**6638-S AMS WICL S6755.1 - NOT FOR FLOOR USE**

**SSB 6638** - S AMD **1105**

By Senator Wilson, C.

**ADOPTED 02/18/2020**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  (1) The legislature finds that it is critical to successful community reintegration and recovery for persons who are being released from prison, jail, juvenile rehabilitation, or other state institutions to have access to supportive services and for those who have behavioral health services needs to receive targeted assistance. This act employs multiple strategies to improve reentry services for these individuals. It provides for suspension of medicaid benefits to end before a person's release from custody so that medical assistance benefits can be made available immediately upon the person's release and so that authorized medicaid services can be provided before the person's release if the state receives a medicaid waiver. It creates a reentry services modality within the community behavioral health services act and directs the Washington state health care authority to apply for a section 1115 medicaid waiver so that the state can leverage federal funding to provide reentry services before the person's release. It provides persons applying for a conditional release under chapter 10.77 RCW with access to the same community support services available to persons receiving community services under a less restrictive alternative order under chapter 71.05 RCW. Finally, it removes stigmatizing language from the program created under RCW 72.09.370 and 71.24.470 and creates a work group to advise the state how to use strategies based on evidence-based, research-based, and promising practices to expand the provision of cost-effective reentry services to new populations.

(2) The legislature finds that the support for patients and communities act, H.R. 6 115th Cong. Sec. 271 (2018), provided federal recognition of the importance of providing transition services to persons who are soon to be former inmates of public institutions. This act requires the secretary of health and human services to issue a state medicaid director letter by October 2019 regarding opportunities for states to apply for a section 1115 waiver to improve care transitions by providing medicaid services up to thirty days before a person's expected release. This guidance has not yet been released. New York state and the District of Columbia have already submitted section 1115 waiver applications which remain pending in the year 2019 in anticipation of this opportunity.

**Sec.**  RCW 74.09.670 and 2016 c 154 s 2 are each amended to read as follows:

(1) The authority is directed to suspend, rather than terminate, medical assistance benefits by July 1, 2017, for persons who are incarcerated or committed to a state hospital or other institution or facility. This must include the ability for a person to apply for medical assistance in suspense status during incarceration or civil commitment, and may not depend upon knowledge of the release date of the person. The authority must provide a progress report describing program design and a detailed fiscal estimate to the governor and relevant committees of the legislature by December 1, 2016.

(2) When a release date is scheduled for an individual whose medical assistance benefits are suspended under this section, the medical assistance benefits of a person may be restored up to ninety days prior to the person's release to facilitate reentry services, provided that no federal funds may be expended during this period for purposes not permitted by the state's agreements with the federal government.

(3) Starting January 1, 2022, the medical assistance benefits of a person that have been suspended under this section must be restored up to ninety days and not less than seven days prior to the person's scheduled release to facilitate reentry services, provided that no federal funds may be expended during this period for purposes not permitted by the state's agreements with the federal government.

(4) For the purpose of this section, "reentry services" has the same meaning as under RCW 71.24.025.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Exhibits suicidal preoccupation or attempts; or

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

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

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

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

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

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

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

(ii) Changes in custodial adult;

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

(iv) Subject to repeated physical abuse or neglect;

(v) Drug or alcohol abuse; or

(vi) Homelessness.

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

(a) The authority for:

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

(ii) Community support services and resource management services;

(b) The department of health for:

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

(ii) Licensed behavioral health providers for the provision of mental health or substance use disorder services, or both; and

(iii) Residential services.

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

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

(44) "Reentry services" means targeted services to support community reintegration and recovery for a person with an identified behavioral health services need who is scheduled or expected to be released from a prison, jail, juvenile rehabilitation facility, state hospital, or other institution or facility within ninety days. "Reentry services" also means targeted services provided to such a person following release to support the person's recovery and stability in the community. "Reentry services" may include:

(a) Engagement, assessment, recovery support, and release planning provided up to ninety days prior to a scheduled or expected release provided by behavioral health clinicians, certified peer counselors, or both;

(b) Intensive case management, peer bridger services, or both provided during the period beginning immediately upon the person's release which may decrease in intensity over time depending on the specific needs of the individual;

(c) Coordination of mental health services, assistance with unfunded medical expenses, assistance obtaining substance use disorder treatment, housing, employment services, educational or vocational training, transportation, independent living skills, parenting education, anger management services, peer services, and such other services as the case manager deems necessary; and

(d) Provision of services under contract through the reentry community services program under RCW 72.09.370 and 71.24.470.

