
SUBSTITUTE SENATE BILL 5431

State of Washington

66th Legislature

2019 Regular Session

By Senate Behavioral Health Subcommittee to Health & Long Term Care (originally sponsored by Senators Frockt, Rivers, O'Ban, Dhingra, Darneille, Cleveland, Keiser, Wagoner, Das, Van De Wege, Zeiger, Conway, Hunt, Kuderer, and Nguyen; by request of Office of the Governor)

READ FIRST TIME 02/22/19.

1 AN ACT Relating to community facilities needed to ensure a
2 continuum of care for behavioral health patients; amending RCW
3 71.24.025, 70.38.111, and 70.38.260; reenacting and amending RCW
4 74.39A.030; adding new sections to chapter 71.24 RCW; creating new
5 sections; and providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that there is a need
8 for additional bed capacity and services for individuals with
9 behavioral health needs. The legislature further finds that for many
10 individuals, it is best for them to receive treatment in their
11 communities and in smaller facilities that help them stay closer to
12 home. The legislature further finds that the state hospitals are
13 struggling to keep up with rising demand; there are challenges to
14 finding appropriate placements for patients ready to discharge, and
15 there are a shortage of appropriate facilities for individuals with
16 complex behavioral health needs.

17 Therefore, the legislature intends to provide more options in the
18 continuum of care for behavioral health clients by creating new
19 facility types and by expanding the capacity of current provider
20 types in the community.

1 **Sec. 2.** RCW 71.24.025 and 2018 c 201 s 4002 are each amended to
2 read as follows:

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

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

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

9 (b) Being gravely disabled as defined in RCW 71.05.020 or, in the
10 case of a child, a gravely disabled minor as defined in RCW
11 71.34.020; or

12 (c) Presenting a likelihood of serious harm as defined in RCW
13 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

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

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

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

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

34 (6) "Behavioral health organization" means any county authority
35 or group of county authorities or other entity recognized by the
36 director in contract in a defined region.

37 (7) "Behavioral health program" means all expenditures, services,
38 activities, or programs, including reasonable administration and
39 overhead, designed and conducted to prevent or treat chemical
40 dependency and mental illness.

1 (8) "Behavioral health services" means mental health services as
2 described in this chapter and chapter 71.36 RCW and substance use
3 disorder treatment services as described in this chapter.

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

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

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

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

13 (c) Has been unable to engage in any substantial gainful activity
14 by reason of any mental disorder which has lasted for a continuous
15 period of not less than twelve months. "Substantial gainful activity"
16 shall be defined by the authority by rule consistent with Public Law
17 92-603, as amended.

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

21 (12) "Community mental health service delivery system" means
22 public, private, or tribal agencies that provide services
23 specifically to persons with mental disorders as defined under RCW
24 71.05.020 and receive funding from public sources.

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

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

6 (15) "County authority" means the board of county commissioners,
7 county council, or county executive having authority to establish a
8 community mental health program, or two or more of the county
9 authorities specified in this subsection which have entered into an
10 agreement to provide a community mental health program.

11 (16) "Department" means the department of health.

12 (17) "Designated crisis responder" means a mental health
13 professional designated by the county or other authority authorized
14 in rule to perform the duties specified in this chapter.

15 (18) "Director" means the director of the authority.

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

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

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

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

1 in Washington and, when possible, is determined to be cost-
2 beneficial.

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

6 (24) "Licensed or certified service provider" means an entity
7 licensed or certified according to this chapter or chapter 71.05 RCW
8 or an entity deemed to meet state minimum standards as a result of
9 accreditation by a recognized behavioral health accrediting body
10 recognized and having a current agreement with the department, or
11 tribal attestation that meets state minimum standards, or persons
12 licensed under chapter 18.57, 18.57A, 18.71, 18.71A, 18.83, or 18.79
13 RCW, as it applies to registered nurses and advanced registered nurse
14 practitioners.

