

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 1394

Chapter 324, Laws of 2019

66th Legislature
2019 Regular Session

BEHAVIORAL HEALTH COMMUNITY FACILITIES

EFFECTIVE DATE: July 28, 2019

Passed by the House April 23, 2019
Yeas 96 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 17, 2019
Yeas 48 Nays 0

CYRUS HABIB

President of the Senate

Approved May 9, 2019 2:15 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 1394** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 13, 2019

**Secretary of State
State of Washington**

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))~~) (35), and (~~((37))~~) (36) 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)) a process of change through which individuals~~
10 ~~improve their health and wellness, live a self-directed life, and~~
11 ~~strive to reach their full potential.~~

12 ~~((31))~~ (30) "Research-based" means a program or practice that
13 has been tested with a single randomized, or statistically controlled
14 evaluation, or both, demonstrating sustained desirable outcomes; or
15 where the weight of the evidence from a systemic review supports
16 sustained outcomes as described in subsection (22) of this section
17 but does not meet the full criteria for evidence-based.

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

38 ~~((33))~~ (32) "Resilience" means the personal and community
39 qualities that enable individuals to rebound from adversity, trauma,
40 tragedy, threats, or other stresses, and to live productive lives.

1 (~~(34)~~) (33) "Resource management services" mean the planning,
2 coordination, and authorization of residential services and community
3 support services administered pursuant to an individual service plan
4 for: (a) Adults and children who are acutely mentally ill; (b) adults
5 who are chronically mentally ill; (c) children who are severely
6 emotionally disturbed; or (d) adults who are seriously disturbed and
7 determined solely by a behavioral health organization to be at risk
8 of becoming acutely or chronically mentally ill. Such planning,
9 coordination, and authorization shall include mental health screening
10 for children eligible under the federal Title XIX early and periodic
11 screening, diagnosis, and treatment program. Resource management
12 services include seven day a week, twenty-four hour a day
13 availability of information regarding enrollment of adults and
14 children who are mentally ill in services and their individual
15 service plan to designated crisis responders, evaluation and
16 treatment facilities, and others as determined by the behavioral
17 health organization.

18 (~~(35)~~) (34) "Secretary" means the secretary of the department
19 of health.

20 (~~(36)~~) (35) "Seriously disturbed person" means a person who:

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

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

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

30 (d) Exhibits suicidal preoccupation or attempts; or

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

36 (~~(37)~~) (36) "Severely emotionally disturbed child" or "child
37 who is severely emotionally disturbed" means a child who has been
38 determined by the behavioral health organization to be experiencing a
39 mental disorder as defined in chapter 71.34 RCW, including those
40 mental disorders that result in a behavioral or conduct disorder,

1 that is clearly interfering with the child's functioning in family or
2 school or with peers and who meets at least one of the following
3 criteria:

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

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

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

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

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

14 (ii) Changes in custodial adult;

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

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

20 (v) Drug or alcohol abuse; or

21 (vi) Homelessness.

22 (~~(38)~~) (37) "State minimum standards" means minimum
23 requirements established by rules adopted and necessary to implement
24 this chapter by:

25 (a) The authority for:

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

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

29 (b) The department of health for:

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

32 (ii) Residential services.

33 (~~(39)~~) (38) "Substance use disorder" means a cluster of
34 cognitive, behavioral, and physiological symptoms indicating that an
35 individual continues using the substance despite significant
36 substance-related problems. The diagnosis of a substance use disorder
37 is based on a pathological pattern of behaviors related to the use of
38 the substances.

39 (~~(40)~~) (39) "Tribal authority," for the purposes of this
40 section and RCW 71.24.300 only, means: The federally recognized

1 Indian tribes and the major Indian organizations recognized by the
2 director insofar as these organizations do not have a financial
3 relationship with any behavioral health organization that would
4 present a conflict of interest.

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

13 (41) "Mental health peer respite center" means a peer-run program
14 to serve individuals in need of voluntary, short-term, noncrisis
15 services that focus on recovery 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) Establish requirements for the ability to provide services
32 and an appropriate level of care to individuals with intellectual or
33 developmental disabilities. The requirements must include staffing
34 and training;

35 (5) Require access to regular psychosocial rehabilitation
36 services including, but not limited to, skills training in daily
37 living activities, social interaction, behavior management, impulse
38 control, and self-management of medications;

39 (6) Establish requirements for the ability to use limited egress;

- 1 (7) Limit services to persons at least eighteen years of age; and
2 (8) Establish resident rights that are substantially similar to
3 the rights of residents in long-term care facilities.