NEW SECTION. **Sec.**  (1) The health care authority shall, after the release of federal guidance, apply for a section 1115 medicaid waiver to provide reentry services as defined under RCW 71.24.025 through the state medicaid program to persons who are expecting to be released from a public institution and are otherwise eligible to receive medical assistance. The authority shall consult with the work group established under section 10 of this act about the details of the application and how to maximize support for Washington state reentry programs within the limitations of what the centers of medicare and medicaid services are likely to approve.

(2) In developing its application, the health care authority must explicitly consider how to best leverage the 1115 medicaid waiver application for the following purposes:

(a) To provide federal funding support for the state-only portions of the reentry community services program under RCW 72.09.370 and 71.24.470;

(b) To provide sustainable funding for cost-effective or cost-neutral reentry or diversion services provided by pilot programs funded by contempt fines in *Trueblood, et al., v. DSHS, et al.*, No. 15-35462; and

(c) To accommodate the special needs of persons in jail who tend to stay for short periods of time and not have access to a documented anticipated release date.

(3) The authority shall consider how evaluations of the reentry community services program created under RCW 72.09.370 and 71.24.470 conducted by the Washington state institute for public policy may be used to establish an evidence base for its waiver application demonstrating the potential for delivering cost-effective reentry services in the state of Washington.

(4) The health care authority shall update the governor and appropriate committees of the legislature in writing upon submission of its section 1115 medicaid waiver application, at the point at which such application obtains final approval or denial from the centers for medicaid and medicare services, and at other critical junctures at the discretion of the health care authority.

**Sec.**  RCW 71.24.385 and 2019 c 325 s 1023 and 2019 c 264 s 6 are each reenacted and amended to read as follows:

(1) Within funds appropriated by the legislature for this purpose, behavioral health administrative services organizations and managed care organizations, as applicable, shall develop the means to serve the needs of people:

(a) With mental disorders residing within the boundaries of their regional service area. Elements of the program may include:

(i) Crisis diversion services;

(ii) Evaluation and treatment and community hospital beds;

(iii) Residential treatment;

(iv) Programs for intensive community treatment;

(v) Outpatient services, including family support;

(vi) Peer support services;

(vii) Community support services;

(viii) Resource management services; ((~~and~~))

(ix) Reentry services; and

(x) Supported housing and supported employment services.

(b) With substance use disorders and their families, people incapacitated by alcohol or other psychoactive chemicals, and intoxicated people.

(i) Elements of the program shall include, but not necessarily be limited to, a continuum of substance use disorder treatment services that includes:

(A) Withdrawal management;

(B) Residential treatment; and

(C) Outpatient treatment.

(ii) The program may include peer support, supported housing, supported employment, crisis diversion, recovery support services, reentry services, or technology-based recovery supports.

(iii) The authority may contract for the use of an approved substance use disorder treatment program or other individual or organization if the director considers this to be an effective and economical course to follow.

(2)(a) The managed care organization and the behavioral health administrative services organization shall have the flexibility, within the funds appropriated by the legislature for this purpose and the terms of their contract, to design the mix of services that will be most effective within their service area of meeting the needs of people with behavioral health disorders and avoiding placement of such individuals at the state mental hospital. Managed care organizations and behavioral health administrative services organizations are encouraged to maximize the use of evidence-based practices and alternative resources with the goal of substantially reducing and potentially eliminating the use of institutions for mental diseases.