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

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

27 (27) Mental health "treatment records" include registration and
28 all other records concerning persons who are receiving or who at any
29 time have received services for mental illness, which are maintained
30 by the department of social and health services or the authority, by
31 behavioral health organizations and their staffs, or by treatment
32 facilities. "Treatment records" do not include notes or records
33 maintained for personal use by a person providing treatment services
34 for the department of social and health services, behavioral health
35 organizations, or a treatment facility if the notes or records are
36 not available to others.

37 (28) "Mentally ill persons," "persons who are mentally ill," and
38 "the mentally ill" mean persons and conditions defined in subsections
39 (1), (10), (36), and (37) of this section.

1 (29) "Recovery" means the process in which people are able to
2 live, work, learn, and participate fully in their communities.

3 (30) "Registration records" include all the records of the
4 department of social and health services, the authority, behavioral
5 health organizations, treatment facilities, and other persons
6 providing services for the department of social and health services,
7 the authority, county departments, or facilities which identify
8 persons who are receiving or who at any time have received services
9 for mental illness.

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

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

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

39 (34) "Resource management services" mean the planning,
40 coordination, and authorization of residential services and community

1 support services administered pursuant to an individual service plan
2 for: (a) Adults and children who are acutely mentally ill; (b) adults
3 who are chronically mentally ill; (c) children who are severely
4 emotionally disturbed; or (d) adults who are seriously disturbed and
5 determined solely by a behavioral health organization to be at risk
6 of becoming acutely or chronically mentally ill. Such planning,
7 coordination, and authorization shall include mental health screening
8 for children eligible under the federal Title XIX early and periodic
9 screening, diagnosis, and treatment program. Resource management
10 services include seven day a week, twenty-four hour a day
11 availability of information regarding enrollment of adults and
12 children who are mentally ill in services and their individual
13 service plan to designated crisis responders, evaluation and
14 treatment facilities, and others as determined by the behavioral
15 health organization.

16 (35) "Secretary" means the secretary of the department of health.

17 (36) "Seriously disturbed person" means a person who:

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

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

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

27 (d) Exhibits suicidal preoccupation or attempts; or

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

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

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

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

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

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

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

11 (ii) Changes in custodial adult;

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

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

17 (v) Drug or alcohol abuse; or

18 (vi) Homelessness.

19 (38) "State minimum standards" means minimum requirements
20 established by rules adopted and necessary to implement this chapter
21 by:

22 (a) The authority for:

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

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

26 (b) The department of health for:

27 (i) Licensed or certified service providers for the provision of
28 mental health and substance use disorder services; and

29 (ii) Residential services.

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

36 (40) "Tribal authority," for the purposes of this section and RCW
37 71.24.300 only, means: The federally recognized Indian tribes and the
38 major Indian organizations recognized by the director insofar as
39 these organizations do not have a financial relationship with any

1 behavioral health organization that would present a conflict of
2 interest.

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

11 (42) "Behavioral health drop-in center" means a twenty-four hour
12 peer-run program to serve individuals referred from emergency rooms,
13 hospitals, or designated crisis responders who are in need of
14 voluntary, short-term, noncrisis services that will focus on recovery
15 and wellness.

16 NEW SECTION. Sec. 3. A new section is added to chapter 71.24
17 RCW to read as follows:

18 The secretary shall license or certify intensive behavioral
19 health treatment facilities that meet state minimum standards. The
20 secretary must establish rules working with the authority and the
21 department of social and health services to create standards for
22 licensure or certification of intensive behavioral health treatment
23 facilities. The rules, at a minimum, must:

24 (1) Clearly define clinical eligibility criteria in alignment
25 with how "intensive behavioral health treatment facility" is defined
26 in RCW 71.24.025;

27 (2) Require twenty-four hour supervision of residents;

28 (3) Establish staffing requirements that provide an appropriate
29 response to the acuity of the residents, including a clinical team
30 and a high staff to patient ratio;

31 (4) Require access to regular psychosocial rehabilitation
32 services including, but not limited to, skills training in daily
33 living activities, social interaction, behavior management, impulse
34 control, and self-management of medications;

