

CERTIFICATION OF ENROLLMENT

SENATE BILL 5415

Chapter 282, Laws of 2019

66th Legislature
2019 Regular Session

INDIAN HEALTH IMPROVEMENT ADVISORY PLAN AND REINVESTMENT ACCOUNT

EFFECTIVE DATE: July 28, 2019

Passed by the Senate April 22, 2019
Yeas 42 Nays 0

CYRUS HABIB

President of the Senate

Passed by the House April 11, 2019
Yeas 96 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 7, 2019 11:08 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5415** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

May 13, 2019

**Secretary of State
State of Washington**

SENATE BILL 5415

AS AMENDED BY THE HOUSE

Passed Legislature - 2019 Regular Session

State of Washington

66th Legislature

2019 Regular Session

By Senators McCoy, Rivers, Cleveland, Saldaña, Van De Wege, Billig, Conway, Frockt, Kuderer, Nguyen, and Rolfes

Read first time 01/21/19. Referred to Committee on Health & Long Term Care.

1 AN ACT Relating to creating a forum and a funding mechanism to
2 improve the health of American Indians and Alaska Natives in the
3 state; reenacting and amending RCW 43.79A.040; and adding a new
4 chapter to Title 43 RCW.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

7 (a) As set forth in 25 U.S.C. Sec. 1602, it is the policy of the
8 nation, in fulfillment of its special trust responsibilities and
9 legal obligations to American Indians and Alaska Natives, to:

10 (i) Ensure the highest possible health status for American
11 Indians and Alaska Natives and to provide all resources necessary to
12 effect that policy;

13 (ii) Raise the health status of American Indians and Alaska
14 Natives to at least the levels set forth in the goals contained
15 within the healthy people 2020 initiative or successor objectives;
16 and

17 (iii) Ensure tribal self-determination and maximum participation
18 by American Indians and Alaska Natives in the direction of health
19 care services so as to render the persons administering such services
20 and the services themselves more responsive to the needs and desires
21 of tribes and American Indian and Alaska Native communities;

1 (b) According to the northwest tribal epidemiology center and the
2 department of health, American Indians and Alaska Natives in the
3 state experience some of the greatest health disparities compared to
4 other groups, including excessively high rates of:

5 (i) Premature mortality due to suicide, overdose, unintentional
6 injury, and various chronic diseases; and

7 (ii) Asthma, coronary heart disease, hypertension, diabetes,
8 prediabetes, obesity, dental caries, poor mental health, youth
9 depressive feelings, cigarette smoking and vaping, and cannabis use;

10 (c) These health disparities are a direct result of both
11 historical trauma, leading to adverse childhood experiences across
12 multiple generations, and inadequate levels of federal funding to the
13 Indian health service;

14 (d) Under a 2016 update in payment policy from the centers for
15 medicare and medicaid services, the state has the opportunity to
16 shift more of the cost of care for American Indian and Alaska Native
17 medicaid enrollees from the state general fund to the federal
18 government if all of the federal requirements are met;

19 (e) Because the federal requirements to achieve this cost shift
20 and obtain the new federal funds place significant administrative
21 burdens on Indian health service and tribal health facilities, the
22 state has no way to shift these costs of care to the federal
23 government unless the state provides incentives for tribes to take on
24 these administrative burdens; and

25 (f) The federal government's intent for this update in payment
26 policy is to help states, the Indian health service, and tribes to
27 improve delivery systems for American Indians and Alaska Natives by
28 increasing access to care, strengthening continuity of care, and
29 improving population health.

30 (2) The legislature, therefore, intends to:

31 (a) Establish that it is the policy of this state and the intent
32 of this chapter, in fulfillment of the state's unique relationships
33 and shared respect between sovereign governments, to:

34 (i) Recognize the United States' special trust responsibility to
35 provide quality health care and allied health services to American
36 Indians and Alaska Natives, including those individuals who are
37 residents of this state; and

38 (ii) Implement the national policies of Indian self-determination
39 with the goal of reducing health inequities for American Indians and
40 Alaska Natives;

- 1 (b) Establish the governor's Indian health advisory council to:
- 2 (i) Adopt a biennial Indian health improvement advisory plan,
- 3 developed by the reinvestment committee;
- 4 (ii) Address issues with tribal implications that are not able to
- 5 be resolved at the agency level; and
- 6 (iii) Provide oversight of the Indian health improvement
- 7 reinvestment account;
- 8 (c) Establish the Indian health improvement reinvestment account
- 9 in order to provide incentives for tribes to assume the
- 10 administrative burdens created by the federal requirements for the
- 11 state to shift health care costs to the federal government;
- 12 (d) Appropriate and deposit into the reinvestment account all of
- 13 the new state savings, subject to federal appropriations and less
- 14 agreed upon administrative costs to maintain fiscal neutrality to the
- 15 state general fund; and
- 16 (e) Require the funds in the reinvestment account to be spent
- 17 only on costs for projects, programs, or activities identified in the
- 18 advisory plan.