(b) Managed care organizations and behavioral health administrative services organizations may allow reimbursement to providers for services delivered through a partial hospitalization or intensive outpatient program. Such payment and services are distinct from the state's delivery of wraparound with intensive services under the *T.R. v. Strange and Birch* settlement agreement.

(3)(a) Treatment provided under this chapter must be purchased primarily through managed care contracts.

(b) Consistent with RCW 71.24.580, services and funding provided through the criminal justice treatment account are intended to be exempted from managed care contracting.

**Sec.**  RCW 10.77.150 and 2010 c 263 s 5 are each amended to read as follows:

(1) Persons examined pursuant to RCW 10.77.140 may make application to the secretary for conditional release. The secretary shall, after considering the reports of experts or professional persons conducting the examination pursuant to RCW 10.77.140, forward to the court of the county which ordered the person's commitment the person's application for conditional release as well as the secretary's recommendations concerning the application and any proposed terms and conditions upon which the secretary reasonably believes the person can be conditionally released. Conditional release may also contemplate partial release for work, training, or educational purposes.

(2) In instances in which persons examined pursuant to RCW 10.77.140 have not made application to the secretary for conditional release, but the secretary, after considering the reports of experts or professional persons conducting the examination pursuant to RCW 10.77.140, reasonably believes the person may be conditionally released, the secretary may submit a recommendation for release to the court of the county that ordered the person's commitment. The secretary's recommendation must include any proposed terms and conditions upon which the secretary reasonably believes the person may be conditionally released. Conditional release may also include partial release for work, training, or educational purposes. Notice of the secretary's recommendation under this subsection must be provided to the person for whom the secretary has made the recommendation for release and to his or her attorney.

(3)(a) The court of the county which ordered the person's commitment, upon receipt of an application or recommendation for conditional release with the secretary's recommendation for conditional release terms and conditions, shall within thirty days schedule a hearing. The court may schedule a hearing on applications recommended for disapproval by the secretary.

(b) The prosecuting attorney shall represent the state at such hearings and shall have the right to have the patient examined by an expert or professional person of the prosecuting attorney's choice. If the committed person is indigent, and he or she so requests, the court shall appoint a qualified expert or professional person to examine the person on his or her behalf.

(c) The issue to be determined at such a hearing is whether or not the person may be released conditionally without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security.

(d) The court, after the hearing, shall rule on the secretary's recommendations, and if it disapproves of conditional release, may do so only on the basis of substantial evidence. The court may modify the suggested terms and conditions on which the person is to be conditionally released. Pursuant to the determination of the court after hearing, the committed person shall thereupon be released on such conditions as the court determines to be necessary, or shall be remitted to the custody of the secretary. If the order of conditional release includes a requirement for the committed person to report to a community corrections officer, the order shall also specify that the conditionally released person shall be under the supervision of the secretary of corrections or such person as the secretary of corrections may designate and shall follow explicitly the instructions of the secretary of corrections including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, and notifying the community corrections officer prior to making any change in the offender's address or employment. If the order of conditional release includes a requirement for the committed person to report to a community corrections officer, the community corrections officer shall notify the secretary or the secretary's designee, if the person is not in compliance with the court-ordered conditions of release.

(4) If the court determines that receiving regular or periodic medication or other medical treatment shall be a condition of the committed person's release, then the court shall require him or her to report to a physician or other medical or mental health practitioner for the medication or treatment. In addition to submitting any report required by RCW 10.77.160, the physician or other medical or mental health practitioner shall immediately upon the released person's failure to appear for the medication or treatment or upon a change in mental health condition that renders the patient a potential risk to the public report to the court, to the prosecuting attorney of the county in which the released person was committed, to the secretary, and to the supervising community corrections officer.

(5) Any person, whose application for conditional release has been denied, may reapply after a period of six months from the date of denial.

(6) A licensed or certified behavioral health agency as defined under RCW 71.24.025 that provides community behavioral health services to a person placed on conditional release under this section or agrees to provide such services upon the person's conditional release shall provide equivalent services to the person as it would provide to a person who is court ordered to receive less restrictive alternative treatment under RCW 71.05.585. A licensed or certified behavioral health agency must participate in reentry planning when a person is recommended for conditional release under this section and may provide reentry services as defined in RCW 71.24.025 in coordination with state hospital staff and the person's managed care organization, behavioral health administrative services organization, or private insurance carrier.