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

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

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

15 The secretary shall license or certify mental health peer respite
16 centers that meet state minimum standards. In consultation with the
17 authority and the department of social and health services, the
18 secretary must:

19 (1) Establish requirements for licensed and certified community
20 behavioral health agencies to provide mental health peer respite
21 center services and establish physical plant and service requirements
22 to provide voluntary, short-term, noncrisis services that focus on
23 recovery and wellness;

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

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

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

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

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

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

36 (1) The authority and the entities identified in RCW 71.24.310
37 and 71.24.380 shall: (a) Work with willing community hospitals

1 licensed under chapters 70.41 and 71.12 RCW and evaluation and
2 treatment facilities licensed or certified under chapter 71.05 RCW to
3 assess their capacity to become licensed or certified to provide
4 long-term inpatient care and to meet the requirements of this
5 chapter; and (b) enter into contracts and payment arrangements with
6 such hospitals and evaluation and treatment facilities choosing to
7 provide long-term mental health placements, to the extent that
8 willing licensed or certified facilities are available.

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

12 NEW SECTION. **Sec. 7.** By November 15, 2019, the health care
13 authority shall confer with the department of health, hospitals
14 licensed under chapters 70.41 and 71.12 RCW, and evaluation and
15 treatment facilities licensed or certified under chapter 71.05 RCW to
16 review laws and regulations and identify changes that may be
17 necessary to address care delivery and cost-effective treatment for
18 adults on ninety-day or one hundred eighty-day commitment orders. The
19 health care authority must report its findings to the governor's
20 office and the appropriate committees of the legislature by December
21 15, 2019.

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

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

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

37 (b) A health care facility if (i) the facility primarily provides
38 or will provide inpatient health services, (ii) the facility is or

1 will be controlled, directly or indirectly, by a health maintenance
2 organization or a combination of health maintenance organizations
3 which has, in the service area of the organization or service areas
4 of the organizations in the combination, an enrollment of at least
5 fifty thousand individuals, (iii) the facility is or will be
6 geographically located so that the service will be reasonably
7 accessible to such enrolled individuals, and (iv) at least seventy-
8 five percent of the patients who can reasonably be expected to
9 receive the tertiary health service will be individuals enrolled with
10 such organization or organizations in the combination; or

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

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

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

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

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

1 (c) The department approves such application. The department
2 shall approve or disapprove an application for exemption within
3 thirty days of receipt of a completed application. In the case of a
4 proposed health care facility (or portion thereof) which has not
5 begun to provide tertiary health services on the date an application
6 is submitted under this subsection with respect to such facility (or
7 portion), the facility (or portion) shall meet the applicable
8 requirements of subsection (1) of this section when the facility
9 first provides such services. The department shall approve an
10 application submitted under this subsection if it determines that the
11 applicable requirements of subsection (1) of this section are met.

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

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

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

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

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

1 (i) Offers services only to contractual members;

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

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

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

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

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

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

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

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

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

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

39 (6) A rural hospital, as defined by the department, reducing the
40 number of licensed beds to become a rural primary care hospital under

1 the provisions of Part A Title XVIII of the Social Security Act
2 Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the
3 reduction of beds licensed under chapter 70.41 RCW, increase the
4 number of licensed beds to no more than the previously licensed
5 number without being subject to the provisions of this chapter.

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

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

33 (9)(a) A nursing home that voluntarily reduces the number of its
34 licensed beds to provide assisted living, licensed assisted living
35 facility care, adult day care, adult day health, respite care,
36 hospice, outpatient therapy services, congregate meals, home health,
37 or senior wellness clinic, or to reduce to one or two the number of
38 beds per room or to otherwise enhance the quality of life for
39 residents in the nursing home, may convert the original facility or
40 portion of the facility back, and thereby increase the number of

1 nursing home beds to no more than the previously licensed number of
2 nursing home beds without obtaining a certificate of need under this
3 chapter, provided the facility has been in continuous operation and
4 has not been purchased or leased. Any conversion to the original
5 licensed bed capacity, or to any portion thereof, shall comply with
6 the same life and safety code requirements as existed at the time the
7 nursing home voluntarily reduced its licensed beds; unless waivers
8 from such requirements were issued, in which case the converted beds
9 shall reflect the conditions or standards that then existed pursuant
10 to the approved waivers.

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

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

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

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

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

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

1 (e) When a building owner has secured an interest in the nursing
2 home beds, which are intended to be voluntarily reduced by the
3 licensee under (a) of this subsection, the applicant shall provide
4 the department with a written statement indicating the building
5 owner's approval of the bed reduction.

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

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

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

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

20 (B) Has operated the facility or group of facilities for at least
21 ten continuous years prior to the establishment of the hospice
22 agency;

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

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

27 (v) The hospice agency commits to obtaining and maintaining
28 medicare certification;

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

32 (vii) The hospice agency is not sold or transferred to another
33 agency.

