FINAL BILL REPORT
SSB 6259

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Synopsis as Enacted

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).

Senate Committee on Health & Long Term Care
Senate Committee on Behavioral Health Subcommittee to Health & Long Term Care
House Committee on Health Care & Wellness
House Committee on Appropriations

Background: Washington is home to 29 federally-recognized Indian tribes, which exercise sovereignty over tribal lands. Health care on tribal lands is provided through an Indian Health Care Delivery system supported by the Indian Health Service and distinct from the state Medicaid program. In July 2017, tribes withdrew from the state managed care system, establishing a distinct funding system for American Indian and Alaska Native (AI/AN) clients.

The Behavioral Health Crisis System. Washington uses a blend of Medicaid and non-Medicaid funding to support a crisis system for persons who are at risk of physical harm to themselves or others based on a behavioral health disorder. Designated crisis responders (DCRs) evaluate clients identified by crisis calls for potential commitment to inpatient facilities such as evaluation and treatment facilities (E&Ts) that specialize in treatment for mental health disorders and secure withdrawal management and stabilization facilities (SWMS) that specialize in treatment of substance use disorders (SUDs). Commitment decisions by DCRs are reviewed by courts which may approve or disapprove the commitment or order a course of involuntary outpatient treatment provided by community behavioral health agencies.

Behavioral Health Services From Indian Providers. Behavioral health services including outpatient mental health, outpatient SUD, and inpatient SUD programs are provided by over 75 different Indian Health Care Providers (IHCPs) and Urban Indian Health Programs (UIHPs). IHCPs and UIHPs have provided integrated care for many years. There are currently no inpatient mental health services provided by IHCPs or UIHPs.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Tribes in Washington have been moving in the direction of developing capacity to provide inpatient mental health crisis services provided by IHCPs on tribal lands for some time. In 2013, following 18 months of work group meetings, a Tribal Centric Behavioral Health report was created calling for increased cultural competency training for state mental health providers interfacing with AI/AN populations, coordinated and central communications between the state mental health authority and tribal governments, and a feasibility study for structuring an IHCP residential mental health program. A Tribal E&T work group, supported by proviso funding, met between 2018-2019 and created a report on how to structure a tribal evaluation and treatment facility. A training for tribal designated crisis responders was held in August 2019.

Federal Trust Responsibility. Since 1941, the United States Supreme Court has formally recognized a federal trust responsibility of the United States government to protect treaty rights, lands, assets, and resources of tribes. A 1977 report of the American Indian Policy Review Commission describes this responsibility as including an obligation to provide services including economic and social programs necessary to raise the standard of living and social well-being of the Indian people to a level comparable to non-Indian society. In furtherance of this trust, the federal government has created agencies such as the Indian Health Service to provide payments for federal health services on Indian lands. Health services supported by the Indian Health Service may be subject to higher reimbursement rates than the rates ordinarily paid by Medicaid in Washington. Medicaid services to AI/AN clients by tribal providers do not require state matching funds.

Behavioral Health Aides. A behavioral health aide is a behavioral health provider type developed in Indian Country and certified by tribes or the Indian Health Service. Behavioral health aides are employed throughout Alaska and parts of the Pacific Northwest. Behavioral health aides undergo three years of manualized training to provide culturally competent counseling, health education, and advocacy for AI/AN clients. Behavioral health aides are currently not recognized health providers for the purpose of reimbursement through the Washington state Medicaid program.

Governor's Indian Health Advisory Council. In 2019, the Legislature enacted the Washington Indian Health Improvement Act which established the Governor's Indian Health Advisory Council to examine jurisdictional issues between tribes, UIHPs, and state agencies.

Joel's Law. When a person is investigated by a DCR but not detained for civil commitment, an immediate family member, guardian, or conservator of the person may file a petition in superior court for review of the decision of the DCR. The petition must be filed within ten days and the court must enter a ruling within five judicial days, which may require the DCR to detain the person.

Summary: The Health Care Authority (HCA) must coordinate with the Centers for Medicare and Medicaid Services to provide federal funding for behavioral health aide services with up to 100 percent federal funds.

IHCPs must share in HCA grants that fund the community behavioral health program and statewide crisis system.

DCRs may be appointed by HCA in consultation with IHCPs or tribes to provide crisis services on tribal lands.

An Indian tribe must have exclusive jurisdiction over the involuntary commitment of an AI/AN person to an E&T located within the boundaries of the tribe. The tribe may consent to concurrent state jurisdiction or expressly decline to exercise exclusive jurisdiction. Involuntary commitment orders by tribal court must be recognized and enforced by Washington courts. If a DCR knows, or has reason to know, that a person under investigation for civil commitment is an AI/AN who receives medical or behavioral health services from a tribe, the DCR must notify the tribe or IHCP regarding whether a petition for initial detention or involuntary outpatient treatment will be filed. Notification must be made in person or by telephonic or electronic communication to the tribal contact listed in HCA's Tribal Crisis Coordination Plan as soon as possible and within three hours. The DCR may restrict the release of information to comply with federal SUD privacy laws.

State health information privacy laws are amended to explicitly include IHCPs among qualified professional persons who may share information and records related to mental health services and civil commitment services, to include tribal courts among courts who may interact with information and records related to mental health services, and to allow mental health information sharing by IHCPs for the purpose of care coordination.

A federally recognized Indian tribe must be allowed to file a petition for initial detention with superior court under Joel's Law when a DCR decides not to detain a person for evaluation and treatment.

The Indian Health Advisory Council must draft recommended legislation to address Indian health improvement needs, including crisis coordination between Indian health care providers and the state's behavioral health system.

A definition is provided in the Community Behavioral Health Services Act for "historical trauma," meaning situations where a community experienced traumatic events, the events generated high levels of collective distress, and the events were perpetuated by outsiders with a destructive or genocidal intent.

HCA must establish written guidelines for conducting culturally appropriate civil commitment evaluations in consultation with IHCPs and the American Indian Health Commission by June 30, 2021.

HCA must report to UIHPs and the American Indian Health Commission annually on psychiatric treatment and evaluation and bed utilization for AI/ANs starting October 1, 2020.

HCA must include IHCPs in any bed tracking system it creates.

Legislative findings describe the impact of the behavioral health crisis on American Indian and Alaska Native populations in Washington State.

Votes on Final Passage:

Senate	46	0	
House	97	0	(House amended)
Senate	49	0	(Senate concurred)

Effective: June 11, 2020
July 1, 2021 (Section 203)
July 1, 2026 (Section 303)