**Sec.**  RCW 72.09.370 and 2019 c 325 s 5025 are each amended to read as follows:

(1) The ((~~offender~~)) reentry community ((~~safety~~)) services program is established to provide intensive services to ((~~offenders~~)) incarcerated persons identified under this subsection and to thereby promote successful reentry, public safety, and recovery. The secretary shall identify ((~~offenders~~)) persons in confinement or partial confinement who: (a) Are reasonably believed to ((~~be dangerous~~)) present a danger to themselves or others if released to the community without supportive services; and (b) have a mental disorder. In determining ((~~an offender's dangerousness~~)) whether an incarcerated person may meet these criteria, the secretary shall consider behavior known to the department and factors, based on research, that are linked to ((~~an increased~~)) risk ((~~for~~)) of dangerousness ((~~of offenders~~)) for persons with mental illnesses who are involved with the criminal justice system and shall include consideration of ((~~an offender's~~)) the person's substance use disorder or history of substance abuse.

(2) Prior to release of ((~~an offender~~)) a person identified under this section, a team consisting of representatives of the department of corrections, the health care authority, and, as necessary, the indeterminate sentence review board, divisions or administrations within the department of social and health services, specifically including the division of developmental disabilities, the appropriate managed care organization ((~~contracted with the health care authority, the appropriate~~)) or behavioral health administrative services organization, and ((~~the~~)) reentry community services providers, as appropriate, shall develop a plan, as determined necessary by the team, for delivery of treatment and support services to the ((~~offender~~)) incarcerated person upon release. In developing the plan, the ((~~offender~~)) person shall be offered assistance in executing a mental health advance directive under chapter 71.32 RCW, after being fully informed of the benefits, scope, and purposes of such directive. The team may include a school district representative for ((~~offenders~~)) incarcerated persons under the age of twenty-one. The team shall consult with the ((~~offender's~~)) person's counsel, if any, and, as appropriate, the ((~~offender's~~)) person's family and community. The team shall notify the crime victim/witness program, which shall provide notice to all people registered to receive notice under RCW 72.09.712 of the proposed release plan developed by the team. Victims, witnesses, and other interested people notified by the department may provide information and comments to the department on potential safety risk to specific individuals or classes of individuals posed by the specific ((~~offender~~)) incarcerated person. The team may recommend: (a) That the ((~~offender~~)) person be evaluated by ((~~the~~)) a designated crisis responder, as defined in chapter 71.05 RCW; (b) department-supervised community treatment; or (c) voluntary community mental health or substance use disorder or abuse treatment.

(3) Prior to release of an ((~~offender~~)) incarcerated person identified under this section, the team shall determine whether or not an evaluation by a designated crisis responder is needed. If an evaluation is recommended, the supporting documentation shall be immediately forwarded to the appropriate designated crisis responder. The supporting documentation shall include the ((~~offender's~~)) person's criminal history, history of judicially required or administratively ordered involuntary antipsychotic medication while in confinement, and any known history of involuntary civil commitment.

(4) If an evaluation by a designated crisis responder is recommended by the team, such evaluation shall occur not more than ten days, nor less than five days, prior to release.

(5) A second evaluation by a designated crisis responder shall occur on the day of release if requested by the team, based upon new information or a change in the ((~~offender's~~)) person's mental condition, and the initial evaluation did not result in an emergency detention or a summons under chapter 71.05 RCW.

(6) If the designated crisis responder determines an emergency detention under chapter 71.05 RCW is necessary, the department shall release the ((~~offender~~)) person only to a state hospital or to a consenting evaluation and treatment facility or secure withdrawal management and stabilization facility. The department shall arrange transportation of the ((~~offender~~)) person to the hospital or facility.

