treatment for up to ninety days from the date  
11 of judgment and may not order inpatient treatment.

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

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

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

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

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

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

16 (d) Continues to be gravely disabled; or

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

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

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

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

31 (6)(a) The hearing shall be held as provided in RCW 71.05.310,  
32 and if the court or jury finds that the grounds for additional  
33 confinement as set forth in this section are present, the court may  
34 order the committed person returned for an additional period of  
35 treatment not to exceed one hundred eighty days from the date of  
36 judgment, except as provided in subsection (7) of this section. If  
37 the court's order is based solely on the grounds identified in  
38 subsection (4)(e) of this section, the court may enter an order for  
39 less restrictive alternative treatment not to exceed one hundred  
40 eighty days from the date of judgment, and may not enter an order for

1 inpatient treatment. An order for less restrictive alternative  
2 treatment must name the mental health service provider responsible  
3 for identifying the services the person will receive in accordance  
4 with RCW 71.05.585, and must include a requirement that the person  
5 cooperate with the services planned by the mental health service  
6 provider.

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

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

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

23 NEW SECTION. **Sec. 206.** The department of social and health  
24 services shall confer with the department of health and hospitals  
25 licensed under chapters 70.41 and 71.12 RCW to review laws and  
26 regulations and identify changes that may be necessary to address  
27 care delivery and cost-effective treatment for adults on ninety or  
28 one hundred eighty day commitment orders which may be different than  
29 the requirements for short-term psychiatric hospitalization. The  
30 department of social and health services shall report its findings to  
31 the select committee on quality improvement in state hospitals by  
32 November 1, 2018.

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

1        NEW SECTION.    **Sec. 208.**    Section 204 of this act expires July 1,  
2    2026.

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