35 (5) Establish requirements for the ability to use limited egress;

36 (6) Limit services to persons at least eighteen years of age; and

37 (7) Establish resident rights that are substantially similar to
38 the rights of residents in long-term care facilities.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 71.24
2 RCW to read as follows:

3 By December 1, 2019, the secretary of health, in consultation
4 with the department of social and health services, the department of
5 commerce, the long-term care ombuds, and relevant stakeholders must
6 provide recommendations to the governor and the appropriate
7 committees of the legislature on providing resident rights and access
8 to ombuds services to the residents of the intensive behavioral
9 health treatment facilities.

10 NEW SECTION. **Sec. 5.** A new section is added to chapter 71.24
11 RCW to read as follows:

12 The secretary shall license or certify behavioral health drop-in
13 centers that meet state minimum standards. In consultation with the
14 authority and the department of social and health services, the
15 secretary must:

16 (1) Establish requirements for licensed and certified agencies
17 providing behavioral health drop-in center services and establish
18 physical plant and service requirements to provide voluntary, short-
19 term, noncrisis services that focus on recovery and wellness;

20 (2) Require licensed and certified agencies to partner with the
21 local crisis system including, but not limited to, evaluation and
22 treatment facilities and designated crisis responders;

23 (3) Establish staffing requirements, including rules to ensure
24 that facilities are peer-run;

25 (4) Limit services to a maximum of seven days in a month;

26 (5) Limit services to individuals who are experiencing
27 psychiatric distress, but do not meet legal criteria for involuntary
28 hospitalization under chapter 71.05 RCW; and

29 (6) Limit services to persons at least eighteen years of age.

30 NEW SECTION. **Sec. 6.** A new section is added to chapter 71.24
31 RCW to read as follows:

32 (1) The authority and the entities identified in RCW 71.24.310
33 and 71.24.380 shall: (a) Work with willing community hospitals
34 licensed under chapters 70.41 and 71.12 RCW and evaluation and
35 treatment facilities licensed or certified under chapter 71.05 RCW to
36 assess their capacity to become licensed or certified to provide
37 long-term inpatient care and to meet the requirements of this
38 chapter; and (b) enter into contracts and payment arrangements with

1 such hospitals and evaluation and treatment facilities choosing to
2 provide long-term mental health placements, to the extent that
3 willing licensed or certified facilities are available.

4 (2) Nothing in this section requires any community hospital or
5 evaluation and treatment facility to be licensed or certified to
6 provide long-term mental health placements.

7 NEW SECTION. **Sec. 7.** By November 15, 2019, the health care
8 authority shall confer with the department of health, hospitals
9 licensed under chapters 70.41 and 71.12 RCW, and evaluation and
10 treatment facilities licensed or certified under chapter 71.05 RCW to
11 review laws and regulations and identify changes that may be
12 necessary to address care delivery and cost-effective treatment for
13 adults on ninety-day or one hundred eighty-day commitment orders. The
14 health care authority must report its findings to the governor's
15 office and the appropriate committees of the legislature by December
16 15, 2019.

17 **Sec. 8.** RCW 70.38.111 and 2017 c 199 s 1 are each amended to
18 read as follows:

19 (1) The department shall not require a certificate of need for
20 the offering of an inpatient tertiary health service by:

21 (a) A health maintenance organization or a combination of health
22 maintenance organizations if (i) the organization or combination of
23 organizations has, in the service area of the organization or the
24 service areas of the organizations in the combination, an enrollment
25 of at least fifty thousand individuals, (ii) the facility in which
26 the service will be provided is or will be geographically located so
27 that the service will be reasonably accessible to such enrolled
28 individuals, and (iii) at least seventy-five percent of the patients
29 who can reasonably be expected to receive the tertiary health service
30 will be individuals enrolled with such organization or organizations
31 in the combination;