19 NEW SECTION. **Sec. 2.** The definitions in this section apply

20 throughout this chapter unless the context clearly requires

21 otherwise.

22 (1) "Advisory council" means the governor's Indian health

23 advisory council established in section 3 of this act.

24 (2) "Advisory plan" means the plan described in section 4 of this

25 act.

26 (3) "American Indian" or "Alaska Native" means any individual who

27 is: (a) A member of a federally recognized tribe; or (b) eligible for

28 the Indian health service.

29 (4) "Authority" means the health care authority.

30 (5) "Board" means the northwest Portland area Indian health

31 board, an Oregon nonprofit corporation wholly controlled by the

32 tribes in the states of Idaho, Oregon, and Washington.

33 (6) "Commission" means the American Indian health commission for

34 Washington state, a Washington nonprofit corporation wholly

35 controlled by the tribes and urban Indian organizations in the state.

36 (7) "Community health aide" means a tribal community health

37 provider certified by a community health aide program of the Indian

38 health service or one or more tribes or tribal organizations

39 consistent with the provisions of 25 U.S.C. Sec. 16161, who can

1 perform a wide range of duties within the provider's scope of
2 certified practice in health programs of a tribe, tribal
3 organization, Indian health service facility, or urban Indian
4 organization to improve access to culturally appropriate, quality
5 care for American Indians and Alaska Natives and their families and
6 communities, including but not limited to community health aides,
7 community health practitioners, behavioral health aides, behavioral
8 health practitioners, dental health aides, and dental health aide
9 therapists.

10 (8) "Community health aide program" means a community health aide
11 certification board for the state consistent with 25 U.S.C. Sec.
12 16161 and the training programs and certification requirements
13 established thereunder.

14 (9) "Fee-for-service" means the state's medicaid program for
15 which payments are made under the state plan, without a managed care
16 entity, in accordance with the fee-for-service payment methodology.

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

21 (11) "Indian health service" means the federal agency within the
22 United States department of health and human services.

23 (12) "New state savings" means the savings to the state general
24 fund that are achieved as a result of the centers for medicare and
25 medicaid services state health official letter 16-002 and related
26 guidance, calculated as the difference between (a) medicaid payments
27 received from the centers for medicare and medicaid services based on
28 the one hundred percent federal medical assistance percentage; and
29 (b) medicaid payments received from the centers for medicare and
30 medicaid services based on the federal medical assistance percentage
31 that would apply in the absence of state health official letter
32 16-002 and related guidance.

33 (13) "Reinvestment account" means the Indian health improvement
34 reinvestment account created in section 5 of this act.

35 (14) "Reinvestment committee" means the Indian health improvement
36 reinvestment committee established in section 3(4) of this act.

37 (15) "Tribal organization" has the meaning set forth in 25 U.S.C.
38 Sec. 5304.

39 (16) "Tribally operated facility" means a health care facility
40 operated by one or more tribes or tribal organizations to provide

1 specialty services, including but not limited to evaluation and
2 treatment services, secure detox services, inpatient psychiatric
3 services, nursing home services, and residential substance use
4 disorder services.

5 (17) "Tribe" means any Indian tribe, band, nation, or other
6 organized group or community, including any Alaska Native village or
7 group or regional or village corporation as defined in or established
8 pursuant to the Alaska Native claims settlement act (43 U.S.C. Sec.
9 1601 et seq.) which is recognized as eligible for the special
10 programs and services provided by the United States to Indians
11 because of their status as Indians.

12 (18) "Urban Indian" means any individual who resides in an urban
13 center and is: (a) A member of a tribe terminated since 1940 and
14 those tribes recognized now or in the future by the state in which
15 they reside, or who is a descendant, in the first or second degree,
16 of any such member; (b) an Eskimo or Aleut or other Alaska Native;
17 (c) considered by the secretary of the interior to be an Indian for
18 any purpose; or (d) considered by the United States secretary of
19 health and human services to be an Indian for purposes of eligibility
20 for Indian health services, including as a California Indian, Eskimo,
21 Aleut, or other Alaska Native.

22 (19) "Urban Indian organization" means an urban Indian
23 organization, as defined by 25 U.S.C. Sec. 1603.