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

37 (11) To alleviate the need to board psychiatric patients in
38 emergency departments and increase capacity of hospitals to serve
39 individuals on ninety-day or one hundred eighty-day commitment

1 orders, for the period of time from May 5, 2017, through June 30,
2 ((2019)) 2021:

3 (a) The department shall suspend the certificate of need
4 requirement for a hospital licensed under chapter 70.41 RCW that
5 changes the use of licensed beds to increase the number of beds to
6 provide psychiatric services, including involuntary treatment
7 services. A certificate of need exemption under this subsection
8 (11) (a) shall be valid for two years.

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

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

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

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

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

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

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

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

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

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

5 (3)(a) Until June 30, (~~2019~~) 2021, a psychiatric hospital
6 licensed as an establishment under chapter 71.12 RCW is exempt from
7 certificate of need requirements for the one-time addition of up to
8 thirty new psychiatric beds, and for the one-time addition of up to
9 sixty psychiatric beds devoted solely to ninety-day and one hundred
10 eighty-day civil commitment patients if the hospital was awarded any
11 grant by the department of commerce to increase behavioral health
12 capacity in fiscal year 2019 and makes a commitment to maintain a
13 payer mix of at least fifty percent medicare and medicaid based on a
14 calculation using patient days for a period of five consecutive years
15 after the beds are made available for use by patients, if it
16 demonstrates to the satisfaction of the department:

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

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

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

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

30 (ii) Commence the project within two years of the date of receipt
31 of the notice of exemption.

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

36 (4)(a) Until June 30, (~~2019~~) 2021, an entity seeking to
37 construct, develop, or establish a psychiatric hospital licensed as
38 an establishment under chapter 71.12 RCW is exempt from certificate
39 of need requirements if the proposed psychiatric hospital will have
40 no more than sixteen beds and dedicate a portion of the beds to

1 providing treatment to adults on ninety or one hundred eighty-day
2 involuntary commitment orders. The psychiatric hospital may also
3 provide treatment to adults on a seventy-two hour detention or
4 fourteen-day involuntary commitment order.

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

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

10 (ii) Commence the project within two years of the date of receipt
11 of the notice of exemption.

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

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

16 NEW SECTION. **Sec. 10.** By July 1, 2020, the health care
17 authority and the department of social and health services, in
18 consultation with the department of health, the department of
19 children, youth, and families, representatives from providers serving
20 children's inpatient psychiatric needs in each of the three largest
21 cities in Washington, representatives from behavioral health and
22 developmental disability service providers, and representatives from
23 developmental disability advocacy organizations including individuals
24 and families of individuals who need or receive behavioral health and
25 developmental disability services, must provide recommendations to
26 the governor's office and the appropriate committees of the
27 legislature relating to short-term and long-term residential
28 intensive behavioral health and developmental disability services for
29 youth and adults with developmental disabilities and behavioral
30 health needs who are experiencing, or are in danger of experiencing,
31 barriers discharging from inpatient behavioral health treatment
32 received in community hospitals or state hospitals. The
33 recommendations must address the needs of youth and adults with
34 developmental or intellectual disabilities separately and: (1)
35 Consider services necessary to support the youth or adult, the youth
36 or adult's family, and the residential service provider in
37 preparation for and after discharge, including in-home behavioral
38 health and developmental disability supports that may be needed after
39 discharge to maintain stability; (2) establish staffing and funding

1 requirements that provide an appropriate level of treatment for
2 residents in facilities, including both licensed mental health
3 professionals and developmental disability professionals; and (3) for
4 youth clients, consider how to successfully transition a youth to
5 adult services without service disruption.

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

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

11 (2) In expanding home and community services, the department
12 shall take full advantage of federal funding available under Title
13 XVIII and Title XIX of the federal social security act, including
14 home health, adult day care, waiver options, and state plan services
15 and expand the availability of in-home services and residential
16 services, including services in adult family homes, assisted living
17 facilities, and enhanced services facilities.

18 (3)(a) The department shall by rule establish payment rates for
19 home and community services that support the provision of cost-
20 effective care. Beginning July 1, 2019, the department shall adopt a
21 data-driven medicaid payment methodology as specified in RCW
22 74.39A.032 for contracted assisted living, adult residential care,
23 and enhanced adult residential care. In the event of any conflict
24 between any such rule and a collective bargaining agreement entered
25 into under RCW 74.39A.270 and 74.39A.300, the collective bargaining
26 agreement prevails.