32 (b) A health care facility if (i) the facility primarily provides
33 or will provide inpatient health services, (ii) the facility is or
34 will be controlled, directly or indirectly, by a health maintenance
35 organization or a combination of health maintenance organizations
36 which has, in the service area of the organization or service areas
37 of the organizations in the combination, an enrollment of at least
38 fifty thousand individuals, (iii) the facility is or will be

1 geographically located so that the service will be reasonably
2 accessible to such enrolled individuals, and (iv) at least seventy-
3 five percent of the patients who can reasonably be expected to
4 receive the tertiary health service will be individuals enrolled with
5 such organization or organizations in the combination; or

6 (c) A health care facility (or portion thereof) if (i) the
7 facility is or will be leased by a health maintenance organization or
8 combination of health maintenance organizations which has, in the
9 service area of the organization or the service areas of the
10 organizations in the combination, an enrollment of at least fifty
11 thousand individuals and, on the date the application is submitted
12 under subsection (2) of this section, at least fifteen years remain
13 in the term of the lease, (ii) the facility is or will be
14 geographically located so that the service will be reasonably
15 accessible to such enrolled individuals, and (iii) at least seventy-
16 five percent of the patients who can reasonably be expected to
17 receive the tertiary health service will be individuals enrolled with
18 such organization;

19 if, with respect to such offering or obligation by a nursing home,
20 the department has, upon application under subsection (2) of this
21 section, granted an exemption from such requirement to the
22 organization, combination of organizations, or facility.

23 (2) A health maintenance organization, combination of health
24 maintenance organizations, or health care facility shall not be
25 exempt under subsection (1) of this section from obtaining a
26 certificate of need before offering a tertiary health service unless:

27 (a) It has submitted at least thirty days prior to the offering
28 of services reviewable under RCW 70.38.105(4)(d) an application for
29 such exemption; and

30 (b) The application contains such information respecting the
31 organization, combination, or facility and the proposed offering or
32 obligation by a nursing home as the department may require to
33 determine if the organization or combination meets the requirements
34 of subsection (1) of this section or the facility meets or will meet
35 such requirements; and

36 (c) The department approves such application. The department
37 shall approve or disapprove an application for exemption within
38 thirty days of receipt of a completed application. In the case of a
39 proposed health care facility (or portion thereof) which has not
40 begun to provide tertiary health services on the date an application

1 is submitted under this subsection with respect to such facility (or
2 portion), the facility (or portion) shall meet the applicable
3 requirements of subsection (1) of this section when the facility
4 first provides such services. The department shall approve an
5 application submitted under this subsection if it determines that the
6 applicable requirements of subsection (1) of this section are met.

7 (3) A health care facility (or any part thereof) with respect to
8 which an exemption was granted under subsection (1) of this section
9 may not be sold or leased and a controlling interest in such facility
10 or in a lease of such facility may not be acquired and a health care
11 facility described in (1)(c) which was granted an exemption under
12 subsection (1) of this section may not be used by any person other
13 than the lessee described in (1)(c) unless:

14 (a) The department issues a certificate of need approving the
15 sale, lease, acquisition, or use; or

16 (b) The department determines, upon application, that (i) the
17 entity to which the facility is proposed to be sold or leased, which
18 intends to acquire the controlling interest, or which intends to use
19 the facility is a health maintenance organization or a combination of
20 health maintenance organizations which meets the requirements of
21 (1)(a)(i), and (ii) with respect to such facility, meets the
22 requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i)
23 and (ii).

24 (4) In the case of a health maintenance organization, an
25 ambulatory care facility, or a health care facility, which ambulatory
26 or health care facility is controlled, directly or indirectly, by a
27 health maintenance organization or a combination of health
28 maintenance organizations, the department may under the program apply
29 its certificate of need requirements to the offering of inpatient
30 tertiary health services to the extent that such offering is not
31 exempt under the provisions of this section or RCW 70.38.105(7).