(7) If the designated crisis responder believes that a less restrictive alternative treatment is appropriate, he or she shall seek a summons, pursuant to the provisions of chapter 71.05 RCW, to require the ((~~offender~~)) person to appear at an evaluation and treatment facility or secure withdrawal management and stabilization facility. If a summons is issued, the ((~~offender~~)) person shall remain within the corrections facility until completion of his or her term of confinement and be transported, by corrections personnel on the day of completion, directly to the identified ((~~evaluation and treatment~~)) facility.

(8) The secretary shall adopt rules to implement this section.

**Sec.**  RCW 71.24.470 and 2019 c 325 s 1030 are each amended to read as follows:

(1) The director shall contract, to the extent that funds are appropriated for this purpose, for case management services and such other services as the director deems necessary to assist ((~~offenders~~)) incarcerated persons identified under RCW 72.09.370 for participation in the ((~~offender~~)) reentry community ((~~safety~~)) services program. The contracts may be with any qualified and appropriate entities.

(2) The case manager has the authority to assist these ((~~offenders~~)) individuals in obtaining the services, as set forth in the plan created under RCW 72.09.370(2), for up to five years. The services may include coordination of mental health services, assistance with unfunded medical expenses, assistance obtaining substance use disorder treatment, housing, employment services, educational or vocational training, independent living skills, parenting education, anger management services, peer services, and such other services as the case manager deems necessary.

(3) The legislature intends that funds appropriated for the purposes of RCW 72.09.370, 71.05.145, and 71.05.212, and this section are to supplement and not to supplant general funding. Funds appropriated to implement RCW 72.09.370, 71.05.145, and 71.05.212, and this section are not to be considered available resources as defined in RCW 71.24.025 and are not subject to the priorities, terms, or conditions in the appropriations act established pursuant to RCW 71.24.035.

(4) The ((~~offender~~)) reentry community ((~~safety~~)) services program was formerly known as the community integration assistance program.

**Sec.**  RCW 71.24.480 and 2019 c 325 s 1031 are each amended to read as follows:

(1) A licensed or certified behavioral health agency acting in the course of the ((~~provider's~~)) agency's duties under this chapter((~~, is~~)) and its individual employees are not liable for civil damages resulting from the injury or death of another caused by a participant in the ((~~offender~~)) reentry community ((~~safety~~)) services program who is a client of the ((~~provider or organization~~)) agency, unless the act or omission of the ((~~provider or organization~~)) agency or employee constitutes:

(a) Gross negligence;

(b) Willful or wanton misconduct; or

(c) A breach of the duty to warn of and protect from a client's threatened violent behavior if the client has communicated a serious threat of physical violence against a reasonably ascertainable victim or victims.

(2) In addition to any other requirements to report violations, the licensed or certified behavioral health agency shall report ((~~an offender's~~)) a reentry community services program participant's expressions of intent to harm or other predatory behavior, regardless of whether there is an ascertainable victim, in progress reports and other established processes that enable courts and supervising entities to assess and address the progress and appropriateness of treatment.

(3) A licensed or certified behavioral health agency's mere act of treating a participant in the ((~~offender~~)) reentry community ((~~safety~~)) services program is not negligence. Nothing in this subsection alters the licensed or certified behavioral health agency's normal duty of care with regard to the client.

(4) The limited liability provided by this section applies only to the conduct of licensed or certified behavioral health agencies and their employees and does not apply to conduct of the state.

(5) For purposes of this section, "participant in the ((~~offender~~)) reentry community ((~~safety~~)) services program" means a person who has been identified under RCW 72.09.370 as ((~~an offender~~)) a person who: (a) Is reasonably believed to ((~~be dangerous~~)) present a danger to himself or herself or others if released to the community without supportive services; and (b) has a mental disorder.