24 NEW SECTION. **Sec. 3.** (1) The governor's Indian health advisory
25 council is established, consisting of:

26 (a) The following voting members:

27 (i) One representative from each tribe, designated by the tribal
28 council, who is either the tribe's commission delegate or an
29 individual specifically designated for this role, or his or her
30 designee;

31 (ii) The chief executive officer of each urban Indian
32 organization, or the urban Indian organization's commission delegate
33 if applicable, or his or her designee;

34 (iii) One member from each of the two largest caucuses of the
35 house of representatives, appointed by the speaker of the house of
36 representatives;

37 (iv) One member from each of the two largest caucuses of the
38 senate, appointed by the president of the senate; and

39 (v) One member representing the governor's office; and

1 (b) The following nonvoting members:

2 (i) One member of the executive leadership team from each of the
3 following state agencies: The authority; the department of children,
4 youth, and families; the department of commerce; the department of
5 corrections; the department of health; the department of social and
6 health services; the office of the insurance commissioner; the office
7 of the superintendent of public instruction; and the Washington
8 health benefit exchange;

9 (ii) The chief operating officer of each Indian health service
10 area office and service unit, or his or her designee;

11 (iii) The executive director of the commission, or his or her
12 designee; and

13 (iv) The executive director of the board, or his or her designee.

14 (2) The advisory council shall meet at least three times per year
15 when the legislature is not in session, in a forum that offers both
16 in-person and remote participation where everyone can hear and be
17 heard.

18 (3) The advisory council has the responsibility to:

19 (a) Adopt the biennial Indian health improvement advisory plan
20 prepared and amended by the reinvestment committee as described in
21 section 4 of this act no later than November 1st of each odd-numbered
22 year;

23 (b) Address current or proposed policies or actions that have
24 tribal implications and are not able to be resolved or addressed at
25 the agency level;

26 (c) Facilitate better understanding among advisory council
27 members and their support staff of the Indian health system, American
28 Indian and Alaska Native health disparities and historical trauma,
29 and tribal sovereignty and self-governance;

30 (d) Provide oversight of contracting and performance of service
31 coordination organizations or service contracting entities as defined
32 in RCW 70.320.010 in order to address their impacts on services to
33 American Indians and Alaska Natives and relationships with Indian
34 health care providers; and

35 (e) Provide oversight of the Indian health improvement
36 reinvestment account created in section 5 of this act, ensuring that
37 amounts expended from the reinvestment account are consistent with
38 the advisory plan adopted under section 4 of this act.

1 (4) The reinvestment committee of the advisory council is
2 established, consisting of the following members of the advisory
3 council:

4 (a) With voting rights on the reinvestment committee, every
5 advisory council member who represents a tribe or an urban Indian
6 organization; and

7 (b) With nonvoting rights on the reinvestment committee, every
8 advisory council member who represents a state agency, the Indian
9 health service area office or a service unit, the commission, and the
10 board.

11 (5) The advisory council may appoint technical advisory
12 committees, which may include members of the advisory council, as
13 needed to address specific issues and concerns.

14 (6) The authority, in conjunction with the represented state
15 agencies on the advisory council, shall supply such information and
16 assistance as are deemed necessary for the advisory council and its
17 committees to carry out its duties under this section.

18 (7) The authority shall provide (a) administrative and clerical
19 assistance to the advisory council and its committees and (b)
20 technical assistance with the assistance of the commission.

21 (8) The advisory council meetings, reports and recommendations,
22 and other forms of collaboration described in this chapter support
23 the tribal consultation process but are not a substitute for the
24 requirements for state agencies to conduct consultation or maintain
25 government-to-government relationships with tribes under federal and
26 state law.

27 NEW SECTION. **Sec. 4.** (1) With assistance from the authority,
28 the commission, and other member entities of the advisory council,
29 the reinvestment committee of the advisory council shall prepare and
30 amend from time to time a biennial Indian health improvement advisory
31 plan to:

32 (a) Develop programs directed at raising the health status of
33 American Indians and Alaska Natives and reducing the health
34 inequities that these communities experience; or

35 (b) Help the state, the Indian health service, tribes, and urban
36 Indian organizations, statewide or in regions, improve delivery
37 systems for American Indians and Alaska Natives by increasing access
38 to care, strengthening continuity of care, and improving population
39 health through investments in capacity and infrastructure.