32 (5)(a) The department shall not require a certificate of need for
33 the construction, development, or other establishment of a nursing
34 home, or the addition of beds to an existing nursing home, that is
35 owned and operated by a continuing care retirement community that:

36 (i) Offers services only to contractual members;

37 (ii) Provides its members a contractually guaranteed range of
38 services from independent living through skilled nursing, including
39 some assistance with daily living activities;

1 (iii) Contractually assumes responsibility for the cost of
2 services exceeding the member's financial responsibility under the
3 contract, so that no third party, with the exception of insurance
4 purchased by the retirement community or its members, but including
5 the medicaid program, is liable for costs of care even if the member
6 depletes his or her personal resources;

7 (iv) Has offered continuing care contracts and operated a nursing
8 home continuously since January 1, 1988, or has obtained a
9 certificate of need to establish a nursing home;

10 (v) Maintains a binding agreement with the state assuring that
11 financial liability for services to members, including nursing home
12 services, will not fall upon the state;

13 (vi) Does not operate, and has not undertaken a project that
14 would result in a number of nursing home beds in excess of one for
15 every four living units operated by the continuing care retirement
16 community, exclusive of nursing home beds; and

17 (vii) Has obtained a professional review of pricing and long-term
18 solvency within the prior five years which was fully disclosed to
19 members.

20 (b) A continuing care retirement community shall not be exempt
21 under this subsection from obtaining a certificate of need unless:

22 (i) It has submitted an application for exemption at least thirty
23 days prior to commencing construction of, is submitting an
24 application for the licensure of, or is commencing operation of a
25 nursing home, whichever comes first; and

26 (ii) The application documents to the department that the
27 continuing care retirement community qualifies for exemption.

28 (c) The sale, lease, acquisition, or use of part or all of a
29 continuing care retirement community nursing home that qualifies for
30 exemption under this subsection shall require prior certificate of
31 need approval to qualify for licensure as a nursing home unless the
32 department determines such sale, lease, acquisition, or use is by a
33 continuing care retirement community that meets the conditions of (a)
34 of this subsection.

35 (6) A rural hospital, as defined by the department, reducing the
36 number of licensed beds to become a rural primary care hospital under
37 the provisions of Part A Title XVIII of the Social Security Act
38 Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the
39 reduction of beds licensed under chapter 70.41 RCW, increase the

1 number of licensed beds to no more than the previously licensed
2 number without being subject to the provisions of this chapter.

3 (7) A rural health care facility licensed under RCW 70.175.100
4 formerly licensed as a hospital under chapter 70.41 RCW may, within
5 three years of the effective date of the rural health care facility
6 license, apply to the department for a hospital license and not be
7 subject to the requirements of RCW 70.38.105(4)(a) as the
8 construction, development, or other establishment of a new hospital,
9 provided there is no increase in the number of beds previously
10 licensed under chapter 70.41 RCW and there is no redistribution in
11 the number of beds used for acute care or long-term care, the rural
12 health care facility has been in continuous operation, and the rural
13 health care facility has not been purchased or leased.

14 (8) A rural hospital determined to no longer meet critical access
15 hospital status for state law purposes as a result of participation
16 in the Washington rural health access preservation pilot identified
17 by the state office of rural health and formerly licensed as a
18 hospital under chapter 70.41 RCW may apply to the department to renew
19 its hospital license and not be subject to the requirements of RCW
20 70.38.105(4)(a) as the construction, development, or other
21 establishment of a new hospital, provided there is no increase in the
22 number of beds previously licensed under chapter 70.41 RCW. If all or
23 part of a formerly licensed rural hospital is sold, purchased, or
24 leased during the period the rural hospital does not meet critical
25 access hospital status as a result of participation in the Washington
26 rural health access preservation pilot and the new owner or lessor
27 applies to renew the rural hospital's license, then the sale,
28 purchase, or lease of part or all of the rural hospital is subject to
29 the provisions of this chapter.