27 (b) The department may authorize an enhanced adult residential
28 care rate for nursing homes that temporarily or permanently convert
29 their bed use under chapter 70.38 RCW for the purposes of providing
30 assisted living, enhanced adult residential care (~~(under chapter~~
31 ~~70.38 RCW)~~), or adult residential care, when the department
32 determines that payment of an enhanced rate is cost-effective and
33 necessary to foster expansion of these contracted (~~(enhanced adult~~
34 ~~residential care)~~) services. As an incentive for nursing homes to
35 permanently convert a portion of (~~(its)~~) their nursing home bed
36 capacity for the purposes of providing assisted living, enhanced
37 adult residential care, or adult residential care, including but not
38 limited to serving individuals with behavioral health treatment

1 needs, the department may authorize a supplemental add-on to the
2 ((enhanced adult)) residential care rate.

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

9 NEW SECTION. **Sec. 12.** (1) The health care authority shall
10 establish a pilot program to provide mental health drop-in center
11 services. The mental health drop-in center services shall provide a
12 peer-focused recovery model during daytime hours through a community-
13 based, therapeutic, less restrictive alternative to hospitalization
14 for acute psychiatric needs. The program shall assist clients in need
15 of voluntary, short-term, noncrisis services that focus on recovery
16 and wellness. Clients may refer themselves, be brought to the center
17 by law enforcement, be brought to the center by family members, or be
18 referred by an emergency department.

19 (2) The pilot program shall be conducted in the largest city in a
20 regional service area that has at least nine counties. Funds to
21 support the pilot program shall be distributed through the behavioral
22 health administrative service organization that serves the pilot
23 program.

24 (3) The pilot program shall begin on January 1, 2020, and
25 conclude July 1, 2022.

26 (4) By December 1, 2020, the health care authority shall submit a
27 preliminary report to the governor and the appropriate committees of
28 the legislature. The preliminary report shall include a survey of
29 peer mental health programs that are operating in the state,
30 including the location, type of services offered, and number of
31 clients served. By December 1, 2021, the health care authority shall
32 report to the governor and the appropriate committees of the
33 legislature on the results of the pilot program. The report shall
34 include information about the number of clients served, the needs of
35 the clients, the method of referral for the clients, and
36 recommendations on how to expand the program statewide, including any
37 recommendations to account for different needs in urban and rural
38 areas.

1 NEW SECTION. **Sec. 13.** A new section is added to chapter 71A.12

2 RCW to read as follows:

3 (1) Subject to the availability of amounts appropriated for this
4 specific purpose, the developmental disabilities administration of
5 the department of social and health services shall track and monitor
6 the following items and make the deidentified information available
7 to the office of the developmental disabilities ombuds created in RCW
8 43.382.005, the legislature, the Washington state hospital
9 association, and the public upon request:

10 (a) Information about clients receiving services from a provider
11 who are taken or admitted to a hospital. This includes:

12 (i) The number of clients who are taken or admitted to a hospital
13 for services without a medical need;

14 (ii) The number of clients who are taken or admitted to a
15 hospital with a medical need, but are unable to discharge once the
16 medical need is met;

17 (iii) Each client's length of hospital stay for nonmedical
18 purposes;

19 (iv) The reason each client was unable to be discharged from a
20 hospital once the client's medical need was met;

21 (v) The location, including the type of provider, where each
22 client was before being taken or admitted to a hospital; and

23 (vi) The location where each client is discharged.

24 (b) Information about clients who are taken or admitted to a
25 hospital once the client's provider terminates services. This
26 includes:

27 (i) The number of clients who are taken or admitted to a hospital
28 for services without a medical need;

29 (ii) The number of clients who are taken or admitted to a
30 hospital with a medical need, but are unable to discharge once the
31 medical need is met;

32 (iii) Each client's length of hospital stay for nonmedical
33 purposes;

34 (iv) The reason each client was unable to be discharged from a
35 hospital once the client's medical need was met;

36 (v) For each client, the reason the provider terminated services;

37 (vi) The location, including the type of provider, where each
38 client was before being taken or admitted to a hospital; and

39 (vii) The location where each client is discharged.

1 (2) A provider must notify the department when a client is taken
2 or admitted to a hospital for services without a medical need and
3 when a client is taken or admitted to a hospital with a medical need
4 but is unable to discharge back to the provider, so that the
5 department may track and collect data as required under subsection
6 (1) of this section.

7 (3) The definitions in this subsection apply throughout this
8 section unless the context clearly requires otherwise.

9 (a) "Hospital" means a facility licensed under chapter 70.41 or
10 71.12 RCW.

11 (b) "Provider" means a certified residential services and support
12 program that contracts with the developmental disabilities
13 administration of the department of social and health services to
14 provide services to administration clients. "Provider" also includes
15 the state-operated living alternatives program operated by the
16 administration.

Passed by the House April 23, 2019.
Passed by the Senate April 17, 2019.
Approved by the Governor May 9, 2019.
Filed in Office of Secretary of State May 13, 2019.

--- END ---