1 (2) The advisory plan shall include the following:

2 (a) An assessment of Indian health and Indian health care in the
3 state;

4 (b) Specific recommendations for programs, projects, or
5 activities, along with recommended reinvestment account expenditure
6 amounts and priorities for expenditures, for the next two state
7 fiscal bienniums. The programs, projects, and activities may include
8 but are not limited to:

9 (i) The creation and expansion of facilities operated by Indian
10 health services, tribes, and urban Indian health programs providing
11 evaluation, treatment, and recovery services for opioid use disorder,
12 other substance use disorders, mental illness, or specialty care;

13 (ii) Improvement in access to, and utilization of, culturally
14 appropriate primary care, mental health, and substance use disorder
15 and recovery services;

16 (iii) The elimination of barriers to, and maximization of,
17 federal funding of substance use disorder and mental health services
18 under the programs established in chapter 74.09 RCW;

19 (iv) Increased availability of, and identification of barriers
20 to, crisis and related services established in chapter 71.05 RCW,
21 with recommendations to increase access including, but not limited
22 to, involuntary commitment orders, designated crisis responders, and
23 discharge planning;

24 (v) Increased access to quality, culturally appropriate, trauma-
25 informed specialty services, including adult and pediatric
26 psychiatric services, medication consultation, and addiction or
27 geriatric psychiatry;

28 (vi) A third-party administrative entity to provide, arrange, and
29 make payment for services for American Indians and Alaska Natives;

30 (vii) Expansion of suicide prevention services, including
31 culture-based programming, to instill and fortify cultural practices
32 as a protective factor;

33 (viii) Expansion of traditional healing services;

34 (ix) Development of a community health aide program, including a
35 community health aide certification board for the state consistent
36 with 25 U.S.C. Sec. 16161, and support for community health aide
37 services;

38 (x) Health information technology capability within tribes and
39 urban Indian organizations to assure the technological capacity to:

40 (A) Produce sound evidence for Indian health care provider best

1 practices; (B) effectively coordinate care between Indian health care
2 providers and non-Indian health care providers; (C) provide
3 interoperability with state claims and reportable data systems, such
4 as for immunizations and reportable conditions; and (D) support
5 patient-centered medical home models, including sufficient resources
6 to purchase and implement certified electronic health record systems,
7 such as hardware, software, training, and staffing;

8 (xi) Support for care coordination by tribes and other Indian
9 health care providers to mitigate barriers to access to care for
10 American Indians and Alaska Natives, with duties to include without
11 limitation: (A) Follow-up of referred appointments; (B) routine
12 follow-up care for management of chronic disease; (C) transportation;
13 and (D) increasing patient understanding of provider instructions;

14 (xii) Expanded support for tribal and urban Indian epidemiology
15 centers to create a system of epidemiological analysis that meets the
16 needs of the state's American Indian and Alaska Native population;
17 and

18 (xiii) Other health care services and public health services that
19 contribute to reducing health inequities for American Indians and
20 Alaska Natives in the state and increasing access to quality,
21 culturally appropriate health care for American Indians and Alaska
22 Natives in the state; and

23 (c) Review of how programs, projects, or activities that have
24 received investments from the reinvestment account have or have not
25 achieved the objectives and why.

26 NEW SECTION. **Sec. 5.** (1) The Indian health improvement
27 reinvestment account is created in the custody of the state
28 treasurer. All receipts from new state savings as defined in section
29 2 of this act and any other moneys appropriated to the account must
30 be deposited into the account. Expenditures from the account may be
31 used only for projects, programs, and activities authorized by
32 section 4 of this act. Only the director of the authority or the
33 director's designee may authorize expenditures from the account. The
34 account is subject to allotment procedures under chapter 43.88 RCW,
35 but an appropriation is not required for expenditures.

36 (2) Beginning November 1, 2019, the new state savings as defined
37 in section 2 of this act, less the state's administrative costs as
38 agreed upon by the state and the reinvestment committee, shall be
39 deposited into the reinvestment account. With advice from the

1 advisory council, the authority shall develop a report and
2 methodology to identify and track the new state savings. Each fall,
3 to assure alignment with existing budget processes, the methodology
4 selected shall involve the same forecasting procedures that inform
5 the authority's medical assistance and behavioral health
6 appropriations to prospectively identify new state savings each
7 fiscal year, as defined in section 2 of this act.

8 (3) The authority shall pursue new state savings for medicaid
9 managed care premiums on an actuarial basis and in consultation with
10 tribes.

11 NEW SECTION. **Sec. 6.** This chapter may be known and cited as the
12 "Washington Indian health improvement act."

13 **Sec. 7.** RCW 43.79A.040 and 2018 c 260 s 28, 2018 c 258 s 4, and
14 2018 c 127 s 6 are each reenacted and amended to read as follows:

15 (1) Money in the treasurer's trust fund may be deposited,
16 invested, and reinvested by the state treasurer in accordance with
17 RCW 43.84.080 in the same manner and to the same extent as if the
18 money were in the state treasury, and may be commingled with moneys
19 in the state treasury for cash management and cash balance purposes.