30 (9)(a) A nursing home that voluntarily reduces the number of its
31 licensed beds to provide assisted living, licensed assisted living
32 facility care, adult day care, adult day health, respite care,
33 hospice, outpatient therapy services, congregate meals, home health,
34 or senior wellness clinic, or to reduce to one or two the number of
35 beds per room or to otherwise enhance the quality of life for
36 residents in the nursing home, may convert the original facility or
37 portion of the facility back, and thereby increase the number of
38 nursing home beds to no more than the previously licensed number of
39 nursing home beds without obtaining a certificate of need under this
40 chapter, provided the facility has been in continuous operation and

1 has not been purchased or leased. Any conversion to the original
2 licensed bed capacity, or to any portion thereof, shall comply with
3 the same life and safety code requirements as existed at the time the
4 nursing home voluntarily reduced its licensed beds; unless waivers
5 from such requirements were issued, in which case the converted beds
6 shall reflect the conditions or standards that then existed pursuant
7 to the approved waivers.

8 (b) To convert beds back to nursing home beds under this
9 subsection, the nursing home must:

10 (i) Give notice of its intent to preserve conversion options to
11 the department of health no later than thirty days after the
12 effective date of the license reduction; and

13 (ii) Give notice to the department of health and to the
14 department of social and health services of the intent to convert
15 beds back. If construction is required for the conversion of beds
16 back, the notice of intent to convert beds back must be given, at a
17 minimum, one year prior to the effective date of license modification
18 reflecting the restored beds; otherwise, the notice must be given a
19 minimum of ninety days prior to the effective date of license
20 modification reflecting the restored beds. Prior to any license
21 modification to convert beds back to nursing home beds under this
22 section, the licensee must demonstrate that the nursing home meets
23 the certificate of need exemption requirements of this section.

24 The term "construction," as used in (b)(ii) of this subsection,
25 is limited to those projects that are expected to equal or exceed the
26 expenditure minimum amount, as determined under this chapter.

27 (c) Conversion of beds back under this subsection must be
28 completed no later than four years after the effective date of the
29 license reduction. However, for good cause shown, the four-year
30 period for conversion may be extended by the department of health for
31 one additional four-year period.

32 (d) Nursing home beds that have been voluntarily reduced under
33 this section shall be counted as available nursing home beds for the
34 purpose of evaluating need under RCW 70.38.115(2) (a) and (k) so long
35 as the facility retains the ability to convert them back to nursing
36 home use under the terms of this section.

37 (e) When a building owner has secured an interest in the nursing
38 home beds, which are intended to be voluntarily reduced by the
39 licensee under (a) of this subsection, the applicant shall provide

1 the department with a written statement indicating the building
2 owner's approval of the bed reduction.

3 (10)(a) The department shall not require a certificate of need
4 for a hospice agency if:

5 (i) The hospice agency is designed to serve the unique religious
6 or cultural needs of a religious group or an ethnic minority and
7 commits to furnishing hospice services in a manner specifically aimed
8 at meeting the unique religious or cultural needs of the religious
9 group or ethnic minority;

10 (ii) The hospice agency is operated by an organization that:

11 (A) Operates a facility, or group of facilities, that offers a
12 comprehensive continuum of long-term care services, including, at a
13 minimum, a licensed, medicare-certified nursing home, assisted
14 living, independent living, day health, and various community-based
15 support services, designed to meet the unique social, cultural, and
16 religious needs of a specific cultural and ethnic minority group;

17 (B) Has operated the facility or group of facilities for at least
18 ten continuous years prior to the establishment of the hospice
19 agency;

20 (iii) The hospice agency commits to coordinating with existing
21 hospice programs in its community when appropriate;

22 (iv) The hospice agency has a census of no more than forty
23 patients;

24 (v) The hospice agency commits to obtaining and maintaining
25 medicare certification;

26 (vi) The hospice agency only serves patients located in the same
27 county as the majority of the long-term care services offered by the
28 organization that operates the agency; and

29 (vii) The hospice agency is not sold or transferred to another
30 agency.

31 (b) The department shall include the patient census for an agency
32 exempted under this subsection (10) in its calculations for future
33 certificate of need applications.