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

(1) The authority shall convene a reentry services work group to consider ways to improve reentry services for persons with an identified behavioral health services need. The work group shall:

(a) Advise the authority on its waiver application under section 4 of this act;

(b) Consider how to expand, replicate, or adapt the essential elements of the reentry community services program under RCW 72.09.370 and 71.24.470 while preserving those aspects most essential to stable reentry and recovery to provide reentry community services to:

(i) A larger set of persons incarcerated in prison including up to all persons releasing from prison who are reasonably believed to present either a high risk of violent recidivism, a high risk of nonviolent recidivism, or both in combination with a mental disorder or a substance use disorder, or other subsets of persons at the discretion of the work group;

(ii) Persons who are committed to a state hospital or long-term involuntary behavioral health treatment facility under chapter 10.77 RCW or RCW 71.05.280(3), who are reasonably believed to be ready for safe discharge to an appropriate community placement;

(iii) Persons expecting release from confinement under chapter 13.40 RCW;

(iv) Persons expecting release from confinement in jail; and/or

(v) Other populations recommended by the work group;

(c) Evaluate whether it would be better for administration of contracts for services under the reentry community services program remain at the state level or instead be administered by managed care organizations or behavioral health administrative services organizations;

(d) Identify the costs and savings that could be realized through expanding or replicating the reentry community services program as described under (b) of this subsection or through other means of providing reentry services;

(e) Evaluate the sustainability of promising reentry services or diversion services provided by pilot programs funded by contempt fines in *Trueblood, et al., v. DSHS, et al.*, No. 15-35462;

(f) Recommend means of funding and staffing expanded reentry services; and

(g) Consider how peer services can be incorporated into the reentry services programs.

(2) The authority shall invite participation in the work group by stakeholders including but not limited to representatives from: Disability rights Washington; behavioral health advocacy organizations; behavioral health peers; reentry community services providers; community behavioral health agencies; advocates for persons with developmental disabilities; the department of corrections; the department of children, youth, and families; the Washington association of sheriffs and police chiefs; prosecutors; defense attorneys; the Washington state association of counties; King county behavioral health and recovery division; the department of social and health services; state hospital employees who serve patients committed under chapters 10.77 and 71.05 RCW; the public safety review panel under RCW 10.77.270; managed care organizations; behavioral health administrative services organizations; the Washington statewide reentry council; the Washington state senate and house of representatives; and the Washington state institute for public policy.

(3) The work group must provide a progress report to the governor and appropriate committees of the legislature by December 1, 2020, and a final report by December 1, 2021.

NEW SECTION. **Sec.**  The Washington state health care authority shall revise its contracts with managed care organizations and behavioral health administrative services organizations to require those entities to ensure that providers that contract to provide services through the reentry community services program under RCW 72.09.370 and 71.24.330 are available to their eligible clients in every regional service area.

NEW SECTION. **Sec.**  The Washington state institute for public policy shall update its previous evaluations of the reentry community services program under RCW 72.09.370 and 71.24.470, considering impacts on both recidivism and the use of public services. The institute shall collaborate with the work group established under section 10 of this act to determine research parameters and additional research questions that would support the work of the work group including, but not limited to, the potential cost, benefit, and risks to the state of expanding or replicating the reentry community services program; and what modifications to the program are most and least likely to prove advantageous based on the current state of knowledge about evidence-based, research-based, and promising programs. The department of corrections, health care authority, administrative office of the courts, King county, and department of social and health services must cooperate with the institute to facilitate access to data or other resources necessary to complete this work. The institute must provide a preliminary report by December 1, 2020, and a final report by November 1, 2021, to the governor and relevant committees of the legislature."

**SSB 6638** - S AMD **1105**

By Senator Wilson, C.

**ADOPTED 02/18/2020**

On page 1, line 2 of the title, after "institutions;" strike the remainder of the title and insert "amending RCW 74.09.670, 10.77.150, 72.09.370, 71.24.470, and 71.24.480; reenacting and amending RCW 71.24.025 and 71.24.385; adding a new section to chapter 71.24 RCW; and creating new sections."

EFFECT: Changes the direction to HCA to apply for a section 1115 Medicaid waiver after receiving guidance from the federal government and includes additional instructions and findings. Modifies the instructions for and invited members of the Reentry Services Work Group.