20 (2) All income received from investment of the treasurer's trust
21 fund must be set aside in an account in the treasury trust fund to be
22 known as the investment income account.

23 (3) The investment income account may be utilized for the payment
24 of purchased banking services on behalf of treasurer's trust funds
25 including, but not limited to, depository, safekeeping, and
26 disbursement functions for the state treasurer or affected state
27 agencies. The investment income account is subject in all respects to
28 chapter 43.88 RCW, but no appropriation is required for payments to
29 financial institutions. Payments must occur prior to distribution of
30 earnings set forth in subsection (4) of this section.

31 (4)(a) Monthly, the state treasurer must distribute the earnings
32 credited to the investment income account to the state general fund
33 except under (b), (c), and (d) of this subsection.

34 (b) The following accounts and funds must receive their
35 proportionate share of earnings based upon each account's or fund's
36 average daily balance for the period: The 24/7 sobriety account, the
37 Washington promise scholarship account, the Gina Grant Bull memorial
38 legislative page scholarship account, the Washington advanced college

1 tuition payment program account, the Washington college savings
2 program account, the accessible communities account, the Washington
3 achieving a better life experience program account, the community and
4 technical college innovation account, the agricultural local fund,
5 the American Indian scholarship endowment fund, the foster care
6 scholarship endowment fund, the foster care endowed scholarship trust
7 fund, the contract harvesting revolving account, the Washington state
8 combined fund drive account, the commemorative works account, the
9 county enhanced 911 excise tax account, the toll collection account,
10 the developmental disabilities endowment trust fund, the energy
11 account, the fair fund, the family and medical leave insurance
12 account, the fish and wildlife federal lands revolving account, the
13 natural resources federal lands revolving account, the food animal
14 veterinarian conditional scholarship account, the forest health
15 revolving account, the fruit and vegetable inspection account, the
16 future teachers conditional scholarship account, the game farm
17 alternative account, the GET ready for math and science scholarship
18 account, the Washington global health technologies and product
19 development account, the grain inspection revolving fund, the
20 Washington history day account, the industrial insurance rainy day
21 fund, the juvenile accountability incentive account, the law
22 enforcement officers' and firefighters' plan 2 expense fund, the
23 local tourism promotion account, the low-income home rehabilitation
24 revolving loan program account, the multiagency permitting team
25 account, the northeast Washington wolf-livestock management account,
26 the pilotage account, the produce railcar pool account, the regional
27 transportation investment district account, the rural rehabilitation
28 account, the Washington sexual assault kit account, the stadium and
29 exhibition center account, the youth athletic facility account, the
30 self-insurance revolving fund, the children's trust fund, the
31 Washington horse racing commission Washington bred owners' bonus fund
32 and breeder awards account, the Washington horse racing commission
33 class C purse fund account, the individual development account
34 program account, the Washington horse racing commission operating
35 account, the life sciences discovery fund, the Washington state
36 heritage center account, the reduced cigarette ignition propensity
37 account, the center for childhood deafness and hearing loss account,
38 the school for the blind account, the Millersylvania park trust fund,
39 the public employees' and retirees' insurance reserve fund, the
40 school employees' benefits board insurance reserve fund, (({the}))

1 the public employees' and retirees' insurance account, (~~{the}~~) the
2 school employees' insurance account, (~~and~~) the radiation perpetual
3 maintenance fund, and the Indian health improvement reinvestment
4 account.

5 (c) The following accounts and funds must receive eighty percent
6 of their proportionate share of earnings based upon each account's or
7 fund's average daily balance for the period: The advanced right-of-
8 way revolving fund, the advanced environmental mitigation revolving
9 account, the federal narcotics asset forfeitures account, the high
10 occupancy vehicle account, the local rail service assistance account,
11 and the miscellaneous transportation programs account.

12 (d) Any state agency that has independent authority over accounts
13 or funds not statutorily required to be held in the custody of the
14 state treasurer that deposits funds into a fund or account in the
15 custody of the state treasurer pursuant to an agreement with the
16 office of the state treasurer shall receive its proportionate share
17 of earnings based upon each account's or fund's average daily balance
18 for the period.

19 (5) In conformance with Article II, section 37 of the state
20 Constitution, no trust accounts or funds shall be allocated earnings
21 without the specific affirmative directive of this section.

22 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act
23 constitute a new chapter in Title 43 RCW.

Passed by the Senate April 22, 2019.
Passed by the House April 11, 2019.
Approved by the Governor May 7, 2019.
Filed in Office of Secretary of State May 13, 2019.

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