34 (11) To alleviate the need to board psychiatric patients in
35 emergency departments and increase capacity of hospitals to serve
36 individuals on ninety-day or one hundred eighty-day commitment
37 orders, for the period of time from May 5, 2017, through June 30,
38 ((2019)) 2021:

39 (a) The department shall suspend the certificate of need
40 requirement for a hospital licensed under chapter 70.41 RCW that

1 changes the use of licensed beds to increase the number of beds to
2 provide psychiatric services, including involuntary treatment
3 services. A certificate of need exemption under this subsection
4 (11) (a) shall be valid for two years.

5 (b) The department may not require a certificate of need for:

6 (i) The addition of beds as described in RCW 70.38.260 (2) and
7 (3); or

8 (ii) The construction, development, or establishment of a
9 psychiatric hospital licensed as an establishment under chapter 71.12
10 RCW that will have no more than sixteen beds and provide treatment to
11 adults on ninety or one hundred eighty-day involuntary commitment
12 orders, as described in RCW 70.38.260(4).

13 **Sec. 9.** RCW 70.38.260 and 2017 c 199 s 2 are each amended to
14 read as follows:

15 (1) For a grant awarded during fiscal years ((2016)) 2018 and
16 ((2017)) 2019 by the department of commerce under this section,
17 hospitals licensed under chapter 70.41 RCW and psychiatric hospitals
18 licensed as establishments under chapter 71.12 RCW are not subject to
19 certificate of need requirements for the addition of the number of
20 new psychiatric beds indicated in the grant. The department of
21 commerce may not make a prior approval of a certificate of need
22 application a condition for a grant application under this
23 section. The period during which an approved hospital or psychiatric
24 hospital project qualifies for a certificate of need exemption under
25 this section is two years from the date of the grant award.

26 (2) (a) Until June 30, ((2019)) 2021, a hospital licensed under
27 chapter 70.41 RCW is exempt from certificate of need requirements for
28 the addition of new psychiatric beds.

29 (b) A hospital that adds new psychiatric beds under this
30 subsection (2) must:

31 (i) Notify the department of the addition of new psychiatric
32 beds. The department shall provide the hospital with a notice of
33 exemption within thirty days; and

34 (ii) Commence the project within two years of the date of receipt
35 of the notice of exemption.

36 (c) Beds granted an exemption under RCW 70.38.111(11)(b) must
37 remain psychiatric beds unless a certificate of need is granted to
38 change their use or the hospital voluntarily reduces its licensed
39 capacity.

1 (3) (a) Until June 30, ((2019)) 2021, a psychiatric hospital
2 licensed as an establishment under chapter 71.12 RCW is exempt from
3 certificate of need requirements for the one-time addition of up to
4 thirty new psychiatric beds, if it demonstrates to the satisfaction
5 of the department:

6 (i) That its most recent two years of publicly available fiscal
7 year-end report data as required under RCW 70.170.100 and 43.70.050
8 reported to the department by the psychiatric hospital, show a payer
9 mix of a minimum of fifty percent medicare and medicaid based on a
10 calculation using patient days; and

11 (ii) A commitment to maintaining the payer mix in (a) of this
12 subsection for a period of five consecutive years after the beds are
13 made available for use by patients.

14 (b) A psychiatric hospital that adds new psychiatric beds under
15 this subsection (3) must:

16 (i) Notify the department of the addition of new psychiatric
17 beds. The department shall provide the psychiatric hospital with a
18 notice of exemption within thirty days; and

19 (ii) Commence the project within two years of the date of receipt
20 of the notice of exemption.

21 (c) Beds granted an exemption under RCW 70.38.111(11)(b) must
22 remain psychiatric beds unless a certificate of need is granted to
23 change their use or the psychiatric hospital voluntarily reduces its
24 licensed capacity.

25 (4) (a) Until June 30, ((2019)) 2021, an entity seeking to
26 construct, develop, or establish a psychiatric hospital licensed as
27 an establishment under chapter 71.12 RCW is exempt from certificate
28 of need requirements if the proposed psychiatric hospital will have
29 no more than sixteen beds and dedicate a portion of the beds to
30 providing treatment to adults on ninety or one hundred eighty-day
31 involuntary commitment orders. The psychiatric hospital may also
32 provide treatment to adults on a seventy-two hour detention or
33 fourteen-day involuntary commitment order.

