Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Health Care & Wellness Committee

SSB 6259

Brief Description: Improving the Indian behavioral health system.

Sponsors: Senate Committee on Behavioral Health Subcommittee to Health & Long Term Care (originally sponsored by Senators McCoy, Hasegawa, Stanford, Wilson, C., Das, Nguyen, Van De Wege and Darneille).

Brief Summary of Substitute Bill

- Directs the Health Care Authority (Authority) to coordinate with the federal Centers for Medicare and Medicaid Services to allow for federal funding for behavioral health aide services.
- Authorizes the Authority to appoint a designated crisis responder upon consultation with a federally recognized Indian tribe or conferring with an Indian health care provider.
- Recognizes that each Indian tribe has jurisdiction as to the involuntary commitment of an American Indian or Alaska Native to an evaluation and treatment facility located within the boundaries of the tribe.

Hearing Date: 2/21/20

Staff: Chris Blake (786-7392).

Background:

The Governor's Indian Health Advisory Council.

In 2019 the Governor's Indian Health Advisory Council (Council) was established in statute. The Council consists of representatives from tribes, urban Indian organizations, the Legislature, and the Governor's Office. The Council includes a Reinvestment Committee which is charged with developing the Indian Health Improvement Advisory Plan which must include an assessment of Indian health and health care in Washington and specific recommendations for programs, projects, and activities. Some of the programs, projects, and activities may relate to:

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- creating and expanding facilities operated by Indian Health Services, tribes, and urban Indian health programs providing evaluation, treatment, and recovery services for substance use disorders, mental illness, or specialty care;
- improving access to, and utilization of, culturally appropriate primary care, mental health, and substance use disorder and recovery services;
- eliminating barriers to, and maximization of federal funding of, substance use disorder and mental health services in medical assistance programs;
- increasing availability of, and identification of barriers to, crisis and related services under the Involuntary Treatment Act, with recommendations to increase access, including involuntary commitment orders, designated crisis responders, and discharge planning;
- increasing access to quality, culturally appropriate, trauma-informed specialty services, including psychiatric services; and
- developing a community health aide program, including a community health aide certification board for Washington and support for community health aide services.

With respect to activities related to the development of community health aide programs, in 1992 the federal government formally established the Community Health Aide Program (Program) in Alaska. The Program trains persons to become community health aides, develops curricula, and establishes a certification board. Community health aides provide health care, health promotion, and disease prevention services in American Indian and Alaska Native communities. The federal Affordable Care Act expanded the Program nationally to allow tribes in other states to develop their own programs.

Designated Crisis Responder Responsibilities.

The Involuntary Treatment Act (ITA) sets forth the procedures, rights, and requirements for involuntary behavioral health treatment of adults. Persons may be committed by a court for involuntary behavioral health treatment if they, due to a mental health or substance use disorder, pose a likelihood of serious harm, are gravely disabled, or are in need of assisted outpatient behavioral health treatment.

A designated crisis responder is a mental health professional responsible for investigating and determining whether a person may be in need of involuntary treatment. If the designated crisis responder finds a basis for commitment, the designated crisis responder may detain or petition a court to order detention for the person for up to 72 hours, excluding weekends and holidays, to an evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment facility. Designated crisis responders are designated by a county or an entity appointed by a county.

Under the ITA, a designated crisis responder is responsible for conducting an evaluation and investigation based on relevant, credible, and timely information to determine if:
- there is evidence that a referred person may suffer from a mental disorder or substance use disorder;
- there is evidence that the person, as a result of a mental disorder or substance use disorder, presents a likelihood of serious harm to themselves, other people, other's property, or the referred person may be gravely disabled; and
- the referred person refuses to seek appropriate treatment options, and no less restrictive alternative is available.

An evaluation and investigation must occur before a petition for detention is filed. If a designated crisis responder decides not to detain a person for initial detention evaluation and treatment or if 48 hours have passed since a designated crisis responder received a request for investigation and has not taken action to have the person detained, an immediate family member or guardian or conservator of the person may petition the superior court for initial detention.

When a person subject to an involuntary commitment order is discharged from a facility providing involuntary treatment services, including an evaluation and treatment facility, state hospital, acute withdrawal management and stabilization facility, or a substance use disorder treatment program, the facility must notify the designated crisis responder who was responsible for the initial commitment.

Summary of Bill:

Involuntary Treatment Act.

A designated crisis responder may be a mental health professional appointed by the Health Care Authority (Authority) in consultation with a federally recognized Indian tribe or after meeting and conferring with an Indian health care provider. When a designated crisis responder is investigating or evaluating a person for potential initial detention or involuntary outpatient treatment and the designated crisis responder knows the person is an American Indian or Alaska Native from a tribe in Washington, the designated crisis responder must notify the tribe or Indian health care provider as to whether or not a petition will be filed. The notification must occur within three hours and be made to the tribal contact identified in the Authority's tribal crisis coordination plan. Facilities discharging a person who has been subject to an involuntary commitment order must provide notice of the discharge to federally recognized tribes and Indian health care providers who have been appointed by the Authority as designated crisis responders. Tribal courts and Indian health care providers are added to provisions allowing for the disclosure of mental health information.

Each Indian tribe is recognized to have jurisdiction exclusive to the state regarding the involuntary commitment of an American Indian or Alaska Native to an evaluation and treatment facility located within the boundaries of the tribe. The jurisdiction does not apply if a tribe has either consented to concurrent jurisdiction with the state or the tribe has expressly declined to exercise its exclusive jurisdiction. Tribal court orders for involuntary commitment are to be recognized and enforced according to superior court rules governing tribal court jurisdiction. A federally recognized tribe may petition the superior court for the initial detention of a person who is a member of that tribe if the designated crisis responder decides not to detain a person for evaluation and treatment or if 48 hours have passed since receiving a request for investigation.

The Authority, in consultation with the tribes and in coordination with Indian health care providers and the American Indian Health Commission for Washington State, must establish written guidelines for conducting culturally appropriate evaluations of American Indians or Alaska Natives by June 30, 2021.

Beginning October 1, 2020, the Authority must submit an annual report on psychiatric treatment and evaluation and bed utilization for American Indians and Alaska Natives. The report must be

made available for review by tribes, urban Indian health programs, and the American Indian Health Commission for Washington State. The Authority must include Indian health care providers in any bed tracking system that it creates.

Tribal Participation in the Community Behavioral Health System.

The Authority must coordinate with the federal Centers for Medicare and Medicaid Services to obtain approval for behavioral health aide services to receive federal funding up to 100 percent. "Behavioral health aides" are defined as counselors, health educators, and advocates who help address individual and community-based behavioral health needs and are certified by a community health aide program of the Indian Health Service or one or more tribal organizations. A behavioral health aide may address behavioral health needs such as alcohol abuse, drug abuse, tobacco abuse, grief, depression, and suicide.

Indian health care providers who have community behavioral health programs are eligible for the grants that are available to behavioral health administrative services organizations and managed care organizations.

Appropriation: None.

Fiscal Note: Requested on February 14, 2020.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 203, relating to grants to Indian health care providers who have community behavioral health programs, which takes effect July 1, 2021, and section 303, relating to the jurisdiction of Indian tribes regarding involuntary commitments, which takes effect July 1, 2026.