34 (b) An entity that seeks to construct, develop, or establish a
35 psychiatric hospital under this subsection (4) must:

36 (i) Notify the department of the addition of construction,
37 development, or establishment. The department shall provide the
38 entity with a notice of exemption within thirty days; and

39 (ii) Commence the project within two years of the date of receipt
40 of the notice of exemption.

1 (c) Entities granted an exemption under RCW 70.38.111(11)(b)(ii)
2 may not exceed sixteen beds unless a certificate of need is granted
3 to increase the psychiatric hospital's capacity.

4 (5) This section expires June 30, (~~2022~~) 2025.

5 NEW SECTION. **Sec. 10.** By December 1, 2019, the secretary of
6 health must, in consultation with the department of social and health
7 services, department of children, youth, and families,
8 representatives from providers serving children's inpatient
9 psychiatric needs in each of the three largest cities in Washington,
10 and the health care authority, provide recommendations to the
11 governor's office and the appropriate committees of the legislature
12 on youth short-term residential intensive behavioral health and
13 developmental disabilities services. The recommendations must
14 establish staffing requirements that provide an appropriate level of
15 treatment for residents and include both licensed mental health
16 professionals and developmental disability professionals. The
17 recommendations should also consider developmental disability-related
18 services necessary to support the youth and the youth's family in
19 preparation for and after discharge.

20 **Sec. 11.** RCW 74.39A.030 and 2018 c 278 s 6 and 2018 c 225 s 2
21 are each reenacted and amended to read as follows:

22 (1) To the extent of available funding, the department shall
23 expand cost-effective options for home and community services for
24 consumers for whom the state participates in the cost of their care.

25 (2) In expanding home and community services, the department
26 shall take full advantage of federal funding available under Title
27 XVIII and Title XIX of the federal social security act, including
28 home health, adult day care, waiver options, and state plan services
29 and expand the availability of in-home services and residential
30 services, including services in adult family homes, assisted living
31 facilities, and enhanced services facilities.

32 (3)(a) The department shall by rule establish payment rates for
33 home and community services that support the provision of cost-
34 effective care. Beginning July 1, 2019, the department shall adopt a
35 data-driven medicaid payment methodology as specified in RCW
36 74.39A.032 for contracted assisted living, adult residential care,
37 and enhanced adult residential care. In the event of any conflict
38 between any such rule and a collective bargaining agreement entered

1 into under RCW 74.39A.270 and 74.39A.300, the collective bargaining
2 agreement prevails.

3 (b) The department may authorize an enhanced adult residential
4 care rate for nursing homes that temporarily or permanently convert
5 their bed use under chapter 70.38 RCW for the purposes of providing
6 assisted living, enhanced adult residential care (~~(under chapter~~
7 ~~70.38 RCW)~~), or adult residential care, when the department
8 determines that payment of an enhanced rate is cost-effective and
9 necessary to foster expansion of these contracted (~~(enhanced adult~~
10 ~~residential care)~~) services. As an incentive for nursing homes to
11 permanently convert a portion of (~~(its)~~) their nursing home bed
12 capacity for the purposes of providing assisted living, enhanced
13 adult residential care, or adult residential care, including but not
14 limited to serving individuals with behavioral health treatment
15 needs, the department may authorize a supplemental add-on to the
16 (~~(enhanced adult)~~) residential care rate.

17 (~~((c) The department may authorize a supplemental assisted living~~
18 ~~services rate for up to four years for facilities that convert from~~
19 ~~nursing home use and do not retain rights to the converted nursing~~
20 ~~home beds under chapter 70.38 RCW, if the department determines that~~
21 ~~payment of a supplemental rate is cost-effective and necessary to~~
22 ~~foster expansion of contracted assisted living services.))~~)

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